SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

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

For the quarterly period ended September 30, 2023

or

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

For the transition period from ________________________ to ________________________

Commission File Number: 001-41147

Fresh Vine Wine, Inc.
(Exact name of registrant as specified in its charter)

Nevada	87-3905007
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
P.O. Box 78984	Charlotte, NC 28271
(Address of principal executive offices)	(Zip Code)

(855) 766-9463
(Registrant's telephone number, including area code)

11500 Wayzata Blvd. # 1147, Minnetonka, MN 55305
(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, $0.001 par value	VINE	NYSE American

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

☒ Yes ☐ No

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

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☒	Smaller reporting company ☒
	Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

As of November 14, 2023, the registrant had 15,976,227 shares of common stock outstanding.

FRESH VINE WINE, INC.

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Cautionary Statement Concerning Forward-Looking Statements

We make forward-looking statements in this Quarterly Report on Form 10-Q. In some cases, you can identify these statements by forward-looking words such as "may," "might," "should," "would," "could," "expect," "plan," "anticipate," "intend," "believe," "estimate," "predict," "potential" or "continue," and the negative of these terms and other comparable terminology. These forward-looking statements, which are subject to known and unknown risks, uncertainties, and assumptions about us, may include projections of our future financial performance based on our growth strategies and anticipated trends in our business. These statements are only predictions based on our current expectations and projections about future events. There are important factors that could cause our actual results, level of activity, performance, or achievements to differ materially from the results, level of activity, performance or achievements expressed or implied by the forward-looking statements. In particular, you should consider the numerous risks and uncertainties described in the section titled "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 and elsewhere such Annual Report, in the other reports and documents that we file with the SEC, and in this Quarterly Report on Form 10-Q.

While we believe we have identified material risks, these risks and uncertainties are not exhaustive. New risks and uncertainties emerge from time to time, and it is not possible to predict all risks and uncertainties, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

Although we believe the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, level of activity, performance, or achievements. Moreover, neither we nor any other person assumes responsibility for the accuracy or completeness of any of these forward-looking statements. You should not rely upon forward-looking statements as predictions of future events. The forward-looking statements in this report represent our views as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements whether as a result of new information, future developments or otherwise, and we do not intend to do so.

Forward-looking statements include, but are not limited to, statements about:

- our ability to continue as a going concern in the absence of obtaining additional financing;
- our ability to obtain additional financing within timeframes required on terms acceptable to us, or at all;
- our ability to regain and maintain compliance with NYSE American continued listing standards and ultimately maintain the listing of our common stock on NYSE American;
- our intentions to pursue and complete a business combination transaction with a suitable target company;
- our ability to hire additional personnel and to manage the growth and operation of our business;
- our reliance on our brand name, reputation and product quality;
- our ability to adequately address increased demands that may be placed on our management, operational and production capabilities.
- the effectiveness of our advertising and promotional activities and investments;
- our ability to successfully refocus our marketing and brand promotion efforts following the termination of license agreements with celebrities who have historically endorsed our wines and promoted our brand;
- general competitive conditions, including actions our competitors may take to grow their businesses;
- fluctuations in consumer demand for wine;
- overall decline in the health of the economy and consumer discretionary spending;
- the occurrence of adverse weather events, natural disasters, public health emergencies, including the COVID-19 pandemic, or other unforeseen circumstances that may cause delays to or interruptions in our operations;

- risks associated with disruptions in our supply chain for grapes and raw and processed materials, including corks, glass bottles, barrels, winemaking additives and agents, water and other supplies;
- disrupted or delayed service by the distributors we rely on for the distribution of our wines;
- our ability to successfully execute our growth strategy, including continuing our expansion in the direct-to-consumer sales channel;
- quarterly and seasonal fluctuations in our operating results;
- our success in retaining or recruiting, or changes required in, our officers, key employees or directors;
- our ability to protect our trademarks and other intellectual property rights, including our brand and reputation;
- our ability to comply with laws and regulations affecting our business, including those relating to the manufacture, sale and distribution of wine;
- the risks associated with the legislative, judicial, accounting, regulatory, political and economic risks and conditions;
- claims, demands and lawsuits to which we are, and may in the future, be subject and the risk that our insurance or indemnities coverage may not be sufficient;
- our ability to operate, update or implement our IT systems;
- our ability to successfully pursue strategic acquisitions and integrate acquired businesses;
- our ability to implement additional finance and accounting systems, procedures and controls in order to satisfy public company reporting requirements;
- the potential liquidity and trading of our securities; and
- the future trading prices of our common stock and the impact of securities analysts' reports on these prices.

In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this report. Although we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

INDEX TO FINANCIAL STATEMENTS

FRESH VINE WINE, INC.
BALANCE SHEETS
September 30, 2023 (Unaudited) and December 31, 2022

	September 30, 2023	December 31, 2022
Assets		
Current assets		
Cash	$ 759,946	$ 2,080,335
Restricted cash	100,000	-
Accounts receivable	430,911	259,317
Due from employees, net	-	37,733
Insurance recovery receivable	-	804,907
Inventories	742,394	3,696,198
Deferred offering costs	-	68,286
Prepaid expenses and other	573,939	961,211
Total current assets	2,607,190	7,907,987
Prepaid expenses (long term)	-	678,167
Total assets	$ 2,607,190	$ 8,586,154
Liabilities, and stockholders' equity		
Current liabilities		
Accounts payable	$ 554,712	$ 589,204
Accrued compensation	-	420,413
Settlement payable	-	1,250,000
Accrued expenses	665,567	422,931
Accrued expenses - related parties	309,333	280,000
Deferred revenue	2,027	10,000
Total current liabilities	1,531,639	2,972,548
Total liabilities	1,531,639	2,972,548
Stockholders' equity		
Series A convertible preferred stock, $0.001 par value - 25,000,000 shares authorized at September 30, 2023 and December 31, 2022; 8,000 and 0 shares issued and outstanding at September 30, 2023 and December 31, 2022 respectively	8	-
Common stock, $0.001 par value - 100,000,000 shares authorized at September 30, 2023 and December 31, 2022; 15,976,227 and 12,732,257 shares issued and outstanding at September 30, 2023 and December 31, 2022 respectively	15,976	12,732
Additional paid-in capital	25,457,806	21,420,732
Accumulated deficit	(24,398,239)	(15,819,858)
Total stockholders' equity	1,075,551	5,613,606
Total liabilities and stockholders' equity	$ 2,607,190	$ 8,586,154

See accompanying notes to the financial statements.

FRESH VINE WINE, INC.
STATEMENTS OF OPERATIONS
(Unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2023	**2022**	**2023**	**2022**
Wholesale revenue	$ 744,532	$ 330,874	$ 1,192,138	$ 1,518,641
Direct to consumer revenue	103,427	204,710	394,576	668,221
Related party service revenue	-	-	-	297,224
Total net revenue	847,959	535,584	1,586,714	2,484,086
Cost of revenues	889,844	601,546	3,631,491	2,049,650
Gross profit (loss)	(41,885)	(65,962)	(2,044,777)	434,436
Selling, general and administrative expenses	1,141,390	2,400,182	4,784,535	9,155,448
Equity-based compensation	946,415	105,679	1,734,765	2,705,901
Operating loss	(2,129,690)	(2,571,823)	(8,564,077)	(11,426,913)
Other income	30	11,783	1,296	21,740
Net loss	(2,129,660)	(2,560,040)	(8,562,781)	(11,405,173)
Preferred dividends	15,600	-	15,600	-
Net loss attributable to common stockholders	$ (2,145,260)	$ (2,560,040)	$ (8,578,381)	$ (11,405,173)
Weighted average shares outstanding				
Basic	15,976,227	12,732,244	15,085,911	12,524,132
Diluted	15,976,227	12,732,244	15,085,911	12,524,132
Net loss per share – basic	$ (0.13)	$ (0.20)	$ (0.57)	$ (0.91)
Net loss per share – diluted	$ (0.13)	$ (0.20)	$ (0.57)	$ (0.91)

See accompanying notes to the financial statements

FRESH VINE WINE, INC.
STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
For the Three and Nine Month Periods Ended September 30, 2023 and 2022
(Unaudited)

	Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount			
Balances at December 31, 2021	-	-	12,200,013	$ 12,200	$ 17,681,141	$ (617,351)	$ 17,075,990
Equity-based compensation	-	-	285,184	285	1,824,049	-	1,824,334
Net Loss	-	-	-	-	-	(4,286,243)	(4,286,243)
Balances at March 31, 2022	-	-	12,485,197	$ 12,485	$ 19,505,190	$ (4,903,594)	$ 14,614,081
Equity-based compensation	-	-	247,060	247	619,143	0	619,390
Net loss	-	-	-	-	-	(4,558,890)	(4,558,890)
Balances at June 30, 2022	-	-	12,732,257	$ 12,732	$ 20,124,333	$ (9,462,484)	$ 10,674,581
Equity-based compensation	-	-	-	-	27,430	-	27,430
Net loss	-	-	-	-	-	(2,560,040)	(2,560,040)
Balances at September 30,2022	-	-	12,732,257	$ 12,732	$ 20,151,763	$ 12,022,524	$ 8,141,971
Balances at December 31, 2022	-	-	12,732,257	$ 12,732	$ 21,420,732	$ (15,819,858)	$ 5,613,606
Rights Offering - common stock and warrants issued	-	-	3,143,969	3,144	2,543,584	-	2,546,728
Equity-based compensation	-	-	500,000	500	257,172	-	257,672
Stock Forfeiture	-	-	(500,000)	(500)	500	-	-
Net loss	-	-	-	-	-	(2,010,824)	(2,010,824)
Balances at March 31, 2023	-	-	15,876,226	$ 15,876	$ 24,221,988	$ (17,830,682)	$ 6,407,182
Equity-based compensation	-	-	1,141,332	1,141	373,037	-	374,178
Net loss	-	-	-	-	-	(4,422,297)	(4,422,297)
Balances at June 30, 2023	-	-	17,017,558	$ 17,017	$ 24,595,025	$ (22,252,979)	$ 2,359,063
Issuance of preferred stock	8,000	8	-	-	749,992	-	750,000
Dividends declared – preferred stock – Series A ($12.00/share)	-	-	-	-	-	(15,600)	(15,600)
Equity-based compensation	-	-	-	-	111,748	-	111,748
Stock forfeiture	-	-	(1,041,331)	(1,041)	1,041	-	-
Net loss	-	-	-	-	-	(2,129,660)	(2,129,660)
Balances at September 30, 2023	8,000	$ 8	15,976,227	$ 15,976	$ 25,457,806	$ (24,398,239)	$ 1,075,551

See accompanying notes to the financial statements.

FRESH VINE WINE, INC.
STATEMENTS OF CASH FLOWS
For the Nine Month Periods Ended September 30
(Unaudited)

	2023	2022
Cash flows from operating activities		
Net loss	$ (8,562,781)	$ (11,405,173)
Adjustments to reconcile net loss to net cash used in operating activities:		
Amortization	-	3,990
Equity-based compensation	1,734,765	2,705,904
Inventory write-down	1,732,500	-
Allowance for doubtful accounts	37,733	-
Changes in operating assets and liabilities		
Accounts receivable	(171,594)	(215,228)
Insurance recovery receivable	804,907	-
Accounts receivable - related parties	-	51,984
Receivables with recourse	-	146,314
Related party receivables	-	269,450
Inventories	1,221,304	(3,771,586)
Prepaid expenses and other	74,272	(138,773)
Accounts payable	(34,492)	68,999
Accrued compensation	(420,413)	139,186
Settlement payable	(1,250,000)	-
Accrued expenses	227,036	172,142
Accrued expenses - related parties	29,333	(204,617)
Deferred revenue	(7,973)	4,579
Related party payables	-	(88,727)
Net cash used in operating activities	(4,585,403)	(12,261,556)
Cash flows from financing activities		
Payments of related party notes payable	-	(216,000)
Payments of outstanding secured borrowings	-	(171,069)
Proceeds from issuance of preferred stock - net of issuance costs	750,000	-
Proceeds from rights offering - net of issuance costs	2,615,014	-
Net cash provided by (used in) financing activities	3,365,014	(387,069)
Net decrease in cash and restricted cash	(1,220,389)	(12,648,625)
Cash and restricted cash - beginning of period	2,080,335	16,063,941
Cash and restricted cash - end of period	$ 859,946	$ 3,415,316
Supplemental disclosure of non-cash investing and financing activities		
Dividends declared but not paid	$ 15,600	$ -

See accompanying notes to the financial statements

FRESH VINE WINE, INC.
Notes to Financial Statements
(Unaudited)

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Business

Fresh Vine Wine, Inc. (the Company), a Nevada corporation, is a premium wine brand built to complement consumers' healthy and active lifestyles. The Company provides a competitively priced premium product that is blended to deliver several important benefits, such as low-cal, low-sugar, low-carb. The Company's wines are also gluten-free and keto and vegan friendly.

The Company's revenue is comprised primarily of wholesale and direct to consumer (DTC) sales, and representation and distribution services. Wholesale revenue is generated through sales to distributors located in states throughout the United States of America and Puerto Rico. DTC revenue is generated from individuals purchasing wine directly from the Company through club membership and the Company's website. Representation and distribution service revenue is generated by providing third party wine producers with access to new markets and distribution channels.

Basis of Presentation

The Company's financial statements have been prepared and are presented in accordance with United States generally accepted accounting principles ("U.S. GAAP"). The financial statements include, in the opinion of the management, all adjustments, consisting of normal and recurring items, necessary for the fair presentation of the financial statements. In certain instances, amounts reported in prior period financial statements have been reclassified to conform to the current financial statement presentation.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted. These financial statements should be read in conjunction with the Company's financial Statements and notes thereto for the fiscal year ended December 31, 2022, included in the Company's Annual Report on Form 10-K.

Restricted Cash

Included in the cash balance is a deposit of $100,000 that our operating bank has required us to maintain as security for collectability of automated clearing house transactions. These funds are held in a separate account and are not available for disbursements.

Accounting Estimates

Management uses estimates and assumptions in preparing these financial statements in accordance with U.S. GAAP. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include contingent liabilities, allowance for doubtful accounts, inventory allowances, equity-based compensation for employees and non-employees, and the valuation of deferred tax assets.

Application of New or Revised Accounting Standards

Pursuant to the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), a company constituting an "emerging growth company" is, among other things, entitled to rely upon certain reduced reporting requirements and is eligible to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies.

The Company is an emerging growth company and has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that the Company (i) is no longer an emerging growth company or (ii) affirmatively and irrevocable opts out of the extended transition period provide in the JOBS Act.

Other Events

On August 8, 2023, the Company received written letters from each of Nina Dobrev and Jaybird Investments, LLC notifying the Company that it is in default of their respective license agreements based on failure to pay their August 2023 license fees (each, a "Notice"). Each Notice also stated that it serves as written notice of termination of the respective license agreements, effective 30 days from delivery of the Notice (the "Termination Date"). The Company's payment of the applicable August license fee was not made and the Company will not be utilizing advertising and marketing services covered by the license agreements in the future.

NYSE Listing Requirements

On September 8, 2023, the Company received a written notice (the "Notice") from NYSE American stating that it was not in compliance with Section 1003(a)(ii) of the NYSE American Company Guide (the "Company Guide"), which requires a listed company that has reported losses from continuing operations and/or net losses in three of its four most recent fiscal years to maintain at least $4 million of stockholders' equity. The Company reported stockholders' equity of $2.4 million as of June 30, 2023, the end of its second fiscal quarter of 2023, and have had losses from continuing operations and/or net losses in each of the fiscal years ended December 31, 2020, 2021 and 2022. As required by the NYSE American, the Company submitted a plan to the NYSE American on October 9, 2023 addressing actions it has taken and how it intends to regain compliance with the continued listing standards within the required 18 month period ending March 8, 2025.

Going Concern and Liquidity

Historically, the Company has incurred losses, which has resulted in an accumulated deficit of approximately $24.4 million as of September 30, 2023. Cash flows used in operating activities were $4.6 million and $12.3 million for the nine months ended September 30, 2023 and 2022, respectively. As of September 30, 2023, the Company had approximately a $1.1 million of working capital, inclusive of $760,000 in cash and cash equivalents and $100,000 in restricted cash. The Company has increased its liquidity by selling inventory at prices below cost, by significantly reducing staffing levels and by the termination of celebrity endorsement contracts.

The Company's ability to continue as a going concern is dependent on its ability to meet its liquidity needs through a combination of factors including but not limited to, cash and cash equivalents, working capital and strategic capital raises. The ultimate success of these plans is not guaranteed.

In considering our forecast for the next twelve months and the current cash and working capital as of the filing of this Form 10-Q, such matters create a substantial doubt regarding the Company's ability to meet our financial needs and continue as a going concern.

The Company received gross proceeds of $800,000 from a preferred stock offering of up to $1.0 million during the quarter ending September 30, 2023. The Company will need to seek additional debt or equity financing to sustain existing operations. If adequate financing is not available, the Company will be forced to take measures to severely reduce our expenses and business operations, or discontinue them completely. Such financing, if available, may be dilutive. At the current reduced pace of incurring expenses and without receipt of additional financing and the receipt of proceeds from the expected sales of inventory under purchase orders from a discount retailer entered into in the third quarter, the Company projects that the existing cash balance will be sufficient to fund current operations into the first quarter of 2024, after which additional financing or capital will be needed to satisfy obligations. Additional financing may not be available on favorable terms or at all. If additional financing is available, it may be highly dilutive to existing shareholders and may otherwise include burdensome or onerous terms. The Company's inability to raise additional working capital in a timely manner would negatively impact the ability to fund operations, generate revenues, maintain or grow the business and otherwise execute the Company's business plan, leading to the reduction or suspension of operations and ultimately potentially ceasing operations altogether and initiating bankruptcy proceedings. Should this occur, the value of any investment in the Company's securities would be adversely affected.

These factors raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

Recently Issued Accounting Pronouncements

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments–Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments,* and also issued subsequent amendments to the initial guidance, collectively, ASC 326, to replace the incurred loss impairment methodology in current U.S. GAAP with a methodology that requires the reflection of expected credit losses and will also require consideration of a broader range of reasonable and supportable information to determine credit loss estimates. For many entities with financial instruments, the standard will require the use of a forward-looking expected loss model rather than the incurred loss model for recognizing credit losses, which may result in the earlier recognition of credit losses on financial instruments. The Company adopted this guidance during the quarter ended March 31, 2023, which had no material impact on the financial statements.

2. REVENUE RECOGNITION

The Company's total revenue reflects the sale of wine domestically in the U.S. to wholesale distributors or DTC and related party service revenues. Under ASC Topic 606, *Revenue from Contracts with Customers* ("ASC 606"), the Company recognizes revenue when control of the promised good is transferred to the customer in an amount that reflects the consideration for which the Company is expected to be entitled to receive in exchange for those products. Each contract includes a single performance obligation to transfer control of the product to the customer. Control is transferred when the product is either shipped or delivered, depending on the shipping terms, at which point the Company recognizes the transaction price for the product as revenue. The Company has elected to account for shipping and handling as a fulfillment activity, with amounts billed to customers for shipping and handling included in total revenue.

The Company also generates revenue through membership in its wine club. Wine club members pay a monthly fee, which varies depending on level of membership, and are entitled to receive quarterly shipments of wine, free shipping, and discounts on other wine and merchandise purchased. The Company recognizes revenue for the monthly membership dues when the product is delivered. Any membership dues received before the product is delivered is recorded as deferred revenue on the Company's balance sheet.

The Company has determined that related party service revenue should be recognized over the period of time it provides such services. ASC 606 also notes that when another party is involved in providing goods or services to a customer, the entity should determine whether the nature of its promise is a performance obligation to provide the specified goods or services itself (that is, the entity is a principal) or to arrange for those goods or services to be provided by the other party (that is, the entity is an agent). The Company does not bear responsibility for inventory losses and does not have pricing determination; therefore, the Company would be considered the agent and revenue should be recognized as net sales.

The following table presents the percentages of total revenue disaggregated by sales channels for the three and nine month periods ended September 30, 2023 and 2022:

	Three months ended		Nine months ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022
Wholesale	87.8%	61.8%	75.1%	61.1%
Direct to consumer	12.2%	38.2%	24.9%	26.9%
Related party service	0.0%	0.0%	0.0%	12.0%
Total revenue	100.0%	100.0%	100.0%	100.0%

3. LOSS PER SHARE

Basic net loss per share is determined by dividing net loss attributable to common shareholders by the weighted-average shares outstanding during the period. Diluted EPS reflects potential dilution and is computed by dividing net loss by the weighted average number of common shares outstanding during the period increased by the numbers of additional common shares that would have been outstanding if all potential common shares had been issued and were dilutive. However, potentially dilutive securities are excluded from the computation of diluted EPS to the extent that their effect is anti-dilutive. The following table presents a reconciliation between basic and diluted net loss per share for the three and nine month periods ending:

	Three Months Ended		Nine Months Ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022
Numerator:				
Net loss attributable to Fresh Vine Wine shareholders	$ (2,129,660)	$ (2,560,040)	$ (8,562,781)	$ (11,405,173)
Less: dividends on preferred stock	15,600	-	15,600	-
	$ (2,145,260)	$ (2,560,040)	$ (8,578,381)	$ (11,405,173)
Denominator:				
Basic – weighted shares outstanding	15,976,227	12,732,244	15,085,911	12,524,132
Dilutive effect from shares authorized	-	-	-	-
Diluted – weighted shares outstanding	15,976,227	12,732,244	15,085,911	12,524,132
Basic loss per share attributable to Fresh Vine Wine shareholders:	$ (0.13)	$ (0.20)	$ (0.57)	$ (0.91)
Diluted loss per share attributable to Fresh Vine Wine shareholders:	$ (0.13)	$ (0.20)	$ (0.57)	$ (0.91)

At September 30, 2023 and 2022, 5,905,528 and 1,691,562 shares have been excluded from the calculation of diluted weighted average shares outstanding as the inclusion of these shares would have an anti-dilutive effect.

4. INVENTORIES

Inventories primarily include bottled wine which is carried at the lower cost (calculated using the average cost method) or net realizable value. During the second quarter of 2023, the Company recorded a $1.7 million inventory write down to net realizable value, which is recorded in cost of revenue in the financial statements. This write-down was the result of entering into an agreement to sell products at a price that was lower than the Company's cost. The finished goods inventory at September 30, 2023 includes a valuation reserve of $209,000. Inventories consist of the following at:

	September 30, 2023	December 31, 2022
Inventory – finished goods	$ 742,394	$ 3,683,159
Inventory – merchandise	-	13,039
Total	$ 742,394	$ 3,696,198

5. PREPAID EXPENSES AND OTHER ASSETS

Prepaid expenses and other assets consist of the following at:

	September 30, 2023	December 31, 2022
Prepaid marketing expense – current	$ -	$ 313,000
Prepaid marketing expenses – long-term	-	678,167
Inventory deposits	293,824	569,377
Prepaid insurance	196,959	-
Other prepaid expenses	83,156	78,834
Total	$ 573,939	$ 1,639,378

6. ACCRUED EXPENSES

Accrued expenses consist of the following at:

	September 30, 2023	December 31, 2022
Sponsorship agreements	$ 499,488	$ 234,494
Accrued credit card charges	2,774	21,013
General trade payable accruals	136,869	107,424
Preferred cumulative dividends	15,600	-
Other accrued expenses	10,836	60,000
Total	$ 665,567	$ 422,931

The sponsorship agreements relate to marketing contracts with unrelated parties within the sports and entertainment industry. The terms of the agreements range from two to four years with annual payments range from $103,000 to $216,000 per agreement. The total expense relating to these agreements for the three and nine month periods ended September 30, 2023 was $88,331 and $264,993, respectively. The total expense relating to these agreements for the three and nine month periods ended September 30, 2022 was ($142,000) and $224,000, respectively.

Accrued credit card charges primarily consist of warehouse, shipping and other operating costs paid via a Company credit card as a tool for managing cashflow.

7. STOCKHOLDERS EQUITY

Rights offering

During the first quarter of 2023, the Company distributed, at no charge to holders of the Company's common stock, non-transferable subscription rights to purchase up to an aggregate of 6,366,129 Units. Each Unit consisted of one share of our common stock and a Warrant to purchase one share of our common stock. The Warrants were exercisable immediately, expire five years from the date of issuance and have an exercise price of $1.25 per share. For each share of common stock held by a stockholder of the Company on February 22, 2023, the record date of the Rights Offering, such stockholder received 0.5 subscription rights. Each whole subscription right allowed the holder thereof to subscribe to purchase one Unit, which we refer to as the basic subscription right, at a subscription price of $1.00 per Unit. In addition, any holder of subscription rights exercising his, her or its basic subscription right in full was eligible to subscribe to purchase additional Units that remained unsubscribed in the Rights Offering at the same subscription price per Unit that applied to the basic subscription right, subject to proration among participants exercising their over-subscription privilege, which we refer to as the over-subscription privilege. Upon the closing of the Rights Offering, which occurred on March 14, 2023, we issued 3,143,969 shares of common stock and 3,143,969 warrants and received aggregate gross cash proceeds of approximately $3.14 million. After deducting dealer-manager fees and other fees and expenses related to the Rights Offering, we received net proceeds of approximately $2.6 million. If exercised, additional gross proceeds of up to approximately $3.93 million may be received through the exercise of warrants issued in the Rights Offering.

Series A Redeemable Preferred Stock

On August 2, 2023, the Company entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with two accredited investors (the "Purchasers") pursuant to which the Company agreed to issue and sell in a private placement (the "Offering") shares of a newly created series of preferred stock designated as "Series A Convertible Preferred Stock" (the "Series A Stock").

Pursuant to the Securities Purchase Agreement, the Purchasers collectively agreed to purchase up to 10,000 shares of Series A Stock at a per share purchase price equal to $100.00 (the "Stated Value"), for total gross proceeds of up to $1.0 million. The Purchasers agreed to purchase 4,000 shares of Series A Stock for an aggregate purchase price of $400,000 at an initial closing of the Offering (the "Initial Closing"), which occurred on August 2, 2023. The Securities Purchase Agreement provides that the Company will issue and sell to the Purchasers, and the Purchasers will purchase, an additional 4,000 shares of Series A Stock at a second closing (the "Second Closing"), which occurred on September 7, 2023. Pursuant to the Securities Purchase Agreement, the Purchasers may elect, but are not required, to purchase an additional 2,000 shares of Series A Stock from the Company at a closing (the "Optional Closing") within 60 days following the date of the Initial Closing. As of September 30, 2023, the Company had not received proceeds from the Optional Closing and discussions are continuing with the investors but there is no guaranty the Optional Closing will occur.

Each share of Series A Stock is convertible, at any time and from time to time from and after the date of the Initial Closing at the option of the holder thereof, into the number of shares of common stock ("Conversion Shares") calculated by dividing the Stated Value by a conversion price (the "Conversion Price") of $0.10. However, if the Company's common stock fails to continue to be listed or quoted for trading on a stock exchange, then the Conversion Price thereafter will mean the lesser of (i) $0.10, or (ii) the closing sale price of the common stock on the trading day immediately preceding the conversion date; provided that the Conversion Price shall not be less than $0.05 (the "Floor Price"). The Conversion Price is subject to standard adjustments based stock splits, stock dividends, stock combinations and the like, and the Floor Price is also subject to anti-dilution adjustments resulting from future offerings of common stock (or common stock equivalents) at a price less than the prevailing Conversion Price.

The Series A Stock contains "blocker" provisions restricting the holders' ability to exercise conversion rights if the issuance of Conversion Shares would result in such holder beneficially owning in excess of 4.99% of the Company's common stock. In addition, a Series A Stock holder's ability to convert Series A Stock to common stock will be subject to an "Exchange Share Cap" and an "Individual Holder Share Cap." Under the Exchange Cap, the total number of shares of common stock issuable upon conversion of outstanding Preferred Shares, when added to any previously issued Dividend Shares (as defined below), may not exceed 19.9% of the Company's issued and outstanding common stock immediately prior to the date on which shares of Series A Stock are first issued. Under the Individual Holder Share Cap, no holder of Series A Stock will have the right to acquire common stock upon conversion of the Series A Stock if the issuance of shares of common stock would result in converting holder beneficially owning in excess of 19.9% of the number of shares of common stock outstanding immediately after giving effect to the issuance. The Exchange Share Cap and the Individual Holder Share Cap will not apply if the Company obtains stockholder approval to issue the shares of common stock exceeding the applicable cap as required by the NYSE American LLC Company Guide.

Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary (a "Liquidation"), the Holders shall (i) first be entitled to receive out of the assets, whether capital or surplus, of the Company an amount equal to 150% times the Stated Value for each share of Series A Stock before any distribution or payment shall be made to the holders of any junior securities and (ii) then be entitled to participate in the distribution of remaining assets with the holders of common stock on an as-if-converted to common stock basis (disregarding for such purposes any conversion limitations).

The Company may redeem (i) up to 75% of the issued and outstanding shares of Series A Stock for a price per share equal to 150% of the Stated Value thereof if such redemption occurs within six months from the date of issuance, and (ii) up to 50% of the issued and outstanding shares of Series A Stock for a price per share equal to 200% of the Stated Value thereof if such redemption occurs after six months but before the expiration of twelve months from the date of issuance.

Each holder of a share of Series A Stock is entitled to receive dividends payable, subject to certain conditions, in cash or shares of common stock ("Dividend Shares") valued as either (i) the then applicable Conversion Price, or (ii) 50% of the then current market price of the Company's common stock, at the dividend rate of 12% per annum. Dividends are cumulative and will be payable on July 31st of each year. However, the Company may not pay dividends by issuing Dividend Shares if and to the extent that the issuance of such Dividend Shares, when added to all Conversion Shares previously issued upon prior conversions of Series A Stock and previously issued Dividend Shares (if any), would exceed the Exchange Share Cap or result in a Series A Stock holder beneficially owning shares of common stock in excess of the Individual Holder Share Cap, in each case unless the Company obtains stockholder approval for such issuances.

The shares of Series A Stock will vote with the common stock as a single class on all matters submitted to a vote of stockholders of the Company other than any proposal to approve the issuance of shares of common stock in excess of the Exchange Share Cap or the Individual Holder Share Cap. The Preferred Shares will vote on an as-converted to common stock basis, taking into account the conversion limitations resulting from the Exchange Share Cap and the Individual Holder Share Cap, if and as applicable; however, solely for purposes of determining voting rights, the Conversion Price shall be equal to the most recent closing sale price of the Common Stock as of the execution and delivery of the Securities Purchase Agreement, which was $0.47.

The issuance activity of the Series A Stock is summarized below:

	Three Months Ended September 30, 2023	Nine Months Ended September 30, 2023
Series A preferred stock shares issued	8,000	8,000
Net proceeds	$ 750,000	$ 750,000

The Series A Stock meets the requirements for permanent equity classification as prescribed by the authoritative guidance.

The following table summarizes accrued dividends that the Company is legally obligated to pay:

	Three Months Ended September 30, 2023	Nine Months Ended September 30, 2023
Series A preferred stock	$ 15,600	$ 15,600

8. EQUITY BASED COMPENSATION

As of June 30, 2023, there was $834,668 of unrecognized equity-based compensation expense recorded in prepaid expenses and other assets. This expense was for various marketing and advertising services in exchange for common stock and was being expensed over the lifetime of license agreements with several celebrity endorsers. The license agreements were terminated during Q3 2023 and the entire $834,668 was recognized as expense during Q3 2023.

Restricted Stock Units

On April 24, 2023 the Company granted 319,023 restricted stock units to its Chief Executive Officer. On May 11, 2023 the Company granted 170,958 restricted stock units to its Executive Vice President Sales and Marketing. On May 25, 2023, the Company granted 124,902 restricted stock units to its Chief Financial Officer. Restricted stock units represent the right to receive one share of common stock from the Company upon vesting. These restricted stock units had a vesting period that coincided with the company filing its Form 10-K for the year ended on December 31, 2023 and had a stipulation that each of the executives attained performance objectives.

Restricted stock unit activity for the nine months ended September 30, 2023 was as follows:

	Number of RSUs	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2022	-	-
Granted	614,883	0.9
Vested or released	-	-
Forfeited	(614,883)	-
Outstanding at September 30, 2023	-	-

Shares of Restricted Stock

During the first quarter of 2023, 6,666 shares of restricted stock from previous periods were forfeited by employees that terminated their employment. There was a new grant of 500,000 shares of restricted stock which related to a consulting arrangement entered into in connection with the settlement reached with a previous employee, as further disclosed in Note 12. On April 24, 2023 the Company granted 463,917 shares of restricted stock to its Chief Executive Officer. On May 11, 2023 the Company granted 380,952 shares of restricted stock to its Executive Vice President Sales and Marketing. On May 25, 2023, the Company granted shares of 196,463 restricted stock to its Chief Financial Officer. All shares of restricted stock granted on April 24, 2023, May 11, 2023 and May 25, 2023 were forfeited and canceled during the third quarter of 2023. In addition, the Company Board of Directors were granted a total of 100,000 shares of restricted stock during the nine-month period ended September 30, 2023. Stock compensation expense related to restricted stock issuances for the three and nine month periods ended September 30, 2023 was $105,346 and $598,404, respectively. Stock compensation expense related to restricted stock for the three and nine month periods ended September 30, 2022 was $2,303 and $12,442, respectively. Total unrecognized equity-based compensation expense is $11,096 related to restricted stock as of September 30, 2023.

Restricted stock activity during the nine-month period ended September 30, 2023 was as follows:

	Number of Shares of Restricted Stock	Weighted Average Remaining Vesting Term (Years)
Outstanding at December 31, 2022	6,666	0.9
Granted	1,641,332	0.6
Vested or released	(550,000)	-
Forfeited	(1,047,998)	-
Outstanding at September 30, 2023	50,000	0.1

Vendor Stock Awards

Vendor stock award activity subject to revenue-related performance conditions during the nine-month period ended September 30, 2023 was as follows:

	Number of Shares of Vendor Stock Awards	Weighted Average Remaining Vesting Term (Years)
Outstanding at December 31, 2022	1,030,000	2.25
Granted	-	-
Vested	-	-
Expired	-	-
Outstanding at September 30, 2023	1,030,000	1.50

For stock awards that contain revenue-related performance conditions, compensation cost is recognized in the period in which it becomes probable that the performance condition will be satisfied. During the second quarter of 2023, it became not probable that the revenue-related performance will be achieved. Accordingly, the Company has reversed the $15,500 of expense recorded in the first quarter of 2023 and has not booked any expense in the second or third quarters of 2023. Stock compensation expense related to vendor stock awards subject to revenue-related performance conditions totaled $0 and $0 for the nine months ended September 30, 2023 and 2022, respectively.

Stock Options

Stock option activity as of and during the nine-month period ended September 30, 2023 was as follows:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contract Term (Years)
Outstanding at December 31, 2022	1,574,892	9.67	8.94
Granted	1,500,000	0.50	5.00
Exercised	-	-	-
Forfeited	(2,628,333)	-	-
Outstanding at September 30, 2023	446,559	9.97	8.22
Exercisable at September 30, 2023	71,559	3.03	8.92

Stock compensation expense related to options issued amounted to $145,295 and $173,242 for the nine months ended September 30, 2023 and 2022 respectively. Total unrecognized equity-based compensation expense is $7,899 related to stock options as of September 30, 2023.

Warrants

During the first nine months of 2023, no warrants from previous periods were exercised or forfeited. As described above, 3,143,969 warrants were granted as part of the Rights Offering, as disclosed in Note 7.

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contract Term (Years)
Outstanding at December 31, 2022	110,000	12.00	3.71
Granted	3,143,969	1.25	5.00
Exercised	-	-	-
Forfeited	-	-	-
Outstanding at September 30, 2023	3,253,969	1.61	4.42

The Company uses the Black-Scholes option-pricing model to estimate the fair value of equity-based awards. The inputs for the Black-Scholes valuation model require management's significant assumptions. Prior to the Company's IPO, the price per share of common stock was determined by the Company's board based on recent prices of common stock sold in private offerings. Subsequent to the IPO, the price per share of common stock is determined by using the closing market price on The NYSE American stock exchange on the grant date. The risk-free interest rates, ranging from 0.02% to 4.45%, are based on the rate for U.S. Treasury securities at the date of grant with maturity dates approximately equal to the expected life of the awards at the grant date. The expected term for employee and nonemployee awards ranged from 3 to 10 years based on industry data, vesting period, contractual period, among other factors. The expected volatility was estimated at 175% based on historical volatility information of peer companies that are publicly available in combination with the Company's calculated volatility since being publicly traded. The Company does not expect to pay dividends on its common stock. For awards with a performance condition, stock compensation is recognized over the requisite service period if it is probable that the performance condition will be satisfied.

9. INCOME TAXES

The Company has federal and state net operating loss carryforwards with a full valuation allowance against the deferred tax assets as of September 30, 2023. No income tax expense or benefit was recorded for the nine month periods ended September 30, 2023 and 2022 due to the Company's net loss position.

10. SUPPLIER AND CUSTOMER CONCENTRATION

The Company has an agreement with an unrelated party for various wine making activities, including production, bottling, labeling, and packaging. The Company purchases finished goods through blanket sales orders that require a minimum 20% deposit. In addition to the purchases of finished goods, the Company pays certain storage, administrative fees and taxes related to the purchased goods. There is no specified term of the agreement but continues as additional blanket sales orders are issued. For the nine month periods ended September 30, 2023 and 2022, substantially all of the Company's inventory purchases were from this supplier.

The Company also engages with other suppliers as needed for the purchase of a select varietal of wine to be offered in limited quantities. There are no formal agreements due to the infrequency of activity with these suppliers.

A significant portion of the Company's wholesale revenue comes from three national distributor customers that operate in several markets. For the three and nine month periods ended September 30, 2023, approximately 96% and 87%, respectively of the Company's wholesale revenue came from these three customers. For the three and nine months ended September 30, 2022, approximately 68% and 70%, respectively, of the Company's wholesale revenue came from these three customers. As of September 30, 2023 and December 31, 2022, these customers accounted for approximately 91% and 90% respectively of accounts receivable.

11. COMMITMENTS AND CONTINGENCIES

License Agreements

During March 2021, the Company entered into two license agreements with the Class F partner investors for marketing and advertising services. These two license agreements were terminated during the third quarter of 2023. The net expense relating to the agreements was $89,333 and $329,333 for the three and nine month periods ended September 30, 2023. The net expense was $120,000 and $260,000 for the three and nine month periods ended September 30, 2022.

Sponsorship Agreements

The estimated expense for the sponsorship agreements as described in Note 6 for the periods subsequent to September 30, 2023 is as follows:

	Advertising and Marketing Expense
2023	$ 88,331
2024	160,147
	$ 248,478

12. LEGAL PROCEEDINGS

Timothy Michaels

On February 24, 2022, Timothy Michaels, the former Chief Operating Officer of the Company, signed a Separation Agreement and Release (the "Separation Agreement") in connection with the termination of his employment with the Company, which occurred on February 7, 2022.

On May 27, 2022, Mr. Michaels filed a complaint against the Company in the Fourth Judicial District Court, Hennepin County, Minnesota, alleging that the Company breached the February 24, 2022 Separation Agreement by including a restricted "lock-up" legend on shares of the Company's common stock issued to Mr. Michaels pursuant to the Settlement Agreement. The complaint also included counts alleging breach of the implied covenant of good faith and fair dealing, issuer liability under Minn. Stat. § 336.8-401 for delay in removing or directing the Company's transfer agent to remove the lock-up legend from the shares, conversion and civil theft.

The Company has denied the allegations and intends to vigorously defend against the lawsuit. The Company made a motion seeking dismissal of the conversion and civil theft counts, which was granted by the Fourth Judicial District Court, Hennepin County, Minnesota on October 31, 2022. On August 9, 2023, the Company moved for summary judgment on Mr. Michaels' remaining claims. The court has yet to rule on the Company's motion for summary judgment. The action remains pending.

Janelle Anderson Litigation Settlement and Related Founder Share Forfeitures

The Company was a party to an action pending in Hennepin County District Court, captioned Janelle Anderson v. Fresh Vine Wine, Inc., Damian Novak, and Rick Nechio, Court File No. 27-CV-22-11491 (the "Lawsuit"), in which Ms. Anderson alleged, among other things, that the Company terminated her employment in retaliation for reports of alleged wrongdoing pursuant to the Minnesota Whistleblower Act. Defendants also included Damian Novak, former Executive Chairman and a former director of the Company, and Rick Nechio, former interim Chief Executive Officer and a director of the Company. The suit was dismissed on March 6, 2023, with prejudice.

On January 27, 2023, the Company entered into a Global Mutual Compromise, Release and Settlement Agreement (the "Settlement Agreement") among Ms. Anderson and each of Messrs. Novak and Nechio. Pursuant to the Settlement Agreement, Ms. Anderson agreed to dismiss the Lawsuit with prejudice and to file with the court any and all documents necessary to effect such dismissal with prejudice within five business days after all settlement consideration has been actually received by her, and the parties agreed to general mutual releases. The Company also agreed to indemnify Ms. Anderson and hold her harmless against any liability, civil damages, penalties, or fines claimed against her for any of her actions done within the course and scope of her employment with the Company as required by Minn. Stat. §181.970, and under any applicable insurance policies, including but not limited to any directors and officers policies. The Settlement Agreement also contains a non-disparagement provision.

As consideration for Ms. Anderson's dismissal and release, and provided that she does not revoke or rescind the Settlement Agreement within prescribed time periods, the Company agreed to make a cash payment to Ms. Anderson in the amount of $1,250,000, less certain attorney fees and relevant taxes and other withholdings, in a lump sum. The Company recouped approximately $805,000 of this cash payment from insurance coverage. The cash payment is in addition to the $400,000 that the Company previously paid to Ms. Anderson in January 2023 in respect of 2022 bonus compensation earned by Ms. Anderson under her employment agreement while employed by the Company. Also as contemplated by the Settlement Agreement, the Company and Ms. Anderson agreed to enter into a consulting agreement (the "Anderson Consulting Agreement") pursuant to which Ms. Anderson would provide certain consulting services to the Company for a period of six months. As consideration for such services, the Company agreed to grant and issue to Ms. Anderson 500,000 shares of the Company's common stock (the "Anderson Consulting Shares") from the Company's 2021 Equity Incentive Plan (the "Anderson Consulting Share Grant"). The cash payment and the Anderson Consulting Share Grant were scheduled to be made at the "closing" of the Settlement Agreement (the "Settlement Closing"), subject to Ms. Anderson not revoking or rescinding the Settlement Agreement during the applicable revocation period. The Settlement Closing was completed on February 20, 2023, with prejudice. No additional expense has been recorded during 2023 regarding this matter.

Also pursuant to the Settlement Agreement, Damian Novak, former Executive Chairman and director, resigned as Executive Chairman and removed himself from his management duties with the Company effective February 20, 2023, and has resigned from our board of directors promptly following completion of the subscription rights offering on March 14, 2023. In addition, Rick Nechio, the Company's former interim Chief Executive Officer and director, resigned from our board of directors effective February 20, 2023.

In conjunction with entering into the Settlement Agreement, Rick Nechio and Damian Novak entered into Agreements to Forfeit Shares of Common Stock (the "Forfeiture Agreements") pursuant to which each agreed to forfeit and transfer back to the Company without consideration 250,000 shares of common stock of the Company held by them (a total of 500,000 shares), to enable the Company to issue the Anderson Consulting Shares to Ms. Anderson without subjecting the Company's other stockholders to dilution therefrom (the "Anderson Consulting-related Forfeitures"). The Anderson Consulting-related Forfeitures became effective in connection with the Settlement Closing.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the financial statements and related notes to those statements as included elsewhere in this Quarterly Report on Form 10-Q. In addition to historical financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties, and assumptions. See "Cautionary Note Regarding Forward-looking Statements" and Part II "Item 1A. Risk Factors, included elsewhere in this Quarterly Report on Form 10-Q. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors, including those discussed in Part I "Item 1A. Risk Factors" included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, and in our subsequently filed documents with the SEC.

Overview

Fresh Vine Wine, Inc. (the "Company") is a premier producer of low carb, low calorie, premium wines in the United States. Founded in 2019, Fresh Vine Wine brings an innovative "better-for-you" solution to the wine market. We currently sell seven proprietary varietals: Cabernet Sauvignon, Pinot Noir, Chardonnay, Sauvignon Blanc, Rosé, Sparkling Rosé, and a limited Reserve Napa Cabernet Sauvignon. All varietals are produced and bottled in Napa, California.

Our wines are distributed across the United States and Puerto Rico through wholesale, retail, and direct-to-consumer (DTC) channels. We are able to conduct wholesale distribution of our wines in all 50 states and Puerto Rico, and we are licensed to sell through DTC channels in 43 states. As of September 30, 2023, we hold active relationships with wholesale distributors in 50 states, up from 48 states as of December 31, 2022. We are actively working with leading distributors, including Southern Glazer's Wine & Spirits (SGWS), Johnson Brothers, and Republic National Distributing Company (RNDC), to expand our presence across the contiguous United States.

Our core wine offerings are priced strategically to appeal to mass markets and sell at a list price between $15 and $25 per bottle. Given the Fresh Vine Wine brand's celebrity backing, "better-for-you" appeal, and overall product quality, we believe that it presents today's consumers with a unique value proposition within this price category. Additionally, Fresh Vine Wine is one of the very few products available at this price point that includes a named winemaker, Jamey Whetstone.

Our marketing activities focus primarily on consumers in the 21-to-34 year old demographic with moderate to affluent income and on those with a desire to pursue healthy and active lifestyles.

Our asset-light operating model allows us to utilize third-party assets, including land and production facilities. This approach helps us mitigate many of the risks associated with agribusiness, such as isolated droughts or fires. Because we source product inputs from multiple geographically dispersed vendors, we reduce reliance on any one vendor and benefit from broad availability/optionality of product inputs. This is particularly important as a California-based wine producer where droughts or fires can have an extremely detrimental impact to a company's supply chain if not diversified.

Key Financial Metrics

We use net revenue, gross profit (loss) and net income (loss) to evaluate the performance of Fresh Vine Wine. These metrics are useful in helping us to identify trends in our business, prepare financial forecasts and make capital allocation decisions, and assess the comparable health of our business relative to our direct competitors.

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Net revenue	$ 847,959	$ 535,584	$ 1,586,714	$ 2,484,086
Gross profit (loss)	$ (41,885)	$ (65,962)	$ (2,044,777)	$ 434,436
Net loss	$ (2,129,660)	$ (2,560,040)	$ (8,562,781)	$ (11,405,173)

Components of Results of Operations and Trends That May Impact Our Results of Operations

Net Revenue

Our net revenue consists primarily of wine sales to distributors and retailers, which together comprise our wholesale channel, and directly to individual consumers through our DTC channel. Net revenues generally represent wine sales and shipping, when applicable, and to a lesser extent branded merchandise and wine club memberships. For wine and merchandise sales, revenues are recognized at time of shipment. For Wine Club memberships, revenues are recognized quarterly at the time of fulfilment.

We refer to the volume of wine we sell in terms of cases. Each case contains 12 standard bottles, in which each bottle has a volume of 750 milliliters. Cases are sold through Wholesale/Retail or DTC channels.

The following factors and trends in our business have driven our net revenue results and are expected to be key drivers of our net revenue for the foreseeable future:

Brand recognition: As we expand our marketing presence and drive visibility through traditional and modern marketing methods, we expect to build awareness and name recognition for Fresh Vine Wine in consumers' minds. Brand awareness will be built substantially through social media channels. Our brand, and to a large extent our direct-to-consumer sales outlet, has historically been dependent on the image and popularity of, and affinity towards, Nina Dobrev and Julianne Hough. Ms. Dobrev and Ms. Hough served as celebrity spokespersons and ambassadors of our company, and actively endorsed our wines on their sizable social media and other outlets pursuant to agreements that granted us licenses to use their pre-approved name, likeness, image, and other indicia of identity, as well as certain content published on their social media and other channels, on and in conjunction with the sale and related pre-approved advertising and promotion of our wine. Such license agreements terminated on September 7, 2023 and, as a result, we will be required to refocus our marketing and brand promotion efforts. See *Part II, "Item 1A Risk Factors - We have relied heavily on celebrities to endorse our wines and market our brand pursuant to license agreements which have been terminated."*

Portfolio evolution: As a relatively new, high-growth brand, we expect and seek to learn from our consumers. We intend to continuously evolve and refine our products to meet our consumers' specific needs and wants, adapting our offering to maximize value for our consumers and stakeholders.

Distribution expansion and acceleration: Purchasing by distributors and loyal accounts that continue to feature our wines are key drivers of net revenue.

Seasonality: In line with industry norms, we anticipate our net revenue peaking during the quarter spanning from October through December due to increased consumer demand around the major holidays. This is particularly true in our DTC revenue channel, where marketing programs will often be aligned with the holiday season and product promotions will be prevalent.

Revenue Channels

Our sales and distribution platform is built upon a highly developed network of distributor accounts. Within this network, we have signed agreements in place with several of the nation's largest distributors including Southern Glazer's Wine & Spirits and RNDC, among others. While we are actively working with these distributors in certain markets, they operate across the United States, and we intend to grow our geographic/market presence through these relationships. The development of these relationships and impacts to our related product mix will impact on our financial results as our channel mix shifts.

- *Wholesale channel*: Consistent with sales practices in the wine industry, sales to retailers and distributors occur below SRP (Suggested Retail Price). We work closely with distributors to increase wine volumes and the number of products sold by their retail accounts in their respective territories.

- *DTC channel*: Wines sold through our DTC channels are generally sold at SRP, although we do periodically offer various promotions. Our DTC channel continues to grow as a result of a number of factors, including expanded e-commerce sites and social media capabilities.

- *Related party services*: We previously entered into service agreements with related parties in the wine industry to provide representation and distribution services. These services were suspended in June 2022 to allow the Company's lean team to prioritize the growth and expansion of the Fresh Vine Wine brand.

Wholesale channel sales made on credit terms generally require payment within 30 days of delivery; however our credit terms with Southern Glazer's Wine & Spirits requires payment within 60 days of delivery. During periods in which our net revenue channel mix reflects a greater concentration of wholesale sales, we typically experience an increase in accounts receivable for the period to reflect the change in sales mix; payment collections in the subsequent period generally reduce our accounts receivable balance and have a positive impact on cash flows.

While we seek to increase revenue across all channels, we expect the majority of our future revenue to be driven through the wholesale channel. We intend to maintain and expand relationships with existing distributors and form relationships with new distributors as we work to grow the Company. With multiple varietals within the Fresh Vine Wine portfolio, we consider ourselves to be a 'one-stop shop' for better-for-you wines. We continue to innovate with new products at competitive price points and strive to enhance the experience as we increase revenue with new and existing consumers.

In the DTC channel, our comprehensive approach to consumer engagement in both online and traditional forums is supported by an integrated e-commerce platform. Our marketing efforts target consumers who have an interest in healthy and active lifestyles. We attempt to motivate consumers toward a simple and easy purchasing decision using a combination of defined marketing programs and a modernized technology stack.

Increasing customer engagement is a key driver of our business and results of operations. We continue to invest in our DTC channel and in performance marketing to drive customer engagement. In addition to developing new product offerings and cross-selling wines in our product portfolio, we focus on increasing customer conversion and retention. As we continue to invest in our DTC channel, we expect to increase customer engagement and subsequently deliver greater satisfaction. We also distribute our wines via other wine e-commerce sites such as Wine.com and Vivino.com and plan to continue to add affiliate retail websites.

Net Revenue Percentage by Channel

We calculate net revenue percentage by channel as net revenue made through our wholesale channel to distributors, through our wholesale channel directly to retail accounts, and through our DTC channel, respectively, as a percentage of our total net revenue. We monitor net revenue percentage across revenue channels to understand the effectiveness of our distribution model and to ensure we are employing resources effectively as we engage customers. See Note 2 to the accompanying financial statements for further details.

	Three months ended		**Nine months ended**	
	September 30, 2023	**September 30, 2022**	**September 30, 2023**	**September 30, 2022**
Wholesale	87.8%	61.8%	75.1%	61.1%
Direct to consumer	12.2%	38.2%	24.9%	26.9%
Related party service	0.0%	0.0%	0.0%	12.0%
Total revenue	100.0%	100.0%	100.0%	100.0%

Cost of Revenues

Cost of revenues (or cost of goods sold) is comprised of all direct product costs such as juice, bottles, caps, corks, labels, capsules, storage and shipping. Additionally, we also categorize boxes and quality assurance testing within our cost of revenues. We expect that our cost of revenues will increase as our net revenue increases. As the volume of our product input increases, we intend to work to renegotiate vendor contracts with key suppliers to reduce overall product input costs as a percentage of net revenue. Based on a proposed sale of inventory at a price below the Company's cost, the Company completed an evaluation of the net realizable value of our inventory during the three months ended June 30, 2023. As a result of this evaluation, the Company recorded a $1.7 million inventory write down to reflect it at its net realizable value, which is recorded in cost of revenue in the financial statements.

Additionally, the Company includes shipping fees in all DTC revenues. These fees are paid by end consumers at time of order and subsequently itemized within the cost of each individual sale.

As a commodity product, the cost of wine fluctuates due to annual harvest yields and the availability of juice. This macroeconomic consideration is not unique to Fresh Vine Wine, although we are conscious of its potential impact to our product cost structure.

Gross Profit (Loss)

Gross profit (loss) is equal to our net revenue less cost of revenues.

Selling, General, and Administrative Expenses

Selling, general, and administrative expenses consist of selling expenses, marketing expenses, and general and administrative expenses. Selling expenses consist primarily of direct selling expenses in our wholesale and DTC channels, including payroll and related costs, product samples, processing fees, and other outside service fees or consulting fees. Marketing expenses consist primarily of advertising costs to promote brand awareness, contract fees incurred as a result of significant sports marketing agreements, customer retention costs, payroll, and related costs. General and administrative expenses consist primarily of payroll and related costs.

Equity-Based Compensation

Equity-based compensation consists of the non-cash expense resulting from our issuance of equity or equity-based grants issued in exchange for employee or non-employee services. We measure equity-based compensation cost at the grant date based on the fair value of the award and recognize the compensation expense over the requisite service period, which is generally the vesting period. We recognize any forfeitures as they occur.

Comparison of the Three and Nine months ended September 30, 2023 and 2022

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Net revenue	$ 847,959	$ 535,584	$ 1,586,714	$ 2,484,086
Cost of revenues	$ 889,844	$ 601,546	$ 3,631,491	$ 2,049,650
Gross profit (loss)	$ (41,885)	$ (65,962)	$ (2,044,777)	$ 434,436
Selling, general and administrative expenses	$ 1,141,390	$ 2,400,182	$ 4,784,535	$ 9,155,448
Equity-based compensation	$ 946,415	$ 105,679	$ 1,734,765	$ 2,705,901
Loss from operations	$ (2,129,690)	$ (2,571,823)	$ (8,564,077)	$ (11,426,913)
Other income	$ 30	$ 11,783	$ 1,296	$ 21,740
Net loss	$ (2,129,660)	$ (2,560,040)	$ (8,562,781)	$ (11,405,173)

Net Revenue, Cost of Revenues and Gross Profit

	Three months ended September 30,		Change		Nine months ended September 30,		Change	
	2023	2022	$	%	2023	2022	$	%
Net revenue	$ 847,959	$ 535,584	312,375	58.3%	$ 1,586,714	$ 2,484,086	(897,372)	-36.1%
Cost of revenues	$ 889,844	$ 601,546	288,298	47.9%	$ 3,631,491	$ 2,049,650	1,581,841	77.2%
Gross profit (loss)	$ (41,885)	$ (65,962)	24,077	36.5%	$ (2,044,777)	$ 434,436	(2,479,213)	-570. 7%

For the three and nine months ended September 30, 2023, we experienced an increase of 58% and a decrease of 36%, respectively, in net revenue compared to the same periods in 2022. The nine month decrease in net revenue was attributable to decreasing sales and marketing spending, the termination of related party sales agreements and increased billbacks. The current quarter increase reflects the sale of inventory at much reduced pricing. The cost of revenues increased during the three and nine months ended September 30, 2023 48% and 77%, respectively, compared to the same periods in 2022. The cost of revenues for the nine months ended September 30, 2023 included an inventory write-down of $1.7 million.

Selling, general and administrative expenses

	Three months ended September 30,		Change		Nine months ended September 30,		Change	
	2023	2022	$	%	2023	2022	$	%
Selling expenses	$ 218,634	$ 296,408	(77,774)	-26.2%	$ 810,755	$ 1,020,340	(209,585)	-20.5%
Marketing expenses	268,767	463,541	(194,774)	-42.0%	1,429,069	2,137,408	(708,339)	-33.2%
General and administrative expenses	$ 653,989	$ 1,640,233	(986,244)	-60.1%	$ 2,544,711	$ 5,997,700	(3,452,989)	-57.6%

For the three and nine months ended September 30, 2023, selling, general and administrative expenses decreased 52% and 48%, respectively, compared to the same periods in the 2022. Selling, general and administrative expense decreases were largely driven by certain one-time charges associated with the leadership transition described, as well as decreases in general and administrative expenses due to lower staffing headcount and related salaries and additional consulting, legal and financial expenses as operational activity decreased from 2023 to 2022.

Cash Flows

	Nine months ended September 30,	
	2023	**2022**
Cash provided by (used in):		
Operating activities	$ (4,585,403)	$ (12,261,556)
Investing activities	-	-
Financing activities	3,365,014	(387,069)
Net (decrease) in cash	$ (1,220,389)	$ (12,648,625)

Cash used in operating activities decreased in the 2023 period primarily due to the fact that no inventory purchases were made in 2023 to maintain our inventory levels to meet demand and reductions in costs for staffing and marketing activities.

Net cash provided by financing activities totaled $3,349,414 and consisted of $2,615,014, raised in the Rights Offering (detailed in Note 7 in the financial statements) that was completed on during the first quarter and the issuance of preferred stock for a net $750,000 (detailed in Note 7) during the quarter ended September 30, 2023 and net cash used in financing activities of $387,069 for the nine months ended September 30, 2022.

Liquidity and Capital Resources

Our primary cash needs are for working capital purposes, such as producing or purchasing inventory and funding operating expenses. We have funded our operations through equity and debt financings, as described under the caption “Financing Transactions” below.

We have incurred losses and negative cash flows from operations since our inception in May 2019, including net losses of approximately $8.6 million and $11.4 million during the nine months ended September 30, 2023 and the nine months ended September 30, 2022, respectively. As of September 30, 2023, we had an accumulated deficit of approximately $24.4 million and a total stockholders’ equity of approximately $1.1 million. We expect to incur losses in future periods as we continue to operate our business and incur expenses associated with being a public company.

As of September 30, 2023, we had $0.9 million in cash and restricted cash, accounts receivable of $431,000, inventory of $0.7 million and prepaid expenses of $0.6 million. On September 30, 2023, current assets amounted to approximately $2.6 million and current liabilities were $1.5 million, resulting in a working capital surplus (with working capital defined as current assets minus current liabilities) of approximately $1.1 million.

Since the commencement of its operations, the Company’s operating and other expenses have continued to significantly exceed its revenues. The Company put in place cash preservation initiatives in the second half of 2022, including a strategic restructuring plan aimed at cash resources while continuing to focus on accelerating sales growth. That plan resulted in the termination of members of the Company’s internal sales team, the engagement of a third party vendor positioned to more efficiently and effectively facilitate sales, and the engagement of a third party vendor to manage marketing initiatives and drive growth within the Direct-to-Consumer sales channel.

During the second quarter of 2023, the Company undertook a review of the Company’s operations and strategic plans, and took measures aimed at improving the Company’s operational efficiency, curtailing operating expenses and further preserving cash resources. During the quarter ended September 30, 2023, the Company continued to work to reduce its operating expenses, including reducing its warehousing costs, while continuing to provide customers the opportunity to experience its wine and supporting its current retail customers and those purchasing via the Company’s wine club or from its website.

Commencing in June 2023, the Company has continued to work aggressively to identify prospective new sources of capital, while working with advisors to assess and improve its liquidity position, including from the sale of existing inventory. Early in the third quarter, the Company entered into purchase orders for the sale of up to 45,000 cases of the Company’s wine to Grocery Outlet, a discount retailer, with sales expected to occur over an approximately three month period. The Company expects to obtain sales proceeds totaling approximately $800,000 from such sales, of which approximately $352,000 was received during the quarter ended September 30, 2023. Receipt of additional revenues is subject to the purchase orders being filled and applicable payment terms.

On August 2, 2023, the Company entered into a Securities Purchase Agreement with two accredited investors (the "Purchasers") pursuant to which the Company agreed to issue and sell in a private placement (the "Series A Offering") shares of a newly created series of preferred stock designated as Series A Convertible Preferred Stock (the "Series A Stock"). The rights and preferences of the Series A Stock were described in the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2023. See Note 7.

Pursuant to the Securities Purchase Agreement, the Purchasers collectively agreed to purchase up to 10,000 shares of Series A Stock at a per share purchase price equal to $100.00, for total gross proceeds of up to $1.0 million. The Purchasers agreed to purchase 4,000 shares of Series A Stock for an aggregate purchase price of $400,000 at an initial closing of the Offering (the "Initial Closing"), which occurred on August 4, 2023, and agreed to purchase an additional 4,000 shares of Series A Stock for an aggregate purchase price of $400,000 at a second closing (the "Second Closing"), which occurred on September 7, 2023. Pursuant to the Securities Purchase Agreement, the Purchasers may elect, but are not required, to purchase an additional 2,000 shares of Series A Stock from the Company at a closing (the "Optional Closing") within 60 days following the date of the Initial Closing (which period may be extended upon agreement of the parties), subject to satisfaction of applicable closing conditions. The Optional Closing has not yet occurred and discussions are continuing with the investors but there is no guaranty that the Optional Closing will occur.

The Company previously engaged The Oak Ridge Financial Services Group, Inc. ("Oak Ridge") to serve as a financial adviser to the Company in connection with the capital raising activities. The Company paid Oak Ridge a $10,000 cash advisory fee upon commencement of the engagement and, in connection with the Series A Offering, the Company has agreed to pay the Oak Ridge a cash fee equal to 5.0% of the gross proceeds received by the Company in the Series A Offering, in addition to reimbursing Oak Ridge for its out-of-pocket expenses.

The Company previously announced that it has initiated an exploration of strategic opportunities by way of merger, acquisition, or any accretive strategic transaction to enhance stockholder value, which is a focus of the Company's plan to increase its stockholders' equity and regain compliance with the NYSE American's continued listing standards. See Part II, *"Item 1A Risk Factors"* included elsewhere in this Quarterly Report on Form 10-Q. The Company has engaged The Oak Ridge Financial Services Group, Inc. as its exclusive investment banker to lead the process of sourcing and vetting potential targets for a merger or other business combination. Although the Company is exploring opportunities with target candidates, there is no guarantee that it will be able to identify suitable combination opportunities. Even if the Company is able to identify such opportunities, it may not be able to successfully negotiate favorable terms and may be required to incur significant costs and expenses to execute such a transaction.

The Company will need to seek additional debt or equity financing to sustain existing operations and pursue its combination transaction objectives. If adequate financing is not available, the Company will be forced to take measures to severely reduce our expenses and business operations, or discontinue them completely. At the current reduced pace of incurring expenses and without receipt of additional financing (but assuming the receipt of funds upon the Optional Closing under the Securities Purchase Agreement and the receipt of additional expected proceeds from the sales of inventory under the Grocery Outlet purchase orders, the Company projects that the existing cash balance will be sufficient to fund current operations into the first quarter of 2024, after which additional financing or capital will be needed to satisfy obligations. Additional financing may not be available on favorable terms or at all. If additional financing is available, it may be highly dilutive to existing stockholders and may otherwise include burdensome or onerous terms. The Company's inability to raise additional working capital in a timely manner would negatively impact the ability to fund operations, generate revenues, maintain or grow the business and otherwise execute the Company's business plan, leading to the reduction or suspension of operations and ultimately potentially ceasing operations altogether and initiating bankruptcy proceedings. Should this occur, the value of any investment in the Company's securities would be adversely affected.

These factors raise substantial doubt about the Company's ability to continue as a going concern. Our financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

Our ability to continue as a going concern in the future will be determined by our ability to generate sufficient cash flow to sustain our operations, raise additional capital in the form of debt or equity financing and/or complete a successful combination transaction with a suitable target company. Our forecast of cash resources is forward-looking information that involves risks and uncertainties, and the actual amount of our expenses could vary materially as a result of a number of factors. We have based our estimates on assumptions that may prove to be wrong, and our revenue could prove to be less and our expenses higher than we currently anticipate. Management does not know whether additional financing will be on terms favorable or acceptable to us when needed, if at all. If we are unable to generate sufficient cash flow to fund our operations and adequate additional funds are not available when required, management may need to curtail its sales and marketing efforts, which would adversely affect our business prospects, or we may be unable to continue operations.

Financing Transactions

We have funded our operations through debt and equity financing, as described in Item 7 (Management's Discussion and Analysis of Financial Condition and Results of Operations) of our Annual Report on Form 10-K for the year ended December 31, 2022 under the caption "Financing Transactions," Item 2 (Management's Discussion and Analysis of Financial Condition and Results of Operations) of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023 under the caption "Financing Transactions," and as described in this report under the caption "Liquidity and Capital Resources."

Critical Accounting Policies and Estimates

The Company's significant accounting policies are detailed in "Note 1: Summary of Significant Accounting Policies" to the financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022 and this Quarterly Report on Form 10-Q. The Company follows these policies in preparation of the financial statements.

Off-Balance Sheet Arrangements

We have not engaged in any off-balance sheet activities as defined in Item 303(a)(4) of Regulation S-K.

Accounting Standards and Recent Accounting Pronouncements

See Note 1 to our financial statement for a discussion of recent accounting pronouncements.

Emerging Growth Company Status

Pursuant to the JOBS Act, a company constituting an "emerging growth company" is, among other things, entitled to rely upon certain reduced reporting requirements and is eligible to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We are an emerging growth company and have elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. Our financial statements may, therefore, not be comparable to those of other public companies that comply with such new or revised accounting standards.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not required.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act), defines the term "disclosure controls and procedures" as those controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act 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 our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as of September 30, 2023. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) were not effective as of September 30, 2023 due to the material weaknesses in internal control over financial reporting as described below.

Material Weakness Remediation Activities

Management had previously determined that there were material weaknesses in our internal control over financial reporting resulting from (i) a lack of segregation of incompatible duties based on the limited number of employees responsible for the Company's accounting and reporting functions, (ii) the lack of a properly designed control or process in place to reconcile the inventory deposit accounting in a timely manner; (iii) a failure to consider the gross versus net balance sheet treatment for the settlement and related insurance recoverable resulting in a material adjustment to gross up assets and liabilities, (iv) a failure to evaluate the performance conditions for the former Chief Executive Officer's bonus, resulting in a material entry to record accrued compensation at December 31, 2022, and (v) the lack of properly designed controls to prepare complete and accurate financial statements and footnotes in accordance with US GAAP in a timely manner. In an effort to remediate the material weakness in our internal control over financial reporting described above, we intend to take the actions to implement the processes described below.

Lack of Segregation of Duties. To ensure timely and accurate financial reporting, management is designing processes to keep authorization, recordkeeping, custody of assets, and reconciliation duties separate, and intends to reevaluate its overall staffing levels within the accounting, finance and information technology departments and may hire additional staff to enable segregation of duties.

Accounting for inventory deposits. The current process requires re-engineering to ensure the inventory deposit balance is accurately measured. In the future, the Company plans to communicate with our inventory warehouse vendor to reconcile any discrepancies.

Accounting for insurance recoveries. The Company has gathered and reviewed all applicable guidance regarding the accounting treatment of insurance recoveries. We plan to use this guidance to appropriately record any future insurance recoveries.

Accounting for executive bonus compensation. The performance conditions of bonuses will be reviewed periodically to ensure the Company is accurately recording accrued bonus compensation.

Inability to prepare complete and accurate financial statements and footnotes. To ensure timely and accurate financial reporting, management intends to hire experienced staff to remedy this material weakness.

Once the above actions and processes have been in operation for a sufficient period of time for our management to conclude that the material weaknesses have been fully remediated and our internal controls over financial reporting are effective, we will consider these material weaknesses fully addressed.

Changes in Internal Control Over Financial Reporting

The Company continues to evaluate its internal control framework for further enhancements. There were no other changes in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) during the quarter ended September 30, 2023 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

The Company is engaged in litigation with Timothy Michaels. See Note 12 to the accompanying financial statements.

Item 1A. Risk Factors

Our failure to maintain continued compliance with the listing requirements of the NYSE American exchange could result in the delisting of our common stock.

Our common stock has been listed on the NYSE American exchange since our December 2021 initial public offering. The rules of NYSE American provide that the NYSE American may, in its discretion, suspend dealings in, or may remove any security from, listing. As a matter of policy, NYSE American will consider the delisting of a security when the financial condition and/or operating results of a company appear to be unsatisfactory, the extent of public distribution or the aggregate market value of the security has become so reduced as to make further dealings on the NYSE American inadvisable, the company has sold or otherwise disposed of its principal operating assets, or has ceased to be an operating company, the company has failed to comply with its listing agreements with the NYSE American, or any other event shall occur or any condition shall exist which makes further dealings on the NYSE American unwarranted. For example, the NYSE American consider suspending trading in, or removing the listing of, securities of an issuer that has stockholders' equity of less than (i) $2 million if such issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years, (ii) $4 million if such issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years, or (iii) $6 million if such issuer has sustained losses from continuing operations and/or net losses in its five most recent fiscal years. The NYSE American will also consider suspending trading in, or removing the listing of, securities of an issuer that has sustained losses which are so substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable as to whether such issuer will be able to continue operations and/or meet its obligations as they mature.

On September 8, 2023, we received a written notice (the "Notice") from NYSE American stating that we were not in compliance with the $4 million stockholders' equity requirement of Section 1003(a)(ii) of the NYSE American Company Guide (the "Company Guide"). We reported stockholders' equity of $2.4 million as of June 30, 2023, the end of our second fiscal quarter of 2023, and have had losses from continuing operations and/or net losses in each of the fiscal years ended December 31, 2020, 2021 and 2022. As required by the NYSE American, we submitted a plan to the NYSE American on October 9, 2023 addressing actions we have taken or and how we intend to regain compliance with the continued listing standards by March 8, 2025.

Pursuant to the Company Guide, NYSE American staff will evaluate our plan and, within 45 days of receiving our plan, make a determination as to whether we have made reasonable demonstration of an ability to regain compliance with the continued listing standards within the time period prescribed. If our plan is accepted by NYSE American, we will have until March 8, 2025 to regain compliance (or sooner if the NYSE American determines that the nature and circumstances of our continued listing status warrant a shorter period of time) and will be subject to periodic NYSE American reviews, including quarterly monitoring for compliance with the plan. If the plan is not accepted, we will be subject to delisting proceedings as specified in the Company Guide. In addition, if the plan is accepted by NYSE American, but we are not in compliance with the continued listing standards by compliance deadline, or if we do not make progress consistent with the plan, we will be subject to delisting proceedings. We cannot make any assurance regarding whether the NYSE American will accept our plan or, if it is accepted, whether we will be able to make progress consistent with the plan or ultimately regain compliance with the NYSE American listing standards.

Our common stock will continue to be listed on the NYSE American while we attempt to regain compliance with the listing standard noted, subject to our compliance with other continued listing requirements. Our common stock will continue to trade under the symbol "VINE," but will be included in the list of NYSE American noncompliant issuers, and the below compliance (".BC") indicator will be disseminated with our ticker symbol. The website posting and .BC indicator would be removed when we have regained compliance with all applicable continued listing standards.

If NYSE American delists our common stock from trading on the exchange and we are not able to list our securities on another national securities exchange, we expect shares of our common shares would qualify to be quoted on an over-the-counter market. If this were to occur, we could experience a number of adverse consequences, including:

- limited availability of market quotations for the common stock;
- reduced liquidity for our securities;
- our common shares being categorized as a "penny stock," which requires brokers trading in our common shares to adhere to more stringent rules and possibly result in a reduced level of trading activity in the secondary trading market for our common stock; and
- decreased ability to issue additional securities or obtain additional financing in the future.

In addition, the National Securities Markets Improvement Act of 1996 generally preempts the states from regulating the sale of "covered securities." Our common shares qualify as "covered securities" because they are listed on NYSE American. If our common shares were no longer listed on NYSE American, our securities would not be "covered securities" and we would be subject to regulation in each state in which we offer our securities.

Our strategic efforts to pursue and complete a business combination transaction with a suitable target company, and operate as a combined company thereafter, may not be successful, which would adversely affect our results of operations and financial condition.

We previously announced that we have initiated an exploration of strategic opportunities by way of merger, acquisition, or any accretive strategic transaction to enhance stockholder value, which is a focus of our plan to increase our stockholders' equity and regain compliance with the NYSE American's continued listing standards. We have engaged The Oak Ridge Financial Services Group, Inc. as our exclusive investment banker to lead the process of sourcing and vetting potential targets for a merger or other business combination transaction (a "Combination Transaction") that would result in a combined company that satisfies NYSE American's listing requirements.

Although we are exploring opportunities with target candidates, there is no guarantee that we will be able to identify suitable combination opportunities, and even if we are able to identify such opportunities, we may not be able to successfully negotiate favorable terms and we may be required to incur significant costs and expenses to execute such a Combination Transaction. If we need to obtain additional financing in connection with a Combination Transaction to pay for transaction expenses or to achieve stockholders' equity of a combined company sufficient to satisfy NYSE American's listing requirements, such financing may not be available to us on favorable terms, if at all. If additional financing is available, it may be highly dilutive to existing stockholders and may otherwise include burdensome or onerous terms. If we do not succeed in raising required funds on acceptable terms, we may be unable to execute on our plan to pursue and complete a Business Combination, which may prevent us regaining compliance with NYSE American's continued listing standards within the prescribed time period and result in our common stock being delisted from the NYSE American.

If we are successful in identifying a suitable target candidate and completing a Combination Transaction, the consideration to the target or its shareholders may be comprised of shares of our stock. The amount of our stock to be issued as consideration in a Combination Transaction would depend on the relative valuations ascribed to the us and the target and may result in significant dilution to our existing stockholders. Furthermore, following a Combination Transaction, our operating results, as a combined company, will be largely dependent on the results of operations of the target's business and on our ability to successfully integrate the target's business with our existing operations. While we seek to combine with a target business that will enable us to generate additional revenue and improve our financial performance, such business may not succeed, which will adversely affect our operating results and financial condition.

We have relied heavily on celebrities to endorse our wines and market our brand pursuant to license agreements which have been terminated.

Our brand, and to a large extent our direct-to-consumer sales outlet, has historically been dependent on the image and popularity of, and affinity towards, Nina Dobrev and Julianne Hough. Ms. Dobrev and Ms. Hough served as celebrity spokespersons and ambassadors of our company, actively endorsed our wines on their sizable social media and other outlets, and have been considered by many to be the face of our brand. Under our license agreements with Ms. Dobrev and Jaybird Investments, LLC (an entity managed by Ms. Hough), each of Ms. Dobrev and Ms. Hough granted us a license to use her pre-approved name, likeness, image, and other indicia of identity, as well as certain content published by her on her social media and other channels, on and in conjunction with the sale and related pre-approved advertising and promotion of our wine.

Our license agreements with Ms. Dobrev and Jaybird Investments, LLC were terminated effective September 7, 2023. Upon such termination, the rights and licenses granted to us under such agreements were revoked and were required to cease the marketing and sale of products that feature their name, likeness, image, and other indicia of identity after a 90 day run-off period. As a result, we will be required to refocus our marketing and brand promotion efforts, which may adversely affect our business and results of operations.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

The Company previously disclosed its offer and sale of Series A Convertible Preferred Stock in its Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2023.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

See “Exhibit Index” following the signature page of this Quarterly Report on Form 10-Q for a description of the documents that are filed as Exhibits to this Quarterly Report on Form 10-Q or incorporated by reference herein.

SIGNATURES:

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

		FRESH VINE WINE, INC.
Date: November 14, 2023	By:	/s/ Michael Pruitt Michael Pruitt Interim Chief Executive Officer
Date: November 14, 2023	By:	/s/ Keith Johnson Keith Johnson Interim Chief Financial Officer

EXHIBIT INDEX

FRESH VINE WINE, INC.
FORM 10-Q

Exhibit Number	Description
31.1*	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Principal Accounting Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1*	Certifications of Principal Executive Officer and Principal Accounting Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith.

Exhibit 31.1

CERTIFICATION

I, Michael Pruitt, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Fresh Vine Wine Inc.;

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

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

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

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

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

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

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

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

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

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

Date: November 14, 2023

/s/ Michael Pruitt
Michael Pruitt
Interim Chief Executive Officer (Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, Keith Johnson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Fresh Vine Wine Inc.;

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

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

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

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

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

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

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

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

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

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

Date: November 14, 2023

/s/ Keith Johnson

Keith Johnson
Interim Chief Financial Officer (Principal Financial Officer)

Exhibit 32.1

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

In connection with the Quarterly Report on Form 10-Q of Fresh Vine Wine Inc. (the “Company”) for the quarter ended September 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Michael Pruitt, Interim Chief Executive Officer, and I, Keith Johnson, Interim Chief Financial Officer, of the Company, certify, pursuant to § 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1350, that to our knowledge:

(1) The Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

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

Date: November 14, 2023

/s/ Michael Pruitt
Michael Pruitt
Interim Chief Executive Officer
(Principal Executive Officer)

/s/ Keith Johnson
Keith Johnson
Interim Chief Financial Officer
(Principal Financial Officer)