UNITED STATES
**SECURITIES AND EXCHANGE COMMISSION**
WASHINGTON, D.C. 20549
**FORM 10-K**

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
**For the fiscal year ended: December 31, 2022**
OR
☐ **TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
**Commission File Number: 001-37527**

# XCEL BRANDS, INC.

(Exact name of Registrant as specified in its charter)

| Delaware | 76-0307819 |
|---|---|
| (State or Other Jurisdiction of Incorporation or Organization) | (I.R.S. Employer Identification No.) |

1333 Broadway, 10th Floor, New York, NY 10018
(Address of Principal Executive Offices)

(347) 727-2474
(Issuer’s Telephone Number, Including Area Code)

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

| Title of each class | Trading Symbol | Name of each exchange on which registered |
|---|---|---|
| Common Stock, $0.001 par value per share | XELB | NASDAQ Global Market |

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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 past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

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

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

| | |
|---|---|
| Large accelerated filer ☐ | 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 has filed a report on and attestation to its management’s assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant’s executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant’s most recently completed second fiscal quarter was $11,906,000 based upon the closing price of such common stock on June 30, 2022.

The number of shares of the issuer’s common stock issued and outstanding as of April 14, 2023 was 19,624,860 shares.

Documents Incorporated By Reference: None

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## PART I

## FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that involve risks and uncertainties. All statements other than statements of historical fact contained in this Annual Report, including statements regarding future events, our future financial performance, business strategy, and plans and objectives of management for future operations, are forward-looking statements. We have attempted to identify forward-looking statements by terminology including “anticipates,” “believes,” “can,” “continue,” “ongoing,” “could,” “estimates,” “expects,” “intends,” “may,” “appears,” “suggests,” “future,” “likely,” “goal,” “plans,” “potential,” “projects,” “predicts,” “seeks,” “should,” “would,” “guidance,” “confident,” or “will” or the negative of these terms or other comparable terminology. These forward-looking statements include, but are not limited to, statements regarding our anticipated revenue, expenses, profitability, strategic plans, and capital needs. These statements are based on information available to us on the date hereof and our current expectations, estimates, and projections and are not guarantees of future performance. Forward-looking statements involve known and unknown risks, uncertainties, assumptions, and other factors, including, without limitation, the risks outlined under “Risk Factors” or elsewhere in this Annual Report, as well as adverse effects on us, our licensees, and customers due to natural disasters, pandemic disease, and other unexpected events, which may cause our or our industry’s actual results, levels of activity, performance, or achievements to differ materially from those expressed or implied by these forward-looking statements. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time and it is not possible for us to predict all risk factors, nor can we address the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause our actual results to differ materially from those contained in any forward-looking statements. You should not place undue reliance on any forward-looking statements. Except as expressly required by the federal securities laws, we undertake no obligation to update any forward-looking statements, whether as a result of new information, future events, changed circumstances, or any other reason.

The "LOGO by Lori Goldstein™," "Halston," "Halston Heritage," "H by Halston®," "H Halston™," "Roy Frowick," "Judith Ripka LTD™," "Judith Ripka Collection™," "Judith Ripka Legacy™," "Judith Ripka®," "Judith Ripka Sterling™," "C. Wonder™," and "C. Wonder Limited™" brands and all related logos and other trademarks or service marks of the Company appearing in this Annual Report are the property of the Company. Brands and all related logos and other trademarks or service marks of other entities (for example, QVC, HSN, etc.) are the property of those respective entities.

**Item 1. Business**

### Overview

Xcel Brands, Inc. (the “Company,” “Xcel,” or “We”) is a media and consumer products company engaged in the design, production, marketing, live streaming, wholesale distribution, and direct-to-consumer sales of branded apparel, footwear, accessories, fine jewelry, home goods and other consumer products, and the acquisition of dynamic consumer lifestyle brands. Xcel was founded in 2011 with a vision to reimagine shopping, entertainment, and social media as one thing. Currently, the Company’s brand portfolio consists of the LOGO by Lori Goldstein brand (the “Lori Goldstein Brand”), the Halston brands (the "Halston Brand"), the Judith Ripka brands (the "Ripka Brand"), the C Wonder brands (the "C Wonder Brand"), the Longaberger brand (the “Longaberger Brand”), the Isaac Mizrahi brands (the "Isaac Mizrahi Brand"), and other proprietary brands.

- The Lori Goldstein Brand, Halston Brand, Ripka Brand, and C Wonder Brand are wholly owned by the Company.
- We manage the Longaberger Brand through our 50% ownership interest in Longaberger Licensing, LLC.
- We manage the Q Optix business through our 50% ownership interest in Q Optix, LLC.
- The Company wholly owned and managed the Isaac Mizrahi Brand through May 31, 2022. On May 31, 2022, we sold a majority interest in the brand to a third party, but retained a 30% noncontrolling interest in the brand

and continue to participate in the operations of the business.

Xcel is pioneering a true omni-channel sales strategy which includes the promotion and sale of products under its brands through interactive television, digital live-stream shopping, brick-and-mortar retail, wholesale, and e-commerce channels, to be everywhere its customers shop. The Company's brands have generated over $3 billion in retail sales via live streaming in interactive television and digital channels alone.

Our objective is to build a diversified portfolio of lifestyle consumer products brands through organic growth and the strategic acquisition of new brands. To grow our brands, we are focused on the following primary strategies:

- Distribution and/or licensing of our brands for sale through interactive television (i.e., QVC, HSN, The Shopping Channel, TVSN, CJO, JTV, etc.);
- wholesale distribution through joint ventures or licensing of our brands to retailers that sell to the end consumer;
- direct-to-consumer distribution of our brands through e-commerce and live streaming;
- licensing our brands to manufacturers and retailers for promotion and distribution through e-commerce, social commerce, and traditional brick-and-mortar retail channels whereby we provide certain design services; and
- acquiring additional consumer brands and integrating them into our operating platform and leveraging our operating infrastructure and distribution relationships.

We believe that Xcel offers a unique value proposition to our retail and direct-to-consumer customers, and our licensees for the following reasons:

- our management team, including our officers' and directors' experience in, and relationships within the industry;
- our deep knowledge, expertise, and proprietary technology in live streaming;
- our design, production, sales, marketing, and supply chain and integrated technology platform that enables us to design and distribute trend-right product; and
- our significant media and internet presence and distribution.

Our design, production and supply chain platform was developed to shorten the supply chain cycle by utilizing state-of-the-art supply chain management technology, trend analytics, and data science to actively monitor fashion trends and read and react to customer demands.

**Recent Highlights and Developments**

In April 2021, we acquired the Lori Goldstein brands, including LOGO by Lori Goldstein, a sophisticated lifestyle brand designed to bring style to the masses and that speaks to everyday women. The acquisition focuses on growing the popular brand through our omni-channel approach including live streaming, e-commerce, and interactive television, and expanding the brand into new products and categories.

In May 2022, we sold a majority interest in the Isaac Mizrahi Brand to a third party, but retained a 30% noncontrolling interest in the brand and continue to participate in the operations of the business. This sale was a transformative moment in Xcel's history and represents the first time we have monetized one of our brands since Xcel was founded in 2011. We used the proceeds from the sale to repay all of our outstanding debt and position us to fund various strategic initiatives as we concentrate our resources on growing our brands, new brand launches, and investing in live streaming technology and new business partnerships.

In the third quarter of 2022, we launched Q Optix, a multi-branded optical business on HSN and QVC. The business is conducted through a joint venture whereby we leverage inventory and systems of our partner without any material working capital investments.

In the first quarter of 2023, we began to restructure our business operations by entering into new licensing agreements and joint venture arrangements with best-in-class business partners. We entered into a new interactive television licensing agreement with America's Collectibles Network, Inc. d/b/a JTV ("JTV") for the Ripka Brand, and a separate license with JTV for the Ripka Brand's e-commerce business. For apparel, similar transactions have recently been executed. In conjunction with the launch of the C Wonder Brand on HSN, we licensed the wholesale production operations related to the brand to One Jeanswear Group, LLC ("OJG"); this new license with OJG also includes other new celebrity brands that we plan to launch in 2023 and beyond. For the Halston Brand, we plan on entering into a joint venture related to the brand's wholesale apparel business with another leading manufacturer (the "Halston JV"). The Halston JV will develop an apparel business under the H Halston brand through department stores, e-commerce, and other retailers. We expect the transition of these operating businesses to be completed by the second quarter of 2023. We believe that this evolution of our operating model will provide us with significant cost savings and allow us to reduce and better manage our exposure to operating risks. We expect that our new partnerships will result in excess of $10 million of cost savings on an annualized basis, with the majority of these savings beginning in the beginning of the second quarter of 2023. Based on these new operating structures, including cost savings and significantly reducing the Company's exposure to operating risk, the Company expects to generate sufficient cash flow to fund its obligations and operating needs.

**Company History and Corporate Information**

The Company was incorporated on August 31, 1989 in the State of Delaware under the name Houston Operating Company. On April 19, 2005, we changed our name to NetFabric Holdings, Inc. On September 29, 2011, Xcel Brands, Inc., a privately-held Delaware corporation (which we refer to as Old Xcel), Netfabric Acquisition Corp., a Delaware corporation and wholly owned subsidiary of the Company, and certain stockholders of the Company entered into an agreement of merger and plan of reorganization pursuant to which Netfabric Acquisition Corp. was merged with and into Old Xcel, with Old Xcel surviving as a wholly owned subsidiary of the Company. On September 29, 2011, we changed our name to Xcel Brands, Inc.

Our principal office is located at 1333 Broadway, New York, NY 10018. Our telephone number is (347) 727-2474.

Additionally, we maintain websites for our respective brands and an e-commerce site for our Judith Ripka brand at www.isaacmizrahi.com, www.halston.com, www.cwonder.com, www.longaberger.com, www.lorigoldstein.com, and www.judithripka.com. Our corporate website is www.xcelbrands.com. None of the content on our websites is incorporated by reference into this Annual Report on Form 10-K.

**Our Brand Portfolio**

Currently, our brand portfolio consists of the Lori Goldstein, Halston, Judith Ripka, C Wonder, Longaberger, and Isaac Mizrahi Brands, and other proprietary brands, including the various labels under these brands.

*Lori Goldstein*

Lori Goldstein helped the fashion industry recognize the value and influence of a visionary stylist by telling powerful, transformative, and authentic stories through the static image. After 35 years behind the camera, Lori ventured in front of it in 2009 when she launched LOGO by Lori Goldstein, an exclusive collection for QVC. LOGO was born from Lori's lifelong passion for layering clothes and her "anything goes with everything" approach to fashion, and is a sophisticated lifestyle brand that embraces Lori's aesthetic and speaks to everyday women. LOGO draws inspiration from the beauty of women of all ages and sizes and gives them the tools and fashion pieces to be their most fabulous selves. We acquired the Lori Goldstein brands, including LOGO by Lori Goldstein, in April 2021, and the brand is currently available through the QVC channel.

*Halston*

The Halston brand was founded by Roy Halston Frowick in the 1960s, and quickly became one of the most important American fashion brands in the world, becoming synonymous with glamour, sophistication, and femininity. Halston’s groundbreaking designs and visionary style still influence designers around the world today. We acquired the H Halston brands in December 2014, and since our acquisition of the Halston Heritage brands in February 2019, we own all Halston labels under our brands. The brand is available across various distribution channels including premium and better department stores, e-commerce, interactive television, and national specialty retailers.

*Judith Ripka*

Judith Ripka is a luxury jewelry brand founded by Judith Ripka in 1977. This brand has become known worldwide for its distinctive designs featuring intricate metalwork, vibrant colors, and distinctive use of texture. The Judith Ripka Fine Jewelry collection consists of pieces in 18 karat gold and sterling silver with precious colored jewels and diamonds, and is currently available in fine jewelry stores, luxury retailers, and via e-commerce. Ms. Ripka launched an innovative collection of fine jewelry on QVC under the Judith Ripka Brand in 1996, where the brand offers customers fine jewelry, watches, and accessories at more accessible price points, including precious and semi-precious stones. We acquired the Ripka brand in April 2014. In December 2017, we launched our Judith Ripka Fine Jewelry e-commerce operations and in January 2018, we launched the Judith Ripka Fine Jewelry wholesale operations. In 2021, we opened a retail store for Judith Ripka Fine Jewelry in Westchester, New York; we subsequently closed the store in 2022.

*C Wonder*

The C Wonder brand was founded by J. Christopher Burch in 2011 to offer a wide-ranging assortment of beautiful, versatile, and spirited products that are designed to transport its customers to a place they have never been. C Wonder offers women’s clothing, footwear, jewelry and accessories, and delightful surprises at every turn. We acquired the C Wonder Brand in July 2015, and the brand is available at mass merchant retailers, clubs, and certain off-price retailers.

*Longaberger*

Longaberger is an iconic American heritage home and collectibles brand that began making baskets in 1896 and launched a direct sales company in 1973 by the Longaberger family. The brand is best known for its distinctive handwoven baskets. We acquired a 50% ownership interest in this brand through a business venture with Hilco Global in November 2019, and are actively managing this brand to build on its history and bring it into the future as a digital first live-streaming and social commerce business. We launched our Longaberger e-commerce and live-streaming operations in February 2020.

*Q Optix*

Q Optix is a multi-branded optical business on HSN and QVC. The business is conducted through a joint venture, which was formed in June 2022 and in which we hold a 50% ownership interest, whereby we leverage inventory and systems of our partner without any material working capital investments. We launched sales of Q Optix products in June 2022.

*Isaac Mizrahi*

Isaac Mizrahi is an iconic American brand that stands for timeless, cosmopolitan style. Isaac Mizrahi, the designer, launched his eponymous label in 1987 to critical acclaim, including four Council of Fashion Designers of America (CFDA) awards. Since then, this brand has become known and beloved around the world for its colorful and stylish designs. As a true lifestyle brand, under Xcel's ownership it has expanded into over 150 different product categories including sportswear, footwear, handbags, watches, eyewear, tech accessories, home, and other merchandise. Under our omni-channel retail sales strategy, the brand is available across various distribution channels to reach customers wherever they shop: better department stores, such as Saks and Hudson's Bay; interactive television, including QVC and The Shopping Channel; and national specialty retailers. The brand is also sold in various global locations, including Canada, Italy, the United Kingdom, and Japan. We acquired the Isaac Mizrahi brand in September 2011, and in May 2022, we sold a majority interest in the brand to a third party, retaining a 30% noncontrolling interest in the brand.

**Growth Strategy**

Our vision is intended to reimagine shopping, entertainment, and social media as one thing. To fulfill this vision, we plan to continue to grow the reach of our brand portfolio by leveraging our technology and live-streaming platforms, design expertise, our integrated design, production and supply chain technology platforms, marketing expertise, and our relationships with our retail and direct-to-consumer customers, key licensees, manufacturers, and retailers. We also continue to market our brands through our innovative true omni-channel retail sales strategy. Our strategy includes distribution through interactive television, e-commerce, live streaming, and traditional brick-and-mortar retail channels. By leveraging the reach and consumer engagement of our media partners, and by developing rich online video and social media content under our brands, our strategy is to drive increased customer engagement and generate sales across our channels of distribution. Key elements of our strategy include:

- *Acquire, Develop or Partner with Brands.* We plan to continue to pursue the acquisition and/or development of additional brands or the rights to brands which we believe are synergistic and complementary to our overall strategy. Our brand acquisition and development strategy are focused on dynamic brands that we believe are synergistic to our existing portfolio of brands, strategic to our growth in a channel of distribution, and expected to be accretive to our earnings.

- *Expand and Leverage our Live-Streaming Platform.* In 2020, we launched our live-streaming platform through our Longaberger brand social commerce technology platform with the goal to build the world's largest digital marketplace powered by live-streaming and micro-influencers for home and other related products designed to create a better lifestyle. We plan to leverage this technology across our other brands.

- *Continue to Develop our Integrated Technologies Platform.* We continue to develop our integrated technologies including live-streaming and direct sales, e-commerce, customer relationship management, 3D design, trend analytics, data science, and consumer insight testing as a refinement of our marketing, design, production and supply chain capabilities in order to market, design, plan, and distribute our products more efficiently and intelligently. Driven by short-lead marketing, such as live streaming, social media, and new direct-to-consumer business models, consumers now expect more from brands and retailers, and we believe that the solution is to deliver to the customer what they want, when they want it, at a price that is fair. Advances in 3D design technologies and software allow us to design more efficiently, seamlessly communicate technical aspects of designs with our manufacturing partners, and produce better, more consistent products. Additionally, photo-realistic images generated by the current generation of 3D design software can be used to perform consumer insight testing on products, to determine demand and plan quantities for production even before a sample is made. Trend analytics including advanced algorithms focused on internet searches, social media, and inventory trends provide a forward-looking view of consumer design preferences and allow us to design into trends early-on, while data analytics will allow us to review performance and respond quickly in our read-and-react design, production and supply chain model. Live streaming and customer relationship management systems enable us to better demonstrate our products and foster high engagement with our customers. We will also seek to utilize machine learning and artificial intelligence to automate at least a portion of these functions.

We believe that our investment into these technologies position us to provide unique solutions to a rapidly changing environment. More importantly, we believe that it will help us continue to grow our business across our brands, and the integrated technologies platform itself should develop more significant value as we continue to build and develop it.

- *Expand Other Retail Partnerships.* We have entered into promotional collaborations and/or marketing agreements with large global companies such as Sesame Street, Crayola, Hewlett Packard, Revlon, Johnson & Johnson, and Kleenex, and have developed exclusive programs through certain licensees for specialty retailers such as Best Buy and Bed Bath & Beyond. We plan to continue to develop strategic relationships under our brands that can leverage our media reach through interactive television and social media to drive traffic and sales for our brands and retail partners and enhance the visibility of our brands.

- *Expand Wholesale License Relationships.* We have entered into numerous license agreements for various product categories under our brands. We have expanded the presence of our brands at department stores and have launched additional categories in the department store channel, including footwear, handbags, dresses, costume jewelry, and sunglasses. We continue to seek opportunities to expand the businesses of our licensees, as well as entering into licenses for new categories under each of our brands where the category is authentic to the brand, for both our existing brands as well as brands that we may acquire and/or develop in the future.

- *Deliver Quality Product Offerings.* We employ a professional team to provide best in class design, production and distribution to ensure that our products adhere to stringent quality standards and design specifications that we have developed. We intend to continue to invest in our design and marketing capabilities in order to differentiate our services to our customers and licensees and our brands in the marketplace.

**Licensing, Design, Production and Marketing**

*Interactive TV*

Qurate Retail Group (“Qurate”) is an important strategic partner in our interactive television business, and is our largest licensee for our Lori Goldstein and Isaac Mizrahi brands. Qurate’s business model is to promote and sell products through its interactive television programs featured on QVC and HSN and related e-commerce and mobile platforms. We employ and manage on-air spokespersons under each of these brands in order to promote products under our brands on QVC and HSN. Qurate’s programming currently reaches over 200 million homes worldwide. Our agreements with Qurate allow our on-air spokespersons to promote our non-Qurate product lines and strategic partnerships under the Mizrahi, Ripka, and Halston brands through QVC’s and HSN’s programs, subject to certain parameters including the payment of a portion of our non-Qurate revenues to Qurate. We believe that our ability to continue to leverage Qurate’s media platform, reach, and attractive customer base to cross-promote products in and drive traffic to our other channels of distribution provides us a unique advantage.

The licensing business model allows us to focus on our core competencies of design, production, marketing, and brand management without much of the investment requirements in inventory associated with traditional consumer product companies. Our brands licensed to Qurate are licensed through our various wholly owned subsidiaries.

*Qurate Agreements*

Through our wholly owned subsidiaries, we have entered into direct-to-retail license agreements with Qurate, pursuant to which we design, and Qurate sources and sells, various products under our LOGO by Lori Goldstein brand, the Longaberger brand, and the Judith Ripka brand. These agreements include, respectively, the Qurate Agreement for the LOGO by Lori Goldstein Brand (the “LOGO Qurate Agreement”) and the Qurate Agreement for the Longaberger Brand (the “Longaberger Qurate Agreement”). We were also previously party to similar agreements with Qurate related to the IsaacMizrahiLIVE brand (the “IM Qurate Agreement”) and the H Halston brand (the “H Qurate Agreement. Qurate owns the rights to all designs produced under these agreements (collectively, the “Qurate Agreements”), and the agreements include the sale of products across various categories through Qurate’s television media and related internet sites.

Pursuant to these agreements, we granted to Qurate and its affiliates the exclusive, worldwide right to promote our branded products, and the right to use and publish the related trademarks, service marks, copyrights, designs, logos, and other intellectual property rights owned, used, licensed and/or developed by us, for varying terms as set forth below.

| Agreement | Current Term Expiry | Automatic Renewal | Xcel Commenced Brand with QVC | QVC Product Launch |
|---|---|---|---|---|
| LOGO Qurate Agreement | November 1, 2023 | one-year period | April 2021 | 2009 |
| Longaberger Qurate Agreement | October 31, 2023 | two-year period | November 2019 | 2019 |
| IM Qurate Agreement | * | not applicable | September 2011 | 2010 |
| H Qurate Agreement | ** | not applicable | January 2015 | 2015 |

* On May 31, 2022, in connection with the sale of a majority interest in the Isaac Mizrahi brand to a third party, this agreement was assigned to IM Topco, LLC, in which Xcel retains a noncontrolling interest.

** In the fourth quarter of 2020, the Company transitioned and discontinued licensing of the H Halston brand to Qurate. The Company began wholesale supply sales of the H Halston products under arrangements with HSN and certain Qurate global affiliates and other unrelated interactive television networks.

In addition to the foregoing agreements, on August 30, 2022, Qurate and Xcel amended its licensing agreement for the Judith Ripka brand to terminate the license period effective December 31, 2021. Effective January 1, 2022, the agreement is effective with respect to a sell-off period, under which Qurate may continue to license the Ripka brand on a non-exclusive basis for as long as necessary to sell off any of its remaining inventory.

In connection with the foregoing and during the same periods, Qurate and its subsidiaries have the exclusive, worldwide right to use the names, likenesses, images, voices, and performances of our spokespersons to promote the respective products.

Under the Qurate Agreements, Qurate is obligated to make payments to us on a quarterly basis, based upon the net retail sales of the specified branded products. Net retail sales are defined as the aggregate amount of all revenue generated through the sale of the specified branded products by Qurate and its subsidiaries under the Qurate Agreements, net of customer returns, and excluding freight, shipping and handling charges, and sales, use, or other taxes.

Notwithstanding our grant of worldwide promotion rights to Qurate, we may, with the permission of Qurate, sell the respective branded products (i) to better or prestige retailers, but excluding discount divisions of such companies and mass merchants, (ii) via specifically branded brick-and-mortar retail stores, and (iii) via company websites, in exchange for making reverse royalty payments to Qurate based on the net retail sales of such products through such channels – with the exception of the Longaberger Brand, for which no reverse royalty payments are required to be made to Qurate under the terms of the applicable agreement.

Also, under the Qurate Agreements, except for the Longaberger Qurate Agreement, we are required for a period of time to pay a royalty participation fee to Qurate on revenue earned from the sale, license, consignment, or any other form of distribution of any products, bearing, marketed in connection with or otherwise associated with the specified trademarks and brands. Such royalty participation fees are recorded as a reduction to net licensing revenue.

Under the Qurate Agreements, we are generally restricted from selling products under the specified respective brands or trademarks (including the trademarks, copyrights, designs, logos, and related intellectual property themselves) to certain mass merchants. The Qurate Agreements generally prohibit us from selling products under the specified respective brands or any of our other trademarks and brands to a direct competitor of Qurate (generally defined as any entity other than Qurate whose primary means of deriving revenue is the transmission of interactive television programs) without Qurate's consent. In addition, during the term of the Ripka Qurate Agreement, and for one year thereafter, we may not, without Qurate's consent, promote, advertise, endorse, or sell (i) the specified branded products through any means or (ii) any products through interactive television. During the term of the H Qurate Agreement, and for one year thereafter, we may not, without Qurate's consent, promote, advertise, endorse, or sell any products, including the H by Halston brands, through interactive television. In addition to the foregoing, certain of the agreements permit us to promote brick-and-mortar collections on Qurate's television programs subject to certain terms and restrictions.

For the years ended December 31, 2022 and 2021, net licensing revenue from Qurate collectively accounted for 44% and 50%, respectively, of the total net revenue of the Company.

*Other Licensing Agreements*

We have entered into numerous other licensing agreements for sales and distribution through e-commerce and traditional brick-and-mortar retailers. Authorized distribution channels include department stores, mass merchant retailers, clubs, and national specialty retailers. Under our other licenses, a supplier is granted rights, typically on an exclusive basis, to a single or small group of related product categories for sale to multiple accounts within an approved channel of distribution and territory. Our other license agreements typically provide the licensee with the exclusive rights for a certain product category in a specified territory and/or distribution channel under a specific brand or brands. Our other license agreements cover various categories, including but not limited to women's apparel, footwear, and accessories; bath and body; jewelry; home products; men's apparel and accessories; children's and infant apparel, footwear, and accessories; and electronics cases and accessories. The terms of the agreements generally range from three to six years with renewal options.

We are in discussions with other potential licensees and strategic partners to license and/or co-brand our brand portfolio for additional categories. In certain cases, we have engaged licensing agents to assist in the procurement of such licenses for which we or our licensees pay such agents' fees based upon a percentage of the net sales of licensed products by such licensees, or a percentage of the royalty payments that we receive from such licensees. While many of the new and proposed licensing agreements will likely require us to provide seasonal design services, most of our new and prospective licensing partners have their own design staff, and we therefore expect low incremental overhead costs related to expanding our licensing business. We will endeavor, where possible, to require licensees to provide guaranteed minimum royalties under their license agreements.

Our licensees currently sell our branded licensed products through brick-and-mortar retailers, e-commerce, and in certain cases supply products to interactive television companies for sale through their television programs and/or through their internet websites. We generally recognize revenues from our other licenses based on a percentage of the sales of products under our brands, but excluding (i) sales of products to interactive television networks, where we receive a retail royalty directly from the interactive television licensee, and (ii) sales of products through e-commerce sites operated by us. Additionally, based upon guaranteed minimum royalty provisions required under many of the license agreements, we are able to recognize revenue related to certain other licenses based on the greater of the sales-based royalty or the guaranteed minimum royalty.

***Wholesale and e-Commerce***

In 2022, we added our Q Optix business to our wholesale operations. Our focus is to continue to grow our direct-to-consumer and live-streaming businesses into a significant portion of our overall business.

***Collaborations***

In certain cases, the Company collaborates with and provides promotional services to other brands or companies, which arrangements may include the use of our brands for the promotion of such company or brands through the internet, television, or other digital content, print media, or other marketing campaigns featuring in-person appearances by our celebrity spokespersons, the development of limited collections of products (which may include co-branded products) for such company, or other services as determined on a case-by-case basis. These have included promotions with Sesame Street, Crayola, Hewlett Packard, Revlon, Johnson & Johnson, and Kleenex.

We also provide certain technology services to our retail partners and certain of our licensees under our proprietary integrated technology platform.

**Marketing**

Marketing is a critical element to maximize brand value to our licensees and our Company. We employ live streaming, social media, and other marketing and public relations support for our brands.

Given our true omni-channel retail sales strategy focusing on the sale of branded products through various distribution channels (including live-streaming, e-commerce, interactive television, and traditional brick-and-mortar sales channels), our marketing efforts currently focus on leveraging micro and mega-influencers, entertainment tie-ins, PR and editorial, social media campaigns, personal appearances, and digital content in order to drive retail sales of product and consumer awareness across our various sales distribution channels. We seek to create the intersection where shopping, entertainment, and social media meet. As such, our marketing is currently conducted primarily through live-streaming and social media, videos, images, and other digital content that are all updated regularly and are amplified by micro and mega-influencers and entertainment tie-ins. Our efforts also include promoting namesakes of our brands and our personalities through various media including live-streaming, television, design for performances, and other events. We also work with our retail partners to leverage their marketing resources, including e-commerce platforms and related digital marketing campaigns, social media platforms, direct mail pieces, and public relations efforts.

We also market the Judith Ripka Fine Jewelry brand through www.judithripka.com, Halston Brand through www.halston.com, the C Wonder brand through www.cwonder.com, the Lori Goldstein brand through www.lorigoldstein.com, and the Longaberger brand through www.longaberger.com. Through our websites, we are able to present the products under our brands to customers with branding that reflects each brand's heritage and unique point of view.

Our e-commerce businesses' growth is dependent on live-streaming and other marketing to drive traffic to our websites and converting our visitors into customers.

**Competition**

Each of our current brands has and any future acquired brand will likely have many competitors within each of its specific distribution channels that span a broad variety of product categories, including the apparel, footwear, accessories, jewelry, home furnishings and décor, food products, and sporting goods industries. These competitors have the ability to compete with the Company and our licensees in terms of fashion, quality, price, products, and/or marketing, and ultimately retail floor space and consumer spending.

Because many of our competitors have significantly greater cash, revenues, and resources than we do, we must work to differentiate ourselves from our direct and indirect competitors to successfully compete for market share with the brands we own and for future acquisitions. We believe that the following factors help differentiate our Company in an increasingly crowded competitive landscape:

- our management team, including our officers' and directors' historical track records and relationships within the industry;

- our brand management platform, which has a strong focus on design, product, marketing, and technology; and

- our operating strategies of wholesale and direct-to consumer sales and licensing brands with significant media presence and driving sales through our true omni-channel retail sales strategy across interactive television, brick-and-mortar, live streaming, and e-commerce distribution channels.

We expect our existing and future licenses to relate to products in the apparel, footwear, accessories, jewelry, home goods, and other consumer products industries, in which our licensees face intense competition, including from our other brands and licensees. In general, competitive factors include quality, price, style, name recognition, and service. In addition, various fashion trends and the limited availability of shelf space could affect competition for our licensees' products. Many of our licensees' competitors have greater financial, distribution, marketing, and other resources than our licensees and have achieved significant name recognition for their brand names. Our licensees may be unable to successfully compete in the markets for their products, and we may not be able to continue to compete successfully with respect to our licensing arrangements.

**Trademarks**

The Company, through its wholly owned subsidiaries, owns and exploits the Lori Goldstein brands, which include the trademarks and brands LOGO by Lori Goldstein, LOGO, LOGO Links, LOGO Lounge, LOGO Layers, and LOGO Luna; the Halston brands, which include the trademarks and brands Halston, Halston Heritage, Roy Frowick, H by Halston, and H Halston; the Ripka brands, which include the trademarks and brands Judith Ripka LTD, Judith Ripka Collection, Judith Ripka Legacy, Judith Ripka, and Judith Ripka Sterling; and the C Wonder brands, which include the trademarks and brands C Wonder and C Wonder Limited. We manage and have a 50% ownership interest in the brands and trademarks of the Longaberger brand through our business venture with Hilco Global. We have a 50% ownership interest in the brands and trademarks of the Q Optix brand through our business venture with Vita Frame LLC. We also have a 30% ownership interest in the Mizrahi brands, which include the trademarks and brands Isaac Mizrahi, Isaac Mizrahi New York, IMNYC Isaac Mizrahi, and IsaacMizrahiLIVE, through our business venture with WHP Global.

Where laws limit our ability to record in our name trademarks that we have purchased, we have obtained by way of license all necessary rights to operate our business. Certain of these trademarks and associated marks are registered or pending registration with the U.S. Patent and Trademark Office in block letter and/or logo formats, as well as in combination with a variety of ancillary designs for use in connection with a variety of product categories, such as apparel, footwear and various other goods and services including, in some cases, home furnishings and decor. The Company intends to renew and maintain registrations as appropriate prior to expiration and it makes efforts to diligently prosecute all pending applications consistent with the Company’s business goals. In addition, the Company registers its trademarks in certain other countries and regions around the world as it deems appropriate.

The Company and its licensees do not presently earn a material amount of revenue from either the licensing of our trademarks internationally or the sale of products under our trademarks internationally. However, the Company has registered its trademarks in certain territories where it expects that it may do business in the foreseeable future. If the Company or a licensee intends to make use of the trademarks in international territories, the Company will seek to register its trademarks in such international territories as it deems appropriate based upon factors including the revenue potential, prospective market, and trademark laws in such territory or territories.

Generally, the Company is primarily responsible for monitoring and protecting its trademarks around the world. The Company seeks to require its licensing partners to advise the Company of any violations of its trademark rights of which its licensing partners become aware and relies primarily upon a combination of federal, state, and local laws, as well as contractual restrictions to protect its intellectual property rights both domestically and internationally.

**Human Capital**

Our employees’ knowledge, social, and personality attributes enable our company to achieve its goals, develop our business, and remain innovative. As of December 31, 2022, we had 69 full-time employees and 12 part-time employees. We value our employees and are committed to providing a healthy and safe work environment. For certain key employees, including our executives, brand ambassadors, and spokespersons, we typically enter into multi-year employment agreements. Overall, we believe that our relationship with our employees is good. None of our employees are represented by a labor union.

**Government Regulation**

We are subject to federal, state, and local laws and regulations affecting our business, including those promulgated under the Occupational Safety and Health Act, the Consumer Product Safety Act, the Flammable Fabrics Act, the Textile Fiber Product Identification Act, the rules and regulations of the Consumer Product Safety Commission, and various environmental laws and regulations. We believe that we are in compliance in all material respects with all applicable governmental regulations.

## Item 1A. Risk Factors

In addition to the other information contained herein or incorporated herein by reference, the risks and uncertainties and other factors described below could have a material adverse effect on our business, financial condition, results of operations and share price and could also cause our future business, financial condition and results of operations to differ materially from the results contemplated by any forward-looking statement we may make herein, in any other document we file with the Securities and Exchange Commission ("SEC"), or in any press release or other written or oral statement we may make. Please also see "Forward-Looking Statements" on page 3 for additional information regarding Forward-Looking Statements.

### Summary of Risk Factors

Our business is subject to a number of risks, which include, but are not limited to, risks related to:

- our limited amount of cash;
- our concentration of revenue with a limited number of licensees;
- restrictions related to certain key licensing agreements;
- conducting operations through joint ventures and our dependence on the joint ventures;
- our dependency upon our spokespersons;
- the operational performance and/or strategic initiatives of our licensees and retail partners;
- continued market acceptance of our brands and products;
- the use of social media and influencers to market brands and products;
- changing consumer preferences and shifting industry trends;
- execution of our growth strategy, including the acquisition of new brands;
- our dependency on our Chief Executive Officer and other key executives;
- intense competition in the apparel, fashion, and jewelry industries, and within our licensees' markets;
- product sourcing, including our arrangements with foreign suppliers, supply and logistics considerations, and our dependency on independent manufacturers; and
- protection of our trademarks and other intellectual property rights.

An investment in our securities is subject to a number of risks, which include, but are not limited to, risks related to:

- management's significant control over matters requiring shareholder approval;
- potential difficulty in liquidating an investment in shares of our common stock;
- the potential impact of SEC "penny stock" rules on trading of our shares of our common stock;
- declines of and volatility in the market price of our common stock;

- the potential issuance of a substantial number of shares of common stock upon exercise of warrants and options;
- the potential impact of Rule 144 restrictions on our shares of common stock as a former shell company;
- our intent to not pay any cash dividends for the foreseeable future; and
- provisions of our corporate charter documents which could delay or prevent change of control.

We are also subject to general risks, which include, but are not limited to, risks related to:

- a pandemic or outbreak of disease or similar public health threat, or fear of such an event;
- supply chain disruptions;
- the Ukrainian-Russian conflict;
- a decline in general economic conditions or consumer spending levels;
- inflation and/or a potential recession;
- extreme or unseasonable weather conditions;
- potential impairment of our trademarks and other intangible assets under accounting guidelines;
- changes in our effective tax rates or adverse outcomes resulting from examination of our tax returns;
- maintenance and security of our information technology systems;
- changes in laws and regulations;
- maintaining an effective system of internal control; and
- limitations on liabilities of our directors and executive officers.

**Risks Related to Our Business**

***We have a limited amount of cash to grow our operations. If we cannot obtain additional sources of cash, our growth prospects and future profitability may be materially adversely affected, and we may not be able to implement our business plan. Such additional financing may not be available on satisfactory terms or it may not be available when needed, or at all.***

As of December 31, 2022, we had cash and cash equivalents of approximately $4.6 million, and during the year ended December 31, 2022, we used $14.2 million of cash in operating activities. Although we believe that our existing cash and our anticipated cash flow from operations will be sufficient to sustain our operations at our current expense levels for at least twelve months subsequent to the date of the filing of this Annual Report on Form 10-K, we may require significant additional cash to satisfy our working capital requirements, expand our operations or acquire and develop additional brands. Our inability to finance our growth, either internally through our operations or externally, may limit our growth potential and our ability to execute our business strategy successfully. If we issue securities to raise capital to finance operations and/or pay down or restructure our debt, our existing stockholders may experience dilution. In addition, the new securities may have rights senior to those of our common stock.

***A substantial portion of our net licensing revenue is concentrated with a limited number of licensees such that the loss of any of such licensees could decrease our revenue and impair our cash flows.***

A substantial portion of our net licensing revenue has been paid by Qurate, through the respective agreements with Qurate through QVC and HSN. During the years ended December 31, 2022 and 2021, Qurate accounted for approximately 44% and 50%, respectively, of our total net revenue. Because we are dependent on these agreements with Qurate for a significant portion of our revenues, if Qurate were to have financial difficulties, or if Qurate decides not to renew or extend its existing agreements with us, our revenue and cash flows could be reduced substantially. Our cash flow would also be significantly impacted if there were significant delays in our collection of receivables from Qurate. Additionally, we have limited control over the programming that Qurate devotes to our brands or its promotional sales with our brands (such as “Today’s Special Value” sales). Qurate has reduced the programming time it devotes to jewelry and, accordingly, also to our Ripka brand, and if Qurate further reduces or modifies its programming or promotional sales related to our brands, our revenues and cash flows could be reduced substantially. In order to increase sales of a brand through Qurate, we generally require additional television programming time dedicated to the brand by Qurate. Qurate is not required to devote any minimum amount of programming time for any of our brands.

While our business with Qurate has grown since we first launched one of our brands on QVC, our Qurate revenues declined from 2021 to 2022, as a result of the May 31, 2022 sale of a controlling interest of the Isaac Mizrachi brand through the sale of a 70% interest in IM Topco, LLC. There can be no guarantee that our Qurate revenues will grow in the future or that they will not decline further. Additionally, there can be no assurance that our other licensees will be able to generate sales of products under our brands or grow their existing sales of products under our brands, and if they do generate sales, there is no guarantee that they will not cause a decline in sales of products being sold through Qurate.

***Our agreements with Qurate restrict us from selling products under our brands with certain retailers, or branded products we sell on Qurate to any other retailer except certain interactive television channels in other territories approved by Qurate, and provides Qurate with a right to terminate the respective agreement if we breach these provisions.***

Although most of our licenses and our Qurate Agreements prohibit the sale of products under our brands to retailers who are restricted by Qurate, and our license agreements with other interactive television companies prohibit such licensees from selling products to retailers restricted by Qurate under the brands we sell on Qurate outside of certain approved territories, one or more of our licensees could sell to a restricted retailer or territory, putting us in breach of our agreements with Qurate and exposing us to potential termination by Qurate. A breach of any of these agreements could also result in Qurate seeking monetary damages, seeking an injunction against us and our other licensees, reducing the programming time allocated to our brands, and/or terminating the respective agreement, which could have a material adverse effect on our net income and cash flows.

***We have recently begun to conduct certain of our operations through a joint venture. Joint ventures could fail to meet our expectations or cease to deliver anticipated benefits. There could also be disagreements with our joint venture partners that could adversely affect our interest a joint venture.***

In May 2022, we sold a majority interest in Isaac Mizrachi brand through the sale of a 70% interest in IM Topco, LLC. We may enter into additional joint ventures in the future. Our operating results are, in part, dependent upon the performance of IM Topco, LLC and, in the future, could also be dependent in part upon the performance of future joint ventures. Joint ventures involve numerous risks, and could fail to meet our initial or ongoing expectations. We provide certain services to IM Topco, LLC and may provide services to future joint ventures, but we do not control the day-to-day operations of IM Topco, LLC and may not control the day-to-day operations of future joint ventures. The anticipated synergies or other benefits of a joint venture may fail to materialize due to changing business conditions or changes in our business priorities or those of our joint venture partners. Our joint venture partners, as well as any future partners, may have interests that are different from our interests that may result in conflicting views as to the conduct of the business or future direction of the joint venture. In the event that we have a disagreement with a joint venture partner with respect to a particular issue to come before the joint venture, or as to the management or conduct of the business of the joint venture, we may not be able to resolve such disagreement in our favor. Any such disagreement could have a material adverse effect on our interest in the joint venture, the business of the joint venture, or the portion of our growth strategy related to the joint venture.

***We are dependent on our joint ventures to provide timely and accurate information about their sales and operations, which we rely upon to effectively manage their brands.***

IM Topco, LLC is, and we expect future joint ventures will be, contractually obligated to provide timely and accurate information regarding their sales and operations. We rely on this information to prepare our consolidated financial statements. Any delay in reporting reduces our visibility into the results of operations for IM Topco, LLC and any future joint ventures, and our inability to collect timely and accurate information may affect our ability to timely complete our financial statements and timely file reports and other information with the SEC and may adversely affect our business and results of operations.

***We are dependent upon the promotional services of Lori Goldstein and our other spokespersons as they relate to our respective brands.***

If we lose the services of Lori Goldstein, we may not be able to fully comply with the terms of our agreement with Qurate, and it may result in significant reductions in the value of the LOGO by Lori Goldstein brand and our prospects, revenues, and cash flows. Lori Goldstein is a key individual in our continued promotion of the LOGO by Lori Goldstein brand and the principal salesperson of the LOGO by Lori Goldstein brand on Qurate. Failure of Lori Goldstein to provide services to Qurate could result in a termination of related agreements with Qurate, which could trigger an event of default under our credit facility. Although we have entered into an employment agreement with Ms. Goldstein, there is no guarantee that we will not lose her services. To the extent that any of Ms. Goldstein's services become unavailable to us, we will likely need to find a replacement for Ms. Goldstein to promote the LOGO by Lori Goldstein brand. Competition for skilled designers and high-profile brand promoters is intense, and compensation levels may be high, and there is no guarantee that we would be able to identify and attract a qualified replacement, or if Ms. Goldstein's services are not available to us, that we would be able to promote the LOGO by Lori Goldstein brand as well as we are able to with Ms. Goldstein. This could significantly affect the value of the LOGO by Lori Goldstein brand and our ability to market the brand, and could impede our ability to fully implement our business plan and future growth strategy, which would harm our business and prospects. Additionally, while we acquired all trademarks, image, and likeness of Lori Goldstein, pursuant to the acquisition of the LOGO by Lori Goldstein assets and her employment agreement, Ms. Goldstein has retained certain rights to participate in outside business activities, including hosting and appearing in television shows, movies and theater productions, and writing and publishing books and other publications. Ms. Goldstein's participation in these personal business ventures could limit her availability to us and affect her ability to perform under this employment agreement. Finally, there is no guarantee that Ms. Goldstein will not take an action that consumers view as negative, which may harm the LOGO by Lori Goldstein brand as well as our business and prospects.

We will also be dependent upon the services of our other spokespersons and our joint venture partner's spokesperson to promote our other brands and the brands of our joint venture. The loss of a spokesperson or a joint ventures' spokesperson could significantly affect the value of the related brand or our related joint venture interest and our or our related joint venture's ability to market the brand which would harm our business and prospects.

***The failure of our licensees to adequately produce, market, source, and sell quality products bearing our brand names in their license categories or to pay their obligations under their license agreements could result in a decline in our results of operations.***

Our revenues are dependent on payments made to us under our licensing agreements. Although the licensing agreements for our brands typically require the advance payment to us of a portion of the licensing fees and in many cases provide for guaranteed minimum royalty payments to us, the failure of our licensees to satisfy their obligations under these agreements or their inability to operate successfully or at all, could result in their breach and/or the early termination of such agreements, the non-renewal of such agreements, or our decision to amend such agreements to reduce the guaranteed minimums or sales royalties due thereunder, thereby eliminating some or all of that stream of revenue. Moreover, during the terms of the license agreements, we are substantially dependent upon the efforts and abilities of our licensees to maintain the quality and marketability of the products bearing our trademarks, as their failure to do so could materially tarnish our brands, thereby harming our future growth and prospects. In addition, the failure of our licensees to meet their production, manufacturing, sourcing, and distribution requirements or actively market the branded licensed products could cause a decline in their sales and potentially decrease the amount of royalty payments (over and above the guaranteed minimums) due to us. A weak economy or softness in the apparel and retail sectors could exacerbate this risk. This, in turn, could decrease our potential revenues. The concurrent failure by several of our material licensees to meet their financial obligations to us could adversely affect our business, results of operations, and cash flows.

***We are subject to the risks associated with our Judith Ripka brand's wholesale and direct-to-consumer model.***

We commenced e-commerce sales and wholesale distribution of our Judith Ripka brand in 2017 and 2018, respectively. In 2019, we completed the transition of our non-interactive television operations of our Judith Ripka brand from a licensing model to a wholesale and direct-to-consumer model. We opened a brick-and-mortar retail store for the Judith Ripka brand in 2021, which we subsequently closed in 2022. As a result, we do not have a well-established history of conducting these operations.

We produce product for our Judith Ripka brands to hold as inventory for sales through our website and wholesale accounts. If we misjudge the market for our Judith Ripka products, we may be faced with significant excess inventory for some products and missed opportunities for other products. In addition, weak sales and mark downs by our retailers or our need to liquidate excess inventory could adversely affect our results of operations. If we are not successful in managing our inventory balances, our cash flows and operating results may be adversely affected.

***If our retail customers change their buying patterns, request additional allowances, develop their own private label brands or enter into agreements with national brand manufacturers to sell their products on an exclusive basis, our sales to these customers could be materially adversely affected.***

Our retail customers' buying patterns, as well as the need to provide additional allowances to customers, could have a material adverse effect on our business, results of operations and financial condition. Customers' strategic initiatives, including developing their own private labels brands, selling national brands on an exclusive basis, reducing the number of vendors they purchase from, or reducing the floor space dedicated to our brands could also impact our sales to these customers. There is a trend among major retailers to concentrate purchasing among a narrowing group of vendors. To the extent that any key customer reduces the number of its vendors or allocates less floor space for our products and, as a result, reduces or eliminates purchases from us, there could be a material adverse effect on us.

***Our business is dependent on continued market acceptance of our brands, our joint venture brands, and any future brands we may acquire directly or through a joint venture, and the products of our licensees.***

Although certain of our licensees guarantee minimum net sales and minimum royalties to us, some of our licensees are not yet selling licensed products or currently have limited distribution of licensed products, and a failure of our brands or of our joint venture brands or of products bearing our brands or our joint venture brands to achieve or maintain broad market acceptance could cause a reduction of our licensing revenues, diminish the value of and generally affect the operating results of our joint ventures, and could further cause existing licensees not to renew their agreements. Such failure could also cause the devaluation of our trademarks, which are our primary assets and the primary assets of our joint ventures, making it more difficult for us or our joint ventures to renew our current licenses upon their expiration or enter into new or additional licenses for such trademarks. In addition, if such devaluation of our trademarks were to occur, a material impairment in the carrying value of one or more of our trademarks, which had an aggregate carrying value of $47.7 million as of December 31, 2022, could also occur and be charged as an expense to our operating results. Continued market acceptance of our brands, our joint ventures' brands, and our licensees' products, as well as market acceptance of any future products bearing any future brands we may acquire, is subject to a high degree of uncertainty and constantly changing consumer tastes, preferences, and purchasing patterns. Creating and maintaining market acceptance of our licensees' products and creating market acceptance of new products and categories of products bearing our marks may require substantial marketing efforts, which may, from time to time, also include our expenditure of significant additional funds to keep pace with changing consumer demands, which funds may or may not be available on a timely basis, on acceptable terms or at all. Additional marketing efforts and expenditures may not, however, result in either increased market acceptance of, or additional licenses for, our trademarks or increased market acceptance, or sales, of our licensees' products. Furthermore, we do not actually design or manufacture all of the products bearing our marks, and therefore, have less control over such products' quality and design than a traditional product manufacturer might have. The failure of our licensees and joint ventures to maintain the quality of their products could harm the reputation and marketability of our brands and our joint ventures' brands, which would adversely impact our business and the business of our joint ventures.

Negative claims or publicity regarding Xcel, IM Topco, LLC, any future joint ventures, our or their brands, or products could adversely affect our reputation and sales regardless of whether such claims are accurate. Social media, which accelerates the dissemination of information, can increase the challenges of responding to negative claims. In the past, many apparel companies have experienced periods of rapid growth in sales and earnings followed by periods of declining sales and losses. Our businesses may be similarly affected in the future.

***Use of social media and influencers may materially and adversely affect our reputation or subject us to fines or other penalties.***

We use and our joint ventures may use third-party social media platforms as, among other things, marketing tools. We also maintain, and our joint ventures may maintain, relationships with many social media influencers and engage in sponsorship initiatives. As existing e-commerce and social media platforms continue to rapidly evolve and new platforms develop, we and our joint ventures must continue to maintain a presence on these platforms and establish presences on new or emerging popular social media platforms. If we or our joint ventures are unable to cost-effectively use social media platforms as marketing tools or if the social media platforms we or our joint ventures use change their policies or algorithms, we or our joint ventures may not be able to fully optimize such platforms, and our and their ability to maintain and acquire customers and our financial condition may suffer.

Furthermore, as laws and regulations and public opinion rapidly evolve to govern the use of these platforms and devices, the failure by us, our employees, our network of social media influencers, our sponsors or third parties acting at our direction to abide by applicable laws and regulations in the use of these platforms and devices or otherwise could subject us to regulatory investigations, class action lawsuits, liability, fines or other penalties and have a material adverse effect on our business, financial condition and operating results.

In addition, an increase in the use of social media for product promotion and marketing may cause an increase in the burden on us and our joint ventures to monitor compliance of such materials, and increase the risk that such materials could contain problematic product or marketing claims in violation of applicable regulations. For example, in some cases, the Federal Trade Commission has sought enforcement action where an endorsement has failed to clearly and conspicuously disclose a financial relationship or material connection between an influencer and an advertiser.

We do not prescribe what our influencers post, and if we were held responsible for the content of their posts or their actions, we could be fined or forced to alter our practices, which could have an adverse impact on our business.

Negative commentary regarding us, our joint ventures or our or their products or influencers and other third parties who are affiliated with us or our joint ventures may also be posted on social media platforms and may be adverse to our or our joint ventures' reputation or business. Influencers with whom we or our joint ventures maintain relationships could engage in behavior or use their platforms to communicate directly with our customers in a manner that reflects poorly on our or our joint ventures' brand and may be attributed to us or our joint ventures or otherwise adversely affect us or our joint ventures. It is not possible to prevent such behavior, and the precautions we and our joint ventures take to detect this activity may not be effective in all cases. Our and our joint ventures' target consumers often value readily available information and often act on such information without further investigation and without regard to its accuracy. The harm may be immediate, without affording us and our joint ventures an opportunity for redress or correction.

***If we are unable to anticipate and respond to changing customer preferences and shifts in fashion and industry trends in a timely manner, our business, financial condition, and operating results could be harmed.***

Our success largely depends on our ability to consistently gauge tastes and trends and provide a diverse and balanced assortment of merchandise that satisfies customer demands in a timely manner. Our ability to accurately forecast demand for our products could be affected by many factors, including an increase or decrease in demand for our products or for products of our competitors, our failure to accurately forecast acceptance of new products, product introductions by competitors, unanticipated changes in general market conditions, and weakening of economic conditions or consumer confidence in future economic conditions. We typically enter into agreements to manufacture and purchase our merchandise in advance of the applicable selling season and our failure to anticipate, identify or react appropriately, or in a timely manner to changes in customer preferences, tastes and trends or economic conditions could lead to, among other things, missed opportunities, excess inventory or inventory shortages, markdowns and write-offs, all of which could negatively impact our profitability and have a material adverse effect on our business, financial condition, and operating results. Failure to respond to changing customer preferences and fashion trends could also negatively impact the image of our brands with our customers and result in diminished brand loyalty.

***If major department, mass merchant, and specialty store chains consolidate, continue to close stores, or cease to do business, our business could be negatively affected.***

We sell our products through major department, mass merchant, and specialty store chains. Continued consolidation in the retail industry, as well as store closing or retailers ceasing to do business, could negatively impact our business. Various customers of ours have encountered reductions in operations including Macy's and Kohl's, as well as other store chains that have reduced the number of stores they operated, Lord & Taylor, which closed all of its stores, and JC Penney and Christopher & Banks, each of which filed for bankruptcy. Store closings could adversely affect our business and results of operations. Consolidation could reduce the number of our customers and potential customers. With increased consolidation in the retail industry, we are increasingly dependent on retailers whose bargaining strength may increase and whose share of our business may grow. As a result, we may face greater pressure from these customers to provide more favorable terms, including increased support of their retail margins. As purchasing decisions become more centralized, the risks from consolidation increase. A store group could decide to close stores, decrease the amount of product purchased from us, modify the amount of floor space allocated to apparel in general or to our products specifically, or focus on promoting private label products or national brand products for which it has exclusive rights rather than promoting our products. Customers are also concentrating purchases among a narrowing group of vendors. These types of decisions by our key customers could adversely affect our business.

***We expect to achieve growth based upon our plans to expand our business under our existing brands. If we fail to manage our expected future growth, our business and operating results could be materially harmed.***

We expect to achieve growth in our existing brands through expansion of our wholesale business and e-commerce platforms. Revenue growth is expected to come from new wholesale accounts and increased traffic to our e-commerce sites. We continue to seek new opportunities and international expansion through interactive television and licensing arrangements. The success of our company, however, will still remain largely dependent on our ability to build and maintain broad market acceptance of our brands, to contract with and retain key licensees and on our licensees' ability to accurately predict upcoming fashion and design trends within customer bases and fulfill the product requirements of retail channels within the global marketplace.

Our ability to compete effectively and to manage future growth, if any, will depend on the sufficiency and adequacy of our current resources and infrastructure and our ability to continue to identify, attract and retain personnel to manage our brands and integrate any brands we may acquire into our operations. There can be no assurance that our personnel, systems, procedures and controls will be adequate to support our operations and properly oversee our brands. The failure to support our operations effectively and properly oversee our brands could cause harm to our brands and have a material adverse effect on the value of such brands and on our reputation, business, financial condition and results of operations. In addition, we may be unable to leverage our core competencies in managing apparel and jewelry brands to managing brands in new product categories.

Also, there can be no assurance that we will be able to achieve and sustain meaningful growth. Our growth may be limited by a number of factors including increased competition among branded products at brick-and-mortar, internet and interactive retailers, decreased airtime on QVC, competition for retail licenses and brand acquisitions, and insufficient capitalization for future transactions.

***We are dependent upon our Chief Executive Officer and other key executives. If we lose the services of these individuals, we may not be able to fully implement our business plan and future growth strategy, which would harm our business and prospects.***

Our success is largely dependent upon the efforts of Robert W. D'Loren, our Chief Executive Officer and Chairman of our board of directors. Our continued success is largely dependent upon his continued efforts and those of our other key executives. Although we entered into an employment agreement with Mr. D'Loren, as well as employment agreements with other executives and key employees, such persons can terminate their employment with us at their option, and there is no guarantee that we will not lose the services of our executive officers or key employees. To the extent that any of their services become unavailable to us, we will be required to hire other qualified executives, and we may not be successful in finding or hiring adequate replacements. This could impede our ability to fully implement our business plan and future growth strategy, which would harm our business and prospects.

***If we are unable to identify and successfully acquire additional trademarks, our growth may be limited and, even if additional trademarks are acquired, we may not realize anticipated benefits due to integration or licensing difficulties.***

While we are focused on growing our existing brands, we intend to selectively seek to acquire additional intellectual property, either directly or through the formation of joint ventures. However, as our competitors continue to pursue a brand management model, acquisitions may become more expensive and suitable acquisition candidates could become more difficult to find. In addition, even if we successfully acquire additional intellectual property or the rights to use additional intellectual property, we may not be able to achieve or maintain profitability levels that justify our investment in, or realize planned benefits with respect to, those additional brands.

Although we will seek to temper our acquisition risks by following acquisition guidelines relating to purchase price and valuation, projected returns, existing strength of the brand, its diversification benefits to us, its potential licensing scale and creditworthiness of licensee base, acquisitions, whether they be of additional intellectual property assets or of the companies that own them, entail numerous risks, any of which could detrimentally affect our reputation, our results of operations, and/or the value of our common stock. These risks include, among others:

- unanticipated costs associated with the target acquisition or its integration with our company;
- our ability to identify or consummate additional quality business opportunities, including potential licenses and new product lines and markets;
- negative effects on reported results of operations from acquisition related charges and costs, and amortization of acquired intangibles;
- diversion of management's attention from other business concerns;
- the challenges of maintaining focus on, and continuing to execute, core strategies and business plans as our brand and license portfolio grows and becomes more diversified;
- adverse effects on existing licensing and other relationships;
- potential difficulties associated with the retention of key employees, and difficulties, delays and unanticipated costs associated with the assimilation of personnel, operations, systems and cultures, which may be retained by us in connection with or as a result of our acquisitions;
- risks of entering new domestic and international markets (whether it be with respect to new licensed product categories or new licensed product distribution channels) or markets in which we have limited prior experience; and

- increased concentration in our revenues with one or more customers in the event that the brand has distribution channels in which we currently distribute products under one or more of our brands.

When we acquire intellectual property assets or the companies that own them, our due diligence reviews are subject to inherent uncertainties and may not reveal all potential risks. We may therefore fail to discover or inaccurately assess undisclosed or contingent liabilities, including liabilities for which we may have responsibility as a successor to the seller or the target company. As a successor, we may be responsible for any past or continuing violations of law by the seller or the target company. Although we will generally attempt to seek contractual protections through representations, warranties and indemnities, we cannot be sure that we will obtain such provisions in our acquisitions or that such provisions will fully protect us from all unknown, contingent or other liabilities or costs. Finally, claims against us relating to any acquisition may necessitate our seeking claims against the seller for which the seller may not, or may not be able to, indemnify us or that may exceed the scope, duration or amount of the seller’s indemnification obligations.

Acquiring additional intellectual property could also have a significant effect on our financial position and could cause substantial fluctuations in our quarterly and yearly operating results. Acquisitions could result in the recording of significant goodwill and intangible assets on our financial statements, the amortization or impairment of which would reduce our reported earnings in subsequent years. No assurance can be given with respect to the timing, likelihood or financial or business effect of any possible transaction. Moreover, our ability to grow through the acquisition of additional intellectual property will also depend on the availability of capital to complete the necessary acquisition arrangements. In the event that we are unable to obtain debt financing on acceptable terms for a particular acquisition, we may elect to pursue the acquisition through the issuance by us of shares of our common stock (and, in certain cases, convertible securities) as equity consideration, which could dilute our common stock and reduce our earnings per share, and any such dilution could reduce the market price of our common stock unless and until we were able to achieve revenue growth or cost savings and other business economies sufficient to offset the effect of such an issuance. Acquisitions of additional brands may also involve challenges related to integration into our existing operations, merging diverse cultures, and retaining key employees. Any failure to integrate additional brands successfully in the future may adversely impact our reputation and business.

As a result, there is no guarantee that our stockholders will achieve greater returns as a result of any future acquisitions we complete.

***Intense competition in the apparel, fashion, and jewelry industries could reduce our sales and profitability.***

As a fashion company, we face intense competition from other domestic and foreign apparel, footwear, accessories, and jewelry manufacturers and retailers. Competition has and may continue to result in pricing pressures, reduced profit margins, lost market share, or failure to grow our market share, any of which could substantially harm our business and results of operations. Competition is based on many factors including, without limitation, the following:

- establishing and maintaining favorable brand recognition;
- developing products that appeal to consumers;
- pricing products appropriately;
- determining and maintaining product quality;
- obtaining access to sufficient floor space in retail locations;
- providing appropriate services and support to retailers;
- maintaining and growing market share;
- developing and maintaining a competitive e-commerce site;

- hiring and retaining key employees; and
- protecting intellectual property.

Competition in the apparel, fashion and jewelry industries is intense and is dominated by a number of very large brands, many of which have longer operating histories, larger customer bases, more established relationships with a broader set of suppliers, greater brand recognition, and greater financial, research and development, marketing, distribution, and other resources than we do. These capabilities of our competitors may allow them to better withstand downturns in the economy or apparel, fashion and jewelry industries. Any increased competition, or our failure to adequately address any of these competitive factors which we have seen from time to time, could result in reduced sales, which could adversely affect our business, financial condition, and operating results.

Competition, along with such other factors as consolidation within the retail industry and changes in consumer spending patterns, could also result in significant pricing pressure and cause the sales environment to be more promotional, as it has been in recent years, impacting our financial results. If promotional pressure remains intense, either through actions of our competitors or through customer expectations, this may cause a further reduction in our sales and gross margins and could have a material adverse effect on our business, financial condition, and operating results.

***Because of the intense competition within our existing and potential wholesale licensees' markets and the strength of some of their competitors, we and our licensees may not be able to continue to compete successfully.***

We expect our existing and future licenses to relate to products in the apparel, footwear, accessories, jewelry, home goods, and other consumer industries, in which our licensees face intense competition, including from our other brands and licensees. In general, competitive factors include quality, price, style, name recognition, and service. In addition, various fashion trends and the limited availability of shelf space could affect competition for our licensees' products. Many of our licensees' competitors have greater financial, distribution, marketing, and other resources than our licensees and have achieved significant name recognition for their brand names. Our licensees may be unable to successfully compete in the markets for their products, and we may not be able to continue to compete successfully with respect to our contractual arrangements.

***If our competition for licenses increases, or any of our current licensees elect not to renew their licenses or renew on terms less favorable than today, our growth plans could be slowed and our business, financial condition and results of operations would be adversely affected.***

To the extent we seek to acquire additional brands, we will face competition to retain licenses and to complete such acquisitions. The ownership, licensing, and management of brands is becoming a more widely utilized method of managing consumer brands as production continues to become commoditized and manufacturing capacity increases worldwide. We face competition from numerous direct competitors, both publicly and privately-held, including traditional apparel and consumer brand companies, other brand management companies and private equity groups. Companies that traditionally focused on wholesale manufacturing and sourcing models are now exploring licensing as a way of growing their businesses through strategic licensing partners and direct-to-retail contractual arrangements. Furthermore, our current or potential licensees may decide to develop or purchase brands rather than renew or enter into contractual agreements with us. In addition, this increased competition could result in lower sales of products offered by our licensees under our brands. If our competition for licenses increases, it may take us longer to procure additional licenses, which could slow our growth rate.

***The extent of our foreign sourcing may adversely affect our business.***

We and our licensees work with several manufacturers overseas, primarily located in China and Thailand. A manufacturing contractor's failure to ship products to us in a timely manner or to meet the required quality standards could cause us to miss the delivery date requirements of our customers for those items. The failure to make timely deliveries may cause customers to cancel orders, refuse to accept deliveries or demand reduced prices, any of which could have a material adverse effect on us. As a result of the magnitude of our foreign sourcing, our business is subject to the following risks:

- political and economic instability in countries or regions, especially Asia, including heightened terrorism and other security concerns, which could subject imported or exported goods to additional or more frequent inspections, leading to delays win deliveries or impoundment of goods;
- imposition of regulations, quotas and other trade restrictions relating to imports, including quotas imposed by bilateral textile agreements between the U.S. and foreign countries;
- currency exchange rates;
- imposition of increased duties, taxes and other charges on imports;
- pandemics and disease outbreaks such as COVID-19;
- labor union strikes at ports through which our products enter the U.S.;
- labor shortages in countries where contractors and suppliers are located;
- restrictions on the transfer of funds to or from foreign countries;
- disease epidemics and health-related concerns, which could result in closed factories, reduced workforces, scarcity of raw materials and scrutiny or embargoing of goods produced in infected areas;
- the migration and development of manufacturing contractors, which could affect where our products are or are planned to be produced;
- increases in the costs of fuel, travel and transportation;
- reduced manufacturing flexibility because of geographic distance between our foreign manufacturers and us, increasing the risk that we may have to mark down unsold inventory as a result of misjudging the market for a foreign-made product; and
- violations by foreign contractors of labor and wage standards and resulting adverse publicity.

If these risks limit or prevent us from manufacturing products in any significant international market, prevent us from acquiring products from foreign suppliers, or significantly increase the cost of our products, our operations could be seriously disrupted until alternative suppliers are found or alternative markets are developed, which could negatively impact our business.

***Fluctuations in the price, availability and quality of raw materials could cause delays and increase costs and cause our operating results and financial condition to suffer.***

Fluctuations in the price, availability and quality of the fabrics or other raw materials, particularly cotton, silk, leather and synthetics used in our manufactured apparel, and gold, silver and other precious and semi-precious metals and gem stones used in our jewelry, could have a material adverse effect on cost of sales or our ability to meet customer demands. The prices of fabrics, precious and semi-precious metals and gemstones depend largely on the market prices of the raw materials used to produce them. The price and availability of the raw materials and, in turn, the fabrics, precious and semi-precious metals and gem stones used in our apparel and jewelry may fluctuate significantly, depending on many factors, including crop yields, weather patterns, labor costs and changes in oil prices. We may not be able to create suitable design solutions that utilize raw materials with attractive prices or, alternatively, to pass higher raw materials prices and related transportation costs on to our customers. We are not always successful in our efforts to protect our business from the volatility of the market price of raw materials, and our business can be materially affected by dramatic movements in prices of raw materials. The ultimate effect of this change on our earnings cannot be quantified, as the effect of movements in raw materials prices on industry selling prices are uncertain, but any significant increase in these prices could have a material adverse effect on our business, financial condition, and operating results.

***Our reliance on independent manufacturers could cause delays or quality issues which could damage customer relationships.***

We use approximately eight independent manufacturers to assemble or produce all of our products. We are dependent on the ability of these independent manufacturers to adequately finance the production of goods ordered and maintain sufficient manufacturing capacity. The use of independent manufacturers to produce finished goods and the resulting lack of direct control could subject us to difficulty in obtaining timely delivery of products of acceptable quality. We generally do not have long-term written agreements with any independent manufacturers. As a result, any single manufacturing contractor could unilaterally terminate its relationship with us at any time. Supply disruptions from these manufacturers (or any of our other manufacturers) could have a material adverse effect on our ability to meet customer demands, if we are unable to source suitable replacement materials at acceptable prices or at all. Moreover, alternative manufacturers, if available, may not be able to provide us with products or services of a comparable quality, at an acceptable price or on a timely basis. We may also, from time to time, make a decision to enter into a relationship with a new manufacturer. Identifying a suitable supplier is an involved process that requires us to become satisfied with their quality control, responsiveness and service, financial stability and labor and other ethical practices. There can be no assurance that there will not be a disruption in the supply of our products from independent manufacturers or that any new manufacturer will be successful in producing our products in a manner we expected. The failure of any independent manufacturer to perform or the loss of any independent manufacturer could have a material adverse effect on our business, results of operations, and financial condition.

***If our independent manufacturers fail to use ethical business practices and comply with applicable laws and regulations, our brand image could be harmed due to negative publicity.***

We have established and currently maintain operating guidelines which promote ethical business practices such as fair wage practices, compliance with child labor laws and other local laws. While we monitor compliance with those guidelines, we do not control our independent manufacturers or their business practices. Accordingly, we cannot guarantee their compliance with our guidelines. A lack of demonstrated compliance could lead us to seek alternative suppliers, which could increase our costs and result in delayed delivery of our products, product shortages or other disruptions of our operations.

Violation of labor or other laws by our independent manufacturers or the divergence of an independent manufacturer's labor or other practices from those generally accepted as ethical in the U.S. or other markets in which we do business could also attract negative publicity for us and our brand. From time to time, our audit results have revealed a lack of compliance in certain respects, including with respect to local labor, safety and environmental laws. Other fashion companies have faced criticism after highly-publicized incidents or compliance issues have occurred or been exposed at factories producing their products. To the extent our manufacturers do not bring their operations into compliance with such laws or resolve material issues identified in any of our audit results, we may face similar criticism and negative publicity. This could diminish the value of our brand image and reduce demand for our merchandise. In addition, other fashion companies have encountered organized boycotts of their products in such situations. If we, or other companies in our industry, encounter similar problems in the future, it could harm our brand image, stock price and results of operations.

Monitoring compliance by independent manufacturers is complicated by the fact that expectations of ethical business practices continually evolve, may be substantially more demanding than applicable legal requirements and are driven in part by legal developments and by diverse groups active in publicizing and organizing public responses to perceived ethical shortcomings. Accordingly, we cannot predict how such expectations might develop in the future and cannot be certain that our guidelines would satisfy all parties who are active in monitoring and publicizing perceived shortcomings in labor and other business practices worldwide.

***Our failure to protect our proprietary rights could compromise our competitive position and decrease the value of our brands.***

We own, through our wholly owned subsidiaries, various U.S. federal trademark registrations and foreign trademark registrations for our brands, together with pending applications for registration, which are vital to the success and further growth of our business and which we believe have significant value. We rely primarily upon a combination of trademarks, copyrights, and contractual restrictions to protect and enforce our intellectual property rights domestically and internationally. We believe that such measures afford only limited protection and, accordingly, there can be no assurance that the actions taken by us to establish, protect, and enforce our trademarks and other proprietary rights will prevent infringement of our intellectual property rights by others, or prevent the loss of licensing revenue or other damages caused therefrom.

For instance, despite our efforts to protect and enforce our intellectual property rights, unauthorized parties may attempt to copy aspects of our intellectual property, which could harm the reputation of our brands, decrease their value, and/or cause a decline in our licensees' sales and thus our revenues. Further, we and our licensees may not be able to detect infringement of our intellectual property rights quickly or at all, and at times, we or our licensees may not be successful in combating counterfeit, infringing, or knockoff products, thereby damaging our competitive position. In addition, we depend upon the laws of the countries where our licensees' products are sold to protect our intellectual property. Intellectual property rights may be unavailable or limited in some countries because standards of registration and ownership vary internationally. Consequently, in certain foreign jurisdictions, we have elected or may elect not to apply for trademark registrations.

While we generally apply for trademarks in most countries where we license or intend to license our trademarks, we may not accurately predict all of the countries where trademark protection will ultimately be desirable. If we fail to timely file a trademark application in any such country, we may be precluded from obtaining a trademark registration in such country at a later date. Failure to adequately pursue and enforce our trademark rights could damage our brands, enable others to compete with our brands and impair our ability to compete effectively.

In addition, in the future, we may be required to assert infringement claims against third parties or more third parties may assert infringement claims against us. Any resulting litigation or proceeding could result in significant expense to us and divert the efforts of our management personnel, whether or not such litigation or proceeding is determined in our favor. To the extent that any of our trademarks were ever deemed to violate the proprietary rights of others in any litigation or proceeding or as a result of any claim, we may be prevented from using them, which could cause a termination of our contractual arrangements, and thus our revenue stream, with respect to those trademarks. Litigation could also result in a judgment or monetary damages being levied against us.

**Risks Related to an Investment in Our Securities**

***Management exercises significant control over matters requiring shareholder approval, which may result in the delay or prevention of a change in our control.***

Pursuant to voting agreements, certain shareholders agreed to appoint a person designated by our board of directors as their collective irrevocable proxy and attorney-in-fact with respect to the shares of the common stock received by them. The proxy holder will vote in favor of matters recommended or approved by the board of directors. The board of directors has designated Robert W. D'Loren as proxy. Also, pursuant to separate voting agreements, certain other stockholders have agreed to appoint Mr. D'Loren as their respective irrevocable proxy and attorney-in-fact with respect to the shares of the common stock issued to them by us. The proxy holder shall vote in favor of matters recommended or approved by the board of directors.

The combined voting power of the common stock ownership of our directors and executive officers is approximately 54% of our voting securities as of April 14, 2023. As a result, our management through such stock ownership will exercise significant influence over all matters requiring shareholder approval, including the election of our directors and approval of significant corporate transactions. This concentration of ownership in management may also have the effect of delaying or preventing a change in control of us that may be otherwise viewed as beneficial by stockholders other than management.

There is also a risk that our existing management and a limited number of stockholders may have interests which are different from certain stockholders and that they will pursue an agenda which is beneficial to themselves at the expense of other stockholders.

***Our failure to meet the continued listing requirements of the Nasdaq Global Market could result in a delisting of our common stock, which could negatively impact the market price and liquidity of our common stock and our ability to access the capital markets.***

On November 22, 2022, we received a letter from the Listing Qualifications Department of The Nasdaq Stock Market ("Nasdaq") notifying us that the minimum bid price per share for our common stock fell below $1.00 for a period of 30 consecutive business days. Therefore, the Company did not meet the minimum bid price requirement set forth in the Nasdaq Listing Rules.

The letter also states that pursuant to Nasdaq Listing Rules 5810(c)(3)(A), we will be provided 180 calendar days to regain compliance with the minimum bid price requirement, or until May 22, 2023.

We can regain compliance if, at any time during the Tolling Period or such 180-day period, the closing bid price of our common stock is at least $1.00 for a minimum period of 10 consecutive business days. If by May 22, 2023, we do not regain compliance with the Nasdaq Listing Rules, we may be eligible for additional time to regain compliance pursuant to Nasdaq Listing Rule 5810(c)(3)(A)(ii). To qualify, we would need to submit a transfer application and a $5,000 application fee. We would also need to provide written notice to Nasdaq of our intention to cure the minimum bid price deficiency during the second compliance period by effecting a reverse stock split, if necessary. As part of its review process, the Nasdaq staff will make a determination of whether it believes we will be able to cure this deficiency. Should the Nasdaq staff conclude that we will not be able to cure the deficiency, or should we determine not to submit a transfer application or make the required representation, Nasdaq will provide notice that our shares of common stock will be subject to delisting.

If we do not regain compliance within the allotted compliance period, including any extensions that may be granted by Nasdaq, Nasdaq will provide notice that our shares of common stock will be subject to delisting from the Nasdaq Global Market. At such time, we may appeal the delisting determination to a hearings panel.

We intend to monitor our common stock closing bid price between now and May 22, 2023 and will consider available options to resolve the Company's noncompliance with the minimum bid price requirement, as may be necessary. There can be no assurance that the Company will be able to regain compliance with the minimum bid price requirement or will otherwise be in compliance with other Nasdaq listing criteria.

***Our common stock may be subject to the penny stock rules adopted by the SEC that require brokers to provide extensive disclosure to their customers prior to executing trades in penny stocks. These disclosure requirements may cause a reduction in the trading activity of our common stock, which could make it more difficult for our stockholders to sell their securities.***

Rule 3a51-1 of the Exchange Act establishes the definition of a "penny stock," for purposes relevant to us, as any equity security that has a minimum bid price of less than $5.00 per share, subject to a limited number of exceptions, including for having securities registered on certain national securities exchanges. If our common stock were delisted from the NASDAQ, market liquidity for our common stock could be severely and adversely affected.

For any transaction involving a penny stock, unless exempt, the penny stock rules require that a broker or dealer approve a person's account for transactions in penny stocks and the broker or dealer receive from the investor a written agreement to the transaction setting forth the identity and quantity of the penny stock to be purchased. In order to approve a person's account for transactions in penny stocks, the broker or dealer must obtain financial information and investment experience and objectives of the person and make a reasonable determination that the transactions in penny stocks are suitable for that person and that that person has sufficient knowledge and experience in financial matters to be capable of evaluating the risks of transactions in penny stocks.

The broker or dealer must also deliver, prior to any transaction in a penny stock, a disclosure schedule prepared by the SEC relating to the penny stock market, which, in highlight form, sets forth:

- the basis on which the broker or dealer made the suitability determination; and
- that the broker or dealer received a signed, written agreement from the investor prior to the transaction.

Disclosure also has to be made about the risks of investing in penny stocks in both public offerings and in secondary trading and commission payable to both the broker-dealer and the registered representative, current quotations for the securities and the rights and remedies available to an investor in cases of fraud in penny stock transactions. Finally, monthly statements have to be sent disclosing recent price information for the penny stock held in the account and information on the limited market in penny stocks.

Because of these regulations, broker-dealers may not wish to engage in the above-referenced necessary paperwork and disclosures and/or may encounter difficulties in their attempt to sell shares of our common stock, which may affect the ability of selling stockholders or other holders to sell their shares in any secondary market and have the effect of reducing the level of trading activity in any secondary market. These additional sales practice and disclosure requirements could impede the sale of our common stock even if and when our common stock becomes listed on the NASDAQ Global Market. In addition, the liquidity for our common stock may decrease, with a corresponding decrease in the price of our common stock.

No assurance can be given that our stock will not be subject to these “penny stock” rules in the future.

Investors should be aware that, according to Commission Release No. 34-29093, the market for “penny stocks” has suffered in recent years from patterns of fraud and abuse. Such patterns include: (1) control of the market for the security by one or a few broker-dealers that are often related to the promoter or issuer; (2) manipulation of prices through prearranged matching of purchases and sales and false and misleading press releases; (3) boiler room practices involving high-pressure sales tactics and unrealistic price projections by inexperienced sales persons; (4) excessive and undisclosed bid-ask differential and markups by selling broker-dealers; and (5) the wholesale dumping of the same securities by promoters and broker-dealers after prices have been manipulated to a desired level, along with the resulting inevitable collapse of those prices and with consequent investor losses. The occurrence of these patterns or practices could increase the future volatility of our share price.

***Our common stock has historically been thinly traded, and you may be unable to sell at or near ask prices or at all if you need to sell or liquidate a substantial number of shares at one time.***

Although our common stock is listed on the NASDAQ Global Market, our common stock has historically been traded at relatively low volumes. As a result, the number of persons interested in purchasing our common stock at or near bid prices at any given time may be relatively small. This situation is attributable to a number of factors, including that we are currently a small company which is still relatively unknown to securities analysts, stock brokers, institutional investors and others in the investment community that generate or influence sales volume, and that even if we came to the attention of such persons, they tend to be risk-averse and reluctant to follow an unproven company such as ours or purchase or recommend the purchase of our shares until such time as we become more seasoned and viable. As a consequence, there may be periods of several days or more when trading activity in our shares is minimal, as compared to a seasoned issuer which has a large and steady volume of trading activity that will generally support continuous sales without an adverse effect on share price. We cannot provide any assurance that a broader or more active public trading market for our common stock will develop or be sustained, or that trading levels will be sustained.

***The market price of our common stock has declined over the past several years and may be volatile, which could reduce the market price of our common stock.***

Currently the publicly traded shares of our common stock are not widely held, and do not have significant trading volume, and, therefore, may experience significant price and volume fluctuations. Although our common stock is quoted on the NASDAQ Global Market, this does not assure that a meaningful, consistent trading market will develop or that the volatility will decline. This market volatility could reduce the market price of the common stock, regardless of our operating performance. In addition, the trading price of the common stock has been volatile over the past several years and could change significantly over short periods of time in response to actual or anticipated variations in our quarterly operating results, announcements by us, our licensees or our respective competitors, factors affecting our licensees' markets generally and/or changes in national or regional economic conditions, making it more difficult for shares of the common stock to be sold at a favorable price or at all. The market price of the common stock could also be reduced by general market price declines or market volatility in the future or future declines or volatility in the prices of stocks for companies in the trademark licensing business or companies in the industries in which our licensees compete.

***We may issue a substantial number of shares of common stock upon exercise of outstanding warrants and options.***

As of December 31, 2022, we had outstanding warrants and options to purchase 5,730,375 shares of our common stock with a weighted average exercise price of $2.14. The holders of warrants and options will likely exercise such securities at a time when the market price of our common stock exceeds the exercise price. Therefore, exercises of warrants and options will result in a decrease in the net tangible book value per share of our common stock and such decrease could be material.

The issuance of shares upon exercise of outstanding warrants and options will dilute our then-existing stockholders' percentage ownership of our company, and such dilution could be substantial. In addition, our growth strategy includes the acquisition of additional brands, and we may issue shares of our common stock as consideration for acquisitions. Sales or the potential for sale of a substantial number of such shares could adversely affect the market price of our common stock, particularly if our common stock remains thinly traded at such time.

As of December 31, 2022, we had an aggregate of 3,291,909 shares of common stock available for grants under our 2021 Equity Incentive Plan (the "2021 Plan") to our directors, executive officers, employees, and consultants. Issuances of common stock pursuant to the exercise of stock options or other stock grants or awards which may be granted under our 2021 Plan will dilute your interest in us.

***Holders of our common stock may be subject to restrictions on the use of Rule 144 by shell companies or former shell companies.***

Historically, the SEC has taken the position that Rule 144 under the Securities Act of 1933, as amended, or the Securities Act, is not available for the resale of securities initially issued by companies that are, or previously were, shell companies (we were considered a shell company on and prior to September 29, 2011), to their promoters or affiliates despite technical compliance with the requirements of Rule 144. The SEC prohibits the use of Rule 144 for resale of securities issued by shell companies (other than business transaction related shell companies) or issuers that have been at any time previously a shell company. The SEC has provided an important exception to this prohibition, however, if the following conditions are met: the issuer of the securities that was formerly a shell company has ceased to be a shell company; the issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act; the issuer of the securities has filed all Exchange Act reports and material required to be filed, as applicable, during the preceding 12 months (or such shorter period that the issuer was required to file such reports and materials), other than Form 8-K reports; and at least one year has elapsed from the time that the issuer filed current Form 10 type information with the SEC reflecting its status as an entity that is not a shell company. As such, due to the fact that we had been a shell company prior to September 2011, holders of "restricted securities" within the meaning of Rule 144, when reselling their shares pursuant to Rule 144, shall be subject to the conditions set forth herein.

***We do not anticipate paying cash dividends on our common stock.***

You should not rely on an investment in our common stock to provide dividend income, as we have not paid dividends on our common stock, and we do not plan to pay any dividends in the foreseeable future. Instead, we plan to retain any earnings to maintain and expand our existing licensing operations, further develop our trademarks, and finance the acquisition of additional trademarks. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any return on their investment. In addition, our credit facility limits the amount of cash dividends we may pay while amounts under the credit facility are outstanding.

***Provisions of our corporate charter documents could delay or prevent change of control.***

Our certificate of incorporation authorizes our board of directors to issue up to 1,000,000 shares of preferred stock without stockholder approval, in one or more series, and to fix the dividend rights, terms, conversion rights, voting rights, redemption rights and terms, liquidation preferences, and any other rights, preferences, privileges, and restrictions applicable to each new series of preferred stock. The designation of preferred stock in the future could make it difficult for third parties to gain control of our company, prevent or substantially delay a change in control, discourage bids for the common stock at a premium, or otherwise adversely affect the market price of the common stock.

**General Risks**

***A pandemic outbreak of disease or similar public health threat, or fear of such an event, could have a material adverse impact on the Company's business, operating results and financial condition.***

A pandemic or outbreak of disease or similar public health threat, such as the COVID-19 pandemic, or fear of such an event, could have a material adverse impact on our business, operating results, and financial condition. The current COVID-19 pandemic has caused a disruption to our business, beginning in March 2020.

The impacts of the ongoing COVID-19 pandemic (including actions taken by national, state, and local governments in response to COVID-19) have negatively impacted the U.S. and global economy, disrupted consumer spending and global supply chains, and created significant volatility and disruption of financial markets. More specifically, COVID-19 has had, and continues to have, a significant negative impact on our business. The initial onset of the pandemic in 2020 resulted in a sudden decrease in sales for many of the Company’s products, from which we have yet to fully recover. The global pandemic has affected the financial health of certain of our customers, and the bankruptcy of certain other customers; as a result, we may be required to make additional adjustments for doubtful accounts which would increase our operating expenses in future periods and negatively impact our operating results. Due to the ongoing COVID-19 pandemic, there is significant uncertainty surrounding the Company’s future results of operations and cash flows. Continued impacts of the pandemic could materially adversely affect our near-term and long-term revenues, earnings, liquidity, and cash flows.

***Supply chain disruptions have adversely affected, and could continue to adversely affect, our ability to import our products in a timely manner and our freight costs.***

The effects of the COVID-19 pandemic on the shipping industry have negatively impacted our ability to import our products in a manner that allows for timely delivery to our customers. Congestion at ports of loading and ports of entry have caused significant delays in deliveries and changes to the itineraries of our steamship carriers. Use of alternate routes or delivery methods would require additional trucking for us and our customers. Truck driver shortages, shortages of truck equipment and the inability of ports to provide reliable pick up times, have also negatively impacted our ability to timely receive goods. If we are unable to mitigate these supply chain disruptions, our ability to meet customer expectations, manage inventory and complete sales could be materially adversely affected.

Contractual shipping rates have increased as a result of increased demand for container space and the logistical delays experienced by the shipping industry. Our costs have increased as a result of higher contractual shipping rates and the need to purchase additional container space on the secondary market at higher spot rates. Terminals are also now imposing additional fees on importers not picking up containers on time, even when equipment and labor shortages negatively affect the ability of importers to pick up in a timely manner.

If we are unable to secure container space on a vessel due to limited availability, we may experience delays in shipping product from our overseas suppliers and ultimately to our customers. Furthermore, even when we are able to secure space, ports around the world are experiencing congestion, slowing transit times of product through ports of entry which negatively affects our ability to timely receive and deliver product to our retail partners and customers.

If we are unable to mitigate these supply chain disruptions, our ability to meet customer expectations, manage inventory and complete sales could be materially adversely affected. In addition, if we are unable to offset higher freight and other costs through product price increases or other measures, our results of operations may be adversely affected.

***The Ukrainian-Russian conflict could have a material adverse impact on our business.***

The Ukrainian-Russian conflict, the responses thereto, such as sanctions imposed by the United States and other western democracies, and any expansion thereof is likely to have unpredictable and wide-ranging effects on the domestic and global economy and financial markets, which could have an adverse effect on our business and results of operations. Already the conflict has caused market volatility, a sharp increase in certain commodity prices, such as wheat and oil, and an increasing number and frequency of cybersecurity threats. So far, we have not experienced any direct impact from the conflict and, as our business is conducted exclusively in the United States, we are probably less vulnerable than companies with international operations. Nevertheless, we will continue to monitor the situation carefully and, if necessary, take action to protect our business, operations, and financial condition.

***A decline in general economic conditions resulting in a decrease in consumer spending levels and an inability to access capital may adversely affect our business.***

The success of our operations depends on consumer spending. Consumer spending is impacted by a number of factors which are beyond our control, including actual and perceived economic conditions affecting disposable consumer income (such as unemployment, wages, energy costs and consumer debt levels), customer traffic within shopping and selling environments, business conditions, interest rates and availability of credit and tax rates in the general economy and in the international, regional and local markets in which our products are sold and the impact of natural disasters and pandemics and disease outbreaks such as the COVID-19 pandemic. Global economic conditions historically included significant recessionary pressures and declines in employment levels, disposable income and actual and/or perceived wealth and further declines in consumer confidence and economic growth. A depressed economic environment is often characterized by a decline in consumer discretionary spending and has disproportionately affected retailers and sellers of consumer goods, particularly those whose goods are viewed as discretionary or luxury purchases, including fashion apparel and accessories such as ours. Such factors as well as another shift towards recessionary conditions have in the past, and could in the future, devalue our brands, which could result in an impairment in its carrying value, which could be material, create downward pricing pressure on the products carrying our brands, and adversely impact our sales volumes and overall profitability. Further, economic and political volatility and declines in the value of foreign currencies could negatively impact the global economy as a whole and have a material adverse effect on the profitability and liquidity of our operations, as well as hinder our ability to grow through expansion in the international markets. In addition, domestic and international political situations also affect consumer confidence, including the threat, outbreak or escalation of terrorism, military conflicts or other hostilities around the world. Furthermore, changes in the credit and capital markets, including market disruptions, limited liquidity, and interest rate fluctuations, may increase the cost of financing or restrict our access to potential sources of capital for future acquisitions.

The risks associated with our business are more acute during periods of economic slowdown or recession. Accordingly, any prolonged economic slowdown or a lengthy or severe recession with respect to either the U.S. or the global economy is likely to have a material adverse effect on our results of operations, financial condition, and business prospects.

***Inflation and/or a potential recession could adversely impact our business and results of operations.***

Many of the components of our cost of goods sold are subject to price increases that are attributable to factors beyond our control, including but not limited to, global economic conditions, trade barriers or restrictions, supply chain disruptions, changes in crop size, product scarcity, demand dynamics, currency rates, water supply, weather conditions, import and export requirements, and other factors. The cost of raw materials, labor, manufacturing, energy, fuel, shipping and logistics, and other inputs related to the production and distribution of our products have increased and may continue to increase unexpectedly.

Beginning in the first quarter of 2022, input costs increased significantly. We expect the pressures of input cost inflation to continue for at least some portion of 2023. We may not be able to mitigate the impact of inflation and cost increases or pass these costs along to our customers.

In addition, poor economic and market conditions, including a potential recession, may negatively impact market sentiment, decreasing the demand for apparel, footwear, accessories, fine jewelry, home goods, and other consumer products, which would adversely affect our operating income and results of operations. If we are unable to take effective measures in a timely manner to mitigate the impact of the inflation as well as a potential recession, our business, financial condition, and results of operations could be adversely affected.

***Extreme or unseasonable weather conditions could adversely affect our business.***

Extreme weather events and changes in weather patterns can influence customer trends and shopping habits. Extended periods of unseasonably warm temperatures during the fall and winter seasons, or cool weather during the summer season, may diminish demand for our seasonal merchandise. Heavy snowfall, hurricanes or other severe weather events in the areas in which our retail stores and the retail stores of our wholesale customers are located may decrease customer traffic in those stores and reduce our sales and profitability. If severe weather events were to force closure of or disrupt operations at the distribution centers we use for our merchandise, we could incur higher costs and experience longer lead times to distribute our products to our retail stores, wholesale customers or digital channel customers. If prolonged, such extreme or unseasonable weather conditions could adversely affect our business, financial condition, and results of operations.

***Our trademarks and other intangible assets are subject to impairment charges under accounting guidelines.***

Our intangible assets including our trademarks had a net carrying value of $47.7 million as of December 31, 2022 and represent a substantial portion of our assets. Under accounting principles generally accepted in the United States of America ("GAAP"), finite-lived intangible assets are amortized over their estimated useful lives, and reviewed for impairment whenever events or changes in circumstances indicate that their carrying value may not be recoverable. Non-renewal of license agreements or other factors affecting our market segments or brands could result in significantly reduced revenue for a brand, which could result in a devaluation of the affected trademark. If such devaluations of our trademarks were to occur, a material impairment in the carrying value of one or more of our trademarks could also occur and be charged as a non-cash expense to our operating results, which could be material. Any write-down of intangible assets resulting from future periodic evaluations would, as applicable, either decrease our net income or increase our net loss and those decreases or increases could be material.

***Changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our results.***

Our future effective tax rates could be adversely affected by changes in the valuation of our deferred tax assets and liabilities, or by changes in tax laws or by a change in allocation of state and local jurisdictions, or interpretations thereof. The Company currently files U.S. federal tax returns and various state tax returns. Tax years that remain open for assessment for federal and state purposes include years ended December 31, 2019 through December 31, 2022. We regularly assess the likelihood of recovering the amount of deferred tax assets recorded on the balance sheet and the likelihood of adverse outcomes resulting from examinations by various taxing authorities in order to determine the adequacy of our provision for income taxes. Although under the 2017 Tax Cuts and Jobs Act Federal tax rates are lower, certain expenses will be either reduced or eliminated, causing the Company to have increased taxable income, which may have an adverse effect on our future income tax obligations. We cannot guarantee that the outcomes of these evaluations and continuous examinations will not harm our reported operating results and financial condition.

***We must successfully maintain and/or upgrade our information technology systems.***

We rely on various information technology systems to manage our operations, which subject us to inherent costs and risks associated with maintaining, upgrading, replacing, and changing these systems, including impairment of our information technology, potential disruption of our internal control systems, substantial capital expenditures, demands on management time, cyber security breaches and other risks of delays or difficulties in upgrading, transitioning to new systems, or of integrating new systems into our current systems.

***System security risk issues as well as other major system failures could disrupt our internal operations or information technology services, and any such disruption could negatively impact our net sales, increase our expenses and harm our reputation.***

Experienced computer programmers and hackers, and even internal users, may be able to penetrate our network security and misappropriate our confidential information or that of third parties, including our customers, enter into or facilitate fraudulent transactions, create system disruptions or cause shutdowns. In addition, employee error, malfeasance or other errors in the storage, use or transmission of any such information could result in a disclosure to third parties outside of our network. As a result, we could incur significant expenses addressing problems created by any such inadvertent disclosure or any security breaches of our network. In addition, we rely on third parties for the operation of our websites, and for the various social media tools and websites we use as part of our marketing strategy.

Consumers are increasingly concerned over the security of personal information transmitted over the internet, consumer identity theft and user privacy, and any compromise of customer information could subject us to customer or government litigation and harm our reputation, which could adversely affect our business and growth. Moreover, we could incur significant expenses or disruptions of our operations in connection with system failures or breaches. In addition, sophisticated hardware and operating system software and applications that we procure from third parties may contain defects in design or manufacture, including “bugs” and other problems that could unexpectedly interfere with the operation of our systems. The costs to us to eliminate or alleviate security problems, viruses and bugs, or any problems associated with our newly transitioned systems or outsourced services could be significant, and the efforts to address these problems could result in interruptions, delays or cessation of service that may impede our sales, distribution or other critical functions. In addition to taking the necessary precautions ourselves, we require that third-party service providers implement reasonable security measures to protect our customers’ identity and privacy as well as credit card information. We do not, however, control these third-party service providers and cannot guarantee that no electronic or physical computer break-ins and security breaches will occur in the future. We could also incur significant costs in complying with the multitude of state, federal and foreign laws regarding the use and unauthorized disclosure of personal information, to the extent they are applicable. In the case of a disaster affecting our information technology systems, we may experience delays in recovery of data, inability to perform vital corporate functions, tardiness in required reporting and compliance, failures to adequately support our operations and other breakdowns in normal communication and operating procedures that could materially and adversely affect our financial condition and results of operations.

***Changes in laws could make conducting our business more expensive or otherwise change the way we do business.***

We are subject to numerous domestic and international regulations, including labor and employment, customs, truth-in-advertising, consumer protection, data protection, and zoning and occupancy laws and ordinances that regulate retailers generally or govern the importation, promotion and sale of merchandise and the operation of stores and warehouse facilities. If these regulations were to change or were violated by our management, employees, vendors, independent manufacturers or partners, the costs of certain goods could increase, or we could experience delays in shipments of our products, be subject to fines or penalties, or suffer reputational harm, which could reduce demand for our merchandise and hurt our business and results of operations.

In addition to increased regulatory compliance requirements, changes in laws could make ordinary conduct of business more expensive or require us to change the way we do business. Laws related to employee benefits and treatment of employees, including laws related to limitations on employee hours, supervisory status, leaves of absence, mandated health benefits, overtime pay, unemployment tax rates and citizenship requirements, could negatively impact us, by increasing compensation and benefits costs, which would in turn reduce our profitability.

Moreover, changes in product safety or other consumer protection laws could lead to increased costs to us for certain merchandise, or additional labor costs associated with readying merchandise for sale. It is often difficult for us to plan and prepare for potential changes to applicable laws and future actions or payments related to such changes could be material to us.

***If we fail to maintain an effective system of internal control, we may not be able to report our financial results accurately or in a timely fashion, and we may not be able to prevent fraud. In such case, our stockholders could lose confidence in our financial reporting, which would harm our business and could negatively impact the price of our stock.***

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, we are required to include in our Annual Report on Form 10-K our assessment of the effectiveness of our internal control over financial reporting. We have dedicated a significant amount of time and resources to ensure compliance with this legislation for the years ended December 31, 2022 and 2021, and will continue to do so for future fiscal periods. We cannot be certain that future material changes to our internal control over financial reporting will be effective. If we cannot adequately maintain the effectiveness of our internal control over financial reporting, we may be subject to sanctions or investigation by regulatory authorities, such as the SEC. Any such action could adversely affect our financial results and the market price of our common stock. Moreover, if we discover a material weakness, the disclosure of that fact, even if quickly remedied, could reduce the market's confidence in our financial statements and harm our stock price.

Our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting until we are no longer a "smaller reporting company." At such time that an attestation is required, our independent registered public accounting firm may issue a report that is adverse or qualified in the event that they are not satisfied with the level at which our controls are documented, designed or operating. Our remediation efforts may not enable us to avoid a material weakness or significant deficiency in the future.

***There are limitations on the liabilities of our directors and executive officers. Under certain circumstances, we are obligated to indemnify our directors and executive officers against liability and expenses incurred by them in their service to us.***

Pursuant to our amended and restated certificate of incorporation and under Delaware law, our directors are not liable to us or our stockholders for monetary damages for breach of fiduciary duty, except for liability for breach of a director's duty of loyalty, acts or omissions by a director not in good faith or which involve intentional misconduct or a knowing violation of law, dividend payments or stock repurchases that are unlawful under Delaware law or any transaction in which a director has derived an improper personal benefit. In addition, we have entered into indemnification agreements with each of our directors and executive officers. These agreements, among other things, require us to indemnify each director and executive officer for certain expenses, including attorneys' fees, judgments, fines and settlement amounts, incurred by any such person in any action or proceeding, including any action by us or in our right, arising out of the person's services as one of our directors or executive officers. The costs associated with providing indemnification under these agreements could be harmful to our business and have an adverse effect on results of operations.

## Item 1B. Unresolved Staff Comments

Not applicable.

## Item 2. Properties

We currently lease and maintain our corporate offices and operations facility located at 1333 Broadway, 10th floor, New York, New York. We entered into a lease agreement on July 8, 2015 for such offices of approximately 29,600 square feet of office space. This lease commenced on March 1, 2016 and shall expire on October 30, 2027.

We previously leased approximately 18,500 square feet of office space at 475 Tenth Avenue, 4th Floor, New York, New York; this location represented our former corporate offices and operations facility. We subleased the office space at 475 Tenth Avenue to a third-party subtenant through February 27, 2022, and our lease of this office space expired by its terms on February 28, 2022.

We also lease approximately 1,300 square feet of retail space for a former retail store location in Westchester, New York, which was closed in the first quarter of 2022. This lease shall expire on January 31, 2029; however, we are currently in the process of negotiating the termination of this lease.

**Item 3. Legal Proceedings**

In the ordinary course of business, from time to time we become involved in legal claims and litigation. In the opinion of management, based on consultations with legal counsel, the disposition of litigation currently pending against us is unlikely to have, individually or in the aggregate, a materially adverse effect on our business, financial position, results of operations, or cash flows.

**Item 4. Mine Safety Disclosures**

None.

## PART II

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

**Market Information**

Our common stock is listed on the NASDAQ Global Market, under the trading symbol "XELB."

The table below sets forth the range of quarterly high and low sales prices for our common stock in 2022 and 2021:

| | High | Low |
|---|---|---|
| December 31, 2022 | | |
| First Quarter | $ 1.64 | $ 1.01 |
| Second Quarter | $ 1.66 | $ 1.06 |
| Third Quarter | $ 1.29 | $ 0.95 |
| Fourth Quarter | $ 1.03 | $ 0.68 |
| | | |
| December 31, 2021 | | |
| First Quarter | $ 2.47 | $ 1.19 |
| Second Quarter | $ 2.99 | $ 1.56 |
| Third Quarter | $ 2.77 | $ 1.49 |
| Fourth Quarter | $ 1.98 | $ 1.06 |

**Holders**

As of December 31, 2022, the number of our stockholders of record was 561 (excluding beneficial owners and any shares held in street name or by nominees).

**Dividends**

We have never declared or paid any cash dividends on our common stock. We expect to retain future earnings to finance our operations and expansion. The payment of cash dividends in the future will be at the discretion of our board of directors and will depend upon our earnings levels, capital requirements, any restrictive loan covenants, and other factors the board of directors considers relevant.

**Securities authorized for issuance under equity compensation plans**

***2021 Equity Incentive Plan***

Our 2021 Equity Incentive Plan, which we refer to as the 2021 Plan, is designed and utilized to enable the Company to offer its employees, officers, directors, consultants, and others whose past, present, and/or potential contributions to the

Company have been, are, or will be important to the success of the Company, an opportunity to acquire a proprietary interest in the Company. The following is a description of the 2021 Plan.

- The 2021 Plan provides for the grant of stock options, restricted stock, restricted stock units, performance awards, or cash awards (any grant under the 2021 Plan, an "Award"). The stock options may be incentive stock options or non-qualified stock options.

- A total of 4,000,000 shares of common stock are eligible for issuance under the 2021 Plan.

- The 2021 Plan may be administered by the Board of Directors (the "Board") or a committee consisting of two or more members of the Board of Directors appointed by the Board (for purposes of this description, any such committee, a "Committee").

- Officers and other employees of our Company or any parent or subsidiary of our Company who are at the time of the grant of an Award employed by us or any parent or subsidiary of our Company are eligible to be granted options or other Awards under the 2021 Plan. In addition, non-qualified stock options and other Awards may be granted under the 2021 Plan to any person, including, but not limited to, directors, independent agents, consultants, and attorneys who the Board or the Committee, as the case may be, believes has contributed or will contribute to our success.

- With respect to incentive stock options granted to an eligible employee owning stock possessing more than 10% of the total combined voting power of all classes of our stock or the stock of a parent or subsidiary of our Company immediately before the grant (each, a "10% Stockholder"), such incentive stock option shall not be exercisable more than 5 years from the date of grant.

- The exercise price of a stock option will not be less than the fair market value of the shares underlying the option on the date the option is granted, provided, however, that the exercise price of a stock option granted to a 10% Stockholder may not be less than 110% of such fair market value.

- Restricted stock awards give the recipient the right to receive a specified number of shares of common stock, subject to such terms, conditions and restrictions as the Board or the Committee, as the case may be, deems appropriate. Restrictions may include limitations on the right to transfer the stock until the expiration of a specified period of time and forfeiture of the stock upon the occurrence of certain events such as the termination of employment prior to expiration of a specified period of time.

- Restricted stock unit awards will be settled in cash or shares of common stock, in an amount based on the fair market value of our common stock on the settlement date. The RSUs will be subject to forfeiture and restrictions on transferability as set forth in the 2021 Plan and the applicable award agreement and as may be otherwise determined by the Board or the Committee. There were no RSUs outstanding as of December 31, 2022.

- Certain Awards made under the Plan may be granted so that they qualify as "performance-based compensation" (as this term is used in Internal Revenue Code Section 162(m) and the regulations thereunder) and are exempt from the deduction limitation imposed by Code Section 162(m) (these Awards are referred to as "Performance-Based Awards"). Under Internal Revenue Code Section 162(m), our tax deduction may be limited to the extent total compensation paid to the chief executive officer, or any of the four most highly compensated executive officers (other than the chief executive officer) exceeds $1 million in any one tax year. In accordance with the 2017 Tax Cuts and Jobs Act, the tax deductibility for each of these executives will be limited to $1,000,000 of compensation annually, including any performance-based compensation. Among other criteria, Awards only qualify as performance-based awards if at the time of grant the compensation committee is comprised solely of two or more "outside directors" (as this term is used in Internal Revenue Code Section 162(m) and the regulations thereunder). In addition, we must obtain stockholder approval of material terms of performance goals for such "performance-based compensation."

- All stock options and certain stock awards, performance awards, and stock units granted under the Plan, and the compensation attributable to such Awards, are intended to (i) qualify as performance-based awards or (ii) be otherwise exempt from the deduction limitation imposed by Internal Revenue Code Section 162(m).

- Cash awards may be issued under the 2021 Plan either alone or in addition to or in tandem with other Awards granted under the 2021 Plan or other payments made to a participant not under the 2021 Plan. The Board or Committee shall determine the eligible persons to whom, and the time or times at which, cash awards will be made, the amount that is subject to the cash award, the circumstances and conditions under which such amount shall be paid, in whole or in part, the time of payment, and all other terms and conditions of the Awards. Each cash award shall be confirmed by, and shall be subject to the terms of, an agreement executed

- No Awards may be granted on or after the tenth anniversary of the effective date of the 2021 Plan.

***2011 Equity Incentive Plan***

The key terms and provisions of our Amended and Restated 2011 Equity Incentive Plan, which we refer to as the 2011 Plan, were substantially similar to the 2021 Plan described above, with the major difference being the number of shares of common stock reserved for issuance under the 2011 Plan. Stock-based awards (including options, warrants, and restricted stock) previously granted under the 2011 Plan remain outstanding, and shares of common stock may be issued to satisfy options or warrants previously granted under the 2011 Plan, although no new awards may be granted under the 2011 Plan.

***Issuances***

From time to time, the Company issues stock-based compensation to its officers, directors, employees, and consultants through its equity compensation plans. The maximum term of options granted is generally five years and generally options vest over a period of six months to two years. However, the Board may approve other vesting schedules. Options may be exercised in whole or in part. The exercise price of stock options granted is generally the fair market value of the Company's common stock on the date of grant.

The fair value of each stock option award is estimated using the Black-Scholes option pricing model based on certain assumptions. The assumption for expected term is based on evaluations of expected future employee exercise behavior. Because of a lack of historical information related to exercise activity, we use the simplified method to determine the expected term. The risk-free interest rate is based on the U.S. Treasury rates at the date of grant with maturity dates approximately equal to the expected term at the grant date. The historical volatility of our common stock is used as the basis for the volatility assumption. The Company has never paid cash dividends, and does not currently intend to pay cash dividends, and thus assumes a 0% dividend yield.

The following table sets forth information as of December 31, 2022 regarding compensation plans under which our equity securities are authorized for issuance:

| Plan Category | Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a) | Weighted Average Exercise Price of Outstanding Options, Warrants and Rights (b) | Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (c) |
|---|---|---|---|
| Equity compensation Plans (1) | 5,730,375 | $ 2.14 | 3,291,909 |

(1) Pursuant to our 2011 and 2021 Equity Incentive Plans.

**Recent Sales of Unregistered Securities**

There were no sales of unregistered or registered securities during the years ended December 2022 and 2021.

**Purchases of equity securities by the issuer and affiliated purchasers**

We did not repurchase any shares of common stock during the fourth fiscal quarter ended December 31, 2022.

**Item 6. [Reserved]**

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

The following discussion and analysis should be read together with our consolidated financial statements and the notes thereto, included in Item 8 of this Annual Report on Form 10-K. This discussion summarizes the significant factors affecting our consolidated operating results, financial condition and liquidity and cash flows for the years ended December 31, 2022 and 2021. Except for historical information, the matters discussed in this Management's Discussion and Analysis of Financial Condition and Results of Operations are forward-looking statements that involve risks and uncertainties and are based upon judgments concerning factors that are beyond our control.

**Overview**

Xcel Brands is a media and consumer products company engaged in the design, production, marketing, live streaming, wholesale distribution, and direct-to-consumer sales of branded apparel, footwear, accessories, fine jewelry, home goods and other consumer products, and the acquisition of dynamic consumer lifestyle brands. The Company's brands have generated over $3 billion in retail sales via live streaming in interactive television and digital channels alone.

Xcel was founded in 2011 with a vision to reimagine shopping, entertainment, and social media as one thing. Currently, Xcel's brand portfolio consists of the LOGO by Lori Goldstein Brand, the Halston Brand, the Ripka Brand, the C Wonder Brand, the Longaberger Brand, the Isaac Mizrahi Brand, and other proprietary brands.

- The Lori Goldstein Brand, Halston Brand, Ripka Brand, and C Wonder Brand are wholly owned by the Company.
- We manage the Longaberger Brand through our 50% ownership interest in Longaberger Licensing, LLC.
- We manage the Q Optix business through our 50% ownership interest in Q Optix, LLC.
- The Company wholly owned and managed the Isaac Mizrahi Brand through May 31, 2022. On May 31, 2022, we sold a majority interest in the brand to a third party, but retained a 30% noncontrolling interest in the brand and continue to participate in the operations of the business.

Xcel is pioneering a true omni-channel sales strategy which includes the promotion and sale of products under its brands through interactive television, digital live-stream shopping, brick-and-mortar retail, wholesale, and e-commerce channels.

To grow our brands, we are focused on the following primary strategies:

- Distribution and/or licensing of our brands for sale through interactive television (i.e., QVC, HSN, The Shopping Channel, TVSN, CJO, JTV, etc.);
- wholesale distribution through joint ventures or licensing of our brands to retailers that sell to the end consumer;
- direct-to-consumer distribution of our brands through e-commerce and live streaming;
- licensing our brands to manufacturers and retailers for promotion and distribution through e-commerce, social commerce, and traditional brick-and-mortar retail channels whereby we provide certain design services; and
- acquiring additional consumer brands and integrating them into our operating platform and leveraging our operating infrastructure and distribution relationships.

We believe that we offer a unique value proposition to our retail and direct-to-consumer customers, and our licensees for the following reasons:

- our management team, including our officers' and directors' experience in, and relationships within the industry;
- our deep knowledge, expertise, and proprietary technology in live streaming;
- our design, production, sales, marketing, and supply chain and integrated technology platform that enables us to design and distribute trend-right product; and
- our significant media and internet presence and distribution.

Our vision is intended to reimagine shopping, entertainment, and social media as one thing. By leveraging live streaming, digital, and social media content across all distribution channels, we seek to drive consumer engagement and generate retail sales across our brands. Our strong relationships with leading retailers, interactive television companies, and streaming networks enable us to reach consumers in over 200 million homes worldwide and hundreds of millions of social media followers.

We believe our design, production, and joint venture supply chain platform provides significant competitive advantages compared with traditional wholesale consumer products companies that design, manufacture, and distribute products. We focus on our core competencies of live streaming, marketing, design, integrated technologies, production and joint venture supply chain platform, and brand development. We believe that we offer a 360-degree solution to our retail partners that addresses many of the challenges facing the retail industry today. We believe our platform is highly scalable. Additionally, we believe we can acquire additional brands into our platform in order to leverage our operating infrastructure, marketing capabilities, and distribution network.

**Critical Accounting Policies and Estimates**

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Critical accounting policies are those that are the most important to the portrayal of our financial condition and results of operations, and that require our most difficult, subjective, and complex judgments as a result of the need to make estimates about the effect of matters that are inherently uncertain. Critical accounting estimates are those that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on our financial condition or results of operations. While our significant accounting policies and estimates are described in more detail in the notes to our consolidated financial statements, our most critical accounting policies and estimates, discussed below, pertain to revenue recognition, trademarks and other intangible assets, income taxes, and equity method investments. These include but are not limited to the estimation of the useful lives of our trademarks, the estimation of the future cash flows related to our trademarks, and the estimation of our incremental borrowing rate (for purposes of accounting for leases). In applying such policies, we must use some amounts that are based upon our informed judgments and best estimates. Estimates, by their nature, are based upon judgments and available information. The estimates that we make are based upon historical factors, current circumstances, and the experience and judgment of management. We evaluate our assumptions and estimates on an ongoing basis.

***Revenue Recognition***

*Licensing*

In connection with our licensing model, we follow Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 606-10-55-65, by which we recognize net licensing revenue at the later of when (1) the subsequent sale or usage occurs or (2) the performance obligation to which some or all of the sales- or usage-based royalty has been allocated is satisfied (in whole or in part). More specifically, we separately identify:

(i) Contracts for which, based on experience, royalties are expected to exceed any applicable minimum guaranteed payments, and to which an output-based measure of progress based on the "right to invoice" practical expedient is applied because the royalties due for each period correlate directly with the value to the customer of our performance in each period (this approach is identified as "View A" by the FASB Revenue Recognition Transition Resource Group, "TRG"); and

(ii) Contracts for which revenue is recognized based on minimum guaranteed payments using an appropriate measure of progress, in which minimum guaranteed payments are straight-lined over the term of the contract and recognized ratably based on the passage of time, and to which the royalty recognition constraint to the sales-based royalties in excess of minimum guaranteed is applied and such sales-based royalties are recognized to the distinct period only when the minimum guaranteed is exceeded on a cumulative basis (this approach is identified as "View C" by the TRG).

*Wholesale Sales*

We generate revenue through sale of branded jewelry and apparel to both domestic and international customers who, in turn, sell the products to their consumers. We recognize revenue within net sales in the accompanying consolidated statements of operations when performance obligations identified under the terms of contracts with our customers are satisfied, which occurs upon the transfer of control of the merchandise in accordance with the contractual terms and conditions of the sale. Shipping to customers is accounted for as a fulfillment activity and is recorded within other selling, general and administrative expenses.

*Direct to Consumer Sales*

Our revenue associated with our e-commerce jewelry operations and the Longaberger brand is recognized within net sales in the accompanying consolidated statements of operations at the point in time when product is shipped to the customer. Shipping to customers is accounted for as a fulfillment activity and is recorded within other selling, general and administrative expenses. Revenue associated with our fine jewelry brick-and-mortar retail store is recognized within net sales in the accompanying consolidated statements of operations at the point of sale.

***Trademarks and Other Intangible Assets***

We follow ASC Topic 350, "Intangibles - Goodwill and Other." Under this standard, goodwill and indefinite-lived intangible assets are not amortized, but are required to be assessed for impairment at least annually. Our finite-lived intangible assets are amortized over their estimated useful lives. We estimate the useful lives of our intangible assets based principally on our expected use and strategic plans for each asset, our own historical experience with similar assets, and our expectations related to demand, competition, and other economic factors.

*Indefinite-Lived Intangible Asset*

We tested our indefinite-lived intangible asset for recovery in accordance with ASC 820-10-55-3F, which states that the income approach ("Income Approach") converts future amounts (for example, cash flows) into a single current (that is, discounted) amount. When the Income Approach is used, fair value measurement reflects current market expectations about those future amounts. The Income Approach is based on the present value of future earnings expected to be generated by a business or asset. Income projections for a future period are discounted at a rate commensurate with the degree of risk associated with future proceeds. A residual or terminal value is also added to the present value of the income to quantify the value of the business beyond the projection period. As such, recoverability of such assets is measured by a comparison of the carrying amount of the asset to its expected future discounted net cash flows. If the carrying amount of such assets is considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the assets exceeds the recoverability of the assets.

We also re-evaluated on an annual basis whether events and circumstances continue to support an indefinite useful life.

We performed the annual impairment testing as described above for the year ended December 31, 2021, and concluded that there was no impairment of our indefinite-lived intangible asset. We subsequently sold our indefinite-lived intangible asset in May 2022 for a gain.

*Finite-Lived Intangibles*

Our finite-lived intangible assets, including Trademarks, are reviewed for impairment whenever events or changes in circumstances indicate that their carrying value may not be recoverable. An impairment loss is recognized if the carrying amount of a finite-lived intangible asset is not recoverable and its carrying amount exceeds its fair value.

With reference to our finite-lived intangible assets' impairment process, we group assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities and evaluate the asset group against the sum of undiscounted future cash flows. If the undiscounted cash flows do not indicate the carrying amount of the asset is recoverable, an impairment charge is measured as the amount by which the carrying amount of the asset group exceeds its fair value based on discounted cash flows analysis or appraisals.

There were no impairment charges recorded for finite-lived intangible assets for the years ended December 31, 2022 and 2021.

***Income Taxes***

Income tax expense is the tax payable for the period and the change during the period in deferred tax assets and liabilities. Deferred income taxes are determined based on the temporary difference between the financial reporting and tax bases of assets and liabilities using enacted rates in effect during the year in which the differences are expected to reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. We consider forecasted earnings, future taxable income, and prudent and feasible tax planning strategies in determined the need for these valuation allowances.

With respect to any uncertainties in income taxes recognized in our financial statements, tax positions are initially recognized in the financial statements when it is more likely than not that the position will be sustained upon examination by the tax authorities. Such tax positions are initially and subsequently measured as the largest amount of tax benefit that has a probability of fifty percent or greater of being realized upon ultimate settlement with the tax authority, assuming full knowledge of the position and all relevant facts. Tax years that remain open for assessment for federal and state tax purposes include the years ended December 31, 2019 through December 31, 2022.

***Equity Method Investments***

We account for our investments in entities over which we have the ability to exercise significant influence, but do not control the entity, under the equity method of accounting, and we recognize our proportionate share of income or losses from the entity within other income (expense) in the consolidated statement of operations.

We initially measure our investment in an equity method investee at cost. In cases where we retain a noncontrolling interest in an investee which we had previously consolidated, we initially measure such retained interest at fair value. In estimating fair value in such cases, we seek to maximize the use of observable inputs (market data obtained from independent sources) and to minimize the use of unobservable inputs (internal assumptions about how market participants would price assets and liabilities).

Subsequent recognition of an investor’s proportionate share of income or losses of an equity method investee is generally determined based on the investor’s proportional ownership interest. However, in cases where contractual agreements specify allocation ratios for profits and losses, specified costs and expenses, and/or distributions of cash from operations, that differ from our ownership interest, we use such specified allocation ratios for purposes of determining our share of income or losses from the investee if the agreement is considered substantive.

**Recently Issued Accounting Pronouncements**

In June 2016, the FASB issued Accounting Standards Update (“ASU”) No. 2016-13, "Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments," which was subsequently amended in November 2018 through ASU No. 2018-19. This ASU will require entities to estimate lifetime expected credit losses for financial instruments, including trade and other receivables, which will result in earlier recognition of credit losses. Subsequently, the FASB issued additional guidance in ASU No. 2019-05 in May 2019, ASU No. 2019-10 and 2019-11 in November 2019, ASU No. 2020-02 in February 2020, and ASU No. 2022-02 in March 2022. Among other things, the additional guidance deferred the application of the new guidance on credit losses for smaller reporting companies to fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. We are currently evaluating the new guidance to determine the impact the adoption of this guidance will have on our results of operations, cash flows, and financial condition when it is adopted during the first quarter of 2023.

**Recently Adopted Accounting Pronouncements**

We adopted ASU No. 2021-10, “Government Assistance (Topic 823): Disclosures by Business Entities about Government Assistance” effective January 1, 2022. This ASU requires certain financial statement disclosures about transactions with a government that are accounted for by applying a grant or contribution accounting model by analogy. As this ASU only affects financial statement disclosures, the adoption of this guidance did not have any impact on our results of operations, cash flows, or financial condition.

We adopted ASU No. 2019-12, “Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes” effective January 1, 2021. This ASU removes certain exceptions to the general principles in Topic 740, including, but not limited to, intraperiod tax allocations and interim period tax calculations. The ASU also provides additional clarification and guidance related to recognition of franchise taxes and changes in tax laws. The adoption of this new guidance did not have any impact on our results of operations, cash flows, or financial condition.

**Summary of Operating Results**

The consolidated financial statements and related notes included elsewhere in this Form 10-K are as of or for the years ended December 31, 2022 (the “Current Year”), and December 31, 2021 (the “Prior Year”).

***Revenues***

Current Year net revenue decreased approximately $12.1 million to $25.8 million from $37.9 million for the Prior Year.

Net licensing revenue decreased by $7.1 million in the Current Year to approximately $14.7 million, compared with approximately $21.8 million in the Prior Year. This decrease in licensing revenue was primarily attributable to the May 31, 2022 sale of a majority interest in the Isaac Mizrahi brand through the sale of a 70% interest in IM Topco, LLC to WHP, partially offset by increased licensing revenue generated by the Lori Goldstein brand, which we acquired on April 1, 2021.

Net sales decreased by $5.0 million in the Current Year to approximately $11.1 million, compared with approximately $16.1 million in the Prior Year. This decrease in net sales was primarily attributable to declines in apparel wholesale revenue and, to a lesser extent, in wholesale jewelry sales, mainly driven by a combination of retailers pausing on purchases triggered by excess inventory levels, and the temporary closing of overseas factories due to COVID-19, causing delays in product delivery resulting in cancelled orders.

***Cost of Goods Sold and Gross Profit***

Current Year cost of goods sold was $8.0 million, compared with $10.7 million for the Prior Year, due to the lower volumes of product sales in the Current Year. Gross profit (net revenue less cost of goods sold) decreased approximately $9.5 million to $17.8 million from $27.3 million in the Prior Year, primarily driven by the aforementioned decrease in net licensing revenue.

Gross profit margin from product sales (net sales less cost of goods sold, divided by net sales) declined from approximately 34% in the Prior Year to approximately 28% in the Current Year, primarily due to the selling-off of seasoned apparel inventory during the earlier portion of 2022, and inventory write-downs related to cancelled sales orders for the reasons outlined above in the discussion of revenues.

***Operating Costs and Expenses***

Operating costs and expenses increased approximately $0.5 million, or approximately 1%, from $39.8 million in the Prior Year to $40.3 million in the Current Year. This slight increase was primarily driven by the combination of (i) higher shipping and logistics costs, as well as cost increases from other service providers and vendors due to the current inflationary economic environment, and (ii) increased trademark amortization expense, related to the acquisition of the Lori Goldstein brand on April 1, 2021, largely offset by (iii) lower asset impairment charges in the Current Year, and (iv) the elimination of salary and other expenses associated with the Isaac Mizrahi brand after the sale of a majority interest in that brand on May 31, 2022.

***Other Income (Expense)***

We recognized a gain on the sale of a majority interest in the Isaac Mizrahi brand in the Current Year of approximately $20.6 million, which was comprised of $46.2 million of cash proceeds plus the recognition of the fair value of our retained interest in the brand of $19.8 million, less $0.9 million of fees and expenses directly related to the transaction and the derecognition of the brand trademarks previously recorded on our balance sheet of $44.5 million.

We account for our interest in the ongoing operations of IM Topco, LLC using the equity method of accounting. We recognized an equity method loss of approximately $1.2 million related to our investment for Current Year, based on the distribution provisions and preferences set forth in the related business venture agreement.

Other income (expense) for the Current Year also includes a $0.9 million gain on the reduction of contingent obligations. In connection with our 2019 purchase of the Halston Heritage trademarks, we agreed to pay the seller additional consideration of up to an aggregate of $6.0 million, based on royalties earned from 2019 through December 31, 2022. This potential earn-out was initially recorded as a liability of $0.9 million, based on the difference at the date of acquisition between the fair value of the acquired assets of the Halston Heritage trademarks and the total consideration paid. The final royalty target year ended on December 31, 2022, and the seller ultimately did not earn any additional consideration based on the formula set forth in the related asset purchase agreement.

***Interest and Finance Expense***

Interest and finance expense for the Current Year was $3.5 million, compared with $3.6 million for the Prior Year.

This slight decrease was primarily attributable to the fact that we had no interest expense from June 1, 2022 through December 31, 2022, as all of our outstanding term loan was repaid on May 31, 2022 and we have not incurred any new debt. The decrease was partially offset by the higher loss on early extinguishment of debt as a result of the aforementioned May 31, 2022 repayment in the Current Year, compared with losses on extinguishment in the Prior Year.

***Income Tax Benefit***

The effective income tax benefit rate for the Current Year was approximately 10.0% resulting in a $0.4 million income tax benefit. During the Current Year, the effective tax rate was primarily attributable to the impacts of stock-based compensation, which decreased the effective rate by approximately 6.1%, and federal tax true-ups, which decreased the effective tax rate by approximately 5.1%. The effective tax rate was also impacted by recurring permanent differences; the largest such recurring permanent differences were state and local tax provisions, which increased the effective rate in 2022 by approximately 6.1%, and disallowed excess compensation, which decreased the effective rate in 2022 by approximately 5.3%.

The effective income tax benefit rate for the Prior Year was approximately 19.3% resulting in a $3.1 million income tax benefit. During the Prior Year, the effective tax rate was impacted by the impact of stock-based compensation, which decreased the effective rate by approximately 5.6%. The effective tax rate was also impacted by recurring permanent differences; the largest such recurring permanent differences were state and local tax provisions, which increased the effective rate in 2021 by approximately 4.6%, and disallowed excess compensation, which decreased the effective rate in 2021 by approximately 0.7%.

***Net Loss***

We had a net loss of approximately $5.4 million for the Current Year, compared with a net loss of approximately $13.0 million for the Prior Year, as a result of the factors discussed above.

***Non-GAAP Net Income, Non-GAAP Diluted EPS, and Adjusted EBITDA***

We had a non-GAAP net loss of $15.0 million or $(0.77) per share ("non-GAAP diluted EPS") based on 19,624,669 weighted average shares outstanding for the Current Year, compared with a non-GAAP net loss of $6.2 million, or $(0.32) per share based on 19,455,987 weighted average shares outstanding for the Prior Year. Non-GAAP net income is a non-GAAP unaudited term, which we define as net income (loss) attributable to Xcel Brands, Inc. stockholders, exclusive of asset impairments, amortization of trademarks, our proportional share of trademark amortization of equity method investees, stock-based compensation, loss on early extinguishment of debt, certain adjustments to the provision for doubtful accounts related to the bankruptcy of and economic impact on certain retail customers due to the COVID-19 pandemic, gain on sale of assets, gain on reduction of contingent obligations, and income taxes. Non-GAAP net income and non-GAAP diluted EPS measures do not include the tax effect of the aforementioned adjusting items, due to the nature of these items and the Company's tax strategy.

We had Adjusted EBITDA of approximately $(12.5) million for the Current Year, compared with Adjusted EBITDA of approximately $(2.5) million for the Prior Year. Adjusted EBITDA is a non-GAAP unaudited measure, which we define as net income (loss) attributable to Xcel Brands, Inc. stockholders before asset impairments, depreciation and amortization, our proportional share of trademark amortization of equity method investees, interest and finance expenses (including loss on early extinguishment of debt, if any), income taxes, other state and local franchise taxes, stock-based compensation, certain adjustments to the provision for doubtful accounts related to the bankruptcy of and economic impact on certain retail customers due to the COVID-19 pandemic, gain on sale of assets, and gain on reduction of contingent obligation.

Management uses non-GAAP net income, non-GAAP diluted EPS, and Adjusted EBITDA as measures of operating performance to assist in comparing performance from period to period on a consistent basis and to identify business trends relating to the Company's results of operations. Management believes non-GAAP net income, non-GAAP diluted EPS, and Adjusted EBITDA are also useful because these measures adjust for certain costs and other events that management believes are not representative of our core business operating results, and thus these non-GAAP measures provide supplemental information to assist investors in evaluating the Company's financial results.

Non-GAAP net income, non-GAAP diluted EPS, and Adjusted EBITDA should not be considered in isolation or as alternatives to net income, earnings per share, or any other measure of financial performance calculated and presented in accordance with GAAP. Given that non-GAAP net income, non-GAAP diluted EPS, and Adjusted EBITDA are financial measures not deemed to be in accordance with GAAP and are susceptible to varying calculations, our non-GAAP net income, non-GAAP diluted EPS, and Adjusted EBITDA may not be comparable to similarly titled measures of other companies, including companies in our industry, because other companies may calculate these measures in a different manner than we do.

In evaluating non-GAAP net income, non-GAAP diluted EPS, and Adjusted EBITDA, you should be aware that in the future we may or may not incur expenses similar to some of the adjustments in this report. Our presentation of non-GAAP net income, non-GAAP diluted EPS, and Adjusted EBITDA does not imply that our future results will be unaffected by these expenses or any unusual or non-recurring items. When evaluating our performance, you should consider non-GAAP net income, non-GAAP diluted EPS, and Adjusted EBITDA alongside other financial performance measures, including our net income and other GAAP results, and not rely on any single financial measure.

The following table is a reconciliation of net loss attributable to Xcel Brands, Inc. stockholders (our most directly comparable financial measure presented in accordance with GAAP) to non-GAAP net loss:

| | Year Ended December 31, | |
|---|---|---|
| **($ in thousands)** | **2022** | **2021** |
| Net loss attributable to Xcel Brands, Inc. stockholders | $ (4,018) | $ (12,184) |
| Asset impairments | 274 | 1,372 |
| Amortization of trademarks | 6,079 | 5,435 |
| Proportional share of trademark amortization of equity method investee | 1,202 | — |
| Stock-based compensation | 620 | 720 |
| Loss on early extinguishment of debt | 2,324 | 1,516 |
| Certain adjustments to provision for doubtful accounts | 413 | 132 |
| Gain on sale of assets | (20,586) | — |
| Gain on reduction of contingent obligation | (900) | — |
| Income tax benefit | (431) | (3,192) |
| Non-GAAP net loss | $ (15,023) | $ (6,201) |

The following table is a reconciliation of diluted loss per share to non-GAAP diluted EPS:

| | Year Ended December 31, | |
|---|---|---|
| | **2022** | **2021** |
| Diluted loss per share attributable to Xcel Brands, Inc. stockholders | $ (0.20) | $ (0.63) |
| Asset impairments | 0.01 | 0.07 |
| Amortization of trademarks | 0.31 | 0.28 |
| Proportional share of trademark amortization of equity method investee | 0.06 | — |
| Stock-based compensation | 0.03 | 0.04 |
| Loss on early extinguishment of debt | 0.12 | 0.08 |
| Certain adjustments to provision for doubtful accounts | 0.02 | 0.01 |
| Gain on sale of assets | (1.05) | — |
| Gain on reduction of contingent obligation | (0.05) | — |
| Income tax benefit | (0.02) | (0.17) |
| Non-GAAP diluted EPS | $ (0.77) | $ (0.32) |
| Diluted weighted average shares outstanding | 19,624,669 | 19,455,987 |

The following table is a reconciliation of net loss attributable to Xcel Brands, Inc. stockholders (our most directly comparable financial measure presented in accordance with GAAP) to Adjusted EBITDA:

| ($ in thousands) | Year Ended December 31, 2022 | 2021 |
|---|---|---|
| Net loss attributable to Xcel Brands, Inc. stockholders | $ (4,018) | $ (12,184) |
| Asset impairments | 274 | 1,372 |
| Depreciation and amortization | 7,263 | 6,830 |
| Proportional share of trademark amortization of equity method investee | 1,202 | — |
| Interest and finance expense | 3,527 | 3,579 |
| Income tax benefit | (431) | (3,106) |
| State and local franchise taxes | 102 | 142 |
| Stock-based compensation | 620 | 720 |
| Certain adjustments to provision for doubtful accounts | 413 | 132 |
| Gain on sale of assets | (20,586) | — |
| Gain on reduction of contingent obligation | (900) | — |
| Adjusted EBITDA | $ (12,534) | $ (2,515) |

**Liquidity and Capital Resources**

***General***

As of December 31, 2022 and 2021, our cash and cash equivalents were $4.6 million and $4.5 million, respectively.

Restricted cash at December 31, 2021 consisted of $0.7 million of cash deposited as collateral for an irrevocable standby letter of credit associated with the lease of our current corporate office and operating facility. There was no restricted cash at December 31, 2022, as the aforementioned letter of credit had expired and was not renewed.

Our principal capital requirements have been to fund working capital needs, acquire new brands, and to a lesser extent, capital expenditures. Notwithstanding our recent investments in our ERP system and our brick-and-mortal retail store in 2020 and 2021, respectively, our business operating model generally does not require material capital expenditures, and as of December 31, 2022, we have no significant commitments for future capital expenditures. Material cash requirements from known contractual and other obligations are discussed under "Obligations and Commitments" below.

***Working Capital***

Our working capital (current assets less current liabilities, excluding the current portion of lease obligations and any contingent liabilities payable in common stock) was $8.8 million and $7.9 million as of December 31, 2022 and 2021, respectively. Commentary on components of our cash flows for the Current Year compared with the Prior Year is set forth below.

***Liquidity and Management's Plans***

The Company incurred net losses of approximately $5.4 million ($25.9 million excluding the gain on sale of a majority interest in the Isaac Mizrahi brand) and $13.0 million during the years ended December 31, 2022 and 2021, respectively, and had an accumulated deficit of approximately $32.8 million and $28.8 million as of December 31, 2022 and 2021, respectively. Included in the net losses were non-cash expenses of approximately $8.2 million and $7.5 million for the years ended December 31, 2022 and 2021, respectively. Net cash used in operating activities was $14.2 million in 2022 and $6.6 million in 2021. These factors raise uncertainties about the Company's ability to continue as a going concern.

Management plans to mitigate an expected shortfall of capital and to support future operations by shifting the business from a wholesale/licensing hybrid model into a licensing plus business model and to divest or restructure the Longaberger brand. In the first quarter of 2023, we began to restructure our business operations by entering into new licensing agreements and joint venture arrangements with best-in-class business partners. We entered into a new interactive television licensing agreement with America's Collectibles Network, Inc. d/b/a JTV ("JTV") for the Ripka Brand, and a separate license with JTV for the Ripka Brand's e-commerce business. For apparel, similar transactions have recently been executed. In conjunction with the launch of the C Wonder Brand on HSN, we licensed the wholesale production operations related to the brand to One Jeanswear Group, LLC ("OJG"); this new license with OJG also includes other new celebrity brands that we plan to launch in 2023 and beyond. For the Halston Brand, we plan on entering into a joint venture related to the brand's wholesale apparel business with another leading manufacturer (the "Halston JV"). The Halston JV will develop an apparel business under the H Halston brand through department stores, e-commerce, and other retailers. The Halston JV will include a wholesale license to Xcel. We expect the transition of these operating businesses to be completed by the second quarter of 2023. We believe that this evolution of our operating model will provide us with significant cost savings and allow us to reduce and better manage our exposure to operating risks. As of March 31, 2023, steps have been taken to reduce payroll by $6 million and operating cost by approximately $7 million over the next twelve months. Further, the Company intends to obtain a line of credit to provide additional capital resources. However, there is no assurance that this line of credit or any other external financing will be obtained.

Based on these recent changes in our business model, management expects to generate adequate cash flows to meet the Company's operating and capital expenditure needs, for at least the twelve months subsequent to the filing date of this Annual Report on Form 10-K, and therefore, such conditions and uncertainties with respect to the Company's ability to continue as a going concern as of December 31, 2022, have subsequently been alleviated.

***Operating Activities***

Net cash (used in) provided by operating activities was approximately $(14.2) million and $(6.6) million in the Current Year and Prior Year, respectively.

The Current Year's cash used in operating activities was primarily attributable to the combination of the net loss of $(5.4) million plus non-cash items of approximately $(10.2) million, partially offset by a net change in operating assets and liabilities of approximately $1.4 million. Non-cash items were primarily comprised of, but not limited to, the net gain on sale of assets of $(20.6) million, $7.3 million of depreciation and amortization, a $2.3 million loss on extinguishment of debt, and the $1.2 million undistributed proportional share of net income of equity method investee. The net change in operating assets and liabilities notably included a decrease in accounts receivable of $2.1 million, a decrease in inventory of $0.5 million, a decrease in prepaid expenses and other assets of $0.6 million, and decreases in various operating liabilities of $(1.4) million. The decrease in accounts receivable was primarily related to the Current Year sale of a majority interest in the Isaac Mizrahi brand, resulting in lower licensing revenues and thus lower receivable balances. The decreases in inventory and other operating assets and liabilities were primarily reflective of the declines in our wholesale business due to retailers pausing or canceling orders during the Current Year.

The Prior Year's cash used in operating activities was primarily attributable to the combination of the net loss of $(13.0) million plus non-cash expenses of approximately $7.7 million, and a net change in operating assets and liabilities of approximately $(1.2) million. Non-cash net expenses were primarily comprised of $6.8 million of depreciation and amortization, $1.4 million of asset impairment charges, $0.3 million of amortization of deferred finance costs, a $1.5 million loss on extinguishment of debt, $0.7 million of stock-based compensation, and $(3.2) million of deferred income tax benefit. The net change in operating assets and liabilities notably included a decrease in accounts receivable of $1.1 million, an increase in inventory of $(2.2) million, an increase in prepaid expenses and other assets of $(0.8) million, and an increase in accounts payable, accrued expenses and other current liabilities of $1.2 million. The changes in accounts receivable and payable were primarily related to the timing of collections and payments, while the change in inventory is primarily related to expected increases in wholesales, including our drop-ship programs, and an increase in our direct-to-consumer businesses.

***Investing Activities***

Net cash provided by investing activities for the Current Year was approximately $44.5 million, and was attributable to $45.4 million of net proceeds from the sale of a majority interest in the Isaac Mizrahi brand to WHP, partially offset by $0.6 million of capital contributions to our equity method investee and approximately $0.3 million of capital expenditures.

Net cash used in investing activities for the Prior Year was approximately $4.8 million, which was primarily attributable to the acquisition of the Lori Goldstein brand on April 1, 2021, and, to a lesser extent, to capital expenditures relating to the fit-out and furnishing of our Judith Ripka fine jewelry retail store (which opened in the second quarter of 2021 and was subsequently closed in the first quarter of 2022).

***Financing Activities***

Net cash used in financing activities for the Current Year was approximately $31.0 million, which mainly consisted of $29.0 million of repayments of our term loan debt, and, to a lesser extent, $1.5 million of prepayment and other fees associated with the early extinguishment of debt, as well as $0.4 million of shares repurchased related to withholding taxes on vested restricted stock.

Net cash provided by financing activities for the Prior Year was approximately $10.5 million, and was primarily attributable to a net increase in debt obligations of $13.5 million, due to debt refinancing transactions entered into on April 14, 2021 and December 30, 2021, as well as cash contributions received from the noncontrolling interest holder in Longaberger Licensing, LLC of $1.0 million. These sources of cash were partially offset by deferred finance costs and other fees paid in connection with the aforementioned debt refinancing transactions of $(2.7) million, and principal payments made on term loan debt of $(1.3) million during the year.

**Obligations and Commitments**

***Contingent Obligation – Lori Goldstein Earn-Out***

In connection with the April 1, 2021 purchase of the Lori Goldstein trademarks (see Note 3 of the consolidated financial statements for additional information), we agreed to pay the seller additional cash consideration of up to $12.5 million, based on royalties earned during the six calendar year period commencing in 2021. The Lori Goldstein Earn-Out of $6.6 million is recorded as a liability in the accompanying consolidated balance sheets, based on the difference at the date of acquisition between the fair value of the acquired assets of the Lori Goldstein brand and the total consideration paid. Based on the performance of the Lori Goldstein brand through December 31, 2022, approximately $0.2 million of additional consideration has been earned and is payable to the Seller in 2023. At December 31, 2022, $0.2 million of the balance is recorded as a current liability and $6.4 million is recorded as a long-term liability; at December 31, 2021, the entire balance was recorded as a long-term liability.

***Contingent Obligation – Isaac Mizrahi Transaction***

In connection with the May 31, 2022 transaction related to the sale of a majority interest in the Isaac Mizrahi brand, we agreed with WHP (the buyer) that, in the event that IM Topco, LLC receives less than $13.3 million in aggregate royalties for any four consecutive calendar quarters over a three-year period ending on May 31, 2025, WHP will be entitled to receive from us up to $16 million, less all amounts of net cash flow distributed to WHP on an accumulated basis, as an adjustment to the purchase price previously paid by WHP. Such amount would be payable by us in either cash or equity interests in IM Topco, LLC held by us. Based on IM Topco's earnings from May 31, 2022 through December 31, 2022 and the applicable distribution provisions, WHP earned $4.32 million in cash flow, which reduces the potential purchase price adjustment to $11.68 million. No amount has been recorded in the accompanying consolidated balance sheets related to this contingent obligation, and management believes the likelihood of any such payment is remote.

***Contingent Obligation – Halston Heritage Earn-Out***

In connection with the February 11, 2019 purchase of the Halston Heritage trademarks from the H Company IP, LLC ("HIP"), we agreed to pay HIP additional consideration (the "Halston Heritage Earn-Out") of up to an aggregate of $6.0 million, based on royalties earned from 2019 through December 31, 2022. This additional consideration would have been payable in shares of our common stock. The Halston Heritage Earn-Out of $0.9 million was recorded as a long-term liability on February 11, 2019 and as of December 31, 2021, based on the difference at the date of acquisition between the fair value of the acquired assets of the Halston Heritage Trademarks and the total consideration paid.

The final royalty target year ended on December 31, 2022, and HIP ultimately did not earn any additional consideration based on the formula set forth in the related asset purchase agreement. As such, during the year ended December 31, 2022, we recorded a $0.9 million gain on the reduction of contingent obligations in the accompanying consolidated statement of operations. As of December 31, 2022, there were no amounts remaining under the Halston Heritage Earn-Out.

***Real Estate Leases***

As described in Item 2 of this Annual Report on Form 10-K, as of December 31, 2022 we had real estate leases for our current office and a retail store location, with remaining lease terms between approximately five to seven years. We recorded an impairment charge related to the right-of-use asset for the retail store as of December 31, 2021, subsequently closed the retail store in 2022, and are currently in the process of negotiating the termination of the retail store lease; however, the lease liability for the retail store remains on our consolidated balance sheet as a liability and is included in the future payment obligations set forth below.

Future payments under our real estate leases are expected to be approximately $1.7 million for each of the years ending December 31, 2023 – 2026, $1.5 million for the year ending December 31, 2027, and $0.2 million thereafter.

***Employment Contracts***

We have entered into contracts with certain executives and key employees. The future minimum payments under these contracts is expected to be approximately $19.9 million, of which, approximately $4.3 million is expected to be paid in 2023, approximately $2.1 million is expected to be paid for each of the years ending December 31, 2024 – 2030, and approximately $0.5 million is expected to be paid in 2031.

***Off-Balance Sheet Arrangements***

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future material effect on our financial condition, results of operations or liquidity.

**Other Factors**

We continue to seek to expand and diversify the types of licensed products being produced under our brands. We plan to continue to diversify the distribution channels within which licensed products are sold, in an effort to reduce dependence on any particular retailer, consumer, or market sector within each of our brands. The Lori Goldstein brand, Halston brand, and C Wonder brand have a core business in fashion apparel and accessories. The Ripka brand is a fine jewelry business, and the Longaberger brand focuses on home good products, which we believe helps diversify our industry focus while at the same time complements our business operations and relationships.

While the recent sale of a majority interest in the Isaac Mizrahi brand is expected to result in a short-term decrease in our revenues, as that brand represented a significant portion of our historical revenues, we will seek to replace those revenues in the long-term with new strategic business initiatives. The proceeds from the sale, as well as future cash flows from our retained interest in the Isaac Mizrahi brand, are expected to position us to fund various strategic initiatives as we concentrate our resources on growing our brands, new brand launches, and investing in live streaming technology and new business partnerships.

We continue to work towards expanding and developing more efficient ways to operate our wholesale and e-commerce businesses, and complement these operations with our licensing business. In addition, we continue to seek new opportunities, including expansion through interactive television, live streaming, our design, production and supply chain platform, additional domestic and international licensing arrangements, and acquiring additional brands, including recent launches of our Victor Glemaud and C Wonder by Christian Sirano businesses on HSN.

However, the impacts of the ongoing COVID-19 pandemic (including actions taken by national, state, and local governments in response to COVID-19) has negatively impacted the U.S. and global economy, disrupted consumer spending and global supply chains, and created significant volatility and disruption of financial markets. More specifically, COVID-19 has had, and continues to have, a significant negative impact on our business. The initial onset of the pandemic in 2020 resulted in a sudden decrease in sales for many of the Company's products, from which we have yet to fully recover. The global pandemic has affected the financial health of certain of our customers, and the bankruptcy of certain other customers; as a result, we recognized bad debt expense of approximately $0.4 million and $0.1 million in the Current Year and Prior Year, respectively, and may be required to make additional adjustments for doubtful accounts which would increase our operating expenses in future periods and negatively impact our operating results. Due to the ongoing COVID-19 pandemic, there is significant uncertainty surrounding the Company's future results of operations and cash flows. Continued impacts of the pandemic could materially adversely affect the Company's near-term and long-term revenues, earnings, liquidity, and cash flows.

In addition, the global shipping industry is currently experiencing challenges related to port delays and tight availability for carriers and containers. This situation has negatively impacted our supply chain partners, including third party manufacturers, logistics providers, and other vendors, as well as the supply chains of our licensees, and has resulted in increased cost of supply and freight costs for us and our licensees. Such higher costs are currently expected to continue for at least some portion of 2023.

Further, the cost of raw materials, labor, manufacturing, energy, fuel, shipping and logistics, and other inputs related to the production and distribution of our products have increased and may continue to increase unexpectedly. Beginning in the first quarter of 2022, input costs increased significantly. We expect the pressures of input cost inflation to continue for at least some portion of 2023. We may not be able to mitigate the impact of inflation and cost increases or pass these costs along to our customers.

Also, poor economic and market conditions, including a potential recession, may negatively impact market sentiment, decreasing the demand for apparel, footwear, accessories, fine jewelry, home goods, and other consumer products, which would adversely affect our operating income and results of operations. If we are unable to take effective measures in a timely manner to mitigate the impact of the inflation as well as a potential recession, our business, financial condition, and results of operations could be adversely affected.

Our long-term success, however, will still remain largely dependent on our ability to build and maintain our brands' awareness and continue to attract wholesale and direct-to-consumer customers, and contract with and retain key licensees and potential business partners, as well as our and our licensees' ability to accurately predict upcoming fashion and design trends within their respective customer bases and fulfill the product requirements of the particular retail channels within the global marketplace. Unanticipated changes in consumer fashion preferences and purchasing patterns, slowdowns in the U.S. economy, changes in the prices of supplies, consolidation of retail establishments, and other factors noted in Item 1A of this Annual Report on Form 10-K could adversely affect our licensees' ability to meet and/or exceed their contractual commitments to us and thereby adversely affect our future operating results.

**Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

Not applicable.

**Item 8. Financial Statements and Supplementary Data**

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors of
**Xcel Brands, Inc. and Subsidiaries**

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of Xcel Brands, Inc. and Subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations, stockholders' equity and cash flows for each of the two years in the period ended December 31, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

**Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

**Critical Audit Matters**

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing separate opinions on the critical audit matter or on the accounts or disclosures to which it relates.

***Liquidity and Management's Plans***

*Critical Audit Matter Description*

As described further in Note 1 to the financial statements, the Company has incurred recurring losses from operations, has an accumulated deficit and insufficient revenues to cover its operating costs. The ability of the Company to continue as a going concern is dependent on executing its business plans and meeting its obligations as they come due within the next twelve months from the filing date of this Annual Report on Form 10-K. Accordingly, the Company has determined that these factors raise substantial doubt and uncertainty as to the Company's ability to continue as a going concern. However, management has implemented plans which are expected to mitigate these conditions or events, and therefore, such conditions or events of substantial doubt have been alleviated.

*How the Critical Audit Matter was Addressed in the Audit*

We determined the Company's ability to continue as a going concern is a critical audit matter due to the estimation and uncertainty regarding the Company's available capital and the risk of bias in management's judgments and assumptions in their determination. Our audit procedures related to considering whether the results of our audit procedures, when considered in the aggregate, indicate that there could be substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time, obtaining information about management's plans that are intended to mitigate the effect of such conditions or events, and assessing the likelihood that such plans can be effectively implemented, included the following, among others:

- We reviewed the Company's assessment and conclusions regarding their ability to generate cashflows for at least twelve months from the filing date of this Annual Report on Form 10-K.

- We inquired of Company management and reviewed Company records to assess whether there are additional factors that contribute to the uncertainties disclosed.

- We assessed whether the Company's determination that there are factors that raise such uncertainties about its ability to continue as a going concern, was adequately disclosed in the financial statements.

- We reviewed and evaluated management's plans for alleviating such conditions and uncertainties and considered whether it is likely that these conditions and uncertainties would be mitigated for a reasonable period of time and that such plans can be effectively implemented.

- We performed testing procedures such as reviewing; prospective financial information for the twelve-month period beginning with the filing date of this Annual Report on Form 10-K, actual operating performance for periods subsequent to December 31, 2022, implemented reductions in operating expenses, and plans for further reductions to support expected cashflows.

/s/ Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2021.

New York, NY

April 17, 2023

**Xcel Brands, Inc. and Subsidiaries**
**Consolidated Balance Sheets**
**(in thousands, except share and per share data)**

| | December 31, 2022 | December 31, 2021 |
|---|---|---|
| **Assets** | | |
| **Current Assets:** | | |
| Cash and cash equivalents | $ 4,608 | $ 4,483 |
| Accounts receivable, net of allowances of $63 and $1,090, respectively | 5,110 | 7,640 |
| Inventory | 2,845 | 3,375 |
| Prepaid expenses and other current assets | 1,457 | 1,681 |
| Total current assets | 14,020 | 17,179 |
| **Non-current Assets:** | | |
| Property and equipment, net | 1,418 | 2,549 |
| Operating lease right-of-use assets | 5,420 | 6,314 |
| Trademarks and other intangibles, net | 47,665 | 98,304 |
| Equity method investment | 19,195 | — |
| Restricted cash | — | 739 |
| Deferred tax assets, net | 1,107 | 141 |
| Other assets | 110 | 555 |
| Total non-current assets | 74,915 | 108,602 |
| **Total Assets** | **$ 88,935** | **$ 125,781** |
| **Liabilities and Stockholders' Equity** | | |
| **Current Liabilities:** | | |
| Accounts payable, accrued expenses and other current liabilities | $ 3,958 | $ 6,169 |
| Accrued income taxes payable | 568 | 64 |
| Accrued payroll | 416 | 577 |
| Current portion of operating lease obligations | 1,376 | 1,207 |
| Current portion of long-term debt | — | 2,500 |
| Current portion of contingent obligations | 243 | — |
| Total current liabilities | 6,561 | 10,517 |
| **Long-Term Liabilities:** | | |
| Long-term portion of operating lease obligations | 5,839 | 7,252 |
| Long-term debt, net, less current portion | — | 25,531 |
| Long-term portion of contingent obligations | 6,396 | 7,539 |
| Total long-term liabilities | 12,235 | 40,322 |
| Total Liabilities | 18,796 | 50,839 |
| **Commitments and Contingencies** | | |
| **Stockholders' Equity:** | | |
| Preferred stock, $.001 par value, 1,000,000 shares authorized, none issued and outstanding | — | — |
| Common stock, $.001 par value, 50,000,000 shares authorized, and 19,624,860 and 19,571,119 shares issued and outstanding at December 31, 2022 and December 31, 2021, respectively | 20 | 20 |
| Paid-in capital | 103,592 | 103,039 |
| Accumulated deficit | (32,797) | (28,779) |
| Total Xcel Brands, Inc. stockholders' equity | 70,815 | 74,280 |
| Noncontrolling interest | (676) | 662 |
| Total Stockholders' Equity | 70,139 | 74,942 |
| **Total Liabilities and Stockholders' Equity** | **$ 88,935** | **$ 125,781** |

See accompanying Notes to Consolidated Financial Statements.

**Xcel Brands, Inc. and Subsidiaries**
**Consolidated Statements of Operations**
**(in thousands, except share and per share data)**

| | For the Year Ended December 31, | |
|---|---|---|
| | 2022 | 2021 |
| **Revenues** | | |
| Net licensing revenue | $ 14,737 | $ 21,876 |
| Net sales | 11,044 | 16,056 |
| Net revenue | 25,781 | 37,932 |
| Cost of goods sold | 7,980 | 10,667 |
| Gross profit | 17,801 | 27,265 |
| | | |
| **Operating costs and expenses** | | |
| Salaries, benefits and employment taxes | 16,802 | 16,535 |
| Other selling, general and administrative expenses | 15,386 | 14,364 |
| Stock-based compensation | 620 | 720 |
| Depreciation and amortization | 7,263 | 6,830 |
| Asset impairment charges | 274 | 1,372 |
| Total operating costs and expenses | 40,345 | 39,821 |
| | | |
| **Other income (expense)** | | |
| Gain on sale of majority interest in Isaac Mizrahi brand | 20,586 | — |
| Loss from equity method investment | (1,202) | — |
| Gain on reduction of contingent obligation | 900 | — |
| Total other income (expense) | 20,284 | — |
| | | |
| Operating loss | (2,260) | (12,556) |
| | | |
| **Interest and finance expense** | | |
| Interest expense - term loan debt | 1,187 | 1,916 |
| Other interest and finance charges, net | 16 | 147 |
| Loss on early extinguishment of debt | 2,324 | 1,516 |
| Total interest and finance expense | 3,527 | 3,579 |
| | | |
| **Loss before income taxes** | (5,787) | (16,135) |
| | | |
| Income tax benefit | (431) | (3,106) |
| | | |
| **Net loss** | **(5,356)** | **(13,029)** |
| Net loss attributable to noncontrolling interest | (1,338) | (845) |
| **Net loss attributable to Xcel Brands, Inc. stockholders** | **$ (4,018)** | **$ (12,184)** |
| | | |
| Loss per common share attributable to Xcel Brands, Inc. stockholders: | | |
| Basic and diluted net loss per share | $ (0.20) | $ (0.63) |
| Weighted average number of common shares outstanding: | | |
| Basic and diluted weighted average common shares outstanding | 19,624,669 | 19,455,987 |

See accompanying Notes to Consolidated Financial Statements.

**Xcel Brands, Inc. and Subsidiaries**
**Consolidated Statements of Stockholders' Equity**
**(in thousands, except share data)**

| | Xcel Brands, Inc. Stockholders | | | | | |
|---|---|---|---|---|---|---|
| | Common Stock | | Paid-in | Accumulated | Noncontrolling | |
| | Shares | Amount | Capital | Deficit | Interest | Total |
| Balance as of January 1, 2021 | 19,260,862 | 19 | 102,324 | (16,595) | 507 | $ 86,255 |
| Compensation expense in connection with stock options and restricted stock | — | — | 343 | — | — | 343 |
| Shares issued to executive in connection with stock grants for bonus payments | 181,179 | 1 | 282 | — | — | 283 |
| Shares issued to directors in connection with restricted stock grants | 50,000 | — | — | — | — | — |
| Shares issued to consultants in connection with restricted stock grants | 40,336 | — | 75 | — | — | 75 |
| Shares issued to employee in connection with contractual agreement | 21,676 | — | 31 | — | — | 31 |
| Shares issued on exercise of stock options, net of shares surrendered for cashless exercises | 26,253 | — | — | — | — | — |
| Shares repurchased from employees in exchange for withholding taxes | (9,187) | — | (16) | — | — | (16) |
| Additional investment in Longaberger Licensing, LLC by noncontrolling interest | — | — | — | — | 1,000 | 1,000 |
| Net loss for the year ended December 31, 2021 | — | — | — | (12,184) | (845) | (13,029) |
| Balance as of December 31, 2021 | 19,571,119 | 20 | 103,039 | (28,779) | 662 | 74,942 |
| Compensation expense in connection with stock options and restricted stock | — | — | 534 | — | — | 534 |
| Shares issued to executive in connection with stock grants for bonus payments | 178,727 | — | 281 | — | — | 281 |
| Shares repurchased from executive in exchange for withholding taxes | (53,882) | — | (85) | — | — | (85) |
| Shares issued to directors in connection with restricted stock grants | 50,000 | — | — | — | — | — |
| Shares issued to consultants in connection with restricted stock grants | 20,064 | — | 33 | — | — | 33 |
| Shares issued to consultant in connection with sale transaction (see Note 3 and Note 7) | 65,275 | — | 97 | — | — | 97 |
| Shares issued to key employee in connection with stock grant | 33,557 | — | 50 | — | — | 50 |
| Shares repurchased from key employee in exchange for withholding taxes related to vesting of restricted shares | (240,000) | — | (357) | — | — | (357) |
| Net loss for the year ended December 31, 2022 | — | — | — | (4,018) | (1,338) | (5,356) |
| Balance as of December 31, 2022 | 19,624,860 | $ 20 | $ 103,592 | $ (32,797) | $ (676) | $ 70,139 |

See accompanying Notes to Consolidated Financial Statements.

# Xcel Brands, Inc. and Subsidiaries
## Consolidated Statements of Cash Flows
## (in thousands)

| | For the Year Ended December 31, 2022 | 2021 |
|---|---|---|
| **Cash flows from operating activities** | | |
| Net loss | $ (5,356) | $ (13,029) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation and amortization expense | 7,263 | 6,830 |
| Asset impairment charges | 274 | 1,372 |
| Amortization of deferred finance costs included in interest expense | 156 | 308 |
| Stock-based compensation | 620 | 720 |
| Provision for doubtful accounts | 413 | 102 |
| Undistributed proportional share of net income of equity method investee | 1,202 | — |
| Loss on early extinguishment of debt | 2,324 | 1,516 |
| Deferred income tax benefit | (965) | (3,192) |
| Gain on sale of majority interest in Isaac Mizrahi brand | (20,586) | — |
| Gain on reduction of contingent obligation | (900) | — |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | 2,117 | 1,147 |
| Inventory | 530 | (2,159) |
| Prepaid expenses and other current and non-current assets | 566 | (818) |
| Accounts payable, accrued expenses, accrued payroll, accrued income taxes payable, and other current liabilities | (1,372) | 1,228 |
| Lease-related assets and liabilities | (244) | (581) |
| Other liabilities | (224) | — |
| **Net cash used in operating activities** | (14,182) | (6,556) |
| | | |
| **Cash flows from investing activities** | | |
| Net proceeds from sale of majority interest in Isaac Mizrahi brand | 45,386 | — |
| Capital contribution to equity method investee | (600) | — |
| Cash consideration for acquisition of Lori Goldstein assets | — | (3,661) |
| Purchase of other intangible assets | — | (39) |
| Purchase of property and equipment | (265) | (1,095) |
| **Net cash provided by (used in) investing activities** | 44,521 | (4,795) |
| | | |
| **Cash flows from financing activities** | | |
| Proceeds from exercise of stock options | — | 5 |
| Shares repurchased including vested restricted stock in exchange for withholding taxes | (442) | (16) |
| Cash contribution from noncontrolling interest | — | 1,000 |
| Proceeds from revolving loan debt | — | 2,498 |
| Proceeds from long-term debt | — | 54,000 |
| Payment of deferred finance costs | — | (2,173) |
| Payment of revolving loan debt | — | (2,498) |
| Payment of long-term debt | (29,000) | (41,750) |
| Payment of prepayment, breakage and other fees associated with early extinguishment of long-term debt | (1,511) | (559) |
| **Net cash (used in) provided by financing activities** | (30,953) | 10,507 |
| | | |
| **Net decrease in cash, cash equivalents, and restricted cash** | (614) | (844) |
| | | |
| Cash, cash equivalents, and restricted cash at beginning of period | 5,222 | 6,066 |
| | | |
| Cash, cash equivalents, and restricted cash at end of period | $ 4,608 | $ 5,222 |
| | | |
| **Reconciliation to amounts on consolidated balance sheets:** | | |
| Cash and cash equivalents | $ 4,608 | $ 4,483 |
| Restricted cash | — | 739 |
| Total cash, cash equivalents, and restricted cash | $ 4,608 | $ 5,222 |
| | | |
| **Supplemental disclosure of non-cash activities:** | | |
| Contingent obligation related to acquisition of Lori Goldstein assets at fair value | $ — | $ 6,639 |
| Liability for equity-based bonuses and other equity-based payments | $ (283) | $ (13) |
| | | |
| **Supplemental disclosure of cash flow information:** | | |
| Cash paid during the period for interest | $ 1,032 | $ 1,799 |
| Cash paid during the period for income taxes | $ — | $ 91 |

See accompanying Notes to Consolidated Financial Statements.

**XCEL BRANDS, INC. AND SUBSIDIARIES**
**Notes to Consolidated Financial Statements**
**December 31, 2022 and 2021**

## 1. Nature of Operations, Background, and Basis of Presentation

Xcel Brands, Inc. ("Xcel" and, together with its subsidiaries, the "Company") is a media and consumer products company engaged in the design, production, marketing, live streaming, wholesale distribution, and direct-to-consumer sales of branded apparel, footwear, accessories, fine jewelry, home goods and other consumer products, and the acquisition of dynamic consumer lifestyle brands.

Currently, the Company's brand portfolio consists of the LOGO by Lori Goldstein brand (the "Lori Goldstein Brand"), the Halston brands (the "Halston Brand"), the Judith Ripka brands (the "Ripka Brand"), the C Wonder brands (the "C Wonder Brand"), the Longaberger brand (the "Longaberger Brand"), the Isaac Mizrahi brands (the "Isaac Mizrahi Brand"), and other proprietary brands.

- The Lori Goldstein Brand, Halston Brand, Ripka Brand, and C Wonder Brand are wholly owned by the Company.
- The Company manages the Longaberger Brand through its 50% ownership interest in Longaberger Licensing, LLC; the Company consolidates Longaberger Licensing, LLC and recognizes noncontrolling interest for the remaining ownership interest held by a third party (see Note 3 for additional details).
- The Company manages the Q Optix business through its 50% ownership interest in Q Optix, LLC.
- The Company wholly owned and managed the Isaac Mizrahi Brand through May 31, 2022. On May 31, 2022, the Company sold to a third party a majority interest in a newly-created subsidiary that was formed to hold the Isaac Mizrahi Brand trademarks, but retained a noncontrolling interest in the brand through a 30% ownership interest in IM Topco, LLC and continues to participate in the operations of the business; the Company accounts for its interest in IM Topco, LLC using the equity method of accounting (see Note 3 for additional details).

The Company designs, produces, markets, and distributes products, licenses its brands to third parties, and generates licensing revenues through contractual arrangements with manufacturers and retailers. The Company and its licensees distribute through an omni-channel retail sales strategy, which includes distribution through interactive television, digital live-stream shopping, brick-and-mortar retail, wholesale, and e-commerce channels to be everywhere its customers shop.

The Company's wholesale and direct-to-consumer operations are presented as "Net sales" and "Cost of goods sold" in the Consolidated Statements of Operations, separately from the Company's licensing revenues.

***Liquidity and Management's Plans***

The Company incurred net losses of approximately $5.4 million ($25.9 million excluding the gain on sale of a majority interest in the Isaac Mizrahi brand) and $13.0 million during the years ended December 31, 2022 and 2021, respectively, and had an accumulated deficit of approximately $32.8 million and $28.8 million as of December 31, 2022 and 2021, respectively. Included in the net losses were non-cash expenses of approximately $8.2 million and $7.5 million for the years ended December 31, 2022 and 2021, respectively. Net cash used in operating activities was $14.2 million in 2022 and $6.6 million in 2021. The Company had working capital (current assets less current liabilities, excluding the current portion of lease obligations) of approximately $8.8 million and $7.9 million as of December 31, 2022 and 2021, respectively. The Company's cash and cash equivalents were approximately $4.6 million as of December 31, 2022. The aforementioned factors raise uncertainties about the Company's ability to continue as a going concern.

Management plans to mitigate an expected shortfall of capital and to support future operations by shifting the business from a wholesale/licensing hybrid model into a licensing plus business model and to divest or restructure the Longaberger brand. In the first quarter of 2023, the Company began to restructure its business operations by entering into new licensing agreements and joint venture arrangements with best-in-class business partners. The Company entered into a new interactive television licensing agreement with America's Collectibles Network, Inc. d/b/a JTV ("JTV") for the Ripka Brand, and a separate license with JTV for the Ripka Brand's e-commerce business. For apparel, similar transactions have recently been executed. In conjunction with the launch of the C Wonder Brand on HSN, the Company licensed the wholesale production operations related to the brand to One Jeanswear Group, LLC ("OJG"); this new license with OJG also includes other new celebrity brands that the Company plans to launch in 2023 and beyond. For the Halston Brand, management plans on entering into a joint venture related to the brand's wholesale apparel business with another leading apparel manufacturer (the "Halston JV"). The Halston JV will develop an apparel business under the H Halston brand through department stores, e-commerce, and other retailers. The Halston JV will include a wholesale license to Xcel. Management expects the transition of these operating businesses to be completed by second quarter of 2023. Management believes that this evolution of the Company's operating model will provide the Company with significant cost savings and allow the Company to reduce and better manage its exposure to operating risks. As of March 31, 2023, steps have been taken to reduce payroll costs by $6 million and operating expenses by $7 million over the next twelve months. Further, the Company intends to obtain a line of credit to provide additional capital resources. However, there is no assurance that this line of credit or any other external financing will be obtained.

Based on these recent changes in the Company's business model, management expects to generate adequate cash flows to meet the Company's operating and capital expenditure needs, for at least the twelve months subsequent to the filing date of this Annual Report on Form 10-K, and therefore, such conditions and uncertainties with respect to the Company's ability to continue as a going concern as of December 31, 2022, have subsequently been alleviated.

## 2. Summary of Significant Accounting Policies

***Principles of Consolidation***

The consolidated financial statements include the accounts of Xcel, its wholly owned subsidiaries, and entities in which Xcel has a controlling financial interest as of and for the years ended December 31, 2022 (the "Current Year") and 2021 (the "Prior Year"). The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") and in accordance with the accounting rules under Regulation S-X, as promulgated by the Securities and Exchange Commission ("SEC"). All significant intercompany accounts and transactions have been eliminated in consolidation, and net earnings have been adjusted by the portion of operating results of consolidated entities attributable to noncontrolling interests.

***Use of Estimates***

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period.

Making estimates requires management to exercise significant judgment. It is at least reasonably possible that the estimate of the effect of a condition, situation, or set of circumstances that existed at the date of the consolidated financial statements, which management considered in formulating its estimate, could change in the near term due to one or more future confirming events. Accordingly, the actual results could differ significantly from estimates.

The Company deems the following items to require significant estimates from management:

- Allowance for doubtful accounts;
- Useful lives of trademarks;

- Assumptions used in the valuation of intangible assets, including cash flow estimates for initial determinations of fair value and/or impairment analysis; and

- Stock-based compensation.

***Cash and Cash Equivalents***

All highly liquid investments with original maturities of three months or less are considered to be cash equivalents.

***Accounts Receivable***

Accounts receivable are reported net of the allowance for doubtful accounts. The allowance for doubtful accounts is based on the Company's ongoing discussions with its licensees, wholesale and digital customers, and its evaluation of each customer's payment history, account aging, and financial position.

As of December 31, 2022 and 2021, the Company had $5.1 million and $7.6 million, respectively, of accounts receivable, net of allowances for doubtful accounts of $0.1 million and $1.1 million, respectively. The Company recognized bad debt expense of $0.4 million and $0.1 million for the Current Year and Prior Year, respectively, which was related to the bankruptcy of several retail customers due to the novel coronavirus disease pandemic. The Company wrote-off approximately $1.5 million of such customers' outstanding receivable balances in the Current Year.

There is no earned revenue that has been accrued but not billed as of December 31, 2022 and 2021.

As of December 31, 2022, approximately $1.7 million of the Company's outstanding receivables were assigned to a third-party agent pursuant to a services agreement entered into during the Current Year, under which the Company assigned, for purposes of collection only, the right to collect certain specified receivables on the Company's behalf and solely for the Company's benefit. Under such agreement, the Company retains ownership of such assigned receivables, and receives payment from the agent (less certain fees charged by the agent) upon the agent's collection of the receivables from customers. During the Current Year, the Company paid approximately $0.05 million in fees to the agent under the aforementioned services agreement.

***Inventory***

Inventory is recorded at the lower of cost or net realizable value, with cost determined on a weighted average basis. The Company holds finished goods inventory for its direct-to-consumer operations. Apparel and jewelry finished goods inventory is purchased to satisfy orders received from its wholesale operations. The Company periodically reviews the composition of its inventories in order to identify obsolete, slow-moving or otherwise non-saleable items. If non-saleable items are observed and there are no alternate uses for the inventories, the Company will record a write-down to net realizable value in the period that the decline in value is first recognized. Write-downs for inventory shrinkage, representing the risk of physical loss of inventory, are estimated based on historical experience and are adjusted based upon physical inventory counts.

***Property and Equipment***

Furniture, equipment, and software are stated at cost less accumulated depreciation and amortization, and are depreciated using the straight-line method over their estimated useful lives, generally three (3) to seven (7) years. Depreciation expense for the years ended December 31, 2022 and 2021 was approximately $1.1 million and $1.3 million, respectively.

Leasehold improvements are amortized over the shorter of their estimated useful lives or the terms of the leases. Betterments and improvements are capitalized, while repairs and maintenance are expensed as incurred.

Costs to develop or acquire software for internal use incurred during the preliminary project stage and the post implementation stage are expensed, while internal and external costs to acquire or develop software for internal use incurred during the application development stage – including design, configuration, coding, testing, and installation – are generally capitalized.

The Company's long-lived property and equipment assets are reviewed for impairment whenever events or changes in circumstances indicate that their carrying value may not be recoverable. An impairment loss is recognized if the carrying amount of an asset is not recoverable and its carrying amount exceeds its fair value. With reference to such impairment testing, the Company groups assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities and evaluates the asset group against the sum of undiscounted future cash flows. If the undiscounted cash flows do not indicate the carrying amount of the asset is recoverable, an impairment charge is measured as the amount by which the carrying amount of the asset group exceeds its fair value based on undiscounted cash flows analysis or appraisals. The inputs utilized in the impairment analysis are classified as Level 3 inputs within the fair value hierarchy as defined in Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 820, "Fair Value Measurement."

As a result of management's decision to close its brick-and-mortar fine jewelry retail store, the Company recognized a $0.7 million impairment charge in the Prior Year related to furniture and fixtures, equipment, and leasehold improvement assets of the store, and a $0.7 million impairment charge in the Prior Year related to the operating lease right-of-use asset for the store. Separately, the Company recognized impairment charges of $0.3 million in the Current Year related to store fixtures purchased for an apparel program with one of the Company's retail partners.

***Trademarks and Other Intangible Assets***

The Company follows FASB ASC Topic 350, "Intangibles - Goodwill and Other." Under this standard, goodwill and indefinite-lived intangible assets are not amortized, but are required to be assessed for impairment at least annually (the Company utilizes December 31 as its testing date) and when events occur or circumstances change that would more likely than not reduce the fair value of the asset below its carrying amount.

*Indefinite-Lived Intangible Asset*

The Company tests its indefinite-lived intangible asset for recovery in accordance with ASC-820-10-55-3F, which states that the income approach ("Income Approach") converts future amounts (for example cash flows) to a single current (that is, discounted) amount. When the Income Approach is used, fair value measurement reflects current market expectations about those future amounts. The Income Approach is based on the present value of future earnings expected to be generated by a business or asset. Income projections for a future period are discounted at a rate commensurate with the degree of risk associated with future proceeds. A residual or terminal value is also added to the present value of the income to quantify the value of the business beyond the projection period. As such, recoverability of assets to be held and used is measured by a comparison of the carrying amount of the asset to its expected future discounted net cash flows. If the carrying amount of such assets is considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the assets exceeds the recoverable amount of the assets.

The Company performed its annual impairment testing as described above for the year ended December 31, 2021, and concluded that there was no impairment of its indefinite-lived intangible asset. The Company subsequently sold its indefinite-lived intangible asset during the Current Year for a gain (see Note 3 for additional details).

*Finite-Lived Intangible Assets*

The Company's finite-lived intangible assets, including Trademarks, are reviewed for impairment whenever events or changes in circumstances indicate that their carrying value may not be recoverable. An impairment loss is recognized if the carrying amount of a finite-lived intangible asset is not recoverable and its carrying amount exceeds its fair value.

With reference to finite-lived intangible assets impairment testing, the Company groups assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities and evaluates the asset group against the sum of undiscounted future cash flows. If the undiscounted cash flows do not indicate the carrying amount of the asset is recoverable, an impairment charge is measured as the amount by which the carrying amount of the asset group exceeds its fair value based on discounted cash flows analysis or appraisals. The inputs utilized in the finite-lived intangible assets impairment analysis are classified as Level 3 inputs within the fair value hierarchy as defined in ASC Topic 820, "Fair Value Measurement."

No impairment charges were recorded related to finite-lived intangible assets for the Current Year or Prior Year.

The Company's finite-lived intangible assets are amortized over their estimated useful lives of three (3) to eighteen (18) years. The Company re-evaluates the remaining useful life of its finite-lived intangible assets on an annual basis, based on consideration of current events and circumstances, the expected use of the asset, and the effects of demand, competition, and other economic factors. No changes were made to the estimated useful lives of intangible assets in the Current Year or Prior Year.

***Restricted Cash***

Restricted cash was $0.7 million as of December 31, 2021. This balance consisted of cash deposited as collateral for an irrevocable standby letter of credit associated with the lease of the Company's current corporate office and operating facility at 1333 Broadway, New York City. There was no restricted cash at December 31, 2022, as the aforementioned letter of credit expired and was not renewed.

***Investments in Unconsolidated Affiliates***

The Company holds a noncontrolling equity interest in IM Topco, LLC, which was entered into during the Current Year (see Note 3 for additional details). This investment is accounted for in accordance with ASC Topic 323, "Investments – Equity Method and Joint Ventures," as the Company has the ability to exercise significant influence over operating and financial policies but does not control the affiliate. As of December 31, 2022, the carrying value of this investment on the Company's consolidated balance sheet was $19.2 million. The Company recognizes its share of the ongoing operating results of IM Topco LLC (based on the distribution provisions set forth in the related business venture agreement) as other income (expense) in the accompanying consolidated statement of operations for the Current Year.

The Company also holds a limited partner ownership interest in an unconsolidated affiliate, which was entered into in 2016. This investment is accounted for in accordance with ASC Topic 321, "Investments – Equity Securities," and is included within other assets on the Company's consolidated balance sheets at December 31, 2022 and 2021. As of December 31, 2022 and 2021, the carrying value of this investment was $0.1 million. This investment does not have a readily determinable fair value and in accordance with ASC 820-10-35-59, the investment is valued at cost, less impairment, plus or minus observable price changes of an identical or similar investment of the same issuer.

***Deferred Finance Costs***

The Company previously incurred costs (primarily professional fees and lender underwriting fees) in connection with borrowings under senior secured term loans. Such costs were deferred on the consolidated balance sheet as a reduction to the carrying value of the associated borrowing, and were amortized as interest expense using the effective interest method.

***Contingent Obligations***

When accounting for asset acquisitions, if any contingent obligations exist and the fair value of the assets acquired is greater than the consideration paid, any contingent obligations are recognized and recorded as the positive difference between the fair value of the assets acquired and the consideration paid for the acquired assets.

When accounting for asset acquisitions, if any contingent obligations exist and the fair value of the assets acquired are equal to the consideration paid, any contingent obligations are recognized based upon the Company's best estimate of the amount that will be paid to settle the liability.

The Company recorded contingent obligations in connection with the acquisitions of the Halston Heritage trademarks in 2019 and the LOGO by Lori Goldstein trademarks in 2021. See Note 3 and Note 9 for additional information related to contingent obligations.

Under the applicable accounting guidance, the Company is required to carry such contingent liability balances on its consolidated balance sheet until the measurement period of the earn-out expires and all related contingencies have been resolved.

***Revenue Recognition***

The Company applies the guidance in ASC Topic 606, "Revenue from Contracts with Customers" to recognize revenue.

*Licensing*

The Company recognizes revenue continuously over time as it satisfies its continuous obligation of granting access to its licensed intellectual properties, which are deemed symbolic intellectual properties under the applicable revenue accounting guidance. Payments are typically due after sales have occurred and have been reported by the licensees or, where applicable, in accordance with minimum guaranteed payment provisions. The timing of performance obligations is typically consistent with the timing of payments, though there may be differences if contracts provide for advances or significant escalations of contractually guaranteed minimum payments. There were no such differences that would have a material impact on the Company's consolidated balance sheets at December 31, 2022 and 2021. In accordance with ASC 606-10-55-65, the Company recognizes net licensing revenue at the later of when (1) the subsequent sale or usage occurs or (2) the performance obligation to which some or all of the sales- or usage-based royalty has been allocated is satisfied (in whole or in part). More specifically, the Company separately identifies:

(i) Contracts for which, based on experience, royalties are expected to exceed any applicable minimum guaranteed payments, and to which an output-based measure of progress based on the "right to invoice" practical expedient is applied because the royalties due for each period correlate directly with the value to the customer of the Company's performance in each period (this approach is identified as "View A" by the FASB Revenue Recognition Transition Resource Group, "TRG"); and

(ii) Contracts for which revenue is recognized based on minimum guaranteed payments using an appropriate measure of progress, in which minimum guaranteed payments are straight-lined over the term of the contract and recognized ratably based on the passage of time, and to which the royalty recognition constraint to the sales-based royalties in excess of minimum guaranteed is applied and such sales-based royalties are recognized to the distinct period only when the minimum guaranteed is exceeded on a cumulative basis (this approach is identified as "View C" by the TRG).

The Company does not typically perform by transferring goods or services to customers before the customer pays consideration or before payment is due, thus the amounts of contract assets as defined by ASC 606-10-45-3 related to licensing contracts were not material as of December 31, 2022 and 2021. The Company's unconditional right to receive consideration based on the terms and conditions of licensing contracts is presented as accounts receivable on the accompanying consolidated balance sheets. The Company typically does not receive consideration in advance of performance and, consequently, amounts of contract liabilities as defined by ASC 606-10-45-2 related to licensing contracts were not material as of December 31, 2022 and 2021.

The Company does not disclose the amount attributable to unsatisfied or partially satisfied performance obligations for variable revenue contracts (identified under "View A" above) in accordance with the optional exemption allowed under ASC 606. The Company did not have any revenue recognized in the reporting period from performance obligations satisfied, or partially satisfied, in previous periods. Remaining minimum guaranteed payments for active contracts as of December 31, 2022 are expected to be recognized ratably in accordance with View C over the remaining term of each contract based on the passage of time and through December 2024, subject to renewal or extension upon termination.

*Wholesale Sales*

The Company generates revenue through the design, sourcing, and sale of branded jewelry and apparel to both domestic and international customers who, in turn, sell the products to the consumer. The Company recognizes revenue within net sales in the accompanying consolidated statements of operations when performance obligations identified under the terms of contracts with its customers are satisfied, which occurs upon the transfer of control of the merchandise in accordance with the contractual terms and conditions of the sale. Shipping to customers is accounted for as a fulfillment activity and is recorded within other selling, general and administrative expenses.

*Direct to Consumer Sales*

The Company's revenue associated with its e-commerce businesses is recognized within net sales in the accompanying consolidated statements of operations at the point in time when product is shipped to the customer. Shipping to customers is accounted for as a fulfillment activity and is recorded within other selling, general and administrative expenses. The Company's revenue related to its brick-and-mortar retail store is recognized within net sales in the accompanying consolidated statements of operations at the point of sale to the customer.

***Advertising Costs***

All costs associated with production for the Company's advertising, marketing, and promotion are expensed during the periods when the activities take place. All other advertising costs, such as print and online media, are expensed when the advertisement occurs. The Company incurred approximately $2.6 million and $2.5 million in advertising and marketing costs for the Current Year and Prior Year, respectively, which are included within other selling, general and administrative expenses in the accompanying consolidated statements of operations.

***Leases***

The Company determines if an arrangement is a lease (as defined in ASC Topic 842, "Leases") at the inception of the arrangement. The Company generally recognizes a right-of-use ("ROU") asset, representing its right to use the underlying leased asset for the lease term, and a liability for its obligation to make future lease payments (the lease liability) at commencement date (the date on which the lessor makes the underlying asset available for use) based on the present value of lease payments over the lease term. The Company does not recognize ROU assets and lease liabilities for lease terms of 12 months or less, but recognizes such lease payments in operations on a straight-line basis over the lease terms.

As the Company's leases typically do not provide an implicit rate, the Company generally uses its incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. Lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option.

For real estate leases of office space, the Company accounts for the lease and non-lease components as a single lease component. Variable lease payments that do not depend on an index or rate (such as real estate taxes and building insurance and lessee's shares thereof), if any, are excluded from lease payments at lease commencement date for initial measurement. Subsequent to initial measurement, these variable payments are recognized when the event determining the amount of variable consideration to be paid occurs.

Lease expense for operating lease payments is generally recognized on a straight-line basis over the lease term. The Company recognizes income from subleases (in which the Company is the sublessor) on a straight-line basis over the term of the sublease, as a reduction to lease expense.

***Stock-Based Compensation***

The Company accounts for stock-based compensation in accordance with ASC Topic 718, "Compensation - Stock Compensation," by recognizing the fair value of stock-based compensation as an operating expense over the service period of the award or term of the corresponding contract, as applicable.

The fair value of stock options and warrants is estimated on the date of grant using the Black-Scholes option pricing model. The valuation determined by the Black-Scholes option pricing model is affected by the Company's stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the expected life of the awards and the expected stock price volatility over the terms of the awards. The expected life is based on the estimated average life of options and warrants using the simplified method; the Company utilizes the simplified method to determine the expected life of the options and warrants due to insufficient exercise activity during recent years as a basis from which to estimate future exercise patterns. The risk-free rate is based on the U.S. Treasury rate for the expected term at the time of grant, volatility is based on the historical volatility of the Company's common stock, and the expected dividend assumption is based on the Company's history and expectation of dividend payouts.

Restricted stock awards are valued using the fair value of the Company's stock at the date of grant, based on the quoted market price of the Company's common shares on the NASDAQ Global Market.

Non-employee awards are measured at the grant date fair value of the equity instruments to be issued, and the Company recognizes compensation cost for grants to non-employees on a straight-line basis over the period of the grant.

The Company accounts for forfeitures as a reduction of compensation cost in the period when such forfeitures occur.

For stock option awards for which vesting is contingent upon the achievement of certain performance targets, the timing and amount of compensation expense recognized is based upon the Company's projections and estimates of the relevant performance metric(s) until the time the performance obligation is satisfied. Expense for such awards is recognized only to the extent that the achievement of the specified performance target(s) has been met or is considered probable.

***Income Taxes***

Current income taxes are based on the respective period's taxable income for federal and state income tax reporting purposes. Deferred tax liabilities and assets are determined based on the difference between the financial statement and income tax bases of assets and liabilities, using enacted tax rates in effect for the year in which the differences are expected to reverse. A valuation allowance is required if, based on the weight of available evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized.

The Company applies the FASB guidance on accounting for uncertainty in income taxes, which prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return, and also addresses derecognition, classification, interest, and penalties related to uncertain tax positions. The Company has no unrecognized tax benefits as of December 31, 2022 and 2021. Interest and penalties related to uncertain tax positions, if any, are recorded in income tax expense. Tax years that remain open for assessment for federal and state tax purposes include the years ended December 31, 2019 through December 31, 2022.

The income tax effects of changes in tax laws are recognized in the period when enacted.

***Fair Value***

ASC Topic 820, “Fair Value Measurement,” defines fair value and establishes a framework for measuring fair value under U.S. GAAP. The fair value of the Company’s financial assets and liabilities reflects management’s estimate of amounts that the Company would have received in connection with the sale of the assets or paid in connection with the transfer of the liabilities in an orderly transaction between market participants at the measurement date. In connection with measuring the fair value of the Company’s assets and liabilities, the Company seeks to maximize the use of observable inputs (market data obtained from independent sources) and to minimize the use of unobservable inputs (internal assumptions about how market participants would price assets and liabilities).

***Fair Value of Financial Instruments***

For certain of the Company’s financial instruments, including cash and cash equivalents, restricted cash, accounts receivable, and accounts payable, the carrying amounts approximate fair value due to the short-term maturities of these instruments. The carrying value of term loan debt approximates fair value because the fixed interest rate approximates current market rates and in the instances it does not, the impact is not material. When debt interest rates are below market rates, the Company considers the discounted value of the difference of actual interest rates and its internal borrowing against the scheduled debt payments.

***Concentrations of Credit Risk***

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and cash equivalents, restricted cash, and accounts receivable. The Company limits its credit risk with respect to cash by maintaining cash, cash equivalents, and restricted cash balances with high quality financial institutions. At times, the Company’s cash, cash equivalents, and restricted cash may exceed federally insured limits. Concentrations of credit risk with respect to accounts receivable are minimal due to the collection history and due to the nature of the Company’s royalty revenues. Generally, the Company does not require collateral or other security to support accounts receivable.

***Earnings (Loss) Per Share***

Basic earnings (loss) per share is computed by dividing net income (loss) available to common stockholders by the weighted average number of common shares outstanding during the period, excluding the effects of any potentially dilutive securities. Diluted earnings (loss) per share reflect, in periods in which they have a dilutive effect, the effect of common shares issuable upon the exercise of stock options and warrants using the treasury stock method. The difference between basic and diluted weighted-average common shares results from the assumption that all dilutive stock options and warrants outstanding were exercised into common stock if the effect is not anti-dilutive.

***Recently Issued Accounting Pronouncements***

In June 2016, the FASB issued Accounting Standards Update (“ASU”) No. 2016-13, "Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments," which was subsequently amended in November 2018 through ASU No. 2018-19. This ASU will require entities to estimate lifetime expected credit losses for financial instruments, including trade and other receivables, which will result in earlier recognition of credit losses. Subsequently, the FASB issued additional guidance in ASU No. 2019-05 in May 2019, ASU No. 2019-10 and 2019-11 in November 2019, ASU No. 2020-02 in February 2020, and ASU No. 2022-02 in March 2022. Among other things, the additional guidance deferred the application of the new guidance on credit losses for smaller reporting companies to fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company is currently evaluating the new guidance to determine the impact the adoption of this guidance will have on the Company’s results of operations, cash flows, and financial condition when it is adopted during the first quarter of 2023.

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***Recently Adopted Accounting Pronouncements***

The Company adopted ASU No. 2019-12, “Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes” effective January 1, 2021. This ASU removes certain exceptions to the general principles in Topic 740, including, but not limited to, intraperiod tax allocations and interim period tax calculations. The ASU also provides additional clarification and guidance related to recognition of franchise taxes and changes in tax laws. The adoption of this new guidance did not have any impact on the Company’s results of operations, cash flows, and financial condition.

The Company adopted ASU No. 2021-10, “Government Assistance (Topic 823): Disclosures by Business Entities about Government Assistance.” This ASU requires certain financial statement disclosures about transactions with a government that are accounted for by applying a grant or contribution accounting model by analogy. As this ASU only affects financial statement disclosures, the adoption of this guidance did not have any impact on the Company’s results of operations, cash flows, or financial condition.

**3. Acquisitions, Divestitures and Variable Interest Entities**

***Acquisition of LOGO by Lori Goldstein Brand***

On March 30, 2021, the Company and its wholly owned subsidiary, Gold Licensing, LLC, entered into an asset purchase agreement (the “Asset Purchase Agreement”) with Lori Goldstein, Ltd. (the “Seller”) and Lori Goldstein (“Shareholder”), pursuant to which the Company agreed to acquire, and the Seller and Shareholder agreed to sell, certain assets of the Seller, including the “LOGO by Lori Goldstein” trademark and other intellectual property rights relating thereto. On April 1, 2021 (the “Closing Date”), the Company completed the acquisition of the assets specified in the Asset Purchase Agreement.

Pursuant to the Asset Purchase Agreement, on the Closing Date, the Company delivered $1.6 million in cash consideration to the Seller. In addition, the Company was required to deliver $2.0 million in cash consideration to the Seller on the earlier of (i) the Company’s receipt of the first royalty payment from QVC, Inc. in respect of the acquired assets, or (ii) July 29, 2021. This payment was made in July 2021.

In addition to the consideration described above, the Seller is eligible to earn additional consideration of up to $12.5 million (the “Lori Goldstein Earn-Out”), which would be payable, in cash, within 45 days after the end of each applicable calendar year during the six calendar year period commencing 2021 in an amount equal to 75% percent of the Royalty Contribution (as defined in the Asset Purchase Agreement) for such calendar year. The Company recorded a contingent obligation of $6.6 million related to the Lori Goldstein Earn-Out, based on the difference between the fair value of the acquired assets of the LOGO by Lori Goldstein brand and the total consideration paid, in accordance with the guidance in ASC Subtopic 805-50. Based on the performance of the Lori Goldstein brand through December 31, 2022, approximately $0.2 million of additional consideration has been earned and is payable to the Seller in 2023.

The LOGO by Lori Goldstein brand acquisition was accounted for as an asset purchase. The following represents the aggregate purchase price of $10.3 million:

| ($ in thousands) | | |
|---|---|---|
| Cash paid at closing | $ | 1,600 |
| Cash paid subsequent to closing | | 2,045 |
| Total direct initial consideration | | 3,645 |
| Direct transaction expenses | | 16 |
| Contingent obligation (Lori Goldstein Earn-Out) | | 6,639 |
| Total consideration | $ | 10,300 |

The aggregate purchase price was allocated entirely to the trademarks of the brand. Such trademarks have been determined by management to have a finite useful life, and accordingly, amortization is recorded in the Company’s consolidated statements of operations. The Lori Goldstein trademarks are being amortized on a straight-line basis over their expected useful life of four years.

Upon the consummation of the acquisition of the LOGO by Lori Goldstein brand as described above, the Company incurred cash bonuses totaling $175,000 to certain members of the Company's senior management, such success-related bonuses having been approved by the Board of Directors on March 18, 2021. These bonuses were expensed on the Closing Date and were subsequently paid in May 2021.

Additionally, concurrent with the acquisition, the Company also entered into a 10-year employment agreement with the Shareholder to serve as the LOGO by Lori Goldstein brand's Chief Creative Officer and Spokesperson, with a base salary of $0.9 million per annum through December 31, 2021 and $1.2 million per annum thereafter, and the opportunity to earn additional incentives based on the future net royalties related to the brand. Further, the Company concurrently entered into a consulting agreement with the Seller to provide creative advice and consultation, for a fee of $0.6 million per annum through December 31, 2021 and $0.8 million per annum thereafter. The Company therefore recognized $1.2 million and $0.9 million of salary expense within salaries, benefits and employment taxes in the accompanying consolidated statements of operations, and $0.8 million and $0.6 million of consulting expense within other selling, general and administrative expenses in the accompanying consolidated statements of operations, in the Current Year and Prior Year, respectively, related to such agreements.

***Sale of Majority Interest in Isaac Mizrahi Brand***

On May 27, 2022, Xcel (along with IM Topco, LLC ("IM Topco") and IM Brands, LLC ("IMB"), both wholly owned subsidiaries of the Company) and IM WHP, LLC ("WHP"), a subsidiary of WHP Global, a private equity-backed brand management and licensing company, entered into a membership purchase agreement. Pursuant to this agreement, on May 31, 2022, (i) the Company contributed assets owned by IMB, including the Isaac Mizrahi Brand trademarks and other intellectual property rights relating thereto into IM Topco, and (ii) the Company sold 70% of the membership interests of IM Topco to WHP.

The purchase price paid by WHP to the Company at the closing of the transaction in exchange for the 70% membership interest in IM Topco consisted of $46.2 million in cash. Pursuant to the purchase agreement, the Company will also be entitled to receive an "earn-out" payment in the amount of $2.0 million if, during the period from January 1, 2023 through December 31, 2023, (i) IM Topco receives Net Royalty Revenue (as defined in the purchase agreement) in an amount equal to or greater than $17.5 million and (ii) IM Topco generates EBITDA (as defined in the purchase agreement) in an amount equal to or greater than $11.8 million. Additionally, in the event that IM Topco receives less than $13.347 million in aggregate royalties for any four consecutive calendar quarters over a three-year period ending on the third anniversary of the closing, WHP will be entitled to receive from the Company up to $16 million, less all amounts of net cash flow distributed to WHP for such period, as an adjustment to the purchase price, payable in either cash or equity interests in IM Topco held by the Company. Based on IM Topco's earnings from May 31, 2022 through December 31, 2022 and the applicable distribution provisions, WHP earned $4.32 million in cash flow, which reduces the potential purchase price adjustment to $11.68 million.

In connection with the aforementioned membership purchase agreement, on May 31, 2022, the Company and WHP entered into an Amended and Restated Limited Liability Company Agreement of IM Topco (the "Business Venture Agreement") governing the operation of IM Topco as a partnership between the Company and WHP following the closing. Pursuant to the Business Venture Agreement, IM Topco is managed by a single Manager appointed by the vote of a majority-in-interest of IM Topco's members, and WHP serves as the sole Manager of IM Topco. The Business Venture Agreement contains customary provisions for the governance of a partnership, including with respect to decision making, access to information, restrictions on transfer of interests, and covenants.

Pursuant to the Business Venture Agreement, IM Topco's Net Cash Flow (as defined in the agreement) shall be distributed to the members during each fiscal year no less than once per fiscal quarter, as follows:

(i) first, 100% to WHP, until WHP has received an aggregate amount during such fiscal year equal to $8,852,000;

(ii) second, 100% to Xcel, until Xcel has received an aggregate amount during such fiscal year equal to $1,316,200; and

(iii) thereafter, in proportion to the members' respective ownership interests.

The amounts described in (i) and (ii) above are subject to adjustment in certain circumstances as set forth in the Business Venture Agreement.

The Company also entered into a number of other related agreements on May 31, 2022 in connection with the transaction, as described below:

- The Company entered into a services agreement with IM Topco, pursuant to which the Company will provide certain design and support services (including assistance with the operations of the interactive television business and related talent support) to IM Topco in exchange for payments of $0.3 million per fiscal year.

- The Company entered into a license agreement with IM Topco, pursuant to which IM Topco granted the Company a license to use certain Isaac Mizrahi trademarks on and in connection with the design, manufacture, distribution, sale, and promotion of women's sportswear products in the United States and Canada during the term of the agreement, in exchange for the payment of royalties in connection therewith. The initial term of this agreement ends December 31, 2026, and provides guaranteed royalties of $0.4 million per year to IM Topco.

- The Company's licensing agreement with Qurate Retail Group related to the Isaac Mizrahi Brand (see Note 5) was assigned to IM Topco as of May 31, 2022.

- The Company's employment agreement with Mr. Mizrahi and the Company's services agreement with Laugh Club (see Note 11) were transferred to IM Topco. In addition, all 522,500 unvested shares of restricted stock of the Company held by Mr. Mizrahi (for which all stock-based compensation expense had been previously recognized in prior periods) were immediately vested, with 240,000 of such shares being surrendered for cancellation in satisfaction of withholding tax obligations. In addition, the Company issued 33,557 additional shares of common stock of the Company (valued at $50,000) to Mr. Mizrahi, which vested immediately, and made a $100,000 cash payment to Mr. Mizrahi.

Management assessed and evaluated the ownership structure and other terms of the May 27, 2022 membership purchase agreement and Business Venture Agreement, as well as considered the Company's continuing involvement with the Isaac Mizrahi Brand through the aforementioned services agreement and licensing agreement, and concluded that (i) IM Topco is not a Variable Interest Entity under ASC Topic 810, and (ii) the Company has significant influence over, but does not control, IM Topco. As such, on May 31, 2022, the Company de-recognized the carrying amount of the Isaac Mizrahi Brand trademarks of $44.5 million and recognized the fair value of its retained interest in IM Topco of approximately $19.8 million as an equity method investment on the accompanying consolidated balance sheet. The fair value of the Company's retained interest was determined by applying the Company's ownership percentage to the implied enterprise value of IM Topco, which was calculated based on the price paid by WHP for the 70% controlling interest, as the May 31, 2022 sale transaction was considered an arms-length transaction between knowledgeable market participants and the most relevant and reasonable indication of value to utilize. The inputs and assumptions for this nonrecurring fair value measurement are classified as Level 3 within the fair value hierarchy defined in ASC Topic 820.

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The Company incurred approximately $0.9 million of expenses directly related to this transaction, including legal fees and agent fees, of which $0.1 million of the agent fees were paid through the issuance of 65,275 shares of the Company's common stock, which were recognized as a reduction to the gain from the transaction. The Company recognized a net pre-tax gain from the transaction of $20.6 million, which is classified as other income in the consolidated statement of operations for the Current Year.

In addition to the amounts described above, the Company's Board of Directors awarded cash bonuses totaling approximately $1.0 million to certain members of the Company's senior management. These bonuses are included in Salaries, benefits and employment taxes in the accompanying consolidated statement of operations for Current Year.

During the Current Year subsequent to the May 27, 2022 transaction, the Company made a capital contribution to IM Topco of $0.6 million in cash, which did not change the Company's noncontrolling ownership interest of 30%.

The Company accounts for its interest in the ongoing operations of IM Topco as other income (expense) under the equity method of accounting. The Company recognized an equity method loss of approximately $1.2 million related to its investment for the year ended December 31, 2022, based on the aforementioned distribution provisions and preferences set forth in the Business Venture Agreement.

Summarized financial information for IM Topco for the period commencing May 31, 2022 (the date of the sale of a majority interest in IM Topco) through December 31, 2022 is as follows:

| **($ in thousands)** | | |
|---|---|---|
| Revenues | $ | 7,791 |
| Gross profit | | 7,791 |
| Income from continuing operations | | 317 |
| Net income | | 317 |

***Longaberger Licensing, LLC Variable Interest Entity***

Xcel is party to a limited liability company agreement (the "LLC Agreement") with a subsidiary of Hilco Global related to Longaberger Licensing, LLC ("LL"). Hilco Global is the sole Class A Member of LL, and Xcel is the sole Class B Member of LL (each individually a "Member," and collectively, the "Members"). Each Member holds a 50% equity ownership interest in LL; however, based on an analysis of the contractual terms and rights contained in the LLC Agreement and related agreements, the Company has previously determined that under the applicable accounting standards, LL is a variable interest entity and the Company has effective control over LL. Therefore, as the primary beneficiary, the Company has consolidated LL since 2019, and has recognized the assets, liabilities, revenues, and expenses of LL as part of its consolidated financial statements, along with a noncontrolling interest which represents Hilco Global's 50% ownership share in LL.

During the Prior Year, the Members made capital contributions to LL of $1.0 million each in order to fund LL's working capital requirements. This resulted in increases to the carrying value of Hilco Global's noncontrolling interest in LL for the Prior year of $1.0 million. The impacts of Xcel's capital contributions were eliminated in consolidation.

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## 4. Trademarks and Other Intangibles

Trademarks and other intangibles, net consist of the following:

| ($ in thousands) | Weighted Average Amortization Period | December 31, 2022 Gross Carrying Amount | December 31, 2022 Accumulated Amortization | December 31, 2022 Net Carrying Amount |
|---|---|---|---|---|
| Trademarks (finite-lived) | 15 years | 68,880 | 21,346 | 47,534 |
| Copyrights and other intellectual property | 8 years | 429 | 298 | 131 |
| **Total** | | **$ 69,309** | **$ 21,644** | **$ 47,665** |

| ($ in thousands) | Weighted Average Amortization Period | December 31, 2021 Gross Carrying Amount | December 31, 2021 Accumulated Amortization | December 31, 2021 Net Carrying Amount |
|---|---|---|---|---|
| Trademarks (indefinite-lived) | n/a | $ 44,500 | $ — | $ 44,500 |
| Trademarks (finite-lived) | 15 years | 68,880 | 15,268 | 53,612 |
| Non-compete agreement | 7 years | 562 | 562 | — |
| Copyrights and other intellectual property | 8 years | 429 | 237 | 192 |
| **Total** | | **$ 114,371** | **$ 16,067** | **$ 98,304** |

During the Current Year, the Company sold its $44.5 million of indefinite-lived trademarks related to the Isaac Mizrahi Brand (see Note 3 for details). Also during the Current Year, the Company retired its intangible asset for a non-compete agreement related to the Halston Brand, as such intangible asset had reached the end of its estimated useful life and had become fully amortized.

Amortization expense for intangible assets for the Current Year and Prior Year was approximately $6.1 million and $5.6 million, respectively.

Estimated future amortization expense related to finite-lived intangible assets over the remaining useful lives is as follows:

| ($ in thousands) Year Ending December 31, | Amortization Expense |
|---|---|
| 2023 | $ 6,140 |
| 2024 | 6,120 |
| 2025 | 4,177 |
| 2026 | 3,533 |
| 2027 | 3,507 |
| Thereafter (through 2036) | 24,188 |
| Total | $ 47,665 |

## 5. Significant Contracts

***Qurate Agreements***

Through its wholly owned subsidiaries, the Company has direct-to-retail license agreements with Qurate Retail Group (“Qurate”), pursuant to which the Company designs, and Qurate sources and sells, various products under the LOGO by Lori Goldstein brand, the Longaberger brand, and the Judith Ripka brand. These agreements include, respectively, the LOGO Qurate Agreement, Longaberger Qurate Agreement, and the Ripka Qurate Agreement. The Company was also previously a party to similar agreements with Qurate related to the Isaac Mizrahi brand (the IM Qurate Agreement) and the H by Halston brand (the H Qurate Agreement). Qurate owns the rights to all designs produced under the aforementioned agreements (collectively, the “Qurate Agreements”), and the Qurate Agreements include the sale of products across various categories through Qurate’s television media (including QVC and HSN) and related internet sites.

Pursuant to the agreements, the Company granted to Qurate and its affiliates the exclusive, worldwide right to promote the Company’s branded products, and the right to use and publish the related trademarks, service marks, copyrights, designs, logos, and other intellectual property rights owned, used, licensed, and/or developed by the Company, for varying terms as set forth below.

| Agreement | Current Term Expiry | Automatic Renewal | Xcel Commenced Brand with QVC | QVC Product Launch |
|---|---|---|---|---|
| LOGO Qurate Agreement | November 1, 2023 | one-year period | April 2021 | 2009 |
| Longaberger Qurate Agreement | October 31, 2023 | two-year period | November 2019 | 2019 |
| Ripka Qurate Agreement | * | not applicable | April 2014 | 1999 |
| IM Qurate Agreement | ** | not applicable | September 2011 | 2010 |
| H Qurate Agreement | *** | not applicable | January 2015 | 2015 |

* On August 30, 2022, Qurate and the Company amended the Ripka Qurate Agreement such that the license period was terminated effective December 31, 2021. Effective January 1, 2022, the agreement entered a sell-off period, under which Qurate may continue to license the Ripka brand on a non-exclusive basis for as long as necessary to sell off any of its remaining inventory.

** On May 31, 2022, in connection with the sale of a majority interest in the Isaac Mizrahi brand to WHP, this agreement was assigned to IM Topco, LLC. See Note 3 for additional details.

*** In the fourth quarter of 2020, the Company transitioned and discontinued licensing of the H Halston brand to Qurate. The Company began wholesale supply sales of the H Halston products under arrangements with HSN and certain Qurate global affiliates and other unrelated interactive television networks.

In connection with the Qurate Agreements and during the same periods, Qurate and its subsidiaries have the exclusive, worldwide right to use the names, likenesses, images, voices, and performances of the Company’s spokespersons to promote the respective products.

Under the Qurate Agreements, Qurate is obligated to make payments to the Company on a quarterly basis, based primarily upon a percentage of the net retail sales of the specified branded products. Net retail sales are defined as the aggregate amount of all revenue generated through the sale of the specified branded products by Qurate and its subsidiaries under the Qurate Agreements, net of customer returns, and excluding freight, shipping and handling charges, and sales, use, or other taxes.

Also, under the Qurate Agreements, except for the Longaberger Qurate Agreement, the Company will pay for a period of time a royalty participation fee to Qurate on revenue earned from the sale, license, consignment, or any other form of distribution of any products, bearing, marketed in connection with, or otherwise associated with the specified trademarks and brands. Such royalty participation fees are recorded as a reduction to net licensing revenue.

Net licensing revenue from Qurate totaled $11.4 million and $18.8 million for the Current Year and Prior Year, respectively, representing approximately 44% and 50% of the Company’s total net revenue, respectively. As of December 31, 2022 and 2021, the Company had receivables from Qurate of $0.9 million and $3.5 million, representing approximately 17% and 46% of the Company’s accounts receivable, respectively. The December 31, 2022 and 2021 Qurate receivables did not include any earned revenue accrued but not yet billed as of the respective balance sheet dates.

## 6. Debt

The Company's net carrying amount of debt was comprised of the following:

| ($ in thousands) | December 31, 2022 | December 31, 2021 |
|---|---|---|
| Term loan debt | $ — | $ 29,000 |
| Unamortized deferred finance costs related to term loan debt | — | (969) |
| Total | — | 28,031 |
| Current portion of debt | — | 2,500 |
| Long-term debt | $ — | $ 25,531 |

On May 31, 2022, the Company used $30.1 million of the proceeds received from the transaction related to the Isaac Mizrahi Brand (see Note 3) to repay all amounts outstanding under the December 30, 2021 term loan agreement with First Eagle Alternative Credit Agent, LLC ("FEAC") described below, consisting of $28.4 million in principal amount, a $1.4 million prepayment fee, and approximately $0.3 million in interest and related expenses. As a result, the Company recognized a loss on early extinguishment of debt of approximately $2.3 million during the Current Year, consisting of approximately $1.4 million of debt prepayment premium, the immediate write-off of approximately $0.8 million of unamortized deferred finance costs, and approximately $0.1 million of other costs.

***Term Loan Debt (through May 31, 2022)***

*Previous Term Loan Debt*

On February 11, 2019, the Company entered into an amended loan agreement with Bank Hapoalim B.M. ("BHI"), which amended and restated a prior term loan with BHI. Under that amended loan agreement, the aggregate amount of all the term loans extended by BHI to Xcel was $22.0 million, which amount was divided into two term loans: (1) a term loan in the amount of $7.3 million and (2) a term loan in the amount of $14.7 million. These two term loans bore interest at a fixed rate of 5.1% and 6.25% per annum, respectively. Such loan agreement was subsequently amended on April 13, 2020 and again on August 18, 2020; such amendments changed the timing and amount of quarterly installment payments, but did not change the total principal balance, interest rate, or maturity date.

*April 2021 Term Loan Debt*

On April 14, 2021, Xcel, as Borrower, and its wholly-owned subsidiaries entered into a new loan and security agreement with BHI as administrative agent and collateral agent, FEAC as co-collateral agent, and the financial institutions party thereto as lenders. Pursuant to this loan agreement, the lenders made two term loans: (1) a term loan in the amount of $10.0 million and (2) a term loan in the amount of $15.0 million. These two term loans bore interest at "LIBOR" plus 4.0% per annum, and "LIBOR" plus 8.0% per annum, respectively, with "LIBOR" defined as the greater of (a) the rate of interest per annum for deposits in dollars for an interest period equal to one month as published by ICE Benchmark Administration Limited or a comparable or successor quoting service at approximately 11:00 a.m. (London time) on such date of determination or (b) 1.0% per annum. This loan agreement also provided that the lenders make available to Xcel a revolving loan facility in an amount up to $4.0 million on a discretionary basis, but not to exceed 85% of the amount of eligible accounts receivable, as defined.

Management assessed and determined that the April 2021 loan agreement resulted in an extinguishment of the previous term loan debt, and accordingly recognized a loss of approximately $0.8 million (consisting of $0.1 million of unamortized deferred finance costs and $0.7 million of breakage fees owed to the old lender under the terms of the previous debt agreement) during the Prior Year.

Upon entering into the April 2021 loan agreement, Xcel paid a 2.5% closing fee in the amount of $0.6 million to the administrative agent for the benefit of each lender having a term loan commitment; the Company also paid approximately $0.6 million of various legal and other fees in connection with the execution of the loan agreement. These fees and costs totaling approximately $1.2 million were deferred on the Company's balance sheet as a reduction of the carrying value of the term loan debt, to be subsequently amortized to interest expense over the term of the debt using the effective interest method.

Under the April 2021 loan agreement, the debt was to mature on April 14, 2025, with principal payable in 16 quarterly installments of $625,000 on each of March 31, June 30, September 30, and December 31 of each year, commencing on June 30, 2021 and ending on March 31, 2025, with a final payment of $15.0 million on the maturity date of April 14, 2025. The Company made the required principal payments on June 30, 2021 and September 30, 2021 (totaling $1.25 million) as scheduled.

The Company, BHI, FEAC, and the lenders subsequently amended the April 2021 loan agreement multiple times during 2021 – on August 12, 2021, September 29, 2021, and November 12, 2021. While these amendments modified financial covenants and/or adjusted the maximum amount available under the revolving loan facility, there were no changes made to the total principal balance, interest rate, maturity date, or any other terms of the loan agreement.

*December 2021 Term Loan Debt*

On December 30, 2021, Xcel, as Borrower, and its wholly-owned subsidiaries entered into a new loan and security agreement with FEAC, as lead arranger and as administrative agent and collateral agent, and the financial institutions party thereto as lenders. Pursuant to this loan agreement, the lenders made a term loan in the aggregate amount of $29.0 million. This term loan bore interest at "LIBOR" plus 7.5% per annum, with "LIBOR" defined as the greater of (a) the rate of interest per annum for deposits in dollars for an interest period equal to three months as published by Bloomberg or a comparable or successor quoting service at approximately 11:00 a.m. (London time) two business days prior to the last business day of each calendar month and (b) 1.0% per annum. The December 2021 loan agreement also provides that Xcel may request the lenders make incremental term loans of up to $25.0 million, with the terms and conditions of any such incremental term loans to be agreed in an amendment to the agreement prior to funding.

Management assessed and determined that the December 2021 loan agreement resulted in an extinguishment of the April 2021 term loan debt, and accordingly recognized a loss of approximately $0.74 million (consisting of $0.92 million of unamortized deferred finance costs and $(0.18) of net fees owed to BHI less refunds of certain costs related to the April 2021 term loan debt) during the Prior Year.

Upon entering into the December 2021 loan agreement, Xcel paid a 1.75% closing fee to FEAC for the benefit of the lenders; the Company also paid approximately $0.5 million of various legal and other fees in connection with the execution of the loan agreement. These fees and costs totaling approximately $0.97 million were deferred on the Company's balance sheet as of December 31, 2021 as a reduction of the carrying value of the term loan debt, to be subsequently amortized to interest expense over the term of the debt using the effective interest method.

The December 2021 term loan was to mature on April 14, 2025. Principal on this debt was payable in quarterly installments of $625,000 on each of March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 2022 and ending on March 31, 2025, with a final payment of $20,875,000 on the maturity date of April 14, 2025.

Under the December 2021 loan agreement, Xcel had the right upon thirty (30) days prior written notice to prepay all or any portion of the term loan debt and accrued and unpaid interest thereon. Based on the terms of the loan agreement, when the term loan was repaid in full on May 31, 2022, Xcel was required to pay a prepayment premium of five percent (5.00%), which amounted to approximately $1.4 million.

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Xcel also granted the lenders a right of first offer to finance any acquisition for which the consideration therefore will be paid other than by cash, the issuance of equity interests of Xcel, or the issuance of notes to the applicable seller.

The various term loan agreements described above also contained customary covenants, including reporting requirements, trademark preservation, and certain financial covenants (on a consolidated basis with Xcel and its wholly-owned subsidiaries); the Company was in compliance with all applicable covenants under the respective loan agreements as of and for all periods presented in the financial statements.

For the Current Year and Prior Year, the Company incurred interest expense of approximately $1.2 million and $1.9 million, respectively, related to term loan debt. The effective interest rate related to term loan debt was approximately 9.8% and 8.7% for the Current Year and Prior Year, respectively.

***Revolving Loan Debt***

Under the terms of the April 2021 loan agreement discussed above, the lenders made a revolving loan facility available to Xcel. On June 24, 2021, Xcel borrowed $1.5 million under the aforementioned revolving loan facility, and on September 30, 2021, Xcel borrowed $998,000 under the revolving loan facility. Xcel repaid the outstanding balance in full on December 30, 2021. The revolving loan facility bore interest at a rate of 4.75% per annum, and the Company incurred related interest expense of approximately $0.1 million for the Prior Year. As of December 31, 2021, the Company no longer had access to a revolving loan facility under the terms of the new loan agreement entered into on December 30, 2021.

## 7. Stockholders' Equity

The Company has authority to issue up to 51,000,000 shares, consisting of 50,000,000 shares of common stock and 1,000,000 shares of preferred stock.

***Equity Incentive Plans***

The Company's 2021 Equity Incentive Plan (the "2021 Plan") is designed and utilized to enable the Company to provide its employees, officers, directors, consultants, and others whose past, present, and/or potential contributions to the Company have been, are, or will be important to the success of the Company, an opportunity to acquire a proprietary interest in the Company. A total of 4,000,000 shares of common stock are eligible for issuance under the 2021 Plan. The 2021 Plan provides for the grant of any or all of the following types of awards: stock options (incentive or non-qualified), restricted stock, restricted stock units, performance awards, or cash awards. The 2021 Plan is administered by the Company's Board of Directors, or, at the Board's discretion, a committee of the Board.

In addition, stock-based awards (including options, warrants, and restricted stock) previously granted under the Company's 2011 Equity Incentive Plan (the "2011 Plan") remain outstanding and shares of common stock may be issued to satisfy options or warrants previously granted under the 2011 Plan, although no new awards may be granted under the 2011 Plan.

***Stock-Based Compensation***

Total expense recognized for all forms of stock-based compensation was approximately $0.72 million in both the Current Year and Prior Year. Of the Current Year expense amount, approximately $0.41 million related to employees and approximately $0.31 million related to directors and consultants; approximately $0.62 million was recorded as an operating cost and approximately $0.10 million was recorded as a reduction to other income. Of the Prior Year expense amount, approximately $0.55 million related to employees and approximately $0.17 million related to directors and consultants; all of the Prior Year expense amount was recorded as an operating cost.

***Stock Options***

Options granted under the Company's equity incentive plans expire at various times – either five, seven, or ten years from the date of grant, depending on the particular grant.

A summary of the Company's stock option activity for the Current Year is as follows:

| | Number of Options | Weighted Average Exercise Price | Weighted Average Remaining Contractual Life (in Years) | Aggregate Intrinsic Value |
|---|---|---|---|---|
| Outstanding at January 1, 2022 | 5,630,970 | $ 2.25 | 5.46 | $ — |
| Granted | 605,850 | 1.61 | | |
| Canceled | — | — | | |
| Exercised | — | — | | |
| Expired/Forfeited | (622,510) | 2.81 | | |
| Outstanding at December 31, 2022, and expected to vest | 5,614,310 | $ 2.12 | 4.76 | $ — |
| Exercisable at December 31, 2022 | 1,916,810 | $ 2.89 | 1.75 | $ — |

Current Year stock option grants were as follows:

On April 20, 2022, the Company granted options to purchase an aggregate of 380,850 shares of common stock to various employees. The exercise price of the options is $1.62 per share, and all options vested immediately on the date of grant.

On April 20, 2022 the Company granted options to purchase an aggregate of 125,000 shares of common stock to non-management directors. The exercise price of the options is $1.62 per share, and 50% of the options vest on each of April 20, 2023 and April 20, 2024.

On April 26, 2022, the Company granted options to purchase an aggregate of 100,000 shares of common stock to a consultant. The exercise price of the options is $1.58 per share, and all options vested immediately on the date of grant.

Prior Year stock option grants were as follows:

On March 15, 2021, the Company granted options to purchase an aggregate of 365,390 shares of common stock to various employees. The exercise price of the options is $1.86 per share, and all options vested immediately on the date of grant.

On April 1, 2021, the Company granted options to purchase an aggregate of 125,000 shares of common stock to non-management directors. The exercise price of the options is $1.93 per share. One-half of the options vested on April 1, 2022, and the remaining half of the options will vest on April 1, 2023.

On July 1, 2021, the Company granted options to purchase an aggregate of 20,000 shares of common stock to a member of management. The exercise price of the options is $2.76 per share. One-half of the options vested on June 1, 2022, and the remaining half of the options will vest on June 1, 2023.

On August 13, 2021, the Company granted options to purchase an aggregate of 10,000 shares of common stock to an employee. The exercise price of the options is $2.00 per share. One-half of the options were to vest on August 13, 2022, with the remaining half of the options to vest on August 13, 2023, but all of these options were forfeited when the employee left the Company in the Current Year.

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The fair value of the options granted was estimated at the date of grant using the Black-Scholes option pricing model with the following assumptions:

| | Year Ended December 31, | |
|---|---|---|
| | 2022 | 2021 |
| Expected Volatility | 57.14 – 92.65 % | 29.49 – 82.99 % |
| Expected Dividend Yield | — % | — % |
| Expected Life (Term, in years) | 0.67 – 3.25 | 2.5 – 3.25 |
| Risk-Free Interest Rate | 1.60 – 2.80 % | 0.24 – 0.52 % |

Compensation expense related to stock options for the Current Year and Prior Year was approximately $0.5 million and $0.3 million, respectively. Total unrecognized compensation expense related to unvested stock options (excluding stock options with performance-based vesting) at December 31, 2022 amounts to approximately $0.1 million and is expected to be recognized over a weighted average period of 1.12 years.

Of the total stock options outstanding at December 31, 2022, the vesting of 3,500,000 options is contingent upon the Company's common stock achieving certain target prices as follows:

| Target Prices | Number of Options Vesting |
|---|---|
| $3.00 | 1,000,000 |
| $5.00 | 850,000 |
| $7.00 | 700,000 |
| $9.00 | 550,000 |
| $11.00 | 400,000 |

As of December 31, 2022, none of these 3,500,000 performance-based stock options have vested, and no compensation expense has been recorded related to such options.

The following table summarizes the Company's stock option activity for non-vested options for the Current Year:

| | Number of Options | Weighted Average Grant Date Fair Value |
|---|---|---|
| Balance at January 1, 2022 | 3,873,334 | $ 0.07 |
| Granted | 605,850 | 0.79 |
| Vested | (771,684) | 0.72 |
| Forfeited or Canceled | (10,000) | 1.09 |
| Balance at December 31, 2022 | 3,697,500 | $ 0.05 |

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***Warrants***

Warrants granted by the Company expire at various times – either five, seven, or ten years from the date of grant, depending on the particular grant.

A summary of the Company's warrant activity for the Current Year is as follows:

| | Number of Warrants | Weighted Average Exercise Price | Weighted Average Remaining Contractual Life (in Years) | Aggregate Intrinsic Value |
|---|---|---|---|---|
| Outstanding and exercisable at January 1, 2022 | 116,065 | $ 3.15 | 2.57 | $ — |
| Granted | — | — | | |
| Canceled | — | — | | |
| Exercised | — | — | | |
| Expired/Forfeited | — | — | | |
| Outstanding and exercisable at December 31, 2022 | 116,065 | $ 3.15 | 1.57 | $ — |

No compensation expense was recorded in the Current Year or Prior Year related to warrants.

***Stock Awards***

A summary of the Company's restricted stock activity for the Current Year is as follows:

| | Number of Restricted Shares | Weighted Average Grant Date Fair Value |
|---|---|---|
| Outstanding at January 1, 2022 | 815,833 | $ 4.00 |
| Granted | 347,623 | 1.58 |
| Canceled | — | — |
| Vested | (830,123) | 3.11 |
| Expired/Forfeited | — | — |
| Outstanding at December 31, 2022 | 333,333 | $ 3.71 |

Current Year stock award grants were as follows:

On April 20, 2022, the Company issued an aggregate of 50,000 shares of common stock to non-management directors, which vest evenly over two years, of which 50% shall vest on April 20, 2023, and 50% shall vest on April 20, 2024.

On April 20, 2022, the Company issued 20,064 shares of common stock to a consultant, which vested immediately.

On May 31, 2022, the Company issued 65,275 shares of common stock to a consultant in connection with the transaction related to the Isaac Mizrahi Brand (see Note 3); these shares vested immediately.

On May 31, 2022, the Company issued 33,557 shares of common stock to Isaac Mizrahi, which vested immediately (see Note 3 for additional details).

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Additionally, on April 20, 2022, the Company issued 178,727 shares of common stock to a member of senior management as payment for a performance bonus earned in 2021. These shares vested immediately. The Company had previously recognized compensation expense of approximately $0.28 million in the Prior Year to accrue for this performance bonus.

Prior Year stock award grants were as follows:

On April 1, 2021, the Company issued an aggregate of 50,000 shares of stock to non-management directors, which vest evenly over two years. One-half of the shares vested on April 1, 2022, and the remaining half shall vest on April 1, 2023.

On April 26, 2021, the Company issued 14,045 shares of stock to a consultant, which vested immediately.

On July 1, 2021, the Company issued 9,399 shares of stock to a consultant, which vested immediately.

On October 1, 2021, the Company issued 16,892 shares of stock to a consultant, which vested immediately.

On October 29, 2021, the Company issued 12,489 shares of stock to an employee pursuant to the terms of a contractual agreement, which vested immediately.

Additionally, on May 7, 2021, the Company issued 181,179 shares of common stock to a member of senior management as payment for a performance bonus earned 2020. These shares vested immediately. The Company recognized compensation expense of approximately $0.3 million in 2020 to accrue for this performance bonus.

Notwithstanding the foregoing, each grantee may extend the first anniversary of all or a portion of the restricted stock by six months and, thereafter one or more times may further extend such date with respect to all or a portion of the restricted stock until the next following date exactly six months thereafter, by providing written notice of such election to extend such date with respect to all or a portion of the restricted stock prior to such date.

Total compensation expense related to stock awards for the Current Year and Prior Year (inclusive of the amounts detailed above) was approximately $0.3 million and $0.4 million, respectively. Total unrecognized compensation expense related to unvested restricted stock grants at December 31, 2022 amounts to $0.1 million and is expected to be recognized over a weighted average period of 1.10 years.

The following table provides information with respect to restricted stock purchased and retired by the Company during the Current Year and Prior Year:

| Date | Total Number of Shares Purchased | Actual Price Paid per Share | Number of Shares Purchased as Part of Publicly Announced Plan | Fair value of Re-Purchased Shares |
|---|---|---|---|---|
| April 20, 2022 (i) | 53,882 | 1.57 | — | 84,000 |
| May 31, 2022 (i) | 240,000 | 1.49 | — | 358,000 |
| Total 2022 | 293,882 | $ 1.50 | — | $ 442,000 |
| | | | | |
| October 29, 2021 (i) | 9,187 | 1.73 | — | 16,000 |
| Total 2021 | 9,187 | $ 1.73 | — | $ 16,000 |

(i) The shares were exchanged from employees and directors in connection with the income tax withholding obligations on behalf of such employees and directors from the vesting of restricted stock or the receipt of stock awards. The 2011 Plan and 2021 Plan allow for award holders to surrender vested shares to cover withholding tax liabilities.

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***Shares Available Under the Company's Equity Incentive Plans***

At December 31, 2022, there were 3,291,909 shares of common stock available for award grants under the 2021 Plan.

***Shares Reserved for Issuance***

At December 31, 2022, there were 9,022,284 shares of common stock reserved for issuance, including 5,316,025 shares reserved pursuant to unexercised warrants and stock options previously granted under the 2011 Plan, 414,350 shares reserved pursuant to unexercised stock options granted under the 2021 Plan, and 3,291,909 shares available for issuance under the 2021 Plan.

***Dividends***

The Company has not paid any dividends to date.

**8. Earnings (Loss) Per Share**

The following table is a reconciliation of the numerator and denominator of the basic and diluted net loss per share computations for the years ended December 31, 2022 and 2021:

| | Year Ended December 31, 2022 | Year Ended December 31, 2021 |
|---|---|---|
| **Numerator:** | | |
| Net loss attributable to Xcel Brands, Inc. stockholders (in thousands) | $ (4,018) | $ (12,184) |
| **Denominator:** | | |
| Basic weighted average number of shares outstanding | 19,624,669 | 19,455,987 |
| Add: Effect of warrants | — | — |
| Add: Effect of stock options | — | — |
| Diluted weighted average number of shares outstanding | 19,624,669 | 19,455,987 |
| Basic net loss per share | $ (0.20) | $ (0.63) |
| Diluted net loss per share | $ (0.20) | $ (0.63) |

As a result of the net loss presented for the Current Year and Prior Year, the Company calculated diluted loss per share using basic weighted-average shares outstanding for both years, as utilizing diluted shares would be anti-dilutive to loss per share.

The computation of basic and diluted loss per share excludes the common stock equivalents of the following potentially dilutive securities because their inclusion would be anti-dilutive:

| | Year Ended December 31, 2022 | Year Ended December 31, 2021 |
|---|---|---|
| Stock options | 5,614,310 | 5,630,970 |
| Warrants | 116,065 | 116,065 |
| Total | 5,730,375 | 5,747,035 |

## 9. Commitments and Contingencies

***Leases***

The Company has an operating lease for its corporate offices and operations facility, as well as certain equipment with a term of 12 months or less. The Company is currently not a party to any finance leases.

The Company's real estate leases have remaining lease terms between approximately 5 to 7 years. As of December 31, 2022, the weighted average remaining lease term was 5.0 years and the weighted average discount rate was 6.25%.

The Company leases office space under an operating lease agreement related to the Company’s main headquarters located in New York City. This lease commenced on March 1, 2016 and expires on October 30, 2027. This lease requires the Company to pay additional rents related to increases in certain taxes and other costs on the property.

The Company also has an operating lease for its former retail store location in Westchester, New York, which was closed in the Current Year. This lease shall expire on January 31, 2029; however, the Company is currently in the process of negotiating the termination of this lease. The Company recorded an impairment charge of $0.7 million to fully impair the remaining balance of the right-of-use asset for this lease in the Prior Year.

The Company had an operating lease for its former corporate offices and operations facility, which was subleased to a third-party subtenant through February 27, 2022, and the Company's lease of this office space expired by its terms on February 28, 2022.

For the years ended December 31, 2022 and 2021, total lease expense included in selling, general and administrative expenses on the Company's consolidated statements of operations was approximately $1.6 million and $1.7 million, respectively. The Company’s total lease costs for the years ended December 31, 2022 and 2021 were comprised of the following:

| ($ in thousands) | 2022 | 2021 |
|---|---|---|
| Operating lease cost | $ 1,474 | $ 2,047 |
| Short-term lease cost | 55 | 68 |
| Variable lease cost | 217 | 178 |
| Sublease income | (104) | (622) |
| Total lease cost | $ 1,642 | $ 1,671 |

Cash paid for amounts included in the measurement of operating lease liabilities was $1.7 million and $2.0 million in the Current Year and Prior Year, respectively. Cash received from subleasing was $0.1 million and $0.7 million in the Current Year and Prior Year, respectively.

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As of December 31, 2022, the maturities of lease liabilities were as follows:

| ($ in thousands) | | |
|---|---|---|
| 2023 | $ | 1,678 |
| 2024 | | 1,711 |
| 2025 | | 1,711 |
| 2026 | | 1,711 |
| 2027 | | 1,452 |
| Thereafter (through 2028) | | 158 |
| Total lease payments | | 8,421 |
| Less: Discount | | 1,206 |
| Present value of lease liabilities | | 7,215 |
| Current portion of lease liabilities | | 1,376 |
| Non-current portion of lease liabilities | $ | 5,839 |

***Employment Agreements***

The Company has employment contracts with certain executives and key employees. The future minimum payments under these contracts are as follows:

| ($ in thousands)<br>Year Ended December 31, | | Employment Contract Payments |
|---|---|---|
| 2023 | $ | 4,313 |
| 2024 | | 2,150 |
| 2025 | | 2,150 |
| 2026 | | 2,150 |
| 2027 | | 2,150 |
| Thereafter | | 6,988 |
| Total future minimum employment contract payments | $ | 19,901 |

In addition to the employment contract payments stated above, the Company's employment contracts with certain executives and key employees contain performance-based bonus provisions. These provisions include bonuses based on the Company achieving revenues in excess of established targets and/or on operating results.

Certain of the employment agreements contain severance and/or change in control provisions. Aggregate potential severance compensation amounted to approximately $3.6 million as of December 31, 2022.

***Contingent Obligation – Halston Heritage Earn-Out***

In connection with the February 11, 2019 purchase of the Halston Heritage trademarks from the H Company IP, LLC ("HIP"), the Company agreed to pay HIP additional consideration (the "Halston Heritage Earn-Out") of up to an aggregate of $6.0 million, based on royalties earned from 2019 through December 31, 2022. This additional consideration would have been payable in shares of common stock of the Company. The Halston Heritage Earn-Out of $0.9 million was recorded as a long-term liability on February 11, 2019 and as of December 31, 2021, based on the difference at the date of acquisition between the fair value of the acquired assets of the Halston Heritage Trademarks and the total consideration paid.

The final royalty target year ended on December 31, 2022, and HIP ultimately did not earn any additional consideration based on the formula set forth in the related asset purchase agreement. As such, during the year ended December 31, 2022, the Company recorded a $0.9 million gain on the reduction of contingent obligations in the accompanying consolidated statement of operations. As of December 31, 2022, there were no amounts remaining under the Halston Heritage Earn-Out.

***Contingent Obligation – Lori Goldstein Earn-Out***

In connection with the April 1, 2021 purchase of the Lori Goldstein trademarks (see Note 3 for additional information), the Company agreed to pay the seller additional cash consideration of up to $12.5 million, based on royalties earned during the six calendar year period commencing in 2021. The Lori Goldstein Earn-Out of $6.6 million is recorded as a liability in the accompanying consolidated balance sheets, based on the difference between the fair value of the acquired assets of the Lori Goldstein brand and the total consideration paid, in accordance with the guidance in ASC Subtopic 805-50. Based on the performance of the Lori Goldstein brand through December 31, 2022, approximately $0.2 million of additional consideration has been earned and is payable to the Seller in 2023. At December 31, 2022, $0.2 million of the balance is recorded as a current liability and $6.4 million is recorded as a long-term liability; at December 31, 2021, the entire balance was recorded as a long-term liability.

***Contingent Obligation – Isaac Mizrahi Transaction***

In connection with the May 31, 2022 transaction related to the sale of a majority interest in the Isaac Mizrahi Brand (see Note 3 for additional information), the Company has agreed with WHP that, in the event that IM Topco receives less than $13.3 million in aggregate royalties for any four consecutive calendar quarters over a three-year period ending on May 31, 2025, WHP will be entitled to receive from the Company up to $16 million, less all amounts of net cash flow distributed to WHP on an accumulated basis, as an adjustment to the purchase price previously paid by WHP. Such amount would be payable by the Company in either cash or equity interests in IM Topco held by the Company. No amount has been recorded in the accompanying consolidated balance sheets related to this contingent obligation, and management believes the likelihood of any such payment is remote. Based on IM Topco's earnings from May 31, 2022 through December 31, 2022 and the applicable distribution provisions, WHP earned $4.32 million in cash flow, which reduces the potential purchase price adjustment to $11.68 million.

***Legal Proceedings***

From time to time, the Company becomes involved in legal claims and litigation in the ordinary course of business. In the opinion of management, based on consultations with legal counsel, the disposition of litigation currently pending against the Company is unlikely to have, individually or in the aggregate, a materially adverse effect on the Company's business, financial position, results of operations, or cash flows. The Company routinely assesses all its litigation and threatened litigation as to the probability of ultimately incurring a liability, and records its best estimate of the ultimate loss in situations where it assesses the likelihood of loss as probable.

***Other Matters***

On November 22, 2022, the Company received a letter from the Listing Qualifications Department of The Nasdaq Stock Market ("Nasdaq") notifying the Company that the minimum bid price per share for its common stock fell below $1.00 for a period of 30 consecutive business days. Therefore, the Company did not meet the minimum bid price requirement set forth in the Nasdaq Listing Rules.

The letters also state that pursuant to Nasdaq Listing Rules 5810(c)(3)(A), the Company will be provided 180 calendar days to regain compliance with the minimum bid price requirement, or until May 22, 2022.

In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company can regain compliance if, at any time during the Tolling Period or such 180-day period, the closing bid price of the Company's common stock is at least $1.00 for a minimum period of 10 consecutive business days. If by May 22, 2023, the Company does not regain compliance with the Nasdaq Listing Rules, the Company may be eligible for additional time to regain compliance pursuant to Nasdaq Listing

Rule 5810(c)(3)(A)(ii). To qualify, the Company would need to submit a transfer application and a $5,000 application fee. The Company would also need to provide written notice to Nasdaq of its intention to cure the minimum bid price deficiency during the second compliance period by effecting a reverse stock split, if necessary. As part of its review process, the Nasdaq staff will make a determination of whether it believes the Company will be able to cure this deficiency. Should the Nasdaq staff conclude that the Company will not be able to cure the deficiency, or should the Company determine not to submit a transfer application or make the required representation, Nasdaq will provide notice that the Company's shares of common stock will be subject to delisting.

If the Company does not regain compliance within the allotted compliance period, including any extensions that may be granted by Nasdaq, Nasdaq will provide notice that the Company's shares of common stock will be subject to delisting from the Nasdaq Global Market. At such time, the Company may appeal the delisting determination to a hearings panel.

The Company intends to monitor its closing bid price and the market value of its publicly held common stock between now and May 22, 2023, and will consider available options to resolve the Company's noncompliance with the minimum bid price requirement, as may be necessary. There can be no assurance that the Company will be able to regain compliance with the minimum bid price requirement or will otherwise be in compliance with other Nasdaq listing criteria.

***Coronavirus Pandemic***

In March 2020, the World Health Organization declared the outbreak of a novel coronavirus disease ("COVID-19") as a pandemic, which continues to circulate throughout the U.S. and the world. The COVID-19 pandemic (including actions taken by national, state, and local governments in response to COVID-19) has negatively impacted the U.S. and global economy, disrupted consumer spending and global supply chains, and created significant volatility and disruption of financial markets.

COVID-19 has had, and continues to have, a significant negative impact on the Company's business. The initial onset of the pandemic in 2020 resulted in a sudden decrease in sales for many of the Company's products, from which the Company has yet to fully recover. Additionally, COVID-19 has also impacted, and continues to impact, the Company's supply chain partners, including third party manufacturers, logistics providers, and other vendors, as well as the supply chains of its licensees. These supply chains have experienced, and may continue to experience in the future, disruptions as a result of closed factories, factories operating with a reduced workforce, or other logistics constraints, including vessel, container and other transportation shortages, labor shortages, and port congestion.

Due to the ongoing COVID-19 pandemic, there is significant uncertainty surrounding the Company's future results of operations and cash flows. Continued impacts of the pandemic could materially adversely affect the Company's near-term and long-term revenues, earnings, liquidity, and cash flows.

**10. Income Taxes**

The Company accounts for income taxes in accordance with ASC Topic 740. Deferred tax assets and liabilities are determined based on differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is established when necessary to reduce deferred tax assets to the amount expected to be realized. In determining the need for a valuation allowance, management reviews both positive and negative evidence pursuant to the requirements of ASC Topic 740, including current and historical results of operations, future income projections, and the overall prospects of the Company's business.

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The income tax provision (benefit) for federal and state and local income taxes in the consolidated statements of operations consists of the following:

| ($ in thousands) | Years Ended December 31, 2022 | 2021 |
|---|---|---|
| **Current:** | | |
| Federal | $ 300 | $ — |
| State and local | 234 | 86 |
| Total current | 534 | 86 |
| | | |
| **Deferred:** | | |
| Federal | (509) | (2,376) |
| State and local | (456) | (816) |
| Total deferred | (965) | (3,192) |
| Total benefit | $ (431) | $ (3,106) |

The reconciliation of income tax benefit computed at the federal and state and local statutory rates to the Company's loss before taxes is as follows:

| | Years Ended December 31, 2022 | 2021 |
|---|---|---|
| U.S. statutory federal rate | 21.00 % | 21.00 % |
| State and local rate, net of federal tax benefit | 6.10 | 4.64 |
| Stock compensation | (6.14) | (5.56) |
| Excess compensation deduction | (5.32) | (0.68) |
| Federal true-ups | (5.09) | (0.10) |
| Life insurance | (0.52) | (0.10) |
| Change in tax rate | — | 0.06 |
| Other permanent differences | — | (0.01) |
| Income tax benefit | 10.03 % | 19.25 % |

The significant components of net deferred tax assets (liabilities) of the Company consist of the following:

| ($ in thousands) | December 31, 2022 | 2021 |
|---|---|---|
| **Deferred tax assets** | | |
| Stock-based compensation | $ 712 | $ 1,274 |
| Federal, state and local net operating loss carryforwards | 3,175 | 6,684 |
| Accrued compensation and other accrued expenses | 748 | 728 |
| Allowance for doubtful accounts | — | 309 |
| Basis difference arising from discounted note payable | 11 | 11 |
| Foreign tax credit | — | 219 |
| Charitable contribution carryover | — | 77 |
| Property and equipment | 497 | 488 |
| Interest expense | — | 602 |
| Total deferred tax assets | 5,143 | 10,392 |
| | | |
| **Deferred tax liabilities** | | |
| Basis difference arising from intangible assets of acquisition | (4,036) | (10,251) |
| Total deferred tax liabilities | (4,036) | (10,251) |
| | | |
| Net deferred tax assets | $ 1,107 | $ 141 |

As of December 31, 2022 and 2021, the Company had approximately $10.9 million and $20.8 million, respectively, of federal net operating loss carryforwards ("NOLs") available to offset future taxable income. The NOL as of December 31, 2017 of $0.3 million has an expiration period through 2037. The NOL generated during tax years beginning after December 31, 2017 of $10.9 million has an indefinite life and does not expire.

As of December 31, 2022 and 2021, management does not believe the Company has any material uncertain tax positions that would require it to measure and reflect the potential lack of sustainability of a position on audit in its consolidated financial statements. The Company will continue to evaluate its uncertain tax positions in future periods to determine if measurement and recognition in its consolidated financial statements is necessary. The Company does not believe there will be any material changes in its unrecognized tax positions over the next year.

## 11. Related Party Transactions

***Isaac Mizrahi***

On February 24, 2020, the Company entered into an employment agreement with Isaac Mizrahi, a principal stockholder of the Company, for Mr. Mizrahi to continue to serve as Chief Design Officer of the Isaac Mizrahi Brand. This employment agreement remained in effect through May 31, 2022. On May 31, 2022, this agreement was transferred to IM Topco as part of the transaction in which the Company sold a majority interest in the Isaac Mizrahi Brand trademarks to a third party (see Note 3 for details).

The employment agreement provided Mr. Mizrahi with a base salary of $1.8 million, $2.0 million, and $2.1 million per annum for 2020, 2021, and 2022, respectively. Mr. Mizrahi was also eligible to receive an annual cash bonus (the “Bonus”) up to an amount equal to $2.5 million less base salary for 2020 and $3.0 million less base salary for 2021 and 2022. The Bonus consisted of the DRT Revenue, Bonus, the Brick-and-Mortar Bonus, the Endorsement Bonus and the Monday Bonus, if any, as determined in accordance with the below:

- “DRT Bonus” means for any calendar year an amount equal to 10% of the aggregate net revenue related to sales of Isaac Mizrahi Brand products through direct response television. The DRT Revenue Bonus shall be reduced by the amount of the Monday Bonus.

- “Brick-and-Mortar Bonus” means for any calendar year an amount equal to 10% of the net revenues from sales of products under the Isaac Mizrahi Brand, excluding DRT revenue and endorsement revenues.

- “Endorsement Bonus” means for any calendar year an amount equal to 40% of revenues derived from projects undertaken by the Company with one or more third parties solely for Mr. Mizrahi to endorse the third party’s products through the use of Mr. Mizrahi’s name, likeness, and/or image, and neither the Company nor Mr. Mizrahi provides licensing or design.

- “Monday Bonus” means $10,000 for each appearance by Mr. Mizrahi on Qurate’s QVC channel on Mondays (subject to certain expectations) up to a maximum of 40 such appearances in a calendar year.

On February 24, 2020 the Company entered into a services agreement with Laugh Club, an entity wholly-owned by Mr. Mizrahi, pursuant to which Laugh Club provided services to Mr. Mizrahi necessary for Mr. Mizrahi to perform his services pursuant to the employment agreement. The Company paid Laugh Club an annual fee of $0.72 million for such services. This services agreement remained in effect through May 31, 2022. On May 31, 2022, this agreement was transferred to IM Topco as part of the transaction in which the Company sold a majority interest in the Isaac Mizrahi Brand trademarks to a third party (see Note 3 for details).

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In addition, on May 31, 2022, all 522,500 unvested shares of restricted stock of the Company held by Mr. Mizrahi (for which all stock-based compensation expense had been previously recognized in prior periods) were immediately vested, with 240,000 of such shares being surrendered for cancellation in satisfaction of withholding tax obligations. Also on May 31, 2022, the Company issued 33,557 additional shares of common stock of the Company (valued at $50,000) to Mr. Mizrahi, which vested immediately, and made a $100,000 cash payment to Mr. Mizrahi.

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

On October 1, 2021, the Company dismissed CohnReznick LLP ("CR") as its independent registered public accounting firm. CR's report on the financial statements of the Company as of and for the year ended December 31, 2020 did not contain an adverse opinion or a disclaimer of opinion, nor was it qualified or modified as to uncertainty, audit scope, or accounting principles. In connection with the audit of the financial statements of the Company for the year ended December 31, 2020 and the subsequent interim period through October 1, 2021, there were no disagreements on any matter of accounting principles or practices, financial statement disclosures, or auditing scope or procedures, which disagreements if not resolved to their satisfaction would have caused them to make reference in connection with CR's opinion to the subject matter of the disagreement.

On September 30, 2021, the Audit Committee of the Board of Directors appointed Marcum LLP ("Marcum") as the Company's new independent registered public accounting firm. Prior to September 30, 2021, the Company did not consult with Marcum regarding (1) the application of accounting principles to a specified transactions, (2) the type of audit opinion that might be rendered on the Company's financial statements, (3) written or oral advice was provided that would be an important factor considered by the Company in reaching a decision as to an accounting, auditing, or financial reporting issues, or (4) any matter that was the subject of a disagreement between the Company and its predecessor auditor as described in Item 304(a)(1)(iv) of Regulation S-K or a reportable event as described in Item 304(a)(1)(v) of Regulation S-K.

The Company's Audit Committee of the Board of Directors participated in and approved the decision to change our independent registered public accounting firm.

There were no disagreements with the Company's auditors which would require disclosure under Item 304(b) of Regulation S-K.

**Item 9A. Controls and Procedures**

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in its 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 Chief Executive Officer and Principal Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. Such controls and procedures, by their nature, can provide only reasonable assurance regarding management's control objectives.

Our Chief Executive Officer and Chief Financial Officer evaluated the effectiveness of our disclosure controls and procedures as defined in Rule 13a-15(f) and 15d-15(f) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of December 31, 2022. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2022, to ensure that all information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time specified in SEC rules and forms and is accumulated and communicated to our management, including our principal executive and principal accounting officers to allow timely decisions regarding required disclosure.

**Management's Annual Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed by, or under the supervision of, the chief executive officer and principal financial officer and effected by our board of directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the design and effectiveness of our internal control over financial reporting based on the criteria set forth in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). Based on our evaluation under the framework described above, our management has concluded that our internal control over financial reporting was effective as of December 31, 2022.

This annual report does not include an attestation report of the Company’s independent registered public accounting firm regarding internal control over financial reporting. Management’s report was not subject to attestation requirements by the Company’s independent registered public accounting firm pursuant to rules of the Securities and Exchange Commission that permit the Company to provide only management’s report in this annual report.

**Changes in Internal Control over Financial Reporting**

There was no change in the Company’s internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) during our most recent completed fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.

**Item 9B. Other Information**

None.

**Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections**

Not applicable.

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance**

The following table sets forth the names, ages, and positions of our executive officers and directors as of the date hereof. Executive officers are appointed by our board of directors. Each executive officer holds office until resignation, is removed by the Board, or a successor is elected and qualified. Each director holds office until a successor is elected and qualified or earlier resignation or removal.

| NAME | AGE | POSITION |
|---|---|---|
| Robert W. D’Loren | 65 | Chairman of the Board of Directors and Chief Executive Officer and President |
| James F. Haran | 62 | Chief Financial Officer and Assistant Secretary, and Principal Financial and Accounting Officer |
| Seth Burroughs | 43 | Executive Vice President of Business Development and Treasury and Secretary |
| Mark DiSanto | 61 | Director |
| James Fielding | 58 | Director |
| Michael R. Francis | 60 | Director |
| Howard Liebman | 80 | Director |
| Deborah Weinswig | 52 | Director |

Below are the biographies of each of our officers and directors as of December 31, 2022.

***Robert W. D’Loren*** has been the Chairman of our Board and our Chief Executive Officer and President since September 2011. Mr. D’Loren has been an entrepreneur, innovator, and pioneer of the consumer branded products industry for over 35 years. Mr. D’Loren has spearheaded the Company’s omni-channel platform, connecting the channels of digital, brick-and-mortar, social media, and direct-response television to create a single customer view and brand experience for Xcel’s brands. He served as Chairman and CEO of IPX Capital, LLC and its subsidiaries, a consumer products investment company, from 2009 to 2011. He continues to serve as IPX Capital LLC’s Chairman.

Prior to founding the Company, from June 2006 to July 2008, Mr. D'Loren was a director, President and CEO of NexCen Brands, Inc., a global brand acquisition and management company with holdings that included The Athlete's Foot, Waverly Home, Bill Blass, MaggieMoo's, Marble Slab Creamery, Pretzel Time, Pretzelmaker, Great American Cookies, and The Shoe Box.

From 2002 to 2006, Mr. D'Loren's work among consumer brands continued as President and CEO of UCC Capital Corporation, an intellectual property investment company where he invested in the consumer branded products, media, and entertainment sectors. From 1997 to 2002, Mr. D'Loren founded and acted as President and Chief Operating Officer of CAK Universal Credit Corporation, an intellectual property finance company. Mr. D'Loren's total career debt and equity investments in over 30 entertainment and consumer branded products companies have exceeded $1.0 billion. In 1985, he founded and served as President and CEO of the D'Loren Organization, an investment and restructuring firm responsible for over $2 billion of transactions. Mr. D'Loren has also served as an asset manager for Fosterlane Management, as well as a manager with Deloitte.

Mr. D'Loren has served on the Board of Directors for Iconix Brand Group, Longaberger Company, Business Loan Center, and as a board advisor to The Athletes Foot and Bill Blass, Ltd. He also serves on the board of directors for the Achilles Track Club International. Mr. D'Loren is a Certified Public Accountant and holds an M.S. degree from Columbia University and a B.S. degree from New York University.

***James F. Haran*** has been our Chief Financial Officer since September 2011. Mr. Haran served as CFO of IPX Capital, LLC and its related subsidiaries, from June 2008 to September 2011. Mr. Haran was the Executive Vice President, Capital Markets for NexCen Brands, Inc. from 2006 to May 2008 and Chief Financial Officer and Chief Credit Officer for UCC Capital Corporation, and its predecessor company, CAK Universal Credit Corp., from 1998 to 2006. Prior to joining UCC, Mr. Haran was a partner at Sidney Yoskowitz and Company P.C., a registered diversified certified public accounting firm. During his tenure, which began in 1987, his focus was on real estate and financial services companies. Mr. Haran is a Certified Public Accountant and holds a B.S. degree from State University of New York at Plattsburgh.

***Seth Burroughs*** has been our Executive Vice President of Business Development and Treasury since September 2011. From June 2006 to October 2010, Mr. Burroughs served as Vice President of NexCen Brands, Inc. Prior to his role at NexCen, from 2003 to 2006, Mr. Burroughs served as Director of M&A Advisory and Investor Relations at UCC Capital Corporation, an intellectual property investment company, where he worked on $500 million in acquisitions and $300 million in specialty financing as an advisor to consumer branded products companies in the franchising and apparel industries. From 2001 to 2003, Mr. Burroughs worked as a Senior Financial Analyst at The Pullman Group where he was involved with structuring the first securitizations of music royalties, including the Bowie Bonds, and as a Financial Analyst at Merrill Lynch's private client group. Mr. Burroughs received a B.S. degree in economics from The Wharton School of Business at the University of Pennsylvania.

***Mark DiSanto*** has served as a member of our Board since October 2011. Since 1988, Mr. DiSanto has served as the Chief Executive Officer of Triple Crown Corporation, a regional real estate development and investment company with commercial and residential development projects exceeding 1.5 million square feet. Mr. DiSanto received a degree in business administration from Villanova University's College of Commerce and Finance, a J.D. degree from the University of Toledo College of Law, and an M.S. degree in real estate development from Columbia University.

***James Fielding*** was appointed as a member of our Board in July 2018. He is a 25-year veteran in the consumer retail space, and previously served as the Global Head of Consumer Products for Dreamworks Animation and Awesomeness TV. Prior to that, Mr. Fielding served as the CEO of Claire's Stores Inc., where he oversaw strategic growth and international development for the retail chain's 3,000-plus stores worldwide. From May 2008 to 2012 Mr. Fielding served as the President of Disney Stores Worldwide.

***Michael R. Francis*** has served as a member of our Board since June 2015. Mr. Francis is founder and CEO of Fairview Associates, LLC, a retail and branding consultancy. From February 2012 to December 2015, Mr. Francis served as the Chief Global Brand Officer of DreamWorks Animation SKG, which creates world-class entertainment, including animated feature films, television specials and series, and live-entertainment properties for audiences around the world. During this tenure with DreamWorks, Mr. Francis was responsible for global consumer products, retail, brand strategy, creative design, location-based entertainment, digital, publishing, and franchise development. From November 2010 to June 2011, Mr. Francis served as the President of J.C. Penney Company, Inc., one of the largest department store operators in the United States. Prior to November 2010, Mr. Francis spent more than 26 years with Target Corporation, an American retailing company and the second-largest discount retailer in the United States, in various roles including Executive Vice President and Global Chief Marketing Officer. Mr. Francis has a B.A. degree in international studies from the University of Michigan.

***Howard Liebman*** has served as a member of our Board since October 2011. He was President, Chief Operating Officer and a director of Hobart West Group, a provider of national court reporting and litigation support services, from 2007 until the sale of the business in 2008. Mr. Liebman served as a consultant to Hobart from 2006 to 2007. Mr. Liebman was President, Chief Financial Officer, and a director of Shorewood Packaging Corporation, a multinational manufacturer of high-end value-added paper and paperboard packaging for the entertainment, tobacco, cosmetics and other consumer products markets. Mr. Liebman joined Shorewood in 1994 as Executive Vice President and Chief Financial Officer, and served as its President from 1999 until Shorewood was acquired by International Paper in 2000. Mr. Liebman continued as Executive Vice President of Shorewood until his retirement in 2005. Mr. Liebman is a Certified Public Accountant and was an audit partner with Deloitte and Touche, LLP (and its predecessors) from 1974 to 1994.

***Deborah Weinswig*** was appointed as a member of our Board in January 2018. She is a Managing Director of Funding Global Retail & Technology ("FGRT"), the think tank for the Hong Kong-based Fung Group, since April 2014 where she is responsible for building the team's research capabilities and providing insights into the disruptive technologies that are reshaping today's global retail landscape. Prior to leading FGRT, Weinswig served as Chief Customer Officer for Profitect Inc., a predictive analytics and big data software provider. From March 2002 to October 2013, Ms. Weinswig was employed by Citigroup, Inc., most recently where she was Managing Director and Head of the Global Staples & Consumer Discretionary team at Citi Research. Ms. Weinswig also serves as an e-commerce expert for the International Council of Shopping Centers' Research Task Force and was a founding member of the Oracle Retail Industry Strategy Council. Lastly, she is a member of the Board of Directors of Kiabi (affiliated with the Auchan Group). Ms. Weinswig is a Certified Public Accountant and holds an MBA from the University of Chicago.

**Directors' Qualifications**

In furtherance of our corporate governance principles, each of our directors brings unique qualities and qualifications to our Board. We believe that all of our directors have a reputation for honesty, integrity, and adherence to high ethical standards. They each have demonstrated business acumen, leadership, and an ability to exercise sound judgment, as well as a commitment to serve the Company and our Board. The following descriptions demonstrate the qualifications of each director:

***Robert W. D'Loren*** has extensive experience in and knowledge of the licensing and commercial business industries and financial markets. This knowledge and experience, including his experience as director, president, and chief executive officer of a global brand management company, provide us with valuable insight to formulate and create our acquisition strategy and how to manage and license acquired brands.

***Mark DiSanto*** has considerable experience in building and running businesses and brings his strong business acumen to the Board.

***James Fielding*** brings extensive senior level experience in the consumer retail space, as well as strong relationships in the media and retail industries.

***Michael R. Francis*** brings extensive senior level experience in the media and retail industries, as well as relationships in the media and retail industries.

***Howard Liebman*** brings comprehensive knowledge of accounting, the capital markets, mergers and acquisitions, financial reporting, and financial strategies from his extensive public accounting experience and prior service as Chief Financial Officer of a public company.

***Deborah Weinswig*** brings thought leadership in the retail and licensing industries, particularly in the areas of sourcing and logistics.

**Key Employees**

***Lori Goldstein*** is Chief Creative Officer and Spokeswoman for the Lori Goldstein Brands. As Chief Creative Officer, she is responsible for providing design input and guidance to Xcel Brands for all brands under her name. Ms. Goldstein's work has covered a vast range, from her collaborations with photographers Annie Leibovitz at Vanity Fair to Steven Meisel at Vogue Italia, to her styling for designers Donatella Versace and Vera Wang. Ms. Goldstein stepped in front of the camera in 2009 when she launched LOGO by Lori Goldstein, her exclusive collection for QVC. She is the author of "Style Is Instinct," which was published in 2013. In 2014, Ms. Goldstein's brand was awarded "Apparel Product Concept of the Year" and she was named QVC Ambassador.

**Employment Agreements with Executives**

***Robert W. D'Loren***

On February 28, 2019, and effective as of January 1, 2019, the Company entered into a three-year employment agreement with Robert W. D'Loren for him to continue to serve as Chief Executive Officer of the Company, referred to as the D'Loren Employment Agreement. Following the initial three-year term, the agreement automatically renewed for a one-year term in 2022 and again in 2023, and will be automatically renewed for one-year terms thereafter unless either party gives written notice of intent to terminate at least 90 days prior to the termination of the then current term. Pursuant to the D'Loren Employment Agreement, Mr. D'Loren's annual base salary is $0.89 million. The Company's board of directors or the compensation committee may approve increases (but not decreases) from time to time. Following the initial three-year term, Mr. D'Loren's base salary will be reviewed at least annually. Mr. D'Loren receives an allowance for an automobile appropriate for his level of position and the Company pays (in addition to monthly lease or other payments) all of the related expenses for gasoline, insurance, maintenance, repairs, or any other costs with Mr. D'Loren's automobile.

*Bonus*

Mr. D'Loren will be eligible to receive an annual cash bonus in an amount equal to (i) 2.5% of all income generated from the sales of the Company's products and by the trademarks and other intellectual property owned, operated or managed by us ("IP Income"), in excess of $8.0 million earned and received by us in such fiscal year: provided that any IP income generated through net sales shall be multiplied by (x) 7% in the case of net sales from wholesale sales, and private label sales and (y) 3% in the case of net sales from e-commerce sales through the Company's web sites and (ii) 5% of the Company's adjusted EBITDA (as defined in the D'Loren Employment Agreement) for such fiscal year. Mr. D'Loren shall have the right to elect to receive the cash bonus through the issuance of shares of the Company's common stock.

Pursuant to the D'Loren Agreement, Mr. D'Loren was granted an option to purchase up to 2,578,947 shares of the Company's common stock at an exercise price of $1.72 per share. The option is exercisable until February 28, 2029 and shall vest, subject to Mr. D'Loren remaining employed by the Company and based upon the Company's common stock achieving the following target prices:

| Target Prices | Number of Option Shares Vesting |
|---|---|
| $3.00 | 736,842 |
| $5.00 | 626,316 |
| $7.00 | 515,789 |
| $9.00 | 405,263 |
| $11.00 | 294,737 |

*Severance*

If Mr. D'Loren's employment is terminated by the Company without cause, or if Mr. D'Loren resigns with good reason, or if the Company fails to renew the term, then Mr. D'Loren will be entitled to receive his unpaid base salary and cash bonuses through the termination date and a lump sum payment equal to the base salary in effect on the termination date for the longer of two years from the termination date or the remainder of the then-current term. Additionally, Mr. D'Loren would be entitled to two hundred times the average annual cash bonuses paid in the preceding 12 months. Mr. D'Loren would also be entitled to continue to participate in the Company's group medical plan or receive reimbursement for premiums paid for other medical insurance in an amount not to exceed the cost to participate in the Company's plan, subject to certain conditions, for a period of 36 months from the termination date.

*Change of Control*

In the event Mr. D'Loren's employment is terminated within 12 months following a change of control by the Company without cause or by Mr. D'Loren with good reason, he would be entitled to a lump sum payment equal to two times (i) his base salary in effect on the termination date for the longer of two years from the termination date or the remainder of the then-current term and (ii) two times the average annual cash bonuses paid in the preceding 12 months, minus $100. "Change of control," as defined in Mr. D'Loren's employment agreement, means a merger or consolidation to which we are a party, a sale, lease or other transfer, exclusive license or other disposition of all or substantially all of our assets, a sale or transfer by our stockholders of voting control, in a single transaction or a series of transactions or, if during any twelve consecutive month period, the individuals who at the beginning of such period, constitute the board of directors of the Company (the "Incumbent Directors") cease (other than due to death) to constitute a majority of the members of the board at the end of such period; provided that directors elected by or on the recommendation of a majority of the directors who so qualify as Incumbent Directors shall be deemed to be Incumbent Directors. Upon a change of control, notwithstanding the vesting and exercisability schedule in any stock option or other grant agreement between Mr. D'Loren and the Company, all unvested stock options, shares of restricted stock and other equity awards granted by the Company to Mr. D'Loren pursuant to any such agreement shall immediately vest, and all such stock options shall become exercisable and remain exercisable for the lesser of 180 days after the date the change of control occurs or the remaining term of the applicable option.

*Non-Competition and Non-Solicitation*

During the term of his employment by the Company and for a one-year period after the termination of such employment (unless Mr. D'Loren's employment was terminated without cause or was terminated by him for good reason, in which case only for his term of employment and a six-month period after the termination of such employment), Mr. D'Loren may not permit his name to be used by or participate in any business or enterprise (other than the mere passive ownership of not more than 5% of the outstanding stock of any class of a publicly held corporation whose stock is traded on a national securities exchange or in the over-the-counter market) that engages or proposes to engage in our business in the United States, its territories and possessions and any foreign country in which we do business as of the date of termination of his employment. Also, during his employment and for a one-year period after the termination of such employment, Mr. D'Loren may not, directly or indirectly, solicit, induce or attempt to induce any customer, supplier, licensee, or other business relation of the Company or any of its subsidiaries to cease doing business with the Company or any of its subsidiaries; or solicit, induce or attempt to induce any person who is, or was during the then-most recent 12-month period, a corporate officer, general manager, or other employee of the Company or any of its subsidiaries, to terminate such employee's employment with the Company or any of its subsidiaries; or hire any such person unless such person's employment was terminated by the Company or any of its subsidiaries; or in any way interfere with the relationship between any such customer, supplier, licensee, employee, or business relation and the Company or any of its subsidiaries.

***James Haran***

On February 28, 2019, and effective as of January 1, 2019, the Company entered into a two-year employment agreement with James Haran for him to continue to serve as the Company's Chief Financial Officer, referred to as the Haran Employment Agreement. Following the initial two-year term, the agreement automatically renewed for successive one-year terms in 2021, 2022, and 2023, and will be automatically renewed for one-year terms thereafter unless either party gives written notice of intent to terminate at least 30 days prior to the expiration of the then current term. Pursuant to the Haran Employment Agreement, Mr. Haran's annual base salary is $0.37 million per annum. The board of directors or the compensation committee may approve increases (but not decreases) from time to time. Following the initial two-year term, the base salary shall be reviewed at least annually. In addition, Mr. Haran receives a car allowance of $1,500 per month.

*Bonus*

Mr. Haran will be eligible to receive a performance cash bonus in an amount equal to (i) 0.23% of all IP Income in excess of $12.0 million earned and received by us in such fiscal year; provided that any IP income generated through net sales shall be multiplied by (x) 7% in the case of net sales from wholesale sales, and private label sales and (y) 3% in the case of net sales from e-commerce sales through the Company's web sites plus (ii) 0.375% of the Company's adjusted EBITDA (as defined in the Haran Employment Agreement) for such fiscal year. Notwithstanding the foregoing, for (i) 2019, $0.04 million of Mr. Haran's bonus was guaranteed, of which $0.01 million was paid to Mr. Haran upon execution of the Haran Employment Agreement and $0.03 million was paid prior to June 30, 2019, and (ii) for 2020, $0.03 million of Mr. Haran's bonus was guaranteed and paid prior to June 30, 2020, in each case.

Pursuant to the Haran Employment Agreement, Mr. Haran was granted an option to purchase up to 552,632 shares of the Company's common stock at an exercise price of $1.72 per share. The option is exercisable until February 28, 2029 and shall vest, subject to Mr. Haran remaining employed with the Company and based upon the Company's common stock achieving target prices as follows:

| Target Prices | Number of Option Shares Vesting |
|---|---|
| $3.00 | 157,895 |
| $5.00 | 134,211 |
| $7.00 | 110,526 |
| $9.00 | 86,842 |
| $11.00 | 63,158 |

*Severance*

If Mr. Haran's employment is terminated by the Company without cause, or if Mr. Haran resigns with good reason, or if the Company fails to renew the term, then Mr. Haran will be entitled to receive his unpaid base salary and cash bonuses through the termination date and a lump sum payment equal to his base salary in effect on the termination date for 12 months. Mr. Haran would also be entitled to continue to participate in our group medical plan, subject to certain conditions, for a period of 12 months from the termination date.

*Change of Control*

In the event Mr. Haran's employment is terminated within 12 months following a change of control by the Company without cause or by Mr. Haran with good reason, Mr. Haran would be entitled to a lump sum payment equal to his base salary in effect on the termination date for 12 months following such termination. "Change of control," as defined in Mr. Haran's employment agreement, means a merger or consolidation to which we are a party, a sale, lease or other transfer, exclusive license or other disposition of all or substantially all of our assets, or a sale or transfer by our stockholders of voting control, in a single transaction or a series of transactions. Upon a change of control, notwithstanding the vesting and exercisability schedule in any stock option or other grant agreement between Mr. Haran and us, all unvested stock options, shares of restricted stock and other equity awards granted by us to Mr. Haran pursuant to any such agreement shall immediately vest, and all such stock options shall become exercisable and remain exercisable for the lesser of 180 days after the date the change of control occurs or the remaining term of the applicable option.

*Non-Competition and Non-Solicitation*

During the term of his employment by the Company and for a one-year period after the termination of such employment, Mr. Haran may not permit his name to be used by or participate in any business or enterprise (other than the mere passive ownership of not more than 5% of the outstanding stock of any class of a publicly held corporation whose stock is traded on a national securities exchange or in the over-the-counter market) that engages or proposes to engage in our business in the United States, its territories and possessions and any foreign country in which we do business as of the date of termination of such employment. Also, during his employment and for a one-year period after the termination of his employment, Mr. Haran may not, directly or indirectly, solicit, induce or attempt to induce any customer, supplier, licensee, or other business relation of the Company or any of its subsidiaries to cease doing business with the Company or any of its subsidiaries; or solicit, induce or attempt to induce any person who is, or was during the then-most recent 12-month period, a corporate officer, general manager or other employee of the Company or any of its subsidiaries, to terminate such employee's employment with the Company or any of its subsidiaries; or hire any such person unless such person's employment was terminated by the Company or any of its subsidiaries; or in any way interfere with the relationship between any such customer, supplier, licensee, employee or business relation and the Company or any of its subsidiaries.

***Seth Burroughs***

On February 28, 2019, and effective as of January 1, 2019, the Company entered into a two-year employment agreement with Seth Burroughs for him to continue to serve as the Company's Executive Vice President – Business Development and Treasury, referred to as the Burroughs Employment Agreement. Following the initial two-year term, the agreement automatically renewed for successive one-year terms in 2021, 2022, and 2023, and will be automatically renewed for one-year terms thereafter unless either party gives written notice of intent to terminate at least 30 days prior to the expiration of the then current term. Pursuant to the Burroughs Employment Agreement, Mr. Burroughs' annual base salary is $0.34 million per annum. The board of directors or the compensation committee may approve increases (but not decreases) from time to time. Following the initial two-year term, the base salary shall be reviewed at least annually.

*Bonus*

Mr. Burroughs will be eligible to receive a performance cash bonus in an amount equal to (i) 0.23% of all IP Income in excess of $12.0 million earned and received by us in such fiscal year; provided that any IP income generated through net sales shall be multiplied by (x) 7% in the case of net sales from wholesale sales, and private label sales and (y) 3% in the case of net sales from e-commerce sales through the Company's web sites plus (ii) 0.375% of the Company's adjusted EBITDA (as defined in the Haran Employment Agreement) for such fiscal year.

Pursuant to the Burroughs Employment Agreement, Mr. Burroughs was granted an option to purchase up to 368,421 shares of the Company's common stock at an exercise price of $1.72 per share. The option is exercisable until February 28, 2029 and shall vest, subject to Mr. Burroughs remaining employed with the Company and based upon the Company's common stock achieving target prices as follows:

| Target Prices | Number of Option Shares Vesting |
|---|---|
| $3.00 | 105,263 |
| $5.00 | 89,474 |
| $7.00 | 73,684 |
| $9.00 | 57,895 |
| $11.00 | 42,105 |

*Severance*

If Mr. Burrough's employment is terminated by the Company without cause, or if Mr. Burroughs resigns with good reason, or if the Company fails to renew the term, then Mr. Burroughs will be entitled to receive his unpaid base salary and cash bonuses through the termination date and a lump sum payment equal to his base salary in effect on the termination date for 12 months. Mr. Burroughs would also be entitled to continue to participate in our group medical plan, subject to certain conditions, for a period of 12 months from the termination date.

*Change of Control*

In the event Mr. Burroughs' employment is terminated within 12 months following a change of control by the Company without cause or by Mr. Burroughs with good reason, Mr. Burroughs would be entitled to a lump sum payment equal to his base salary in effect on the termination date for 12 months following such termination. "Change of control," as defined in Mr. Burroughs' employment agreement, means a merger or consolidation to which we are a party, a sale, lease or other transfer, exclusive license or other disposition of all or substantially all of our assets, or a sale or transfer by our stockholders of voting control, in a single transaction or a series of transactions. Upon a change of control, notwithstanding the vesting and exercisability schedule in any stock option or other grant agreement between Mr. Burroughs and us, all unvested stock options, shares of restricted stock and other equity awards granted by us to Mr. Burroughs pursuant to any such agreement shall immediately vest, and all such stock options shall become exercisable and remain exercisable for the lesser of 180 days after the date the change of control occurs or the remaining term of the applicable option.

*Non-Competition and Non-Solicitation*

During the term of his employment by the Company and for a one-year period after the termination of such employment, Mr. Burroughs may not permit his name to be used by or participate in any business or enterprise (other than the mere passive ownership of not more than 5% of the outstanding stock of any class of a publicly held corporation whose stock is traded on a national securities exchange or in the over-the-counter market) that engages or proposes to engage in our business in the United States, its territories and possessions and any foreign country in which we do business as of the date of termination of such employment. Also, during his employment and for a one-year period after the termination of his employment, Mr. Burroughs may not, directly or indirectly, solicit, induce or attempt to induce any customer, supplier, licensee, or other business relation of the Company or any of its subsidiaries to cease doing business with the Company or any of its subsidiaries; or solicit, induce or attempt to induce any person who is, or was during the then-most recent 12-month period, a corporate officer, general manager or other employee of the Company or any of its subsidiaries, to terminate such employee's employment with the Company or any of its subsidiaries; or hire any such person unless such person's employment was terminated by the Company or any of its subsidiaries; or in any way interfere with the relationship between any such customer, supplier, licensee, employee or business relation and the Company or any of its subsidiaries.

**Family Relationships**

There are no family relationships among our directors or officers.

**Independence of the Board of Directors**

The board has determined that Messrs. Howard Liebman, Mark DiSanto, James Fielding, Michael R. Francis, and Ms. Deborah Weinswig meet the director independence requirements under the applicable listing rule of the NASDAQ Stock Market LLC ("NASDAQ"). Each current member of the Audit Committee, Compensation Committee, and Nominating Committee is independent and meets the applicable rules and regulations regarding independence for such committee, including those set forth in the applicable NASDAQ rules, and each member is free of any relationship that would interfere with his individual exercise of independent judgment.

**Section 16(a) Beneficial Ownership Reporting Compliance**

To our knowledge, based solely on a review of Forms 3 and 4 and any amendments thereto furnished to our Company pursuant to Rule 16a-3(e) under the Securities Exchange Act of 1934, or representations that no Forms 5 were required, all Section 16(a) filing requirements applicable to our officers, directors, and beneficial owners of more than 10% of our equity securities were timely filed.

**Code of Ethics**

On September 29, 2011, we adopted a code of ethics that applies to our officers, employees, and directors, including our Chief Executive Officer, Chief Financial Officer and senior executives. Our Code of Ethics can be accessed on our website, www.xcelbrands.com.

**Audit Committee and Audit Committee Financial Expert**

Our board of directors has appointed an Audit Committee which consists of Mr. Liebman, Mr. DiSanto, and Ms. Weinswig. Each of such persons has been determined to be an "independent director" under the applicable NASDAQ and SEC rules, which is the independence standard that was adopted by our board of directors. The board of directors has determined that Mr. Liebman meets the requirements to serve as the Audit Committee Financial Expert by our board of directors. The Audit Committee operates under a written charter adopted by our board of directors. The Audit Committee assists the board of directors by providing oversight of our accounting and financial reporting processes, appoints the independent registered public accounting firm, reviews with the registered independent registered public accounting firm the scope and results of the audit engagement, approves professional services provided by the independent registered public accounting firm, reviews the independence of the independent registered public accounting firm, considers the range of audit and non-audit fees and reviews the adequacy of internal accounting controls.

**Compensation Committee**

Our board of directors has appointed a Compensation Committee consisting of Messrs. DiSanto and Fielding. Each of such persons has been determined to be an "independent director" under the applicable NASDAQ rules. Our board of directors has adopted a written Compensation Committee Charter that sets forth the committee's responsibilities. The committee is responsible for determining all forms of compensation for our executive officers, and establishing and maintaining executive compensation practices designed to enhance long-term stockholder value.

**Nominating Committee**

Our board of directors has appointed a Nominating Committee consisting of Messrs. DiSanto and Liebman. Each of such persons has been determined to be an "independent director" under the applicable NASDAQ rules. Our board of directors has adopted a written Nominating Committee Charter that sets forth the committee's responsibilities.

## Item 11. Executive Compensation

The following table sets forth information regarding all cash and non-cash compensation earned, during the years ended December 31, 2022 and 2021, by our principal executive officer and our two other most highly compensated executive officers, which we refer to collectively as the named executive officers, for services in all capacities to the Company:

**Summary Compensation Table**

| Name | Title | Year | Salary (1) | Bonus (2) | Awards (3) | All Other Compensation | Total |
|---|---|---|---|---|---|---|---|
| Robert W. D'Loren | CEO and Chairman | 2022 | $ 888,500 | $ 863,534 | $ 280,601 | $ 10,698 | $ 2,043,333 |
| | | 2021 | $ 888,500 | $ 382,640 | $ 282,640 | $ — | $ 1,553,780 |
| James F. Haran | CFO | 2022 | $ 366,000 | $ 139,672 | $ — | $ 3,332 | $ 509,004 |
| | | 2021 | $ 366,000 | $ 39,310 | $ — | $ — | $ 405,310 |
| Seth Burroughs | EVP - Business Development and Treasury | 2022 | $ 340,600 | $ 154,672 | $ — | $ — | $ 495,272 |
| | | 2021 | $ 340,600 | $ 63,310 | $ — | $ — | $ 403,910 |

(1) Robert W. D'Loren's salary amount for 2022 includes a voluntary temporary deferral of salary of $178,265, which was paid to Mr. D'Loren in 2023.

(2) Bonuses in 2021 include amounts paid in accordance with the executives' respective employment agreements (see "Employment Agreements with Executives" in Item 10). Bonuses in 2022 include (i) amounts paid in accordance with the executives' respective employment agreements and (ii) amounts awarded by the board of directors as transaction bonuses related to the May 2022 sale of a majority interest in the Isaac Mizrahi brand.

(3) The amounts shown represent the grant date fair value of fully-vested common stock awards issued as payment for performance bonuses earned in the prior year.

**Outstanding Equity Awards as of December 31, 2022**

| | | Options and Warrant Awards | | | | Stock Awards | |
|---|---|---|---|---|---|---|---|
| Name | Title | Number of Securities Underlying Unexercised Options & Warrants, Exercisable | Number of Securities Underlying Unexercised Options & Warrants, Unexercisable | Exercise Price | Option or Warrant Expiration Date | Number of Shares of Stock that Have Not Vested | Market Value of Shares of Stock that Have Not Vested |
| Robert W. D'Loren | CEO, Chairman | — | 2,578,947 (1) | $ 1.72 | 2/28/2029 | — | $ — |
| James F. Haran | CFO | — | 552,632 (1) | $ 1.72 | 2/28/2029 | — | $ — |
| Seth Burroughs | EVP - Bus. Development & Treasury | — | 368,421 (1) | $ 1.72 | 2/28/2029 | — | $ — |

(1) These options shall become exercisable based upon the Company's common stock achieving specified target prices as outlined in the executive's employment agreement, and expire on February 28, 2029. See "Employment Agreements with Executives" in Item 10.

### Director Compensation

We pay our non-employee directors $3,000 for each board of directors and committee meeting attended, up to a maximum of $12,000 per year for board of directors' meetings and up to a maximum of $12,000 per year for committee meetings, except that the chairman of each committee receives $4,000 for each such committee meeting attended, up to a maximum of $16,000 per year.

The following table sets forth information with respect to each non-employee director's compensation for the year ended December 31, 2022. The dollar amounts shown for Stock Awards represent the grant date fair value of the restricted stock awards or stock options granted during the fiscal year calculated in accordance with ASC Topic 718.

| Name | Fees Earned or Paid in Cash | Stock Awards | Option Awards | Total |
|---|---|---|---|---|
| Mark DiSanto (1) (2) | $ 21,000 | $ 16,200 | $ 23,536 | $ 60,736 |
| Michael R. Francis (1) (2) | $ 9,000 | $ 16,200 | $ 23,536 | $ 48,736 |
| Howard Liebman (1) (2) | $ 28,000 | $ 16,200 | $ 23,536 | $ 67,736 |
| Deborah Weinswig (1) (2) | $ 21,000 | $ 16,200 | $ 23,536 | $ 60,736 |
| James Fielding (1) (2) | $ 12,000 | $ 16,200 | $ 23,536 | $ 51,736 |

(1) On April 20, 2022, each non-employee directory was granted 10,000 shares of restricted stock pursuant to the terms and conditions of the 2021 Equity Incentive Plan. Such shares of restricted stock will vest evenly over two years, whereby 50% shall vest on April 20, 2023 and 50% shall vest on April 20, 2024. Notwithstanding the foregoing, each grantee may extent the vesting date of all or a portion of the restricted shares by six months and, thereafter one or more times may further extend such date with respect to all or a portion of the restricted shares until the next following October 20 or April 20, as the case may be. The grant date fair value of the shares was $1.62 per share.

(2) On April 20, 2022, each non-employee director was granted options to purchase 25,000 shares of stock pursuant to the terms and conditions of the 2021 Equity Incentive Plan. Such options will vest evenly over two years, whereby 50% shall vest on April 20, 2023 and 50% shall vest on April 20, 2024. The exercise price of the options is $1.62 per share.

**2021 Equity Incentive Plan**

Our 2021 Equity Incentive Plan, which we refer to as the 2021 Plan, is designed and utilized to enable the Company to offer its employees, officers, directors, consultants, and others whose past, present, and/or potential contributions to the Company have been, are, or will be important to the success of the Company, an opportunity to acquire a proprietary interest in the Company.

The 2021 Plan provides for the grant of stock options, restricted stock, restricted stock units, performance awards, or cash awards. The stock options may be incentive stock options or non-qualified stock options. A total of 4,000,000 shares of common stock are eligible for issuance under the 2021 Plan. The 2021 Plan may be administered by the board of directors or a committee consisting of two or more members of the board of directors appointed by the board of directors.

Officers and other employees of Xcel or any parent or subsidiary of Xcel who are at the time of the grant of an award employed by us or any parent or subsidiary of Xcel are eligible to be granted options or other awards under the 2021 Plan. In addition, non-qualified stock options and other awards may be granted under the 2021 Plan to any person, including, but not limited to, directors, independent agents, consultants, and attorneys who the board of directors or the committee, as the case may be, believes has contributed or will contribute to our success.

Cash awards may be issued under the 2021 Plan either alone or in addition to or in tandem with other awards granted under the 2021 Plan or other payments made to a participant not under the 2021 Plan. The board or committee, as the case may be, shall determine the eligible persons to whom, and the time or times at which, cash awards will be made, the amount that is subject to the cash award, the circumstances and conditions under which such amount shall be paid, in whole or in part, the time of payment, and all other terms and conditions of the awards.

With respect to incentive stock options granted to an eligible employee owning stock possessing more than 10% of the total combined voting power of all classes of our stock or the stock of a parent or subsidiary of our Company immediately before the grant, such incentive stock option shall not be exercisable more than 5 years from the date of grant. The exercise price of an incentive stock option will not be less than the fair market value of the shares underlying the option on the date the option is granted, provided, however, that the exercise price of an incentive stock option granted to a 10% stockholder may not be less than 110% of such fair market value. The exercise price of a non-qualified stock option may not be less than fair market value of the shares of common stock underlying the option on the date the option is granted.

Restricted stock awards give the recipient the right to receive a specified number of shares of common stock, subject to such terms, conditions and restrictions as the board or the committee, as the case may be, deems appropriate. Restrictions may include limitations on the right to transfer the stock until the expiration of a specified period of time and forfeiture of the stock upon the occurrence of certain events such as the termination of employment prior to expiration of a specified period of time. Restricted stock unit (“RSU”) awards will be settled in cash or shares of common stock, in an amount based on the fair market value of our common stock on the settlement date. The RSUs will be subject to forfeiture and restrictions on transferability as set forth in the 2021 Plan and the applicable award agreement and as may be otherwise determined by the board or the committee. There were no RSUs outstanding as of December 31, 2022.

Certain awards made under the 2021 Plan may be granted so that they qualify as “performance-based compensation” (as this term is used in Internal Revenue Code Section 162(m) and the regulations thereunder) and are exempt from the deduction limitation imposed by Code Section 162(m). Under Internal Revenue Code Section 162(m), our tax deduction may be limited to the extent total compensation paid to the chief executive officer, or any of the four most highly compensated executive officers (other than the chief executive officer) exceeds $1 million in any one tax year. Among other criteria, awards only qualify as performance-based awards if at the time of grant the compensation committee is comprised solely of two or more “outside directors” (as this term is used in Internal Revenue Code Section 162(m) and the regulations thereunder). In addition, we must obtain stockholder approval of material terms of performance goals for such performance-based compensation.

All stock options and certain stock awards, performance awards, and stock units granted under the 2021 Plan, and the compensation attributable to such awards, are intended to (i) qualify as performance-based awards or (ii) be otherwise exempt from the deduction limitation imposed by Internal Revenue Code Section 162(m). No awards may be granted on or after the fifth anniversary of the effective date of the 2021 Plan.

The 2021 Equity Incentive Plan became effective April 19, 2022. Prior to the effectiveness of the 2021 Plan, the Company made awards under our Amended and Restated 2011 Equity Incentive Plan (the "2011 Plan"), the key terms and provisions of which were substantially similar to the 2021 Plan described above, with the major difference being the number of shares of common stock eligible for issuance. Stock-based awards (including options, warrants, and restricted stock) previously granted under our 2011 Plan remain outstanding, and shares of common stock may be issued to satisfy options or warrants previously granted under the 2011 Plan, although no new awards may be granted under the 2011 Plan.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The following table lists, as of April 14, 2023, the number of shares of common stock beneficially owned by (i) each person or entity known to the Company to be the beneficial owner of more than 5% of the outstanding common stock; (ii) each named executive officer and director of the Company, and (iii) all officers and directors as a group. Information relating to beneficial ownership of common stock by our principal stockholders and management is based upon information furnished by each person using "beneficial ownership" concepts under the rules of the Securities and Exchange Commission. Under these rules, a person is deemed to be a beneficial owner of a security if that person has or shares voting power, which includes the power to vote or direct the voting of the security, or investment power, which includes the power to dispose of or direct the disposition of the security. The person is also deemed to be a beneficial owner of any security of which that person has a right to acquire beneficial ownership within 60 days. Under the Securities and Exchange Commission rules, more than one person may be deemed to be a beneficial owner of the same securities, and a person may be deemed to be a beneficial owner of securities as to which he or she may not have any pecuniary beneficial interest. Except as noted below, each person has sole voting and investment power. Unless otherwise indicated, the address for such person is c/o Xcel Brands, Inc., 1333 Broadway, 10th Floor, New York, New York 10018.

The percentages below are calculated based on 19,624,860 shares of common stock issued and outstanding as of April 14, 2023:

| Name and Address | Number of Shares of Common Stock Beneficially Owned | Percent Beneficially Owned |
|---|---|---|
| **Named executive officers and directors:** | | |
| Robert W. D'Loren (1) | 8,124,560 | 41.40 % |
| James F. Haran (2) | 204,018 | 1.04 |
| Seth Burroughs (3) | 310,549 | 1.58 |
| Howard Liebman (4) | 188,665 | * |
| Mark DiSanto (5) | 1,559,176 | 7.90 |
| Michael R. Francis (6) | 231,500 | 1.17 |
| Deborah Weinswig (7) | 140,500 | * |
| James Fielding (8) | 107,500 | * |
| | | |
| **All directors and executive officers as a group (8 persons) (9)** | 10,866,468 | 54.03 |
| | | |
| **5% Shareholders:** | | |
| Isaac Mizrahi (10) | 2,416,882 | 12.26 |
| Hilco Trading, LLC (11) | 1,667,767 | 8.52 |
| 5 Revere Drive, Suite 206, Northbrook, IL 60062 | | |
| Burch Acquisition LLC (12) | 1,000,000 | 5.11 |
| 840 First Avenue, Suite 200, King of Prussia, PA 19406 | | |

* Less than 1%.

(1) Consists of (i) 1,738,990 shares held by Mr. D'Loren, (ii) 607,317 shares owned by Irrevocable Trust of Rose Dempsey (or the Irrevocable Trust) of which Mr. D'Loren and Mr. DiSanto are the trustees and as to which Mr. D'Loren has sole voting and dispositive power, (iii) 1,988,390 shares of common stock held in the name of Isaac Mizrahi, (iv) 1,666,667 shares of common stock held in the name of Hilco Trading, LLC, and (v) 2,123,196 shares of common stock as to which holders thereof granted to Mr. D'Loren irrevocable proxy and attorney-in-fact with respect to the shares. Certain holders or grantees have entered into certain agreements, pursuant to which appoint a person designated by our board of directors as their irrevocable proxy and attorney-in-fact with respect to the shares set forth in clauses (iii), (iv), and (v). Mr. D'Loren does not have any pecuniary interest in these shares described in clauses (iii), (iv), and (v) and disclaims beneficial ownership thereof. Does not include 326,671 shares held by the D'Loren Family Trust (or the Family Trust) of which Mark DiSanto is a trustee and has sole voting and dispositive power. Does not include 2,578,947 options that are not yet exercisable.

(2) Consists of (i) 204,018 shares of common stock. Does not include 552,632 options that are not yet exercisable.

(3) Consists of (i) 310,549 shares of common stock. Does not include 368,421 options that are not yet exercisable.

(4) Consists of (i) 36,165 shares of common stock, (ii) 50,000 restricted shares, and (iii) immediately exercisable options to purchase 102,500 shares.

(5) Consists of (i) 326,671 shares held by the D'Loren Family Trust, of which Mark DiSanto is trustee and has sole voting and dispositive power over the shares held by the D'Loren Family Trust, (ii) 1,027,613 shares held by Mark X. DiSanto Investment Trust, of which Mark DiSanto is trustee and has sole voting and dispositive power over the shares held by the Trust, (iii) 20,000 restricted shares, (iv) 102,500 shares issuable upon exercise of warrants and options that have vested, and (v) 82,392 shares held by other trusts, of which Mark DiSanto is trustee and has sole voting and dispositive power over the shares held by the trusts.

(6) Consists of (i) 109,000 shares of common stock, (ii) 20,000 restricted shares, and (iii) immediately exercisable options to purchase 102,500 shares.

(7) Consists of (i) 38,000 restricted shares and (ii) immediately exercisable options to purchase 102,500 shares.

(8) Consists of (i) 10,000 shares of common stock, (ii) 20,000 restricted shares, and (iii) immediately exercisable options to purchase 77,500 shares.

(9) Includes (i) 4,452,715 shares of common stock, (ii) 148,000 restricted shares, (iii) 487,500 shares issuable upon exercise of options that are currently exercisable, and (iv) 5,778,253 other shares of common stock as to which holders thereof granted to Mr. D'Loren irrevocable proxy and attorney-in-fact with respect to the shares.

(10) Consists of (i) 2,266,882 shares of common stock and (ii) immediately exercisable options to purchase 150,000 shares.

(11) The H Company IP, LLC, or HIP, directly owns 1,000,000 shares of common stock, which we refer to as the H Company Shares. House of Halston, LLC, or HOH, is the parent company of HIP and may be deemed to share beneficial ownership of the H Company Shares by virtue of its ability to direct the business and investment decisions of HIP. The H Investment Company, LLC, or H Investment, in its capacity as the controlling member of HOH, has the ability to direct the investment decisions of HOH, including the power to direct the decisions of HOH regarding the disposition of the H Company Shares; therefore, H Investment may be deemed to beneficially own the H Company Shares. Hilco Brands, LLC, or Hilco Brands, in its capacity as a member of the Board of Managers of H Investment, has the ability to direct the management of H Investment's business, including the power to direct the decisions of H Investment regarding the voting and disposition of the H Company Shares; therefore, Hilco Brands may be deemed to have indirect beneficial ownership of the H Company Shares. Hilco Trading, LLC, or Hilco Trading, is the parent company of Hilco Brands and may be deemed to share beneficial ownership of the H Company Shares by virtue of its ability to direct the business and investment decisions of Hilco Brands. Hilco Trading also directly owns 667,767 shares of our outstanding common stock, which we refer to as the Hilco Shares. By virtue of the relationship described above and its direct ownership of the Hilco Shares, Hilco Trading beneficially owns 1,667,767 shares of our common stock. Jeffrey Bruce Hecktman is the majority owner of Hilco Trading and may be

deemed to share beneficial ownership of the H Company Shares and the Hilco Shares by virtue of his ability to direct the business and investment decisions of Hilco Trading. By virtue of this relationship, Mr. Hecktman may be deemed to have indirect beneficial ownership of 1,667,767 shares of our common stock.

(12) Consists of 1,000,000 shares of common stock.

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

***Isaac Mizrahi***

On February 24, 2020, the Company entered into an employment agreement with Isaac Mizrahi, a principal stockholder of the Company, for Mr. Mizrahi to continue to serve as Chief Design Officer of the Isaac Mizrahi Brand. This employment agreement remained in effect through May 31, 2022. On May 31, 2022, this agreement was transferred to IM Topco as part of the transaction in which the Company sold a majority interest in the Isaac Mizrahi Brand trademarks to a third party.

The employment agreement provided Mr. Mizrahi with a base salary of $1.8 million, $2.0 million, and $2.1 million per annum for 2020, 2021, and 2022, respectively. Mr. Mizrahi was also eligible to receive an annual cash bonus (the "Bonus") up to an amount equal to $2.5 million less base salary for 2020 and $3.0 million less base salary for 2021 and 2022. The Bonus consisted of the DRT Revenue, Bonus, the Brick-and-Mortar Bonus, the Endorsement Bonus and the Monday Bonus, if any, as determined in accordance with the below:

- "DRT Bonus" means for any calendar year an amount equal to 10% of the aggregate net revenue related to sales of Isaac Mizrahi Brand products through direct response television. The DRT Revenue Bonus shall be reduced by the amount of the Monday Bonus.

- "Brick-and-Mortar Bonus" means for any calendar year an amount equal to 10% of the net revenues from sales of products under the Isaac Mizrahi Brand, excluding DRT revenue and endorsement revenues.

- "Endorsement Bonus" means for any calendar year an amount equal to 40% of revenues derived from projects undertaken by the Company with one or more third parties solely for Mr. Mizrahi to endorse the third party's products through the use of Mr. Mizrahi's name, likeness, and/or image, and neither the Company nor Mr. Mizrahi provides licensing or design.

- "Monday Bonus" means $10,000 for each appearance by Mr. Mizrahi on Qurate's QVC channel on Mondays (subject to certain expectations) up to a maximum of 40 such appearances in a calendar year.

On February 24, 2020 the Company entered into a services agreement with Laugh Club, an entity wholly-owned by Mr. Mizrahi, pursuant to which Laugh Club provided services to Mr. Mizrahi necessary for Mr. Mizrahi to perform his services pursuant to the employment agreement. The Company paid Laugh Club an annual fee of $0.72 million for such services. This services agreement remained in effect through May 31, 2022. On May 31, 2022, this agreement was transferred to IM Topco as part of the transaction in which the Company sold a majority interest in the Isaac Mizrahi Brand trademarks to a third party.

In addition, on May 31, 2022, all 522,500 unvested shares of restricted stock of the Company held by Mr. Mizrahi (for which all stock-based compensation expense had been previously recognized in prior periods) were immediately vested, with 240,000 of such shares being surrendered for cancellation in satisfaction of withholding tax obligations. Also on May 31, 2022, the Company issued 33,557 additional shares of common stock of the Company (valued at $50,000) to Mr. Mizrahi, which vested immediately, and made a $100,000 cash payment to Mr. Mizrahi.

## Item 14. Principal Accountant Fees and Services

***Audit Fees***

The aggregate fees billed for professional services rendered by our prior Independent Registered Public Accounting Firm, CohnReznick LLP, for the review of our consolidated financial statements included in our quarterly reports for the first two fiscal quarters of 2021, and other fees that are normally provided by the accounting firm in connection with statutory and regulatory filings or engagements for the year ended December 31, 2021 (up through the date of their dismissal on October 1, 2021) were approximately $105,000.

The aggregate fees billed or to be billed for professional services rendered by our current Independent Registered Public Accounting Firm, Marcum LLP, for the audit of our annual consolidated financial statements, review of our consolidated financial statements included in our quarterly report for the third fiscal quarter of 2021, and other fees that are normally provided by the accounting firm in connection with statutory and regulatory filings or engagements for the year ended December 31, 2021 were approximately $277,000.

The aggregate fees billed or to be billed for professional services rendered by our current Independent Registered Public Accounting Firm, Marcum LLP, for the audit of our annual consolidated financial statements, review of our consolidated financial statements included in our quarterly reports, and other fees that are normally provided by the accounting firm in connection with statutory and regulatory filings or engagements for the year ended December 31, 2022 were approximately $353,000.

***Audit-Related Fees***

There were no fees billed by our Independent Registered Public Accounting Firm for audit-related services for the fiscal years ended December 31, 2022 and 2021.

***Tax Fees***

There were no fees billed for professional services rendered by our Independent Registered Public Accounting Firm for tax compliance, tax advice, and tax planning for the fiscal years ended December 31, 2022 and 2021.

***All Other Fees***

There were no fees billed for non-audit services by our Independent Registered Public Accounting Firm for the fiscal years ended December 31, 2022 and 2021.

***Audit Committee Determination***

The Audit Committee considered and determined that the services performed are compatible with maintaining the independence of the independent registered public accounting firm.

***Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Auditor***

The Audit Committee is responsible for pre-approving all audit and permitted non-audit services to be performed for us by our Independent Registered Public Accounting Firm as outlined in its Audit Committee charter. Prior to engagement of the Independent Registered Public Accounting Firm for each year's audit, management or the Independent Registered Public Accounting Firm submits to the Audit Committee for approval an aggregate request of services expected to be rendered during the year, which the Audit Committee pre-approves. During the year, circumstances may arise when it may become necessary to engage the Independent Registered Public Accounting Firm for additional services not contemplated in the original pre-approval. In those circumstances, the Audit Committee requires specific pre-approval before engaging the Independent Registered Public Accounting Firm. The engagements of our Independent Registered Public Accounting Firm were approved by the Company's Audit Committee.

## PART IV

### Item 15. Exhibit and Financial Statement Schedules

### INDEX TO EXHIBITS

| Exhibit Number | Description |
|---|---|
| 3.1 | Amended and Restated Certificate of Incorporation of Xcel Brands, Inc. (7) |
| 3.2 | Third Restated and Amended Bylaws of Xcel Brands, Inc. (8) |
| 4.1 | Third Amended and Restated Equity Incentive Plan and Forms of Award Agreements (9) |
| 4.2 | 2021 Equity Incentive Plan (11) |
| 4.3 | Description of Registrant’s Securities (10) |
| 9.1 | Amended and Restated Voting Agreement between Xcel Brands, Inc. and IM Ready-Made, LLC, dated as of December 24, 2013 (2) |
| 9.2 | Voting Agreement between Xcel Brands, Inc. and Judith Ripka Berk, dated as of April 3, 2014 (4) |
| 9.3 | Voting Agreement dated as of December 22, 2014 by and between Xcel Brands, Inc. and H Company IP, LLC (5) |
| 9.4 | Form of Voting Agreement dated as of February 11, 2019 (1) |
| 10.1 | Employment Agreement between the Company and Robert D’Loren dated February 27, 2019 (10) |
| 10.2 | Employment Agreement between the Company and James Haran dated February 27, 2019 (10) |
| 10.3 | Employment Agreement between the Company and Seth Burroughs dated February 27, 2019 (12) |
| 10.4 | Amended and Restated Fifth Amendment, entered into as of March 14, 2014 and effective as of December 24, 2013, to the Asset Purchase Agreement filed as Exhibit 10.1 (3) |
| 10.5 | Sublease Agreement, dated as of July 8, 2015, by and between Xcel Brands, Inc. and GBG USA Inc. (6) |
| 10.6 | Membership Interest Purchase Agreement (13) |
| 21.1 | Subsidiaries of the Registrant (14) |
| 23.1 | Independent Registered Public Accounting Firm’s Consent (14) |
| 31(i).1 | Rule 13a-14(a)/15d-14(a) Certification (CEO) (14) |
| 31(i).2 | Rule 13a-14(a)/15d-14(a) Certification (CFO) (14) |
| 32(i).1 | Section 1350 Certification (CEO) (14) |
| 32(i).2 | Section 1350 Certification (CFO) (14) |

| | |
|---|---|
| 99.1 | IM Topco, LLC Financial Statements as of December 31, 2022 and for the Period from May 11, 2022 (inception) through December 31, 2022 and Independent Auditor’s Report (14) |
| 101.INS | Inline XBRL Instance Document (14) |
| 101.SCH | Inline XBRL Taxonomy Schema (14) |
| 101.CAL | Inline XBRL Taxonomy Calculation Linkbase (14) |
| 101.DEF | Inline XBRL Taxonomy Definition Linkbase (14) |
| 101.LAB | Inline XBRL Taxonomy Label Linkbase (14) |
| 101.PRE | Inline XBRL Taxonomy Presentation Linkbase (14) |
| 104 | Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101) (14) |

(1) This Exhibit is incorporated by reference to the appropriate exhibit to the Current Report on Form 8-K, which was filed with the SEC on February 15, 2019.

(2) This Exhibit is incorporated by reference to the appropriate Exhibit to the Current Report on Form 8-K, which was filed with the SEC on December 24, 2013.

(3) This Exhibit is incorporated by reference to the appropriate Exhibit to the Current Report on Form 8-K, which was filed with the SEC on March 20, 2014.

(4) This Exhibit is incorporated by reference to the appropriate Exhibit to the Current Report on Form 8-K, which was filed with the SEC on April 9, 2014.

(5) This Exhibit is incorporated by reference to the appropriate Exhibit to the Current Report on Form 8-K, which was filed with the SEC on December 24, 2014.

(6) This Exhibit is incorporated by reference to the appropriate Exhibit to the Current Report on Form 8-K, which was filed with the SEC on July 14, 2015.

(7) This Exhibit is incorporated by reference to the appropriate Exhibit to the Current Report on Form 8-K, which was filed with the SEC on October 24, 2017.

(8) This Exhibit is incorporated by reference to the appropriate Exhibit to the Current Report on Form 8-K, which was filed with the SEC on December 8, 2017.

(9) This Exhibit is incorporated by reference to the appropriate Exhibit to the Current Report on Form 8-K, which was filed with the SEC on March 1, 2019.

(10) This Exhibit is incorporated by reference to the appropriate Exhibit to the Annual Report on Form 10-K for the year ended December 31, 2020, which was filed with the SEC on April 23, 2021.

(11) This Exhibit is incorporated by reference to the appropriate Exhibit to the revised Definitive Proxy Statement on Form DEF 14-A, which was filed with the SEC on October 20, 2021.

(12) This Exhibit is incorporated by reference to the appropriate Exhibit to the Annual Report on Form 10-K for the year ended December 31, 2021, which was filed with the SEC on April 15, 2022.

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(13) This Exhibit is incorporated by reference to the appropriate Exhibit to the Current Report on Form 8-K, which was filed with the SEC on June 3, 2022.

(14) Filed herewith.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Exchange Act, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

| | |
|---|---|
| Date: April 17, 2023 | /s/ Robert W. D'Loren |
| | Robert W. D'Loren, Chairman, President,<br>Chief Executive Officer and Director<br>(Principal Executive Officer) |

Pursuant to the requirements of the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| Name | Title | |
|---|---|---|
| */s/ Robert W. D'Loren*<br>Robert W. D'Loren | Chief Executive Officer and Chairman<br>(Principal Executive Officer) | April 17, 2023 |
| */s/ James F. Haran*<br>James F. Haran | Chief Financial Officer<br>(Principal Financial Officer and<br>Principal Accounting Officer) | April 17, 2023 |
| Michael R. Francis | Director | |
| */s/ Mark DiSanto*<br>Mark DiSanto | Director | April 17, 2023 |
| */s/ James Fielding*<br>James Fielding | Director | April 17, 2023 |
| */s/ Howard Liebman*<br>Howard Liebman | Director | April 17, 2023 |
| */s/ Deborah Weinswig*<br>Deborah Weinswig | Director | April 17, 2023 |

**Exhibit 21.1**

**Subsidiaries of Xcel Brands, Inc.**

***Name and Jurisdiction of Incorporation***

- IM Brands, LLC, a Delaware limited liability company
- JR Licensing, LLC, a Delaware limited liability company
- Judith Ripka Fine Jewelry, LLC, a Delaware limited liability company
- Judith Ripka Fine Jewelry Digital, LLC, a Delaware limited liability company
- H Licensing, LLC, a Delaware limited liability company
- H Heritage Licensing, LLC, a Delaware limited liability company
- C Wonder Licensing, LLC, a Delaware limited liability company
- Longaberger Licensing, LLC, a Delaware limited liability company
- Gold Licensing, LLC, a Delaware limited liability company
- Xcel Design Group, LLC, a Delaware limited liability company
- XCEL-CT MFG, LLC, a Delaware limited liability company
- AHX Beauty, LLC, a Delaware limited liability company
- The Beauty Solution, LLC, a Delaware limited liability company
- Tribe Cosmetics, LLC, a Delaware limited liability company
- Xcel Acquisition Co., LLC, a Delaware limited liability company
- Q Optix, LLC, a Delaware limited liability company

**Exhibit 23.1**

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statements of Xcel Brands, Inc. and Subsidiaries on Form S-8 File No. 333-188985; File No. 333-201252; File No. 333-214150; and File No. 333-264382 of our report dated April 17, 2023, with respect to our audits of the consolidated financial statements of Xcel Brands, Inc. and Subsidiaries as of December 31, 2022 and 2021 and for the years then ended, which report is included in this Annual Report on Form 10-K of Xcel Brands, Inc. for the year ended December 31, 2022.

/s/ Marcum LLP

Marcum LLP
New York, New York
April 17, 2023

**Exhibit 23.2**

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in Form S-3 (333-216009) and in Form S-8 (File Nos. 333-188985, 333-201252, and 333-214150) of Xcel Brands, Inc. and Subsidiaries of our report dated April 22, 2021 on our audit of the consolidated financial statements of Xcel Brands, Inc. and Subsidiaries as of and for the year ended December 31, 2020, included in this Annual Report on Form 10-K of Xcel Brands, Inc. and Subsidiaries for the year ended December 31, 2021. We also consent to the reference to our firm under the caption "Experts" in Form S-3 (333-216009).

/s/ CohnReznick LLP
New York, New York
April 14, 2022

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO**
SECTION 302 OF THE SARBANES OXLEY ACT OF 2002

I, Robert W. D'Loren certify that:

1. I have reviewed this annual report on Form 10-K of Xcel Brands, Inc. (the "registrant") for the year ended December 31, 2022.
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 our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer, and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

April 17, 2023

/s/ Robert W. D'Loren
Name: Robert W. D'Loren
Title: Chairman, President, Chief Executive Officer and Director
(Principal Executive Officer)

**EXHIBIT 31(i).2**

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO**
SECTION 302 OF THE SARBANES OXLEY ACT OF 2002

I, James F. Haran certify that:

1. I have reviewed this annual report on Form 10-K of Xcel Brands, Inc. (the "registrant") for the year ended December 31, 2022.

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 our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

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

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

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

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

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

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

April 17, 2023

/s/ James F. Haran
Name: James F. Haran
Title: Chief Financial Officer (Principal Financial and Accounting Officer)

**EXHIBIT 32(i).1**

**CERTIFICATION PURSUANT TO**
**18 U.S.C. SECTION 1350,**
**AS ADOPTED PURSUANT TO**

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Robert W. D’Loren, the Chairman, President, Chief Executive Officer, and Director of Xcel Brands, Inc. (the “Registrant”), certifies, under the standards set forth and solely for the purposes of 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his knowledge, the Annual Report on Form 10-K of the Registrant for the year ended December 31, 2022 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and information contained in that Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

April 17, 2023

/s/ Robert W. D’Loren
Name: Robert W. D’Loren
Title: Chairman, President, Chief Executive Officer and Director
(Principal Executive Officer)

A signed original of this written statement required by Section 906 has been provided to Xcel Brands, Inc. and will be retained by Xcel Brands, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

**EXHIBIT 32(i).2**

**CERTIFICATION PURSUANT TO**
**18 U.S.C. SECTION 1350,**
**AS ADOPTED PURSUANT TO**

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

James F. Haran, Chief Financial Officer of Xcel Brands, Inc (the “Registrant”), certifies, under the standards set forth and solely for the purposes of 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his knowledge, the Annual Report on Form 10-K of the Registrant for the year ended December 31, 2022 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and information contained in that Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

April 17, 2023

/s/ James F. Haran
Name: James F. Haran
Title: Chief Financial Officer (Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906 has been provided to Xcel Brands, Inc. and will be retained by Xcel Brands, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

# IM TOPCO, LLC
(A Limited Liability Company)

Financial Statements as of December 31, 2022 and for the Period from May 11, 2022 (inception) through December 31, 2022 and Independent Auditor’s Report

**IM TOPCO, LLC**
(A Limited Liability Company)

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Ad3ptus

**INDEPENDENT AUDITOR'S REPORT**

To the Members and Managers
of IM Topco, LLC

**Opinion**

We have audited the accompanying financial statements of IM Topco, LLC (a Delaware corporation), which comprise the balance sheet as of December 31, 2022, and the related statements of income, member's equity, and cash flows for the period from May 11, 2022 (inception) to December 31, 2022, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of IM Topco, LLC as of December 31, 2022, and the results of its operations and its cash flows for the initial period then ended in accordance with accounting principles generally accepted in the United States of America.

**Basis for Opinion**

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of IM Topco, LLC and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Responsibilities of Management for the Financial Statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about IM Topco, LLC's ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

**Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of IM Topco, LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about IM Topco, LLC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

**/s/ Adeptus Partners, LLC**

Ocean, NJ

March 29, 2023

**IM TOPCO, LLC**
(A Limited Liability Company)
Balance Sheet as of December 31, 2022
($ thousands)

| | | December 31, 2022 |
|---|---|---|
| ASSETS | | |
| Current assets: | | |
| Cash | $ | 1,695 |
| Accounts receivable | | 2,210 |
| Prepaid expenses and other current assets | | 72 |
| Total current assets | | 3,977 |
| Intangibles, net | | 61,998 |
| Total assets | $ | 65,975 |
| LIABILITIES AND MEMBERS' EQUITY | | |
| Current liabilities: | | |
| Accounts payable and accrued expenses | $ | 252 |
| Deferred license revenue | | 56 |
| Total liabilities | | 308 |
| Members' equity | | 65,667 |
| Total liabilities and members' equity | $ | 65,975 |

See accompanying notes to financial statements.

**IM TOPCO, LLC**
(A Limited Liability Company)
Statement of Income
For the Period May 11, 2022 (inception) through December 31, 2022
($ thousands)

| | | For the Period May 31, 2022 (inception) through December 31, 2022 |
|---|---|---|
| Revenue | $ | 7,791 |
| Operating expenses: | | |
| Selling, general and administrative | | 3,469 |
| Amortization | | 4,006 |
| Operating expenses, total | | 7,475 |
| Net income | $ | 316 |

See accompanying notes to financial statements.

**IM TOPCO, LLC**
(A Limited Liability Company)
Statement of Members' Equity
For the Period May 11, 2022 (inception) through December 31, 2022
($ thousands)

| | Contributed Capital | Retained Earnings | Total Members' Equity |
|---|---|---|---|
| Balance, May 31, 2022 (inception) | $ - | $ - | $ - |
| Member contributions | 68,000 | - | 68,000 |
| Member distributions | (2,667) | - | (2,667) |
| Equity grants | 18 | - | 18 |
| Net income | - | 316 | 316 |
| Balance, December 31, 2022 | $ 65,351 | $ 316 | $ 65,667 |

See accompanying notes to financial statements.

**IM TOPCO, LLC**
(A Limited Liability Company)
Statement of Cash Flows
For the Period May 11, 2022 (inception) through December 31, 2022
($ thousands)

| | | For the Period May 31, 2022 (inception) through December 31, 2022 |
|---|---|---|
| Cash flows from operating activities: | | |
| Net income | $ | 316 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Amortization | | 4,006 |
| Noncash equity compensation | | 18 |
| Changes in operating assets and liabilities: | | |
| Increase in accounts receivable | | (2,210) |
| Increase in other assets | | (72) |
| Increase in accounts payable and accrued expenses | | 252 |
| Increase in deferred revenue | | 56 |
| Net cash provided by operating activities | | 2,366 |
| Cash flows from investing activities: | | |
| Acquisitions | | - |
| Investment in intangible assets | | (4) |
| Net cash used in investing activities | | (4) |
| Cash flows from financing activities: | | |
| Member contributions | | 2,000 |
| Member distributions | | (2,667) |
| Net cash used in financing activities | | (667) |
| Net increase in cash | | 1,695 |
| Cash, beginning of period | | - |
| Cash, end of period | $ | 1,695 |
| Non-cash financing: | | |
| Member contributions of intangible assets | $ | 66,000 |

See accompanying notes to financial statements.

**Note 1 – Organization and Nature of Operations**

IM Topco, LLC (the "Company") engages in the design, licensing, and marketing of the Isaac Mizrahi family of brands (the "Isaac Mizrahi Brands") with a focus on a variety of product categories featuring the Isaac Mizrahi Brands. The Company operates in a "working capital light" business model, licensing the Isaac Mizrahi Brand to generate royalties and other revenues through licensing and other agreements with sourcing and design companies, wholesale manufacturers, and retailers, including direct response television retailers. IM Topco, LLC, a Delaware limited liability company, was formed on May 11, 2022 and acquired the Isaac Mizrahi trademarks and other intellectual property rights relating thereto through the Membership Interest Purchase Agreement ("MIPA") dated May 27, 2022 on May 31, 2022.

**Note 2 - Summary of Significant Accounting Policies**

**Basis of Accounting**

The financial statements are prepared on an accrual basis in accordance with accounting principles generally accepted in the United States ("GAAP") and are presented in U.S. dollars.

**Use of Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods.

Making estimates requires management to exercise significant judgment. It is possible that the estimate of the effect of a condition, situation, or set of circumstances that existed at the date of the financial statements, which management considered in formulating its estimate, could change in the near term due to one or more future confirming events. Accordingly, actual results could differ significantly from estimates.

**Cash and Cash Equivalents**

Cash and cash equivalents consist of cash deposits and investments with an original maturity of three months or less at the time of initial deposit. The objectives of the Company's cash management policy are to safeguard and preserve funds, to maintain liquidity sufficient to meet the Company's cash flow requirements, and to attain a market rate of return. The Company places its cash and cash equivalents in institutions and funds of high credit quality.

**Accounts Receivable**

Accounts receivable are recorded net of allowances for doubtful accounts, based on the Company's ongoing discussions with its licensees and other customers and its evaluation of their creditworthiness, payment history, and account aging. Accounts receivable balances deemed to be uncollectible are charged to the allowance for doubtful accounts after all means of collection have been exhausted and the potential for recovery is considered remote. The allowance for doubtful accounts was zero for December 31, 2022.

**Intangible Assets**

Intangible assets represent trademarks and license agreements relating to the Isaac Mizrahi brand. The trademarks, which have been determined to be indefinite-lived intangible assets are not amortized, but instead are subject to impairment evaluation. The license agreements, which have been determined to have a finite life, are evaluated for the possibility of impairment when certain indicators are present and are otherwise amortized on a straight-line basis over their estimated useful life. Testing for impairment occurs annually on October 1. The Company accounts for intangible assets and goodwill as required by FASB ASC Topic 350, Intangibles – Goodwill and Other ("ASC 350"). No impairment charges were recorded during the period from May 11 (inception) through December 31, 2022. The Company capitalizes costs for its successful defense of proprietary trademarks.

**Revenue Recognition**

The Company recognizes revenue in accordance with ASC 606, *Revenue from Contracts with Customers*. ASC 606 requires a five-step approach to determine the appropriate method of revenue recognition for each contractual arrangement:

Step 1: Identify the Contract(s) with a Customer
Step 2: Identify the Performance Obligation(s) in the Contract
Step 3: Determine the Transaction Price
Step 4: Allocate the Transaction Price to the Performance Obligation(s) in the Contract
Step 5: Recognize Revenue when (or as) the Entity Satisfies a Performance Obligation

The Company has entered into various license agreements for its owned trademarks. Under ASC 606, the Company's agreements are generally considered symbolic licenses, which contain the characteristics of a right-to-access license since the customer is simultaneously receiving the intellectual property ("IP") and benefiting from it throughout the license period. The Company assesses each license agreement at inception and determines the performance obligation(s) and appropriate revenue recognition method. As part of this process, the Company applies judgments based on historical trends when estimating future revenues and the period over which to recognize revenue.
The Company generally recognizes revenue for license agreements under the following methods:

1. *Licenses with guaranteed minimum royalties ("GMRs")*: Generally, GMR payments comprising the transaction price are recognized on a straight-line basis over the term of the contract, as defined in each license agreement.
2. *Licenses with both GMRs (fixed revenue) and earned royalties (variable revenue)*: Earned royalties in excess of GMRs are only recognized when the Company is reasonably certain that the guaranteed minimum payments for the period, as defined in each license agreement, will be exceeded. Additionally, the Company has categorized certain contracts as variable when there is a history and future expectation of exceeding GMRs. The Company recognizes income for these contracts during the period corresponding to the licensee's sales.
3. *Licenses that are sales-based only or earned royalties*: Earned royalties (variable revenue) are recognized as income during the period corresponding to the licensee's sales.

Payments received as consideration for the grant of a license or advanced royalty payments are recorded as deferred revenue at the time payment is received and recognized into revenue under the methods described above.

Contract assets represent unbilled receivables and are presented within accounts receivable, net in the balance sheet. Contract liabilities represent unearned revenues and are presented within the current portion of deferred revenue in the balance sheet.

**Advertising Costs**

All costs associated with production for the Company's advertising, marketing, and promotion are expensed during the periods when the activities take place. All other advertising costs, such as print and online media, are expensed when the advertisement occurs. The Company incurred approximately $62,000 in advertising and marketing costs for the period ended December 31, 2022.

**Income Taxes**

The Company is not a taxable entity for federal income tax purposes, and as such, does not directly pay federal income tax. The Company's taxable income or loss, which may vary substantially from the net income or loss reported in the Statement of Operations, is included in the federal income tax returns of each member.

The Company follows required accounting guidance for uncertainty in income taxes. The Company evaluates its tax positions on an ongoing basis and if considered necessary establishes liabilities for uncertain tax positions that may be challenged by tax authorities. Management evaluated the Company's tax positions and concluded that the Company had no uncertain tax positions as of December 31, 2022.

**Fair Value**

ASC Topic 820, "Fair Value Measurements and Disclosures," defines fair value and establishes a framework for measuring fair value under U.S. GAAP. The fair value of the Company's financial assets and liabilities reflects management's estimate of amounts that the Company would have received in connection with the sale of the assets or paid in connection with the transfer of the liabilities in an orderly transaction between market participants at the measurement date. In connection with measuring the fair value of the Company's assets and liabilities, the Company seeks to maximize the use of observable inputs (market data obtained from independent sources) and to minimize the use of unobservable inputs (internal assumptions about how market participants would price assets and liabilities).

**Fair Value of Financial Instruments**

For the Company's financial instruments, including cash, accounts receivable, and accounts payable, the carrying amounts approximate fair value due to the short-term maturities of these instruments.

**Concentrations of Credit Risk**

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and accounts receivable.

- The Company limits its credit risk with respect to cash by maintaining cash balances with high quality financial institutions. At times, the Company's cash balances may exceed federally insured limits of $250,000.

- Concentrations of credit risk with respect to accounts receivable are minimal due to the collection history and the outstanding amounts are immaterial compared with total current assets and revenue amounts. Generally, the Company does not require collateral or other security to support accounts receivable.

**Recently Issued Accounting Pronouncements**

In June 2016, the FASB issued Accounting Standards Update ("ASU") No. 2016-13, "Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments," which was subsequently amended in November 2018 through ASU No. 2018-19. This ASU will require entities to estimate lifetime expected credit losses for financial instruments, including trade and other receivables, which will result in earlier recognition of credit losses. In November 2019, the FASB issued ASU No. 2019-10, which, among other things, deferred the application of the new guidance on credit losses for smaller reporting companies to fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company is currently evaluating the new guidance to determine the impact the adoption of this guidance will have on the Company's results of operations, cash flows, and financial condition.

**Note 3 - <u>Purchase of the Isaac Mizrahi Intangible Assets</u>**

On May 31, 2022, the Company acquired the Isaac Mizrahi trademarks and other intellectual property rights from Xcel Brands, Inc. (“Xcel”) and IM Brands, LLC, a wholly owned subsidiary of Xcel, for a purchase price of $66.0 million through the MIPA dated May 27, 2022. Pursuant to the terms of the transaction, Xcel received $46.2 million in cash from IMWHP, LLC (“WHP”) and retained a 30% membership interest in the Company. WHP received a 70% membership interest in the Company.

The Company determined that the set of assets and activities acquired met the definition of a “business”; therefore, the transaction was accounted as a business combination. As a result, the assets and liabilities of IM Topco, LLC were recorded at fair market value as of the date of the transaction, May 31, 2022 in the balance sheet of the Company.

The total valuation of $66.0 million was allocated to trademarks and license agreements. Trademarks were determined to have an indefinite life and initial value of $29.4 million. License Agreements have been determined by management to have a useful life of five years and four months and initial value of $36.6 million. WHP contributed cash contributions of $1.4 million and Xcel contributed $0.6 million. We recorded $4.0 million of amortization expense related to the license agreements for the period from May 11, 2022 (inception) through December 31, 2022.

In connection with the Mizrahi Acquisition, the Company signed a long-term licensing agreement for the Isaac Mizrahi brand, which became effective upon closing. WHP also entered into a management services agreement to facilitate the day-to-day operation of IM Topco, LLC by WHP’s management. A cash distribution was made of $2.7 million to WHP from IM Topco, LLC in December 2022. Pursuant to the purchase agreement, the Company has an obligation to pay Xcel Brands, Inc. an earnout payment of $2.0 million (the “IM Earnout) in 2024 if, during the 2023 fiscal year, IM Topco generates royalty revenue and EBITDA over a specific threshold (the “Thresholds”).

Total revenue from the Isaac Mizrahi Brands included in the statement of operations for the year ended December 31, 2022, is $7.8 million.

**Note 4 - <u>Intangible Assets</u>**

Intangible assets, net consist of the following:

| ($ in thousands) | Weighted Average Amortization Period | December 31, 2022 Gross Carrying Amount | December 31, 2022 Accumulated Amortization | December 31, 2022 Net Carrying Amount |
|---|---|---|---|---|
| Trademarks (indefinite-lived) | NA | $ 29,381 | $ - | $ 29,381 |
| License Agreements (finite-lived) | 5.33 years | 36,623 | 4,006 | 32,617 |
| **Total** | | **$ 66,004** | **$ 4,006** | **$ 61,998** |

Amortization expense for the finite-lived intangible assets for the period May 11, 2022 (inception) through December 31, 2022 was approximately $4.0 million.

Estimated future amortization expense related to finite-lived intangible assets over the remaining useful lives is as follows:

| ($ in thousands) Year Ending December 31, | Amortization Expense |
|---|---|
| 2023 | $ 6,867 |
| 2024 | 6,867 |
| 2025 | 6,867 |
| 2026 | 6,866 |
| 2027 | 5,150 |
| Thereafter | - |
| Total | $ 32,617 |

**Note 5 - Concentration**

The Company has a direct-to-retail license agreement with QVC, Inc ("QVC"), pursuant to which the Company designs, and QVC sources and sells, various products under the Isaac Mizrahi brand (the "QVC Agreement"). QVC owns the rights to all designs produced under the aforementioned agreement and the QVC Agreement includes the sale of products across various categories through QVC's television media (including QVC and HSN) and related internet sites. Pursuant to the agreement, the Company granted to QVC and its affiliates the exclusive, worldwide right to promote the Company's branded products, and the right to use and publish the related trademarks, service marks, copyrights, designs, logos, and other intellectual property rights owned, used, licensed, and/or developed by the Company.

Net licensing revenue from QVC represented a substantial portion of the Company's revenue recorded from the period May 11, 2022 (inception) through December 31, 2022. As of December 31, 2022, the Company had receivables from QVC that represented approximately 90% of the Company's accounts receivable.

**Note 6 - Capital**

The Company is owned by two members: WHP and Xcel. The Company has 1,000 Units authorized, issued, and outstanding; 700 Units are held by WHP and 300 Units are held by Xcel. In accordance with the terms of the governing Limited Liability Company Agreement, each Member shall vote in proportion to its percentage interest of Units held.

***Capital Contributions***

On May 31, 2022, WHP and Xcel made capital contributions to the Company of $47.6 million and $20.4 million, respectively. WHP's capital contribution consisted of $1.4 million in cash and $46.2 million in intellectual property. Xcel's capital contribution consisted of $0.6 million in cash and $19.8 million in intellectual property.

***Distributions***

During the period May 11, 2022 (inception) through December 31, 2022, the Company made cash distributions to WHP in the amount of $2.7 million. There were no distributions made to Xcel.

**Note 7 - <u>Commitments and Contingencies</u>**

***Legal Proceedings***

From time to time, the Company is involved in legal matters arising in the ordinary course of business. While the Company believes that such matters are currently not material, there can be no assurance that matters arising in the ordinary course of business for which the Company is, or could be, involved in litigation will not have a material adverse effect on its business, financial condition, results of operations, or cash flows. Contingent liabilities arising from potential litigation are assessed by management based on the individual analysis of these proceedings and on the opinion of the Company's lawyers and legal consultants. There have been no provisions recorded for the period ended December 31, 2022.

***Loss Contingencies***

The Company recognizes contingent losses that are both probable and estimable. In this context, probable means circumstances under which events are likely to occur. The Company records legal costs pertaining to contingencies as incurred. There were no contingent losses recognized as of December 31, 2022.

**Note 8 - <u>Related Party Transactions</u>**

***WHP***

On May 31, 2022, the Company entered into a services agreement with WHP pursuant to which WHP provides certain services to the Company. During the period May 11, 2022 (inception) through December 31, 2022, the Company paid WHP a fee of $0.4 million for such services.

***Xcel***

On May 31, 2022, the Company entered into a services agreement with Xcel pursuant to which Xcel provides certain services to the Company. During the period May 11, 2022 (inception) through December 31, 2022, the Company paid Xcel a fee of $0.2 million for such services.

On May 31, 2022, the Company entered into a license agreement with XL CT MFG, LLC ("XL CT"), a wholly-owned subsidiary of Xcel, pursuant to which the Company granted XL CT a license to use certain Isaac Mizrahi trademarks on and in connection with the design, manufacture, distribution, sale, and promotion of women's sportswear products in the United States and Canada during the term of the agreement, in exchange for the payment of royalties in connection therewith. The initial term of this agreement ends December 31, 2026, and provides for guaranteed royalties of $0.4 million per year from XL CT. The agreement was terminated in December and replaced by an agreement with Jump Design Group, Inc ("Jump"). Xcel is responsible for any differential payments made between Jump and the guaranteed royalties of the Xcel license agreement. During the period May 11, 2022 (inception) through December 31, 2022, Xcel paid the Company royalties of approximately $0.2 million.

**Note 9 - <u>Subsequent Events</u>**

The Company has evaluated subsequent events through March 29, 2023, which is the date the financial statements were available to be issued and has concluded that other than the event disclosed above, no such events or transactions took place with would require disclosure herein.