

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2023

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

(State or other jurisdiction of
incorporation or organization)

87-3905007

(IRS Employer
Identification No.)

P.O. Box 78984
Charlotte, NC 28271

(Address and Zip Code of principal executive offices)

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

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 if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

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

Indicate by checkmark 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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

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

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

The aggregate market value of the registrant's common stock held by non-affiliates was \$3,207,021 as of June 30, 2023 (the last business day of the registrant's most recently completed second fiscal quarter), based on a total of 14,190,359 shares of common stock held by non-affiliates and a closing price of \$0.226 as reported on the NYSE American on June 30, 2023. For purposes of this computation, all officers, directors, and 10% beneficial owners of the registrant are deemed to be affiliates. Such determination should not be deemed to be an admission that such officers, directors or 10% beneficial owners are, in fact, affiliates of the registrant.

As of March 8, 2024, Fresh Vine Wine, Inc. had 15,976,227 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.



TABLE OF CONTENTS

	Page
<u>PART I</u>	1
ITEM 1. Business	1
ITEM 1A. Risk factors	13
ITEM 1B. Unresolved staff comments	36
ITEM 1C. Cybersecurity	36
ITEM 2. Properties	36
ITEM 3. Legal proceedings	37
ITEM 4. Mine safety disclosures	37
<u>PART II</u>	38
ITEM 5. Market for registrant’s common equity, related stockholder matters and issuer purchases of equity securities	38
ITEM 6. [RESERVED]	39
ITEM 7. Management’s discussion and analysis of financial condition and results of operations	39
ITEM 7A. Quantitative and qualitative disclosures about market risk	48
ITEM 8. Financial statements and supplementary data	48
ITEM 9. Changes in and disagreements with accountants on accounting and financial disclosure	48
ITEM 9A. Controls and procedures	48
ITEM 9B. Other information	50
ITEM 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.	50
<u>PART III</u>	51
ITEM 10. Directors, executive officers and corporate governance	51
ITEM 11. Executive compensation	54
ITEM 12. Security ownership of certain beneficial owners and management and related stockholder matters	60
ITEM 13. Certain relationships and related transactions, and director independence	62
ITEM 14. Principal accounting fees and services	66
<u>PART IV</u>	67
ITEM 15. Exhibits, financial statement schedules	67
ITEM 16. Form 10-K Summary	67
<u>SIGNATURES</u>	68

Cautionary Statement Concerning Forward-Looking Statements

We make forward-looking statements in this Annual Report on Form 10-K. 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 this report under the caption “Risk Factors.”

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 complete, on a timely basis or at all, the proposed Merger (as defined below) with Notes Live, Inc. announced on January 29, 2024, pursuant to the terms and conditions of the Merger Agreement (as defined below);
- the likelihood of the satisfaction of certain conditions to the completion of the Merger and whether and when the Merger will be completed;
- the expected number of Fresh Vine securities included in the fully diluted number of outstanding shares of Fresh Vine common stock for purposes of calculating the exchange ratio for the Merger transaction;
- the continued listing of our common stock on the NYSE American pending closing of the proposed Merger, or the combined company’s ability to satisfy the initial listing standards of the NYSE American;
- our ability to engage in a sale, license, transfer, disposition, divestiture or other monetization transaction, or winding down of Fresh Vine’s current wine production business in a manner reasonably acceptable to Notes Live, Inc., which is a condition to the closing of the Merger transaction, and the terms, conditions and timing of a such a transaction;
- the relative values ascribed to Fresh Vine, Inc. and Notes Live, Inc. for purposes of the Merger transaction, and the risk that as a result of adjustments to the exchange ratio in the merger transaction, Fresh Vine stockholders or Notes Live shareholders could own less of the combined company than is currently anticipated;

- the occurrence of any event, change or other circumstance or condition that could give rise to the termination of the Merger Agreement;
- the sufficiency of Fresh Vine’s cash and working capital to support continuing operations, to pay transaction costs through a closing of the proposed Merger transaction and to satisfy the net cash requirements that are a condition to the closing of the Merger transaction;
- the effect of the announcement, pendency or completion of the proposed Merger on Fresh Vine’s or Notes Live’s business relationships, operating results and business generally;
- the outcome of any legal proceedings that may be instituted against Fresh Vine, Notes Live or any of their respective directors or officers related to the Merger Agreement or the transactions contemplated thereby;
- the expected benefits of, and potential value created by, the Merger for the Fresh Vine stockholders and Notes Live stockholders;
- the strategy or future operations of the combined company following the closing of the proposed Merger with Notes Live, Inc.;
- the combined company’s projected financial performance;
- expectations concerning Fresh Vine’s or Notes Live’s relationships and actions with third parties;
- future regulatory, judicial and legislative changes in Fresh Vine’s or Notes Live’s industry;
- our ability to continue as a going concern in the absence of obtaining additional financing;
- 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 refocus our marketing and brand promotion efforts following the termination of the license agreements with our celebrity brand ambassadors;
- 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;
- the impact of COVID-19 on our customers, suppliers, business operations and financial results;
- 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 existence or sufficiency of our insurance or indemnities coverage;
- 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;
- the future trading prices of our common stock and the impact of securities analysts' reports on these prices;
- any statements of the plans, strategies and objectives of management for future operations, including the execution of integration plans and the anticipated timing of filings; and

This Annual Report on Form 10-K includes market data and forecasts with respect to the wine industry. We have obtained this market data and certain industry forecasts from various independent third-party sources, including industry publications, reports by market research firms, surveys, and other independent sources. Some data and information are based on management's estimates and calculations, which are derived from our review and interpretation of internal company research and data, surveys, and independent sources. We believe the data regarding the industry in which we compete and our market position and market share within this industry generally indicate size, position, and market share within this industry; however, this data is inherently imprecise and is subject to significant business, economic and competitive uncertainties and risks due to a variety of factors, including those described in "Risk Factors." These and other factors could cause our future performance to differ materially from our assumptions and estimates.

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.

Risk Factor Summary

An investment in our common stock involves a high degree of risk. Any of the factors set forth under "Risk Factors" may limit our ability to successfully execute our business strategy. You should carefully consider all of the information set forth in this report, and, in particular, you should evaluate the specific factors set forth under "Risk Factors" in deciding whether to invest in our common stock. Among these important risks are the following:

Risks related to the proposed Merger transaction

- The Exchange Ratio will not change or otherwise be adjusted based on the market price of our common stock as the exchange ratio depends on, among other things, the relative valuations ascribed to us and Notes Live and not the market price of our common stock.
- Our stockholders and Notes Live's shareholders may not realize a benefit from the Merger commensurate with the ownership dilution they will experience.
- Failure to complete the Merger may result in either us or Notes Live paying a termination fee to the other party.
- The transactions contemplated by the Merger Agreement must be approved by our stockholders and by Notes Live's shareholders.
- Our stockholders will have a reduced ownership and voting interest in, and will exercise significantly less influence over the management of, the combined company following the closing of the Merger.
- During the pendency of the Merger, we may not be able to enter into a business combination with another party on more favorable terms because of restrictions in the Merger Agreement.
- Certain provisions of the Merger Agreement may discourage third parties from submitting alternative takeover proposals.
- There is no public market for Notes Live common stock.
- If the conditions to the Merger are not satisfied or waived, the Merger will not occur.
- If the Merger is not completed, our board of directors may decide to pursue a dissolution of our company.
- We are substantially dependent on our remaining employees to facilitate the consummation of the Merger.
- Our ability to complete the Fresh Vine Legacy Transaction is uncertain, and we cannot predict the terms and conditions of any such Fresh Vine Legacy Transaction.
- Lawsuits may be filed in the future against us and the members of our board of directors arising out of the proposed Merger.

Risks related to our company and our business

- We have a limited operating history and have generated limited revenue to date.
- We have not generated profits from operations to date.
- We need to hire additional executive officers and other personnel.
- The success of our existing business depends heavily on the strength of our wine brand.
- Business growth will place increased demands on our management, operational and production capabilities.
- Our advertising and promotional investments may affect our financial results but not be effective.
- We have relied heavily on celebrities to endorse our wines and market our brand pursuant to license agreements which have been terminated.
- We rely heavily on third-party suppliers and service providers.
- We face significant competition with an increasing number of products and market participants.
- Consolidation of the distributors of our wines, as well as the consolidation of retailers, may increase competition in an already crowded space.
- A reduction in consumer demand for wine could materially and adversely affect our business.
- We are heavily reliant on distributors that resell alcoholic beverages in all states in which we do business.
- Our marketing strategy involves continued expansion into the direct-to-consumer channel, which may present risks and challenges for which we are not adequately prepared.
- Inclement weather, drought, pests, plant diseases and other factors could reduce the amount or quality of the grapes available to produce our wines.
- If we are unable to obtain adequate supplies of premium juice from third-party juice suppliers, the quantity or quality of our wine production could be adversely affected.
- We may be unable to identify and obtain adequate supplies of quality agricultural, raw and processed materials, or the cost of the commodities or products may increase.
- We have been engaged in litigation with our former Chief Operating Officer.
- The impact of U.S. and worldwide economic trends and financial market conditions could materially and adversely affect our business, liquidity, financial condition and results of operations.
- If we are unable to secure and protect our intellectual property, the value of our wine brands and intellectual property could decline.
- We may not be fully insured against catastrophic perils, which may cause us to experience a material financial loss.
- From time to time, we may become subject to litigation.
- A failure of one or more of our key IT systems, networks, processes, associated sites or service providers could have a material adverse impact on business operations and financial condition.

- Our failure to adequately maintain and protect the personal information of our customers or our employees in compliance with evolving legal requirements could have a material adverse effect on our business.

Risks related to regulation

- As a producer of alcoholic beverages, we are regularly the subject of regulatory reviews, proceedings and audits by governmental entities.
- New and changing environmental requirements, and new market pressures related to climate change, could materially and adversely affect our business, results of operations and financial results.
- Changes in foreign and domestic laws and government regulations to which we are currently subject may increase our costs or limit our ability to sell our wines into certain markets.

Risks related to our common stock

- Our failure to maintain compliance with NYSE American listing requirements could result in the delisting of our common stock, and our common stock could become subject to the penny stock rules.
- We incur significant legal, accounting, and other expenses associated with being a public company.
- We cannot be certain that the reduced disclosure requirements applicable to emerging growth companies will not make our shares less attractive to investors.
- We may fail to develop and/or maintain adequate internal control over financial reporting.
- Provisions of our corporate governance documents could make an acquisition of our Company more difficult and may prevent attempts by our stockholders to replace or remove our current management.
- Your percentage ownership in us may be diluted by future issuances of capital stock.
- An active, liquid trading market for our common stock may not develop.
- Sales of a substantial number of shares of our common stock in the public market could cause the market price of our common stock to drop significantly, even if our business is performing well.
- As a public company, we are subject to additional laws, regulations and stock exchange listing standards, which will result in additional costs to us and may strain our resources and divert our management's attention.
- We have no current plans to pay cash dividends on our common stock.

General risks

- Our operating results and share price may be volatile, and the market price of our common stock may drop below the price you pay.
- We may require additional debt and equity capital to pursue our business objectives and respond to business opportunities, challenges, or unforeseen circumstances.

PART I

ITEM 1. BUSINESS.

Overview

Fresh Vine Wine, Inc. (referred to in this report as “we,” “us,” “our” “Fresh Vine Wine,” “Fresh Vine” and 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. Offering bold, crisp, and creamy wines that embody health, warmth, and a deeper connection to wellness and an active lifestyle, we offer a unique and innovative collection of today’s most popular varietals. 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 have been produced and bottled in Napa, California.

Recent Developments – Anticipated Merger with Notes Live, Inc.

On January 25, 2024, we, FVW Merger Sub, Inc., a Colorado corporation and our wholly-owned subsidiary (“Merger Sub”), and Notes, Live, Inc., a Colorado corporation (“Notes Live”), entered into an Agreement and Plan of Merger (the “Merger Agreement”) pursuant to which, among other things, and subject to the satisfaction or waiver of certain conditions set forth in the Merger Agreement, Merger Sub will merge with and into Notes Live, with Notes Live continuing as a wholly-owned subsidiary of the Company and the surviving corporation of the merger (the “Merger”).

Notes Live is a Colorado-based live entertainment and hospitality company that currently operates entertainment campuses in both the Colorado Springs, Colorado, and Atlanta, Georgia metropolitan areas. Notes Live is also in the process of developing its crown-jewel, the Sunset Amphitheater collection, a set of luxury outdoor amphitheatres designed to set a new standard in entertainment. The flagship Sunset amphitheater location in Colorado Springs is in development and scheduled to open in August of 2024. Additional amphitheatres have also been announced by Notes Live in Oklahoma City and Broken Arrow, Oklahoma, and it has plans to expand into the North Texas market.

Subject to the terms and conditions of the Merger Agreement, at the closing of the Merger, (i) each then outstanding share of Notes Live common stock (collectively, “Notes Live common stock”) (which comprises all of Notes Live’s outstanding capital stock) will be converted into the right to receive a number of shares of Fresh Vine common stock calculated in accordance with the Merger Agreement (the “Exchange Ratio”), (ii) each then outstanding warrant to purchase Notes Live common stock will be exchanged (or otherwise amended) for a warrant exercisable (at an exercise price adjusted to reflect to the Exchange Ratio) to acquire that number of shares of Fresh Vine common stock equal to the number of warrant shares multiplied by the Exchange Ratio, and (iii) any then outstanding Notes Live promissory note that is convertible into Notes Live common stock will be exchanged, or otherwise amended, such that it will be convertible from and after the Merger into shares of Fresh Vine common stock at a per share conversion price adjusted to reflect the Exchange Ratio. Each share of Fresh Vine common stock and each option and warrant to purchase Fresh Vine common stock that is outstanding at the effective time of the Merger will remain outstanding in accordance with its terms and such shares of Fresh Vine common stock, options and warrants will be unaffected by the Merger (subject adjustment based on the proposed Reverse Stock Split described below).

The Exchange Ratio will be calculated using a formula intended to allocate existing Fresh Vine stockholders and Notes Live shareholders a percentage of the combined company based on agreed upon relative valuations of Fresh Vine and Notes Live in which:

- the Notes Live valuation is equal to \$350,875,464, plus an amount equal to the aggregate gross proceeds received or to be received by Notes Live in a private offering of Notes Live securities being conducted by Notes Live as of the date of the Merger Agreement (the “Notes Live Financing”); and
- the Fresh Vine Valuation is equal to \$18.0 million, plus the amount of any Net Cash Surplus.

For such purposes, “Net Cash Surplus” means the amount by which the cash, cash equivalent assets or other liquid assets of Fresh Vine at the closing of the Merger transaction exceed the Net Cash Target, and the “Net Cash Target” means an aggregate of \$3.5 million; provided that the Net Cash Target will be reduced on a dollar-for-dollar basis for the gross proceeds of any equity investments in Notes Live made by Fresh Vine, its affiliates, or persons directly introduced to Notes Live by Fresh Vine or its affiliates from December 1, 2023 through the effective date of the Merger (but not giving effect to the previously disclosed \$500,000 equity investment in Notes Live made by Fresh Vine upon entering into the letter of intent with Note Live for the subject transaction (the “Fresh Vine Equity Investment”).

On a pro forma basis and without adjustment for gross proceeds from the Notes Live Financing or any Net Cash Surplus, pre-Merger Notes Live shareholders are expected to own approximately 95.1% of the outstanding shares of capital stock of the combined company and pre-Merger Fresh Vine stockholders are expected to own approximately 4.9% of the outstanding shares of capital stock of the combined company.

As contemplated by the Merger Agreement, Fresh Vine intends to effect a reverse stock split at or around the effect date of the Merger at a ratio that results in the Fresh Vine common stock satisfying the initial listing standards of the NYSE American stock exchange (the “NYSE American”) and the exchange ratio in the Merger being as near to one as reasonably practicable (i.e., so that each share of Notes Live capital stock will be exchanged in the Merger for approximately one share of Fresh Vine common stock) (the “Reverse Stock Split”).

At the effective time of the Merger, the board of directors of Fresh Vine is expected to consist of seven members, all of whom will be designated by Notes Live.

Each of Fresh Vine and Notes Live has agreed to customary representations, warranties and covenants in the Merger Agreement, including, among others, covenants relating to (a) the conduct of their respective businesses during the period between the date of signing the Merger Agreement and the closing of the Merger, (b) non-solicitation of alternative acquisition proposals, (c) Fresh Vine filing with the U.S. Securities and Exchange Commission (the “SEC”) and causing to become effective a registration statement on Form S-4 to register the shares of Fresh Vine common stock to be issued in connection with the Merger (the “Registration Statement”), (d) Notes Live obtaining shareholder approval for the adoption of the Merger Agreement and the transaction contemplated thereby, (e) Fresh Vine calling, giving notice of and holding the Fresh Vine Shareholder Meeting (as defined below), (f) Fresh Vine and Notes Live using reasonable best efforts to file or otherwise submit applications, notices, reports and other documents reasonably required to be filed or otherwise submitted to any governmental authority with respect to the transactions contemplated by the Merger Agreement, (g) Fresh Vine using commercially reasonable efforts to maintain the existing listing of Fresh Vine common stock on the NYSE American and to obtain approval of the listing of the combined company’s common stock on the NYSE American, and (h) Fresh Vine and Notes Live using commercially reasonable efforts to coordinate with respect to compliance with NYSE American rules and regulations. In addition, the Merger Agreement requires that, on or prior to the closing of the Merger, Fresh Vine shall engage in a sale, license, transfer, disposition, divestiture or other monetization transaction, or winding down of Fresh Vine’s current wine production business (the “Fresh Vine Legacy Business”), or the sale, license, transfer, disposition, divestiture or other monetization transaction or other disposition of the assets comprising the Fresh Vine Legacy Business and in connection therewith causing any and all known obligations or liabilities associated with such assets and the conduct of the Fresh Vine Legacy Business operations to be satisfied (the “Fresh Vine Legacy Transaction”).

Consummation of the Merger is subject to certain closing conditions, including, among other things, (a) approval by Fresh Vine stockholders of the Fresh Vine Shareholder Matters (as defined below), (b) approval by Notes Live shareholders of, among other things, the adoption of the Merger Agreement, (c) the effectiveness of the Registration Statement, (d) NYSE American’s approval of the listing of the shares of Fresh Vine common stock to be issued in connection with the Merger (under the ticker symbol “VENU”), and, if applicable, NYSE American’s approval of an initial listing application for the combined company, (e) if applicable, the completion of required filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the expiration or termination any waiting period applicable to the consummation of the Merger, (f) the absence of material adverse effects impacting Fresh Vine or Notes Live, (g) Fresh Vine having cash, cash equivalent assets or other liquid assets at the closing of the Merger in an amount that equals or exceeds the Net Cash Target, and having no liabilities on its balance sheet or unpaid or unsatisfied obligations that will require a cash expenditure by Fresh Vine after the effective time of the Merger, (h) the absence of dissenting Notes Live shareholders, and (i) the entry by Notes Live into lock-up and leak-out arrangements with its shareholders to its satisfaction. In addition, the closing of the Merger is conditioned upon Fresh Vine having completed the Fresh Vine Legacy Transaction, or discontinued the Fresh Vine Legacy Business, in a manner reasonably acceptable to Notes Live. Each party’s obligation to consummate the Merger is also subject to other specified customary conditions, including without limitation regarding the accuracy of the representations and warranties of the other party and the performance in all material respects by the other party of its obligations under the Merger Agreement required to be performed on or prior to the date of the closing of the Merger.

The Merger Agreement contains certain termination rights of each of Fresh Vine and Notes Live. Upon termination of the Merger Agreement under specified circumstances, Fresh Vine may be required to pay Notes Live a termination fee of \$1.0 million and/or reimburse Notes Live's expenses up to a maximum of \$500,000, and Notes Live may be required to pay Fresh Vine a termination fee of \$1.0 million, reimburse Fresh Vine's expenses up to a maximum of \$500,000, and/or, at the election of Fresh Vine, redeem the Fresh Vine Equity Investment at the same price per share as the purchase price paid by Fresh Vine therefor.

In connection with the Merger, Fresh Vine expects to seek the approval of its stockholders for, among other things, (a) the issuance of the shares of Fresh Vine common stock issuable in connection with the Merger and the change of control of Fresh Vine resulting from the Merger pursuant to the rules of the NYSE American, (b) amendments to the Fresh Vine Articles of Incorporation to change the name of Fresh Vine to "Notes Live Holding Corp." and, solely if doing so will not violate the rules and regulations of NYSE American, cause its authorized common stock to be divided into two or more separate classes or series, (c) an amendment to the Fresh Vine Articles of Incorporation to effect the Reverse Stock Split; (d) upon conversion or exchange of Fresh Vine Series A Convertible Preferred Stock, the issuance of shares of Fresh Vine common stock in excess of the "Exchange Share Cap" and "Individual Holder Share Cap" limitations provided for in the Certificate of Designation of Preferences, Rights and Limitations of the Series A Convertible Preferred Stock, (e) the liquidation, spinning-out, distribution, or other disposition or discontinuance of the Fresh Vine Legacy Business, and (f) any other proposal to be agreed upon by Fresh Vine and Notes Live in furtherance of the transactions contemplated by the Merger Agreement (collectively, the "Fresh Vine Shareholder Matters" and such meeting, the "Fresh Vine Shareholder Meeting").

The transactions contemplated by the Merger Agreement are anticipated to close in June 2024, subject to approval by Fresh Vine's stockholders, and the satisfaction or waiver of various additional closing conditions.

The preceding summary of the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which was filed as Exhibit 2.1 to our Current Report on Form 8-K filed January 29, 2024 and which is incorporated herein by reference. The Merger Agreement is not intended to provide factual information about Fresh Vine or Notes Live or to modify or supplement any factual disclosures about Fresh Vine in this report of its other public filings with the SEC. The Merger Agreement includes representations, warranties and covenants of Fresh Vine, Notes Live and Merger Sub made solely for the purpose of the Merger Agreement and solely for the benefit of the parties thereto in connection with the negotiated terms of the Merger Agreement. Moreover, certain of those representations and warranties may not be accurate or complete as of any specified date, may be subject to a contractual standard of materiality different from those generally applicable to SEC filings or may have been used for purposes of allocating risk among the parties to the Merger Agreement, rather than establishing matters of fact. Investors and stockholders are not third-party beneficiaries under the Merger Agreement. Accordingly, investors should not rely on the representations, warranties and covenants in the Merger Agreement or any descriptions thereof as characterizations of the actual state of facts or conditions of Fresh Vine, Notes Live or any of their respective affiliates.

Important Additional Information

In connection with the proposed transaction, Fresh Vine will file materials with the SEC, including a registration statement on Form S-4 (Form S-4), which will include a document that serves as a proxy statement/prospectus of Fresh Vine and an information statement of Notes Live, and other documents regarding the proposed transaction. INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THESE MATERIALS, INCLUDING THE FORM S-4 AND THE PROXY STATEMENT/PROSPECTUS, WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES TO THE PROPOSED TRANSACTION. Investors and security holders will be able to obtain the Form S-4, the proxy statement/prospectus and other materials filed by Fresh Vine with the SEC free of charge from the SEC's website at www.sec.gov or from Fresh Vine at the SEC Filings section of <https://ir.freshvinewine.com/invest/>.

Our Existing Business

We are 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. Offering bold, crisp, and creamy wines that embody health, warmth, and a deeper connection to wellness and an active lifestyle, we offer a unique and innovative collection of today’s most popular varietals. 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 have been produced and bottled in Napa, California.

Our wines are focused on the affordable luxury segment. Importantly, our wines stand out in the luxury wine market because they address the preferences of our target demographic of consumers with moderate to affluent income and with a desire to pursue a healthy and active lifestyles for a low-calorie, low-carb, gluten-free product, while concurrently delivering the quality and taste profile of a premium wine brand. This allows us to position our wines in the “better for you” segment that seeks to appeal to consumers’ emphasis on a healthy lifestyle. While we believe our product offerings have mass appeal among all consumers of affordable luxury wines, we have positioned the Fresh Vine Wine brand as a complement to the healthy and active lifestyles of younger generation wine consumers.

Our core wine offerings are priced strategically to appeal to mass markets and sell at a list price between \$15 and \$25 per bottle - price points that support a premium product strategy, appeal to mass markets, and allow us to offer significant value across all consumer distribution channels. Given the Fresh Vine Wine brand’s “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.

As a testament to the quality of our varietals, in September 2022 we announced that The Tasting Panel Magazine and The Somm Journal, two highly regarded wine publications, had awarded Fresh Vine Wine’s California Cabernet Sauvignon, 2020 Vintage, a 92 Rating (out of 100). This is the second of our varietals to receive a 92 Rating during 2022, with our Limited Reserve Napa Cabernet Sauvignon receiving a Rating of 92 from James Suckling, regarded as one of the world’s most influential wine critics, in July. Also, in July 2022, our 2020 California Pinot Noir and California 2021 Rosé varietals were awarded Bronze Medals by TEXSOM. In 2022, Fresh Vine Wine varietals were recognized by various industry authorities with a total of 16 separate awards.

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 December 31, 2023, we hold active relationships with wholesale distributors in 50 states. We are working with leading distributors, including Southern Glazer’s Wine & Spirits (SGWS), Johnson Brothers, and Republic National Distributing Company (RNDC), to continue and expand our presence across the contiguous United States.

Our DTC channel enables us to sell wine directly to the consumer at full retail prices. Although these prices are consistent with our suggested retail prices (SRPs), we incur two mark-ups of approximately 30% each for our distributor and retail partners when selling wine through our wholesale distribution channel, therefore directly reducing our revenue and margins. Because the DTC channel provides significantly higher margins than sales generated through wholesale distributors, we intend to further invest in DTC capabilities to ensure it remains an integral part of our business. We also believe continued investment in DTC technologies and capabilities are critical to maintaining an intimate relationship with our customers, which is becoming increasingly digital. In addition, we also sell through alternative DTC sales platforms, such as ecommerce marketplaces, product aggregators and virtual distributors, all of which have experienced significant recent growth, as well as sales through home delivery services.

We do not own or operate any vineyards. Instead of cultivating our own grapes, we have used Fior di Sole, a third-party supplier, to source grapes. This allows us to leverage our supplier's broad network of vendor relationships and purchasing power to negotiate favorable cost structures. Because our supplier procures product inputs on our behalf, including bulk juice, we do not currently engage directly with grape growers ("growers") or bulk distributors of juice ("bulk distributors"). As a result, we have limited front-end supply chain visibility. This is a strategy by design that we believe provides us with access to diversified growers and large distributors, which reduces our reliance upon any single vendor and mitigates our exposure to droughts, wildfires, spoilage, contamination and other supply side risks common to the wine industry.

Our supplier procures grapes and/or juice for our existing varietals from California. This juice is then stored in Napa until time of production, at which point it is made available for blending and bottling processes at our Napa Valley production and bottling facility. This is significant in that both blending and bottling must occur within Napa to be considered produced and bottled in Napa — a distinctive product attribute that adds significant production value to our brand in the eyes of consumers. However, wine produced by the Company will only be labelled with a Napa Valley appellation of origin if it is produced from grapes grown in the Napa Valley American Viticultural Area (AVA). The labels for the Company's core wines identify California as the appellation of origin.

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.

Our Strengths

Differentiated Product Offerings — Premium, Napa Valley Wines within the "Better-For-You" Segment

We offer wines that are differentiated from those sold by other wine producers operating within the better-for-you segment of the affordable luxury category based on our premium quality, our association with an award-winning winemaker and our Napa Valley based state of the art production.

- *Premium Wines.* Premium wines are differentiated from other varietals based on consumers' perception and expectation that they are of exceptional quality. We have developed a proprietary winemaking process that produces superior quality and taste in the affordable luxury wine category based on consumer preferences data, direct consumer feedback and careful market research. Importantly, our current wines stand out in the luxury wine market because they address consumers' growing preference for a less-calorie, less-carb, less sugar and gluten-free option, while concurrently delivering the quality and taste profile of a premium wine brand.

- *Award-Winning Winemaker.* We conducted an international search to find an accomplished winemaker who shared the Fresh Vine Wine vision and have entered into an agreement with Jamey Whetstone, an established, award winning winemaker from Napa Valley, to develop our wines. Consulting with the Fresh Vine Wine brand compliments Mr. Whetstone's lifestyle as an active surfer, skier, and all-around outdoorsman. His passion for winemaking is mirrored by his passion for adventure, and he too wanted to create a better-for-you wine that customers can be proud to bring to the table for any occasion. We believe it is unique for a high-profile winemaker like Mr. Whetstone to attach his name and reputation to a brand in the better-for-you wine segment, and we believe that Mr. Whetstone's association with our brand increases consumer awareness and speaks to the quality of our varietals.
- *Produced and Bottled in Napa Valley.* Importantly, we are able to market our wines as being produced and bottled in Napa Valley, California. We believe that this designation impacts consumption decisions of many wine drinkers, as Napa Valley-produced wines are considered by many to be a sign of superior production quality. However, wine produced by the Company will only be labelled with a Napa Valley appellation of origin if it is produced from grapes grown in the Napa Valley American Viticultural Area (AVA). The labels for the Company's existing wines identify California as the appellation of origin. Currently, this only applies to our Reserve wine.

Capital-Efficient and Scalable Operational Structure

We have strategically structured our organization and operations to minimize our capital investment requirements while maintaining flexibility to rapidly scale our production capabilities to meet consumer demands. We do this by utilizing internal capabilities while leveraging a network of reputable third-party providers with industry experience and expertise that we use to perform various functions falling outside our internal core competencies.

Production and Bottling on an Alternating Proprietorship Basis

We contracted with Fior di Sole, an industry leading packaging innovation and wine production company based in Napa Valley, California, to serve as a "host winery" and to occupy a portion of its production and warehouse facility and utilize its production equipment on an alternating proprietorship basis. Under this arrangement, we used capacity at Fior di Sole's production facility at times mutually convenient to us and Fior di Sole to produce and bottle our wines for an initial set-up fee and a recurring monthly fee. Fior di Sole was responsible for keeping its production equipment in good operating order. When the alternating Premises was operated by or used on behalf of our Company, it was operated pursuant to our federal basic permit and California winegrower's license. Under our agreement with Fior di Sole, we were solely responsible for managing and conducting our own winemaking activities and we made all production decisions relating to our wines. However, we could have requested the use of Fior di Sole's personnel to perform crush, fermentation, blending, cellar, warehousing, barrel topping and/or bottling services for additional fees. This arrangement had allowed us to commence our operations and build the Fresh Vine Wine brand without having to incur the considerable overhead costs involved with the purchase or full-time lease of a production facility. The term of the agreement commenced in July 2019, had an initial term of one year and automatically renews for additional one-year terms unless either party provides 90 days written notice to the other of its intent to terminate at the end of the then current term. Either party may terminate the agreement upon 30 days written notice if the other party is in violation of any law or regulation that renders it impossible to perform its obligations under the agreement for a period of greater than 30 days, makes an assignment for the benefit of creditors or files for bankruptcy protection, or is in material breach of its obligations under the agreement and such failure to perform is not cured within 30 days of written notice from the other party.

Fior di Sole also provided us with capacity juice and blends, finishes, bottles, stops, labels and packages our wine, which reduced our internal overhead expenses and allowed us to benefit from that company's increased purchasing power. Fior di Sole provided these services on a purchase order basis, which purchase orders were subject to the parties' mutual agreement and governed by a Custom Winemaking and Bottling Agreement. This agreement outlined the schedule for placing orders, the responsibility and schedule for delivery of production materials, procedures for establishing the wine bottling date and delivery date. We were required to remit 20% of the amount due for wine produced, bottled and packaged pursuant to this agreement upon our submission of a purchase order. The payment advance was used by Fior Di Sole to reserve or procure materials on our behalf with additional vendors for bottles, boxes, corks, labels, juice, and other inputs. We, or our winemaker on our behalf, oversaw the production at the winery and approved all components and aspects of the production process. The balance of the amount due for wine produced, bottled and packaged (the remaining 80%) was due following our quality review and acceptance of the finished product. This agreement was terminated in December 2023.

Licensing, Tax and Regulatory Compliance

We have contracted with a third-party to manage our regulatory licensing and compliance activities. We maintain licenses that enable us to distribute our wine to all 50 states, and to sell direct-to-consumer from our e-commerce website in 48 states. We currently utilize software tools available to the industry and work with our license compliance service provider to navigate and manage the complex state-by-state tax and other regulations that apply to our operations in the beverage alcohol industry. This has enabled us to reduce the administrative burden of tax compliance, reporting and product registration.

We believe that leveraging our network of supply chain and compliance partners, consultants and service providers enables us to avoid potential costly and lengthy delays on nearly every aspect of our business, from grapes to packaging materials, and will accelerate our return on capital due to our limited need to procure expensive equipment, real estate, and other capital-intensive resources.

Sales and Marketing Strategy

Omni-Channel Marketing Approach

Today's consumers interact with brands through many channels, from traditional media to social media and other digital channels, and through various in-person and online purchasing methods. In order to build the visibility of our brand and create a grassroots consumer following to support our DTC distribution channel, we have employed a strategic omnichannel marketing approach that we believe allows us to engage with our target consumers on their terms to expand and deepen their recognition of our brand. In addition to other mass market promotional activities, our marketing strategy also utilizes modern techniques, efficiency measures, and channels not commonly seen in the wine industry, including a combination of social media lifestyle and wine influencer activities, through which brand ambassadors or "influencers" may conduct promotional activities through the Company's or their own social media channels including, but not limited to, Twitter, Facebook, Instagram, Snapchat, YouTube and Pinterest, among others.

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 "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."

Professional Sports Sponsorships

We have previously entered into sponsorship agreements with professional sports organizations and venues spanning all four major United States professional sports leagues, which support our commitment and outreach to consumers focused on active and healthy lifestyles, including agreements with the following organizations and/or their affiliates:

- Washington Capitals (NHL) and Washington Wizards (NBA)
- Tampa Bay Rays (MLB)
- Washington Commanders (NFL)

These sponsorship arrangements generally provide us with advertising placements at the stadiums and arenas during sporting and concert events, as well as specified media and other advertising and promotional benefits, in exchange for our payment of annual sponsorship fees.

We completed our sponsorship agreement with the Tampa Bay Rays in 2023. We intend to reduce or cancel the remaining sponsorships and do not anticipate pursuing new professional sports sponsorships as part of our marketing and brand awareness initiatives going forward since our brand has reached national retail distribution.

Labelling and Innovative Packaging Initiatives

We believe wine labelling can have a big impact on consumers' purchasing practices. We conduct market research to validate the consistency of our wine labels with our brand narrative. Packaging also continues to be a key driver of brand perception, and we are exploring "active lifestyle packaging" alternatives to traditional bottling that provides an opportunity for our customers to enjoy Fresh Vine Wines in non-traditional settings now and for future years, including bottles with screw-off caps, aluminum cans, and smaller size bottles and cans that can be taken on-the-go and are ideal for in-store point of purchase sales.

Engagement with Industry Experienced Third Party Vendors

In October 2022, we executed a strategy that is aimed at amplifying cash preservation initiatives while continuing to focus on accelerating sales growth. The plan resulted in the termination of ten employees on the Company's internal sales team and the engagement by the Company of a third party sales and distribution management company positioned to more efficiently and effectively facilitate current and future product sales. In addition, the Company engaged a reputable third party vendor to manage marketing initiatives and drive growth primarily within the Company's Direct-to-Consumer sales channel.

Related party services

In October 2021, the Company entered into a service agreement with Appellation Brands, LLC, a related party in the wine industry due to common ownership, to provide representation and distribution services. As of June 15, 2022, the original agreement was terminated. Prior to termination, the Company provided access to new markets and retail and wholesale customers to the related party. In exchange for these services, the Company received a management fee of \$50,000 per month plus a tiered fee ranging between \$5.00 and \$6.50 per case of the products sold. For the year ended December 31, 2022, the Company recognized \$297,224 in service revenue related to this agreement. In September 2022, the Company entered into a new distribution agreement with Appellation Brands, LLC to purchase approximately \$195,000 of wine inventory and sell directly to our customers. Sales associated with the new agreement are recorded within wholesale revenue beginning September 1, 2022. Total sales for the year ended December 31, 2023 associated with the new agreement was approximately \$16,000. After our sales of the Appellation Brands, LLC wine inventory was completed, our affiliation with Appellation Brands, LLC ceased altogether.

Our Strategy for Growth

We have been executing the following strategies to gain brand and product visibility and increase sales and market share:

- Continuing to establish brand visibility, awareness and credibility through mass and micro marketing tactics and association with other strong brands. These range from organic to paid media.
- Continuing to build grass roots demand through high visibility sales and marketing activities that promote high margin DTC and home delivery sales channels, including continued investment in DTC technologies and capabilities that are critical to maintaining an intimate relationship with consumers.
- Expanding our U.S.-based wholesale and retail distribution network by leveraging our product and brand differentiation, the emerging better-for-you category and to provide distribution partners with a differentiated value proposition.
- Pursuing distribution of our wines internationally.
- Embracing disruptive technologies and customer trends, and exploring and expanding partnerships with other organizations investing in customer-centric technologies, such as home delivery, third party wine clubs and evolving alternative DTC purchasing methods, such as ecommerce marketplaces, product aggregators and virtual distributors.
- Expanding and strengthening key supply chain relationships, including with current and future juice suppliers, bottlers, materials suppliers, and dry goods suppliers, to establish a diversified portfolio of partners across all areas of our supply chain and to maintain effective capital management.
- Continuing to add to the Fresh Vine Wine product portfolio by developing new varietals that fit within the better-for-you category and are consistent with our existing brand.
- Continuing to invest in packaging innovation, including “active lifestyle packaging” alternatives to traditional bottling that provides an opportunity for our customers to enjoy Fresh Vine Wines in non-traditional settings.
- Capitalizing on upward price mobility - While many other wine companies are experiencing downward price pressure to enter the coveted under \$30 category, our wines currently sell for suggested retail prices ranging from \$15 to \$25 per bottle.
- Developing additional wine brands by replicating the strategies used to build the Fresh Vine Wine brand via business service line agreements.

With over 500,000 licensed retail accounts (according to Neilson) in the United States, there remains ample opportunity to continue broadening distribution of our wines as well as increasing the volume of wine sold to existing accounts.

Competition

The wine industry and alcohol markets generally are intensely competitive. Our wines compete domestically and internationally with other premium or higher quality wines produced in Europe, South America, South Africa, Australia and New Zealand, as well as North America. Our wines compete on the basis of quality, price, brand recognition and distribution capability. The ultimate consumer has many choices of products from both domestic and international producers. Our wines may be considered to compete with all alcoholic and non-alcoholic beverages.

At any given time, there are more than 400,000 wine choices available to consumers, differing with one another based on vintage, variety or blend, location and other factors. Accordingly, we experience competition from nearly every segment of the wine industry. Additionally, some of our competitors have greater financial, technical, marketing and other resources, offer a wider range of products, and have greater name recognition, which may give them greater negotiating leverage with distributors and allow them to offer their products in more locations and/or on better terms than us. Nevertheless, we believe that our brand offerings, scalable infrastructure and relationships with one of the largest domestic distributors will allow us to continue growing our business.

IT Systems

We rely on various IT systems, owned by us and third parties, to effectively manage our sales and marketing, accounting, financial, legal and compliance functions. Our website is hosted by a third party, and we rely on third-party vendors for regulatory compliance for order processing, shipments, and e-commerce functionality. We believe these systems are scalable to support our growth plans. We recognize the value of enhancing and extending the uses of information technology in our business.

Regulatory Matters

Regulatory framework

We, along with our contract growers, producers, manufacturers, distributors, retail accounts and ingredients and packaging suppliers, are subject to extensive regulation in the United States by federal, state and local government authorities with respect to registration, production processes, product attributes, packaging, labelling, storage and distribution of wine and other products we make.

We are also subject to state and local tax requirements in all states where our wine is sold. We monitor the requirements of relevant jurisdictions to maintain compliance with all tax liability and reporting matters. In California, we are subject to a number of governmental authorities, and are also subject to city and county building, land use, licensing and other codes and regulations.

Alcohol-related regulation

We are subject to extensive regulation in the United States by federal, state and local laws regulating the production, distribution and sale of consumable food items, and specifically alcoholic beverages, including by the TTB and the FDA. The TTB is primarily responsible for overseeing alcohol production records supporting tax obligations, issuing wine labelling guidelines, including grape source and bottle fill requirements, as well as reviewing and issuing certificates of label approval, which are required for the sale of wine through interstate commerce. We carefully monitor compliance with TTB rules and regulations, as well as the state law of each state in which we sell our wines. In California, where most of our wines are made, we are subject to alcohol-related licensing and regulations by many authorities, including the ABC. ABC agents and representatives investigate applications for licenses to sell alcoholic beverages, report on the moral character and fitness of alcohol license applicants and the suitability of premises where sales are to be conducted and enforce California alcoholic beverages laws. We are subject to municipal authorities with respect to aspects of our operations, including the terms of our use permits. These regulations may limit the production of wine and control the sale of wine, among other elements.

Employee and occupational safety regulation

We are subject to certain state and federal employee safety and employment practices regulations, including regulations issued pursuant to the U.S. Occupational Safety and Health Act (“OSHA”), and regulations governing prohibited workplace discriminatory practices and conditions, including those regulations relating to COVID-19 virus transmission mitigation practices. These regulations require us to comply with manufacturing safety standards, including protecting our employees from accidents, providing our employees with a safe and non-hostile work environment and being an equal opportunity employer. In California, we are also subject to employment and safety regulations issued by state and local authorities.

Environmental regulation

As a result of our wine production activities, we and certain third parties with which we work are subject to federal, state and local environmental laws and regulations. Federal regulations govern, among other things, air emissions, wastewater and stormwater discharges, and the treatment, handling and storage and disposal of materials and wastes. State environmental regulations and authorities intended to address and oversee environmental issues are largely state-level analogues to federal regulations and authorities intended to perform the similar purposes. In California, we are also subject to state-specific rules, such as those contained in the California Environmental Quality Act, California Air Resources Act, Porter-Cologne Water Quality Control Act, California Water Code sections 13300-13999 and Title 23 of the California Administrative Code and various sections of the Health and Safety Code. We are subject to local environmental regulations that address a number of elements of our wine production process, including air quality, the handling of hazardous waste, recycling, water use and discharge, emissions and traffic impacts.

Labelling regulation

Many of our wines are identified by their appellation of origin, which are among the most highly regarded wine growing regions in the world. An appellation may be present on a wine label only if it meets the requirements of applicable state and federal regulations that seek to ensure the consistency and quality of wines from a specific territory. These appellations designate the specific geographic origin of most or all (depending on the appellation) of the wine’s grapes, and can be a political subdivision (e.g., a country, state or county) or a designated viticultural area. The rules for vineyard designation are similar. Although we expect that most of our labels will maintain the same appellation of origin from year to year, we may choose to change the appellation of one or more of our wines from time to time to take advantage of high-quality grapes in other areas or to change the profile of a wine.

Privacy and security regulation

We collect personal information from individuals. Accordingly, we are subject to several data privacy and security related regulations, including but not limited to: U.S. state privacy, security and breach notification laws; the GDPR; and other European privacy laws as well as privacy laws being adopted in other regions around the world. In addition, the FTC and many state attorneys general are interpreting existing federal and state consumer protection laws to impose evolving standards for the online collection, use, dissemination and security of information about individuals. Certain states have also adopted robust data privacy and security laws and regulations. For example, the CCPA, which took effect in 2020, imposes obligations and restrictions on businesses regarding their collection, use, and sharing of personal information and provides new and enhanced data privacy rights to California residents, such as affording them the right to access and delete their personal information and to opt out of certain sharing of personal information. In response to the data privacy laws and regulations discussed above and those in other countries in which we do business, we have implemented several technological safeguards, processes, contractual third-party provisions, and employee trainings to help ensure that we handle information about our employees and customers in a compliant manner. We maintain a global privacy policy and related procedures, and we train our workforce to understand and comply with applicable privacy laws.

Intellectual Property

We strive to protect the reputation of our wine brand. We establish, protect and defend our intellectual property in a number of ways, including through employee and third-party nondisclosure agreements, copyright laws, domestic and foreign trademark protections, intellectual property licenses and social media and information security policies for employees. We have been granted three (3) trademark registrations in the United States for FRESH VINE[®], FRESH VINE (Stylized)[®], and our FV Logo[®], and numerous trademark registrations in other countries for the FRESH VINE mark, and we have filed, and expect to continue to file, trademark applications seeking to protect any newly-developed wine brands. We have also been granted a copyright registration in the first version of our website located at www.freshvine.com. Information contained on or accessible through our website is not incorporated by reference in or otherwise a part of this report. As a copyright exists in a work of art once it is fixed in tangible medium, we intend to continue to file copyright applications to protect newly-developed works of art that are important to our business.

We also rely on, and carefully protect, proprietary knowledge and expertise, including the sources of certain supplies, formulations, production processes, innovation regarding product development and other trade secrets necessary to maintain and enhance our competitive position.

Seasonality

There is a degree of seasonality in the growing cycles, procurement and transportation of grapes. The wine industry in general tends to experience seasonal fluctuations in revenue and net income, with lower sales and net income during the quarter spanning January through March and higher sales and net income during the quarter spanning from October through December due to the usual timing of seasonal holiday buying. As our operations expand, we expect that we will be impacted by the seasonality experienced in the wine industry generally.

Employees

As of December 31, 2023, we had approximately four full-time employees. All of our employees are employed in the United States. None of our employees are represented by a labor union or covered by a collective bargaining agreement. We consider our relationship with our employees to be good.

Legal Proceedings

We may be subject to legal disputes and subject to claims that arise in the ordinary course of business. Except as disclosed in “*Item 3 - Legal Proceedings*,” we are not a party or subject to any pending legal proceedings the resolution of which is expected to have a material adverse effect on our business, operating results, cash flows or financial condition.

Corporate History

We were initially organized on May 8, 2019 as a Texas limited liability company under the name “Fresh Grapes, LLC.” In connection with our initial public offering, on December 8, 2021, we converted from a Texas limited liability company into a Nevada corporation and changed our name from Fresh Grapes, LLC to Fresh Vine Wine, Inc., which we refer to herein as the “LLC Conversion.” In conjunction with the LLC Conversion, all of our outstanding units were converted into shares of our common stock based on the relative ownership interests of our pre-IPO equity holders. While operating as a limited liability company, our outstanding equity was referred to as “units.” In this report, for ease of comparison, we may refer to such units as our common stock for periods prior to the LLC Conversion, unless otherwise indicated in this report. Similarly, unless otherwise indicated, we may refer to members’ equity in this report as stockholders’ equity. Further, while operating as a limited liability company, our governing body was referred to as our Board of Managers, with the members thereof being referred to as “Managers.” We may refer to such governing body throughout this report as our board of directors and such individuals as our directors.

Company Website Access and SEC Filings

We make available on the Investor Relations section of our website, free of charge, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, Proxy Statements, and Forms 3, 4 and 5, and amendments to those reports as soon as reasonably practicable after filing such documents with, or furnishing such documents to, the SEC. The SEC maintains a website (www.sec.gov) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

Our website is www.freshvinewine.com. We have included our website address in this report as an inactive textual reference only. Information contained on or accessible through our website is not incorporated by reference in or otherwise a part of this report.

ITEM 1A. RISK FACTORS.

Our company and business involves a number of challenges and risks. In addition to the other information in this report, you should consider carefully the following risk factors in evaluating us and our business. The risks described below are not the only ones that we face. Additional risks not presently known to us or that we currently deem immaterial may also affect our business, financial condition, operating results, or prospects. In assessing these risks, you should also refer to the other information contained in this report, including our financial statements and related notes.

Risks related to the proposed Merger transaction

The Exchange Ratio will not change or otherwise be adjusted based on the market price of our common stock as the exchange ratio depends on, among other things, the relative valuations ascribed to us and Notes Live upon entry into the Merger Agreement and not the market price of our common stock, so the merger consideration at the closing of the Merger may have a greater or lesser value than at the time the Merger Agreement was signed.

On January 25, 2024, we, Merger Sub (our wholly-owned subsidiary) and Notes Live entered into the Merger Agreement pursuant to which, among other things, and subject to the satisfaction or waiver of certain conditions set forth in the Merger Agreement, Merger Sub will merge with and into Notes Live, with Notes Live continuing as our wholly-owned subsidiary and the surviving corporation in the Merger. Subject to the terms and conditions of the Merger Agreement, at the closing of the Merger, and among other things, each then outstanding share of Notes Live common stock will be converted into the right to receive a number of shares of Fresh Vine common stock calculated in accordance with the Merger Agreement (the “Exchange Ratio”), (ii) each then outstanding warrant to purchase Notes Live common stock will be exchanged (or otherwise amended) for a warrant exercisable (at an exercise price adjusted to reflect to the Exchange Ratio) to acquire that number of shares of Fresh Vine common stock equal to the number of warrant shares multiplied by the Exchange Ratio, and (iii) any then outstanding Notes Live promissory note that is convertible into Notes Live common stock will be exchanged, or otherwise amended, such that it will be convertible from and after the Merger into shares of Fresh Vine common stock at a per share conversion price adjusted to reflect the Exchange Ratio.

The Merger Agreement has set the calculation of the Exchange Ratio based on the relative valuations ascribed to us and Notes Live upon entry into the Merger Agreement, which in turn will be adjusted to reflect the amount of gross proceeds received or to be received by Notes Live in its private offering of securities conducted by Notes Live as of the date of the Merger Agreement and the Net Cash Surplus, if any, of Fresh Vine on the closing date of the Merger (as well as the impact of the Reverse Stock Split). The Merger Agreement does not include a price-based termination right. Therefore, if before the completion of the Merger the market price of our common stock declines from the market price on the date of the Merger Agreement, then Notes Live’s shareholders could receive merger consideration with substantially lower value than the value of such merger consideration on the date of the Merger Agreement. Similarly, if before the completion of the Merger the market price of our common stock increases from the market price of our common stock on the date of the Merger Agreement, then Notes Live’s shareholders could receive Merger consideration with substantially greater value than the value of such merger consideration on the date of the Merger Agreement. Because the Exchange Ratio does not adjust as a direct result of changes in the market price of our common stock, changes in the market price of our common stock will change the value of the total Merger consideration payable to Notes Live’s shareholders.

Stock price changes may result from a variety of factors, including changes in our or Notes Live’s respective businesses, operations and prospects, market assessments of the likelihood that the Merger will be completed, the timing of the Merger, and general market, industry and economic conditions.

Our stockholders and Notes Live's shareholders may not realize a benefit from the Merger commensurate with the ownership dilution they will experience in connection with the Merger.

If the combined company is unable to realize the full strategic and financial benefits currently anticipated from the Merger, our stockholders and Notes Live's shareholders will have experienced dilution of their ownership interests in their respective companies without receiving any commensurate benefit, or only receiving part of the commensurate benefit to the extent the combined company is able to realize only part of the strategic and financial benefits currently anticipated from the Merger.

Failure to complete the Merger may result in either us or Notes Live paying a termination fee to the other party and could significantly harm the market price of our common stock and negatively affect the future business and operations of each company.

If the Merger is not completed and the Merger Agreement is terminated under certain circumstances, we may be required to pay Notes Live a termination fee of \$1.0 million and/or reimburse Notes Live's expenses up to a maximum of \$500,000, and Notes Live may be required to pay us a termination fee of \$1.0 million, reimburse our expenses up to a maximum of \$500,000 and/or, at the election of Fresh Vine, redeem the \$500,000 equity investment in Notes Live made by Fresh Vine upon entering into the letter of intent with Note Live for the Merger transaction at the same price per share as the purchase price paid by Fresh Vine therefor. Even if a termination fee or reimbursement of expenses of the other party are not payable in connection with a termination of the Merger Agreement, each of us and Notes Live will have incurred significant fees and expenses, which must be paid whether or not the Merger is completed.

In addition, if the Merger Agreement is terminated and our board of directors determines to seek another business combination, there can be no assurance that we will be able to find a partner and close an alternative transaction on terms that are as favorable or more favorable than the terms set forth in the Merger Agreement.

The issuance of our common stock to Notes Live's shareholders pursuant to the Merger Agreement and the resulting change in control from the Merger must be approved by our stockholders, and the Merger Agreement and transactions contemplated thereby must be approved by Notes Live's shareholders. Failure to obtain these approvals would prevent the closing of the Merger.

Before the Merger can be completed, our stockholders must approve, among other things, the issuance of our common stock to Note Live's shareholders pursuant to the Merger Agreement and the resulting change in control from the Merger, and Note Live's shareholders must adopt the Merger Agreement and approve the Merger and the related transactions. Failure to obtain the required stockholder approvals may result in a material delay in, or the abandonment of, the Merger. Any delay in completing the Merger may materially adversely affect the timing and benefits that are expected to be achieved from the Merger.

Our stockholders will have a reduced ownership and voting interest in, and will exercise significantly less influence over the management of, the combined company following the closing of the Merger as compared to their current ownership and voting interest in our company.

If the proposed Merger is completed, our current stockholders will own a significantly smaller percentage of the combined company than their ownership in our company prior to the Merger. On a pro forma basis and without adjustment for gross proceeds from the Notes Live Financing or any Net Cash Surplus, pre-Merger Notes Live shareholders are expected to own approximately 95.1% of the outstanding shares of capital stock of the combined company and pre-Merger Fresh Vine stockholders are expected to own approximately 4.9% of the outstanding shares of capital stock of the combined company.

During the pendency of the Merger, we may not be able to enter into a business combination with another party on more favorable terms because of restrictions in the Merger Agreement, which could adversely affect our business prospects.

Covenants in the Merger Agreement impede our ability to make acquisitions during the pendency of the Merger, subject to specified exceptions. As a result, if the Merger is not completed, we may be at a disadvantage to our competitors during such period. In addition, while the Merger Agreement is in effect, we are generally prohibited from soliciting, initiating or knowingly encouraging, inducing or facilitating any inquiries, indications of interest, proposals or offers that constitute or may reasonably be expected to lead to certain transactions involving a third party, including a merger, sale of assets or other business combination, subject to specified exceptions. Any such transactions could be favorable to our stockholders, but we may be unable to pursue them.

Certain provisions of the Merger Agreement may discourage third parties from submitting alternative takeover proposals, including proposals that may be superior to the transactions contemplated by the Merger Agreement.

The terms of the Merger Agreement prohibit us from soliciting alternative takeover proposals or cooperating with persons making unsolicited takeover proposals, except in limited circumstances when our board of directors determines in good faith that an unsolicited alternative takeover proposal is or is reasonably likely to result in a superior takeover proposal and that failure to cooperate with the proponent of the proposal is reasonably likely to be inconsistent with our board's fiduciary duties. Any such transactions could be favorable to our stockholders. In addition, if we terminate the Merger Agreement under certain circumstances, including terminating because of a decision of ours to enter into a definitive agreement with respect to a superior offer, we would be required to pay a termination fee of \$1.0 million to Notes Live and/or reimburse Notes Live's expenses up to a maximum of \$500,000. This termination fee described above may discourage third parties from submitting alternative takeover proposals to our stockholders, and may cause our board of directors to be less inclined to recommend an alternative takeover proposal.

Because the lack of a public market for Notes Live common stock makes it difficult to evaluate the value of Notes Live common stock, the Notes Live shareholders may receive shares of our common stock in the Merger that have a value that is less than, or greater than, the fair market value of Notes Live common stock.

The outstanding common stock of Notes Live is privately held and is not traded in any public market. The lack of a public market makes it extremely difficult to determine the fair market value of Notes Live. Because the percentage of our common stock to be issued to Notes Live's shareholders was determined based on negotiations between the parties, it is possible that the value of our common stock to be received by Notes Live's shareholders will be less than the fair market value of Notes Live, or that the value of our common stock to be received by Notes Live's shareholders may be more than the aggregate fair market value for Notes Live.

If the conditions to the Merger are not satisfied or waived, the Merger will not occur.

Even if the transactions contemplated by the Merger Agreement are approved by our stockholders and Notes Live's shareholders, several other specified conditions set forth in the Merger Agreement must be satisfied or waived to complete the Merger, including without limitation (i) the effectiveness of a registration statement on Form S-4 to register the shares of Fresh Vine common stock to be issued in connection with the Merger, (ii) NYSE American's approval of the listing of the shares of Fresh Vine common stock to be issued in connection with the Merger, and, if applicable, NYSE American's approval of an initial listing application for the combined company, (iii) if applicable, the completion of required filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the expiration or termination any waiting period applicable to the consummation of the Merger, (iv) the absence of material adverse effects impacting Fresh Vine or Notes Live, (v) Fresh Vine having cash, cash equivalent assets or other liquid assets at the closing of the Merger in an amount that equals or exceeds the Net Cash Target, and having no liabilities on its balance sheet or unpaid or unsatisfied obligations that will require a cash expenditure by Fresh Vine after the effective time of the Merger, (vi) the absence of dissenting Notes Live shareholders, and (vii) the entry by Notes Live into lock-up and leak-out arrangements with its shareholders to its satisfaction. We cannot assure you that all of the conditions will be satisfied or waived. If the conditions are not satisfied or waived, the Merger will not occur or will be delayed, and we may lose some or all of the intended benefits of the Merger.

If the Merger is not completed, our board of directors may decide to pursue a dissolution of our company. In a dissolution, there can be no assurances as to the amount or timing of available cash, if any, to distribute to our stockholders after paying our debts and other obligations and setting aside funds for reserves.

Although we have entered into the Merger Agreement with Notes Live, the closing of the Merger may be delayed or may not occur at all and there can be no assurance that the Merger will deliver the anticipated benefits we expect or enhance stockholder value. If the Merger is not completed and the Merger Agreement is terminated under certain circumstances, we may be required to pay Notes Live a termination fee of \$1.0 million and/or reimburse Notes Live's expenses up to a maximum of \$500,000. Even if a termination fee is not payable in connection with a termination of the Merger Agreement, we will have incurred significant fees and expenses, which must be paid whether or not the Merger is completed.

If, for any reason, the Merger does not close, our board of directors may elect to, among other things, attempt to complete another strategic transaction like the Merger, attempt to sell or otherwise dispose of the various assets of ours or continue to operate our business, and/or decide that it is in the best interests of the Fresh Vine stockholders to suspend or cease its operations, seek to dissolve the company and liquidate its assets, or initiate bankruptcy proceedings. Any of these alternatives would be costly and time-consuming and may require that we obtain additional funding. We expect that it would be difficult to secure financing in a timely manner, on favorable terms or at all. We can make no assurances that we would be able to obtain additional financing or find a partner and close an alternative transaction on terms that are as favorable or more favorable than the terms set forth in the Merger Agreement or that any such alternatives are possible or would be successful, if pursued. To the extent that we seek and are able to raise additional capital through the sale of equity or convertible debt securities, our stockholders' ownership interest will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect their rights as a common stockholder. Debt financing or preferred equity financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures, or declaring dividends. Even if we are able to pursue such alternatives, the failure to complete the Merger may result in negative publicity and/or a negative impression of us in the investment community, could significantly harm the market price of our common stock and may affect our relationship with employees and other partners in the business community.

If the Merger is not completed, our board of directors may decide that it is in the best interests of our stockholders to suspend or cease its operations, seek to dissolve the company and liquidate its assets, or initiate bankruptcy proceedings. In that event, the amount of cash available, if any, for distribution to our stockholders would depend heavily on the timing of such decision since the amount of cash available for distribution continues to decrease as we fund our operations and incur fees and expenses related to the Merger. In addition, if our board of directors were to approve and recommend, and our stockholders were to approve, a dissolution of our company, we would be required to pay our outstanding obligations, as well as to make reasonable provision for contingent and unknown obligations, prior to making any distributions to our stockholders. As a result of this requirement, a portion of our assets may need to be reserved pending the resolution of such obligations. In addition, we may be subject to litigation or other claims related to a dissolution of our company. If a dissolution were pursued, our board of directors, in consultation with our advisors, would need to evaluate these matters and make a determination about a reasonable amount to reserve. Accordingly, our stockholders could lose all or a significant portion of their investment in the event of a dissolution of our company.

We are substantially dependent on our remaining employees to facilitate the consummation of the Merger.

As of December 31, 2023, we had four full-time employees. Our ability to successfully complete the Merger depends in large part on our ability to retain our remaining personnel. Despite our efforts to retain these employees, one or more may terminate their employment with us on short notice. The loss of the services of certain employees could potentially harm our ability to consummate the Merger, to run our day-to-day business operations, as well as to fulfill our reporting obligations as a public company.

Our ability to complete the Fresh Vine Legacy Transaction is uncertain, and we cannot predict the terms and conditions of any such Fresh Vine Legacy Transaction, including the consideration that we may receive.

As a condition to the closing of the Merger, on or before the closing of the Merger, Fresh Vine shall have engaged in a sale, license, transfer, disposition, divestiture or other monetization transaction, or winding down of Fresh Vine's current wine production business (the "Fresh Vine Legacy Business"), or the sale, license, transfer, disposition, divestiture or other monetization transaction or other disposition of the assets comprising the Fresh Vine Legacy Business and in connection therewith causing any and all known obligations or liabilities associated with such assets and the conduct of the Fresh Vine Legacy Business operations to be satisfied (the "Fresh Vine Legacy Transaction").

Because completion of the Fresh Vine Legacy Transaction is a condition to the closing of the Merger, the success of the combined company will be dependent on the success of the Notes Live business operations following the merger.

Lawsuits may be filed in the future against us and the members of our board of directors arising out of the proposed Merger, which may delay or prevent the proposed Merger.

Putative stockholder complaints, including stockholder class action complaints, and other complaints may be filed against us and our board of directors in connection with the transactions contemplated by the Merger Agreement. It is common for public reporting companies engaged in merger transactions to receive letters from purported stockholders demanding amendments to registration statements and/or proxy statements filed with the SEC to provide additional disclosures that such stockholders allege were improperly omitted, or complaints asserting claims for allegedly false and misleading statements in such filings. The outcome of demands or complaints that we may receive or any litigation is uncertain, and we may not be successful in defending against any such claims. Lawsuits that may be filed against us and/or our board of directors could delay or prevent the Merger, divert the attention of our management team and employees from our day-to-day business and otherwise adversely affect our business and financial condition.

Risks related to our company and our business.

We have a limited operating history and have generated limited revenue to date.

Our company was recently founded, and we have a limited operating history on which to base an evaluation of our business and prospects. Our prospects must be considered in light of the risks, expenses and difficulties frequently encountered by companies in their early stage of development, particularly companies in new and evolving markets such as ours. The risks include, but are not limited to, an evolving business model and the management of growth and product development. To address these risks, we must, among other things, implement and successfully execute our business strategy and other business systems, respond to competitive developments, and attract, retain and motivate qualified personnel. We cannot assure you that we will be successful in addressing the risks we may encounter, and our failure to do so could have a material adverse effect on our business, prospects, financial condition and results of operations.

We have generated very limited revenues to date, including revenues of approximately \$1.8 million and \$2.9 million during fiscal 2023 and fiscal 2022, respectively. We have incurred net losses of \$10.6 million and \$15.2 million during fiscal 2023 and 2022, respectively. We had an accumulated deficit of \$26.5 million and \$15.8 million at December 31, 2023 and 2022, respectively. We may never generate material revenues or achieve profitability.

We have not generated profits from operations to date. The success and longevity of our company will depend on our ability to generate profits from future operations or obtain sufficient capital through financing transactions to meet our business obligations.

The report of our independent registered public accounting firm on our financial statements for the fiscal year ended December 31, 2023 included an explanatory paragraph indicating that there is substantial doubt as to our ability to continue as a going concern for twelve months from the financial statement issuance date. We incurred net losses of \$10.6 million and \$15.2 million during fiscal 2023 and 2022, respectively. Our cash and restricted cash balance at December 31, 2023 was approximately \$336,000. Our ability to continue as a going concern, including during the pendency of the Merger transaction, will be determined by our ability to generate sufficient cash flow to sustain our operations and/or raise additional capital in the form of debt or equity financing.

We need to hire additional executive officers and other personnel.

Our executive management is currently comprised of a Chief Executive Officer and a Chief Financial Officer, both of whom are serving in interim positions. If the Merger transaction is not completed, the future success of our existing wine production business will be dependent in part upon us locating and retaining qualified individuals who will serve as executive officers on a permanent basis and lead our Company and our business operations, and on us locating additional members to serve on our board of directors to help oversee and guide our company. We cannot predict with certainty when we will be able locate such individuals.

The success of our business depends heavily on the strength of our wine brand.

Obtaining, maintaining and expanding our reputation as a producer of premium wine among our customers and the premium wine market generally is critical to the success of our business and our growth strategy. The premium wine market is driven by a relatively small number of active and well-regarded wine critics within the industry who have outsized influence over the perceived quality and value of wines. If we are unable to maintain the actual or perceived quality of our wines, including as a result of contamination or tampering, environmental or other factors impacting the quality of our grapes or other raw materials, or if our wines otherwise do not meet the subjective expectations or tastes of one or more of a relatively small number of wine critics, the actual or perceived quality and value of one or more of our wines could be harmed, which could negatively impact not only the value of that wine, but also the value of the vintage, the particular brand or our broader portfolio. The winemaking process is a long and labor-intensive process that is built around yearly vintages, which means that once a vintage has been released we are not able to make further adjustments to satisfy wine critics or consumers. As a result, we are dependent on our winemakers and tasting panels to ensure that every wine we release meets our exacting quality standards.

With the advent of social media, word within the premium wine market spreads quickly, which can accentuate both the positive and the negative reviews of our wines and of wine vintages generally. Public perception of our brands could be negatively affected by adverse publicity or negative commentary on social media outlets, particularly negative commentary on social media outlets that goes “viral,” or our responses relating to, among other things:

- an actual or perceived failure to maintain high-quality, safety, ethical, social and environmental standards for all of our operations and activities;
- an actual or perceived failure to address concerns relating to the quality, safety or integrity of our wines and the hospitality we offer to our guests at our potential future tasting rooms;
- our environmental impact, including our use of agricultural materials, packaging, water and energy use, and waste management; or
- an actual or perceived failure by us to promote the responsible consumption of alcohol.

If we do not produce wines that are well-regarded by the relatively small wine critic community, the wine market will quickly become aware and our reputation, wine brand, business and financial results of our operations could be materially and adversely affected. In addition, if our wine receives negative publicity or consumer reaction, whether as a result of our wines or wines of other producers, our wines in the same vintage could be adversely affected. Unfavorable publicity, whether accurate or not, related to our industry, us, our winery brands, marketing, personnel, operations, business performance or prospects could also unfavorably affect our corporate reputation, company value, ability to attract high-quality talent or the performance of our business.

Any contamination or other quality control issue could have an adverse effect on sales of the impacted wine or our broader portfolio of wines. If any of our wines become unsafe or unfit for consumption, cause injury or are otherwise improperly packaged or labelled, we may have to engage in a product recall and/or be subject to liability and incur additional costs. A widespread recall, multiple recalls, or a significant product liability judgment against us could cause our wines to be unavailable for a period of time, depressing demand and our brand equity. Even if a product liability claim is unsuccessful or is not fully pursued, any resulting negative publicity could adversely affect our reputation with existing and potential customers and accounts, as well as our corporate and individual winery brands image in such a way that current and future sales could be diminished. In addition, should a competitor experience a recall or contamination event, we could face decreased consumer confidence by association as a producer of similar products.

Additionally, third parties may sell wines or inferior brands that imitate our wine brand or that are counterfeit versions of our labels, and customers could be duped into thinking that these imitation labels are our authentic wines. For example, there could be instances of potential counterfeiting. A negative consumer experience with such a wine could cause them to refrain from purchasing our brands in the future and damage our brand integrity. Any failure to maintain the actual or perceived quality of our wines could materially and adversely affect our business, results of operations and financial results.

Damage to our reputation or loss of consumer confidence in our wines for any of these or other reasons could result in decreased demand for our wines and could have a material adverse effect on our business, operational results, and financial results, as well as require additional resources to rebuild our reputation, competitive position and winery brand strength.

If our business grows, it will place increased demands on our management, operational and production capabilities that we may not be able to adequately address. If we are unable to meet these increased demands, our business will be harmed.

Unless we manage our growth effectively, we may make mistakes in operating our business, such as inaccurate forecasting. The anticipated growth of our operations will place significant demand on our management and operational resources. In order to manage growth effectively, we must implement and improve our operational systems, procedures and controls on a timely basis. Our key personnel have limited experience managing this type of business. If we cannot manage our business effectively, our business could suffer.

Our advertising and promotional investments may affect our financial results but not be effective.

Consumer awareness is of great importance to the success of businesses operating in the wine industry. We have incurred, and expect to continue to incur, significant advertising and promotional expenditures to enhance our wine brand and raise consumer awareness, which we believe is vital to the long-term success of our operations. These expenditures may adversely affect our results of operations in a particular quarter or even a full fiscal year and may not result in increased sales. Variations in the levels of advertising and promotional expenditures have in the past caused, and are expected in the future to continue to cause, variability in our quarterly results of operations. While we strive to invest only in effective advertising and promotional activities in both the digital and traditional segments, it is difficult to correlate such investments with sales results, and there is no guarantee that our expenditures will be effective in building brand strength or growing long term sales.

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 been heavily dependent on the positive image and public popularity of, and affinity towards, Nina Dobrev and Julianne Hough. Ms. Dobrev and Ms. Hough have served as celebrity spokespersons and ambassadors of our company, have actively endorsed our wines on their sizable social media and other outlets, and are 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.

On August 8, 2023, the Company received written letters from each of Ms. Dobrev and Jaybird Investments, LLC, notifying the Company that it was in default of their respective license agreements based on failure to pay license fees and providing 30 day notice of termination of their respective license agreements. Effective September 7, 2023, each license agreement terminated. 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.

We rely heavily on third-party suppliers and service providers, and they may not continue to produce products or provide services that are consistent with our standards or applicable regulatory requirements, which could harm our brand, cause consumer dissatisfaction, and require us to find alternative suppliers and service providers.

We have strategically structured our organization and operations with a view towards minimizing our capital investment requirements. We do this by leveraging a network of third-party providers with industry experience and expertise that we use to perform various functions on our behalf. Specifically, we contract with Fior di Sole, an industry leading packaging innovation and wine production company based in Napa Valley, California, to serve as a “host winery” and permit us to occupy a portion of its production and warehouse facility and its production equipment on an alternating proprietorship basis. Under this arrangement, we are able to use capacity at Fior di Sole’s production facility at times mutually convenient to us and Fior di Sole to produce and bottle our wines. Fior di Sole is responsible for keeping its production equipment in good operating order. Although we are solely responsible for managing and conducting our own winemaking activities, we may request use of the Fior di Sole’s personnel to perform crush, fermentation, blending, cellar, warehousing, barrel topping and/or bottling services for additional fees. Under a separate agreement, Fior di Sole provides us with bulk juice and blends, finishes, bottles, stops, labels, and packages our wine. Fior di Sole provides these services on a purchase order basis, which purchase orders are subject to the parties’ mutual agreement. This agreement was terminated in December 2023.

The Company relies heavily on the third parties to manage the sales and distribution of our wine and manage our DTC marketing initiatives. We also utilize third parties to help manage all of our regulatory licensing and compliance activities, and we utilize additional software tools available to the industry to navigate and manage the complex state-by-state regulations that apply to our operations in the beverage alcohol industry.

We engage many of our third-party suppliers and service providers on a purchase order basis or pursuant to agreements that are generally one year or less in duration. The ability and willingness of these third parties to supply and provide services to us may be affected by competing orders placed by other companies, the demands of those companies or other factors. If we experience significant increases in demand or need to replace a significant third party supplier or service provider, there can be no assurance that alternative third party vendors will be available when required on terms that are acceptable to us, or at all, or that any such vendor will allocate sufficient capacity to us in order to meet our requirements. If we fail to replace a supplier or service provider in a timely manner or on commercially reasonable terms, we could incur product disruptions and our operating results and financial condition could be materially harmed. Switching or adding additional vendors, particularly our alternating proprietorship host winery, would also involve additional costs and require management time and focus.

Except for remedies that may be available to us under our agreements with our third-party vendors, we cannot control whether or not they devote sufficient time and resources to supporting our business operations. These third parties may also have relationships with other commercial entities, including our competitors, for whom they may also be providing services, which could affect their performance on our behalf. If these third parties do not successfully carry out their contractual duties or obligations or meet expected deadlines or need to be replaced for other reasons, it could adversely impact our ability to meet consumers’ demands for our products or comply with regulatory requirements and subject us to potential liability, any of which may harm the reputation of our company and our products.

Although we carefully manage our relationships with our network of third-party vendors, there can be no assurance that we will not encounter challenges or delays in the future or that these challenges or delays will not have a material adverse impact on our business, financial condition and prospects.

We face significant competition with an increasing number of products and market participants that could materially and adversely affect our business, results of operations and financial results.

Our industry is intensely competitive and highly fragmented. Our wines compete with many other domestic and foreign wines. Our wines compete with popularly priced generic wines and with other alcoholic and, to a lesser degree, non-alcoholic beverages, for drinker acceptance and loyalty, shelf space and prominence in retail stores, presence, and prominence on restaurant wine lists and for marketing focus by the Company’s distributors, many of which carry extensive portfolios of wines and other alcoholic beverages. This competition is driven by established companies as well as new entrants in our markets and categories. In the United States, wine sales are relatively concentrated among a limited number of large suppliers, including E&J Gallo, Constellation, Duckhorn, Trinchero, Jackson Family Wines, Ste. Michelle and The Wine Group, and these and our other competitors may have more robust financial, technical, marketing and distribution networks and public relations resources than we have. As a result of this intense competition, combined with our growth goals, we have experienced and may continue to face upward pressure on our selling, marketing and promotional efforts and expenses. There can be no assurance that in the future we will be able to successfully compete with our competitors or that we will not face greater competition from other wineries and beverage manufacturers.

If we are unable to successfully compete with existing or new market participants, or if we do not effectively respond to competitive pressures, we could experience reductions in market share and margins that could have a material and adverse effect on our business, results of operations and financial results.

Consolidation of the distributors of our wines, as well as the consolidation of retailers, may increase competition in an already crowded space and may have a material adverse effect on our business, results of operations and financial results.

Other than sales made directly to our consumers, the majority of our wine sales are made through distributors for resale to retail outlets, restaurants and hotels across the United States. We expect sales to distributors to represent an increasingly substantial portion of our future net sales as we continue to grow our network of wholesale distributors. Consolidation among wine producers, distributors, wholesalers, suppliers and retailers could create a more challenging competitive landscape for our wines. In addition, we believe that the increased growth and popularity of the retail e-commerce environment across the consumer product goods market, which accelerated during the COVID-19 pandemic and the resulting quarantines, “stay at home” orders, travel restrictions, retail store closures, social distancing requirements and other government action, has and is likely to continue to change the competitive landscape for our wines. Consolidation at any level could hinder the distribution and sale of our wines as a result of reduced attention and resources allocated to our winery brands both during and after transition periods, because our winery brands might represent a smaller portion of the new business portfolio. Furthermore, consolidation of distributors may lead to the erosion of margins as newly consolidated distributors take down prices or demand more margin from existing suppliers. Changes in distributors’ strategies, including a reduction in the number of brands they carry or the allocation of resources for our competitors’ brands or private label products, may adversely affect our growth, business, financial results and market share. Distributors of our wines offer products that compete directly with our wines for inventory and retail shelf space, promotional and marketing support and consumer purchases. Expansion into new product categories by other suppliers or innovation by new entrants into the market could increase competition in our product categories.

An increasingly large percentage of our net sales is concentrated within a small number of wholesale customers. The purchasing power of large retailers is significant, and they have the ability to command concessions. There can be no assurance that the distributors and retailers will purchase our wines or provide our wines with adequate levels of promotional and merchandising support. The failure to bring on major accounts or the need to make significant concessions to retain one or more such accounts could have a material and adverse effect on our business, results of operations and financial position.

A reduction in consumer demand for wine, which may result from a variety of factors, including demographic shifts and decreases in discretionary spending, could materially and adversely affect our business, results of operations and financial results.

We rely on consumers’ demand for our wine. Consumer preferences may shift due to a variety of factors, including changes in demographic or social trends, changes in discretionary income, public health policies and perceptions and changes in leisure, dining and beverage consumption patterns. Our success will require us to anticipate and respond effectively to shifts in consumer behavior and drinking tastes. If consumer preferences were to move away from our wine brand, our results of operations would be materially and adversely affected.

A limited or general decline in consumer demand could occur in the future due to a variety of factors, including:

- a general decline in economic or geopolitical conditions;
- a general decline in the consumption of alcoholic beverage products in on-premise establishments, such as those that may result from smoking bans and stricter laws relating to driving while under the influence of alcohol and changes in public health policies, including those implemented to address the COVID-19 pandemic;
- a generational or demographic shift in consumer preferences away from wines to other alcoholic beverages;
- increased activity of anti-alcohol groups;
- concern about the health consequences of consuming alcoholic beverage products; and
- increased federal, state, provincial, and foreign excise, or other taxes on beverage alcohol products and increased restrictions on beverage alcohol advertising and marketing.

Demand for premium wine brands, like ours, may be particularly susceptible to changing economic conditions and consumer tastes, preferences and spending habits, which may reduce our sales of these products and adversely affect our profitability. An unanticipated decline or change in consumer demand or preference could also materially impact our ability to forecast for future production requirements, which could, in turn, impair our ability to effectively adapt to changing consumer preferences. Any reduction in the demand for our wines would materially and adversely affect our business, results of operations and financial results.

Due to the three-tier alcohol beverage distribution system in the United States, we are heavily reliant on our distributors that resell alcoholic beverages in all states in which we do business. A significant reduction in distributor demand for our wines would materially and adversely affect our sales and profitability.

Due to regulatory requirements in the United States, we sell a significant portion of our wines to wholesalers for resale to retail accounts. A change in the relationship with any of our significant distributors could harm our business and reduce our sales. The laws and regulations of several states prohibit changes of distributors, except under certain limited circumstances, making it difficult to terminate or otherwise cease working with a distributor for poor performance without reasonable justification, as defined by applicable statutes. Any difficulty or inability to replace distributors, poor performance of our major distributors or our inability to collect accounts receivable from our major distributors could harm our business. In addition, an expansion of the laws and regulations limiting the sale of our wine would materially and adversely affect our business, results of operations and financial results. There can be no assurance that the distributors and accounts to which we sell our wines will continue to purchase our wines or provide our wines with adequate levels of promotional support, which could increase competitive pressure to increase sales and marketing spending and could materially and adversely affect our business, results of operations and financial results.

Our marketing strategy involves continued expansion into the direct-to-consumer channel, which may present risks and challenges for which we are not adequately prepared and which could negatively affect our sales in these channels and our profitability.

A portion of our operating strategy is to expand our sales of wine through this direct-to-consumer channel. However, the direct-to-consumer marketplace is highly competitive and in recent years has seen the entrance of new competitors and products targeting similar customer groups as our business. To be competitive and forge new connections with customers, we are continuing investment in the expansion of our direct-to-consumer channel. Such expansion may require significant investment in e-commerce platforms, marketing, fulfilment, information technology (“IT”) infrastructure and other known and unknown costs. The success of our direct-to-consumer sales channel depends on our ability to maintain the efficient and uninterrupted operation of online order-processing and fulfilment and delivery operations. As such, we are heavily dependent on the performance of our shipping and technology partners. Any system interruptions or delays could prevent potential customers from purchasing our wines directly.

Our ability to ship wines directly to our customers is the result of court rulings, including the U.S. Supreme Court ruling in *Granholm v. Heald*, which allow, in certain circumstances, shipments to customers of wines from out-of-state wineries. Any changes to the judicial, legal, or regulatory framework that reduce our ability to sell wines in most states using our direct-to-consumer sales channel could have a materially adverse effect on our business, results of operations and financial results.

We may be unable to adequately adapt to shifts in consumer preferences for points of purchase, such as an increase in at-home delivery during the COVID-19 pandemic, and our competitors may react more rapidly or with improved customer experiences. A failure to react quickly to these and other changes in consumer preferences, or to create infrastructure to support new or expanding sales channels may materially and adversely affect our business, results of operations and financial results.

A failure to adequately prepare for adverse events that could cause disruption to elements of our business, including the availability of bulk grapes, and the blending, inventory aging or distribution of our wines could materially and adversely affect our business, results of operations and financial results.

Disruptions to our operations caused by adverse weather, natural disasters, public health emergencies, including the COVID-19 pandemic, or unforeseen circumstances may cause delays to or interruptions in our operations. Concerns regarding the availability of water for production is particular to companies that produce and bottle wines in California. A consequence of any of these or supply or supply chain disruptions, including the temporary inability to produce our wines due to the closure of our production sites, could prevent us from meeting consumer demand in the near term or long term for our aged wines. For example, as result of the COVID-19 pandemic, our industry has experienced temporary supply chain disruptions for certain processed materials, cardboard packaging, and glass, as well as increased strain on logistics networks and shipping partners. The occurrence of any such disruptions during a peak time of demand for such processed materials could increase the magnitude of the effect on our distribution network and sales. Failure to adequately prepare for and address any such disruptions could materially and adversely affect our business, results of operations and financial results.

A catastrophic event causing physical damage, disruption or failure at our production facility could adversely affect our business. Although our wines currently available for sale do not require substantial aging, we expect that certain of our wines, including the Reserve Cabernet Sauvignon, require aging for some period of time. As a result, we expect to maintain inventory of aged and maturing wines in warehouses. The loss of a substantial amount of aged inventory through fire, accident, earthquake, other natural or man-made disaster, contamination or otherwise could significantly reduce the supply of the affected wine or wines, including our aged wines, which are typically the highest priced and limited production wines.

Any disruptions that cause forced closure or evacuation could materially harm our business, results of operations and financial results. Additionally, should multiple closings occur, we may lose guest confidence resulting in a reduction in direct sales, which could materially and adversely affect our business, results of operations and financial results. If we expand our future operations to include tasting rooms, such closings would also negatively impact visitation.

Inclement weather, drought, pests, plant diseases and other factors could reduce the amount or quality of the grapes available to produce our wines, which could materially and adversely affect our business, results of operations and financial results.

A shortage in the supply of quality grapes may result from the occurrence of any number of factors that determine the quality and quantity of grape supply, including adverse weather conditions (including heatwaves, frosts, drought and excessive rainfall), and various diseases, pests, fungi and viruses. We cannot anticipate changes in weather patterns and conditions, and we cannot predict their impact on our operations if they were to occur. Any shortage could cause an increase in the price of some or all of the grape varieties required for our wine production or a reduction in the amount of wine we are able to produce, which could materially and adversely affect our business, results of operations and financial results.

Factors that reduce the quantity of grapes the growers with which we contract grow may also reduce their quality. Deterioration in the quality of our wines could harm our winery brand strength, and a decrease in our production could reduce our sales and increase our expenses, both of which could materially and adversely affect our business, results of operations and financial results.

If we are unable to obtain adequate supplies of premium juice from third-party juice suppliers, the quantity or quality of our annual production of wine could be adversely affected, causing a negative impact on our business, results of operations and financial condition.

The production of our wines and the ability to fulfill the demand for our wines is restricted by the availability of premium grapes and juice from third-party growers. If we are unable to source grapes and juice of the requisite quality, varietal and geography, among other factors, our ability to produce wines to the standards, quantity and quality demanded by our customers could be impaired.

Factors including climate change, agricultural risks, competition for quality, water availability, land use, wildfires, floods, disease, and pests could impact the quality and quantity of grapes and bulk juice available to our company. Furthermore, these potential disruptions in production may drive up demand for grapes and bulk juice creating higher input costs or the inability to purchase these materials. Following the 2020 wildfires in Northern California, the price of bulk juice increased substantially in a very short period of time, leading to some wine producers reducing lot sizes of certain wines. As a result, our financial results could be materially and adversely affected both in the year of the harvest and future periods.

If we are unable to identify and obtain adequate supplies of quality agricultural, raw and processed materials, including corks, glass bottles, barrels, winemaking additives and agents, water and other supplies, or if there is an increase in the cost of the commodities or products, our profitability, production and distribution capabilities could be negatively impacted, which would materially and adversely affect our business, results of operations and financial condition.

We use grapes and other raw materials to produce and package our wine, including corks, barrels, winemaking additives, and water, as well as large amounts of packaging materials, including metal, cork, glass and cardboard. We purchase raw materials and packaging materials under contracts of varying maturities from domestic and international suppliers.

Glass bottle costs are one of our largest packaging components of cost of goods sold. In North America, glass bottles have only a small number of producers. The inability of any of our glass bottle suppliers to satisfy our requirements could materially and adversely affect our business. In addition, costs and programs related to mandatory recycling and recyclable materials deposits could be adopted in states of manufacture, imposing additional and unknown costs to manufacture products utilizing glass bottles. The amount of water available for use is important to the supply of our grapes and winemaking, other agricultural raw materials, and our ability to operate our business. If climate patterns change and droughts become more severe, there may be a scarcity of water or poor water quality, which may affect our production costs, consistency of yields or impose capacity constraints. We depend on sufficient amounts of quality water for operation of our wineries, as well as to conduct our other operations. The suppliers of the grapes and other agricultural raw materials we purchase also depend upon sufficient supplies of quality water for their vineyards and fields. Prolonged or severe drought conditions in the western United States or restrictions imposed on irrigation options by governmental authorities could have an adverse effect on our operations in the region. If water available to our operations or the operations of our suppliers becomes scarcer, restrictions are placed on our usage of water or the quality of that water deteriorates, we may incur increased production costs or face manufacturing constraints which could negatively affect our production. Even if quality water is widely available to us, water purification and waste treatment infrastructure limitations could increase our costs or constrain operation of our production facilities. Any of these factors could materially and adversely affect our business, results of operations and financial results.

Our production and shipping activities also use energy in their operations, including electricity, propane and natural gas. Energy costs could rise in the future, which would result in higher transportation, freight and other operating costs, such as ageing and bottling expenses. Our freight cost and the timely delivery of our wines could be adversely affected by a number of factors that could reduce the profitability of our operations, including driver shortages, higher fuel costs, weather conditions, traffic congestion, increased government regulation, and other matters. In addition, increased labor costs or insufficient labor supply could increase our production costs.

Our supply and the price of raw materials, packaging materials and energy and the cost of energy, freight and labor used in our productions and distribution activities could be affected by a number of factors beyond our control, including market demand, global geopolitical events (especially their impact on energy prices), economic factors affecting growth decisions, exchange rate fluctuations and inflation. To the extent any of these factors, including supply of goods and energy, affect the prices of ingredients or packaging, or we do not effectively or completely hedge changes in commodity price risks, or are unable to recoup costs through increases in the price of our finished wines, our business, results of operations and financial results could be materially and adversely affected.

In addition to litigation that may arise from time to time in the ordinary course of business, we have been engaged in litigation with our former Chief Operating Officer.

As disclosed under Item 3 - Legal Proceedings, the Company has been a defendant in a lawsuit styled Timothy Michaels v. Fresh Vine Wine, Inc. filed May 27, 2022 in the Fourth Judicial District Court, Hennepin County, Minnesota. The lawsuit relates to a complaint filed by Mr. Michaels resulting from the Company including a restricted “lock-up” legend on shares of the Company’s common stock issued to Mr. Michaels pursuant to a settlement agreement that the Company entered into with Mr. Michaels following termination of his employment and for not removing or directing the Company’s transfer agent to remove such legend. A jury trial commenced on January 23, 2024. During trial, on January 24, 2024, the Company filed a motion for judgement in favor of the Company as a matter of law, which was denied by the Court. On January 25, 2024, the jury in the lawsuit rendered a verdict against the Company awarding damages to Mr. Michaels in the amount of \$585,976.25. The damages awarded to Mr. Michaels by the trial court are not covered by the Company’s insurance policies.

The Company is assessing the options available to it, including the possibility of appealing the verdict. Although the Company believes it has legal grounds to appeal the verdict, continued litigation and related actions may be expensive, the outcome of any litigation (including any appeal) is difficult to predict, and the existence of litigation may impact the ability of management to focus on other business matters. Furthermore, the Company will be required to post an appeals bond in order to stay execution of the money judgment pending any appeal. Given the Company's current financial position, the cost of such an appeals bond is uncertain and may be higher than the typical cost of such a bond or require the Company to provide cash or other collateral. In addition, adverse judgments may result in an increase in future insurance premiums, and any judgments for which the Company is not fully insured may result in a significant financial loss and may materially and adversely affect the Company's business, results of operations and financial results.

The impact of U.S. and worldwide economic trends and financial market conditions could materially and adversely affect our business, liquidity, financial condition and results of operations.

We are subject to risks associated with adverse economic conditions in the United States and globally, including economic slowdown, inflation, and the disruption, volatility and tightening of credit and capital markets. Unfavorable global or regional economic conditions could materially and adversely impact our business, liquidity, financial condition and results of operations. In general, positive conditions in the broader economy promote customer spending on wine, while economic weakness, which generally results in a reduction of customer spending, may have a more pronounced negative effect on spending on wine. Unemployment, tax increases, governmental spending cuts or a return of high levels of inflation could affect consumer spending patterns and purchases of our wines and other alcoholic beverage products. Reduced consumer discretionary spending and reduced consumer confidence could negatively affect the trend towards consuming premium wines and could result in a reduction of wine and beverage alcohol consumption in the United States generally. In particular, extended periods of high unemployment, lower consumer discretionary spending and low consumer confidence could result in lower sales of premium wine brands, including our wine, in favor of wine brands which have a lower average sales price and generally have lower gross profit margins and lower overall sales, which could negatively impact our business and results of operations. These conditions could also create or worsen credit issues, cash flow issues, access to credit facilities and other financial hardships for us and our suppliers, distributors, accounts and consumers. An inability of our suppliers, distributors and retailers to access liquidity could impact our ability to produce and distribute our wines.

If we are unable to secure and protect our intellectual property in domestic and foreign markets, including trademarks for our wine brands and wines, the value of our wine brands and intellectual property could decline, which could have a material and adverse effect on our business, results of operations and financial results.

Our future success depends on our ability to protect our current and future wine brands and wines and to enforce and defend our trademarks and other intellectual property rights. We rely on a combination of trademark, copyright and trade secret laws, as well as confidentiality procedures and contractual restrictions, to secure and protect our intellectual property rights. We have been granted three (3) trademark registrations in the United States for FRESH VINE®, FRESH VINE (Stylized)®, and our FV Logo®, and numerous trademark registrations in other countries for the FRESH VINE mark, and we have filed, and may continue to file, trademark applications seeking to protect newly-developed wine brands. We have also been granted a copyright registration in the first version of our website located at www.freshvine.com. While a copyright exists in a work of art once it is fixed in tangible medium, we intend to continue to file copyright applications to protect newly-developed works of art that are important to our business.

We cannot be sure that any trademark office or copyright office will issue trademark registrations under any of our trademark applications, or copyright registrations under any of our copyright applications. Third parties may oppose the registration of our trademark applications, contest our trademark rights or copyrights, and petition to cancel our registered trademarks. We cannot assure you that we will be successful in defending our trademarks or copyrights in actions brought by third parties. There is also a risk that we could fail to timely maintain or renew our trademark registrations or otherwise protect our trademark rights or copyrights, which could result in the loss of those trademark rights (including in connection with failure to maintain consistent use of these trademarks). If we fail to maintain our trademarks or a third party successfully challenges our trademarks or copyrights, we could be forced to rebrand our wineries, wines, and other products, which could result in a loss of winery brand recognition and could require us to devote additional resources to the development and marketing of new wine brands.

Notwithstanding any trademark registrations or copyright registrations held by us, a third party could bring a lawsuit or other claim alleging that we have infringed that third party's trademark rights or copyrights. Any such claims, with or without merit, could require significant resources to defend, could damage the reputation of our wine brands, could result in the payment of compensation (whether as a damages award or settlement) to such third parties, and could require us to stop using our wine brands or otherwise agree to an undertaking to limit that use. In addition, our actions to monitor and enforce trademark rights or copyrights against third parties may not prevent counterfeit products or products bearing confusingly similar trademarks from entering the marketplace, which could divert sales from us, tarnish our reputation or reduce the demand for our products or the prices at which we sell those products. Any enforcement litigation brought by us, whether or not successful, could require significant costs and resources, and divert the attention of management, which could negatively affect our business, results of operations and financial results. Third parties may also acquire and register domain names that are confusingly similar to or otherwise damaging to the reputation of our trademarks, and we may not be able to prevent or cancel any such domain name registrations.

In addition to registered intellectual property rights such as trademark registrations and copyright registrations, we rely on non-registered proprietary information, such as trade secrets, confidential information, and know-how, including in connection with the crafting of our low calorie, low-carb, premium tasting wines. In order to protect our proprietary information, we rely in part on agreements with our employees, independent contractors and other third parties that place restrictions on the use and disclosure of this intellectual property. These agreements may be breached, or this intellectual property, including trade secrets, may otherwise be disclosed or become known to our competitors, which could cause us to lose any competitive advantage resulting from this intellectual property. To the extent that our employees, independent contractors or other third parties with whom we do business use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions. The loss of trade secret protection could make it easier for third parties to compete with our products. In addition, any changes in, or unexpected interpretations of, intellectual property laws may compromise our ability to enforce our trade secret and intellectual property rights. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights, and failure to obtain or maintain protection of our trade secrets or other proprietary information could harm our business, financial condition, results of operations and competitive position.

We may not be fully insured against catastrophic perils, including catastrophic loss or inaccessibility of wineries, production facilities and/or distribution systems resulting from fire, wildfire, flood, wind events, earthquake and other perils, which may cause us to experience a material financial loss.

Although we currently store the bulk of our wine inventory at our third-party warehouse in California, which is prone to seismic activity, wildfires and floods, among other perils. If any of these facilities were to experience a catastrophic loss in the future, it could disrupt our operations, delay production, shipments and our recognition of revenue, and result in potentially significant expenses to repair or replace the facility. If such a disruption were to occur, we could breach agreements, our reputation could be harmed and our business and operating results could be materially and adversely affected. Although we carry insurance to cover property and inventory damage and business interruption, these coverages are subject to deductibles and self-insurance obligations, as well as caps on coverage that could be below the value of losses we could incur in certain catastrophic perils. Furthermore, claims for recovery against our insurance policies can be time-consuming, and may result in significant delays between when we incur damages and when we receive payment under our insurance policies. If one or more significant catastrophic events occurred damaging our own or third-party assets and/or services, we could suffer a major financial loss and our business, results of operations and financial condition could be materially and adversely affected.

Furthermore, increased incidence or severity of natural disasters has adversely impacted our ability to obtain adequate property damage, inventory, and business interruption insurance at financially viable rates, if at all. For example, we have observed certain insurers ceasing to offer certain inventory protection policies, and we have supplemented our insurance coverage recently by purchasing policies at higher premiums. If these trends continue and our insurance coverage is adversely affected, and to the extent we elect to increase our self-insurance obligations, we may be at greater risk that similar future events will cause significant financial losses and materially and adversely affect our business, results of operations and financial results.

From time to time, we may become subject to litigation specifically directed at the alcoholic beverage industry, as well as litigation arising in the ordinary course of business.

Companies operating in the alcoholic beverage industry may, from time to time, be exposed to class action or other private or governmental litigation and claims relating to product liability, alcohol marketing, advertising or distribution practices, alcohol abuse problems or other health consequences arising from the excessive consumption of or other misuse of alcohol, including underage drinking. Various groups have, from time to time, publicly expressed concern over problems related to harmful use of alcohol, including drinking, and driving, underage drinking and health consequences from the misuse of alcohol. These campaigns could result in an increased risk of litigation against the Company and our industry. Lawsuits have been brought against beverage alcohol companies alleging problems related to alcohol abuse, negative health consequences from drinking, problems from alleged marketing or sales practices and underage drinking. While these lawsuits have been largely unsuccessful in the past, others may succeed in the future.

From time to time, we may also be party to other litigation in the ordinary course of our operations, including in connection with commercial disputes, enforcement or other regulatory actions by tax, customs, competition, environmental, anti-corruption and other relevant regulatory authorities, or, securities-related class action lawsuits, particularly following any significant decline in the price of our securities. Any such litigation or other actions may be expensive to defend and result in damages, penalties, or fines as well as reputational damage to our company and our winery brands and may impact the ability of management to focus on other business matters. Furthermore, any adverse judgments may result in an increase in future insurance premiums, and any judgments for which we are not fully insured may result in a significant financial loss and may materially and adversely affect our business, results of operations and financial results.

A failure of one or more of our key IT systems, networks, processes, associated sites or service providers could have a material adverse impact on business operations, and if the failure is prolonged, our financial condition.

We rely on IT systems, networks, and services, including internet sites, data hosting and processing facilities and tools, hardware (including laptops and mobile devices), software and technical applications and platforms, some of which are managed, hosted, provided, and used by third parties or their vendors, to assist us in the management of our business. The various uses of these IT systems, networks and services include, but are not limited to: hosting our internal network and communication systems; supply and demand planning; production; shipping wines to customers; hosting our winery websites and marketing products to consumers; collecting and storing customer, consumer, employee, stockholder, and other data; processing transactions; summarizing and reporting results of operations; hosting, processing and sharing confidential and proprietary research, business plans and financial information; complying with regulatory, legal or tax requirements; providing data security; and handling other processes necessary to manage our business.

Increased IT security threats and more sophisticated cybercrimes and cyberattacks, including computer viruses and other malicious codes, ransomware, unauthorized access attempts, denial of service attacks, phishing, social engineering, hacking and other types of attacks pose a potential risk to the security of our IT systems, networks and services, as well as the confidentiality, availability, and integrity of our data, and we have in the past, and may in the future, experience cyberattacks and other unauthorized access attempts to our IT systems. Because the techniques used to obtain unauthorized access are constantly changing and often are not recognized until launched against a target, we or our vendors may be unable to anticipate these techniques or implement sufficient preventative or remedial measures. If we are unable to efficiently and effectively maintain and upgrade our system safeguards, we may incur unexpected costs and certain of our systems may become more vulnerable to unauthorized access. In the event of a ransomware or other cyber-attack, the integrity and safety of our data could be at risk, or we may incur unforeseen costs impacting our financial position. If the IT systems, networks or service providers we rely upon fail to function properly, or if we suffer a loss or disclosure of business or other sensitive information due to any number of causes ranging from catastrophic events, power outages, security breaches, unauthorized use or usage errors by employees, vendors or other third parties and other security issues, we may be subject to legal claims and proceedings, liability under laws that protect the privacy and security of personal information (also known as personal data), litigation, governmental investigations and proceedings and regulatory penalties, and we may suffer interruptions in our ability to manage our operations and reputational, competitive or business harm, which may adversely affect our business, results of operations and financial results. In addition, such events could result in unauthorized disclosure of material confidential information, and we may suffer financial and reputational damage because of lost or misappropriated confidential information belonging to us or to our employees, stockholders, customers, suppliers, consumers or others. In any of these events, we could also be required to spend significant financial and other resources to remedy the damage caused by a security breach or technological failure and the reputational damage resulting therefrom, to pay for investigations, forensic analyses, legal advice, public relations advice or other services, or to repair or replace networks and IT systems. As a result of the COVID-19 pandemic, a greater number of our employees are working remotely and accessing our IT systems and networks remotely, which may further increase our vulnerability to cybercrimes and cyberattacks and increase the stress on our technology infrastructure and systems.

Our failure to adequately maintain and protect personal information of our customers or our employees in compliance with evolving legal requirements could have a material adverse effect on our business.

We collect, use, store, disclose or transfer (collectively, “process”) personal information, including from employees and customers, in connection with the operation of our business. A wide variety of local and international laws as well as regulations and industry guidelines apply to the privacy and collecting, storing, use, processing, disclosure, and protection of personal information and may be inconsistent among countries or conflict with other rules. Data protection and privacy laws and regulations are changing, subject to differing interpretations and being tested in courts and may result in increasing regulatory and public scrutiny and escalating levels of enforcement and sanctions.

A variety of data protection legislation apply in the United States at both the federal and state level, including new laws that may impact our operations. For example, the State of California has enacted the California Consumer Privacy Act of 2018 (“CCPA”), which generally requires companies that collect, use, share and otherwise process “personal information” (which is broadly defined) of California residents to make disclosures about their data collection, use, and sharing practices, allows consumers to opt-out of certain data sharing with third parties or the sale of personal information, allows consumers to exercise certain rights with respect to any personal information collected and provides a new cause of action for data breaches. In addition, a new privacy law, the California Privacy Rights Act (“CPRA”), which significantly modifies the CCPA, was recently approved by ballot initiative during the November 3, 2021 general election. On January 1, 2023 the CCPA became effective and added additional privacy protection. This may require us to incur additional expenditures to ensure compliance. Additionally, the Federal Trade Commission, and many state attorneys general are interpreting federal and state consumer protection laws to impose standards for the online collection, use, dissemination, and security of data. The burdens imposed by the CCPA and other similar laws that have been or may be enacted at the federal and state level may require us to modify our data processing practices and policies and to incur additional expenditures in order to comply.

Foreign laws and regulations relating to privacy, data protection, information security and consumer protection often are more restrictive than those in the United States. The European Union, for example, traditionally has imposed stricter obligations under its laws and regulations relating to privacy, data protection and consumer protection than the United States. In May 2018 the European Union’s new regulation governing data practices and privacy called the General Data Protection Regulation, or GDPR, became effective and substantially replaced the data protection laws of the individual European Union member states. The law requires companies to meet more stringent requirements regarding the handling of personal data of individuals in the EU than were required under predecessor EU requirements. In the United Kingdom, a Data Protection Bill that substantially implements the GDPR also became law in May 2018. The GDPR and other similar regulations require companies to give specific types of notice and in some cases seek consent from consumers and other data subjects before collecting or using their data for certain purposes, including some marketing activities. Outside of the European Union, many countries have laws, regulations, or other requirements relating to privacy, data protection, information security, and consumer protection, and new countries are adopting such legislation or other obligations with increasing frequency. Many of these laws may require consent from consumers for the use of data for various purposes, including marketing, which may reduce our ability to market our products. There is no harmonized approach to these laws and regulations globally. Consequently, we would increase our risk of non-compliance with applicable foreign data protection laws by expanding internationally. We may need to change and limit the way we use personal information in operating our business and may have difficulty maintaining a single operating model that is compliant. In addition, various federal, state and foreign legislative and regulatory bodies, or self-regulatory organizations, may expand current laws or regulations, enact new laws or regulations or issue revised rules or guidance regarding privacy, data protection, information security and consumer protection.

Compliance with these and any other applicable privacy and data protection laws and regulations is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms ensuring compliance with the new privacy and data protection laws and regulations. Our actual or alleged failure to comply with any applicable privacy and data protection laws and regulations, industry standards or contractual obligations, or to protect such information and data that we process, could result in litigation, regulatory investigations, and enforcement actions against us, including fines, orders, public censure, claims for damages by employees, customers and other affected individuals, public statements against us by consumer advocacy groups, damage to our reputation and competitive position and loss of goodwill (both in relation to existing customers and prospective customers) any of which could have a material adverse effect on our business, financial condition, results of operations, and cash flows. Additionally, if third parties that we work with, such as vendors or developers, violate applicable laws or our policies, such violations may also place personal information at risk and have an adverse effect on our business. Even the perception of privacy concerns, whether or not valid, may harm our reputation, subject us to regulatory scrutiny and investigations, and inhibit adoption of our wines by existing and potential customers.

Risks related to regulation.

As a producer of alcoholic beverages, we are regularly the subject of regulatory reviews, proceedings and audits by governmental entities, any of which could result in an adverse ruling or conclusion, and which could have a material adverse effect on our business, financial condition, results of operations and future prospects.

We are subject to extensive regulation in the United States by federal, state, and local laws regulating the production, distribution and sale of consumable food items, and specifically alcoholic beverages, including by the Alcohol and Tobacco Tax and Trade Bureau (the “TTB”) and the Food and Drug Administration (the “FDA”). These and other regulatory agencies impose a number of product safety, labelling and other requirements on our operations and sales. In California, where all of our wines are made, we are subject to alcohol-related licensing and regulations by many authorities, including the Department of Alcohol Beverage Control (the “ABC”), which investigates applications for licenses to sell alcoholic beverages, reports on the moral character and fitness of alcohol license applicants and the suitability of premises where sales are to be conducted. We are also subject to regulatory compliance requirements in all states in which we sell our wines. Any governmental litigation, fines, or restrictions on our operations resulting from the enforcement of these existing regulations or any new legislation or regulations could have a material adverse effect on our business, results of operations and financial results. Any government intervention challenging the production, marketing, promotion, distribution or sale of beverage alcohol or specific brands could affect our ability to sell our wines. Because litigation and other legal proceedings can be costly to defend, even actions that are ultimately decided in our favor could have a negative impact on our business, results of operations or financial results. Adverse developments in major lawsuits concerning these or other matters could result in management distraction and have a material adverse effect on our business. Changes to the interpretation or approach to enforcement of regulations may require changes to our business practices or the business practices of our suppliers, distributors, or customers. The penalties associated with any violations or infractions may vary in severity, and could result in a significant impediment to our business operations, and could cause us to have to suspend sales of our wines in a jurisdiction for a period of time.

New and changing environmental requirements, and new market pressures related to climate change, could materially and adversely affect our business, results of operations and financial results.

There has been significant public discussion related to concerns that carbon dioxide and other greenhouse gases in the atmosphere have an adverse impact on global temperatures, weather patterns and the frequency and severity of extreme weather and natural disasters. Federal regulations govern, among other things, air emissions, wastewater and stormwater discharges, and the treatment, handling and storage and disposal of materials and wastes. State environmental regulations and authorities intended to address and oversee environmental issues are largely state-level analogues to federal regulations and authorities intended to perform the similar purposes. We are subject to local environmental regulations that address a number of elements of our wine production process, including air quality, the handling of hazardous waste, recycling, water use and discharge, emissions and traffic impacts. Compliance with these and other environmental regulation requires significant resources. Continued regulatory and market trends towards sustainability may require or incentivize us to make changes to our current business operations. We may experience future increases in the costs associated with environmental regulatory compliance, including fees, licenses and the cost of capital improvements to meet environmental regulatory requirements. Although we don’t cultivate our own grapes, increased costs associated with environmental regulatory compliance may impact grape growers, which may increase out costs to purchase bulk juice.

Changes in foreign and domestic laws and government regulations to which we are currently subject, including changes to the method or approach of enforcement of these government rules and regulations, may increase our costs or limit our ability to sell our wines into certain markets, which could materially and adversely affect our business, results of operations and financial condition.

Government laws and regulations may result in increased production and sales costs, including an increase on the applicable tax in various state, federal and foreign jurisdictions in which we do business. The amount of wine that we can sell directly to consumers outside of California is regulated, and in certain states we are not allowed to sell wines directly to consumers at all. Changes in these laws and regulations that tighten current rules could have an adverse impact on sales or increase costs to produce, market, package or sell wine. Changes in regulation that require significant additional source data for registration and sale, in the labelling or warning requirements, or limitations on the permissibility of any component, condition or ingredient, in the places in which our wines can be legally sold could inhibit sales of affected products in those markets.

The wine industry is subject to extensive regulation by a number of foreign and domestic agencies, state liquor authorities and local authorities. These regulations and laws dictate such matters as licensing requirements, land use, production methods, trade and pricing practices, permitted distribution channels, permitted and required labelling, advertising, sequestration of classes of wine and relations with wholesalers and retailers. Any expansion of our existing facilities may be limited by present and future zoning ordinances, use permit terms, environmental restrictions and other legal requirements. In addition, new or updated regulations, requirements or licenses, particularly changes that impact our ability to sell DTC and/or retain accounts in California, or new or increased excise taxes, income taxes, property and sales taxes or international tariffs, could affect our financial condition or results of operations. From time to time, states consider proposals to increase state alcohol excise taxes. New or revised regulations or increased licensing fees, requirements or taxes could have a material adverse effect on our business, financial condition, and results of operations.

Risks related to our common stock

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 considers 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.

On November 21, 2023, we received notification (the "Acceptance Letter") from NYSE American that the Company's plan to regain compliance with NYSE American's listing standards was accepted. The Acceptance Letter also stated that the Company is not in compliance with Section 1003(a)(i) of the Company Guide, which requires an issuer to have stockholders' equity of \$2.0 million or more if it has reported losses from continuing operations and/or net losses in two out of its three most recent fiscal years. The Company reported stockholders' equity of \$1.1 million as of September 30, 2023, the end of its third fiscal quarter of 2023, and has had losses from continuing operations and/or net losses in each of its fiscal years ended December 31, 2020, 2021 and 2022.

NYSE American has granted the Company a plan period through March 8, 2025 to regain compliance with Sections 1003(a)(i) and (ii) of the Company Guide. If the Company is not in compliance with all continued listing standards by that date or if the Company does not make progress consistent with the plan during the plan period, the Company will be subject to delisting proceedings. The Company will be subject to periodic NYSE American reviews, including quarterly monitoring for compliance with the plan. We cannot make any assurance regarding 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.

If our common stock becomes subject to the penny stock rules, it would become more difficult to trade our shares.

The SEC has adopted rules that regulate broker-dealer practices in connection with transactions in penny stocks. Penny stocks are generally equity securities with a price of less than \$5.00, other than securities registered on certain national securities exchanges or authorized for quotation on certain automated quotation systems, provided that current price and volume information with respect to transactions in such securities is provided by the exchange or system. If we do not retain our listing on NYSE American and if the price of our common stock is less than \$5.00, our common stock may be deemed a penny stock. The penny stock rules require a broker-dealer, before a transaction in a penny stock not otherwise exempt from those rules, to deliver a standardized risk disclosure document containing specified information. In addition, the penny stock rules require that before effecting any transaction in a penny stock not otherwise exempt from those rules, a broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive (i) the purchaser's written acknowledgment of the receipt of a risk disclosure statement; (ii) a written agreement to transactions involving penny stocks; and (iii) a signed and dated copy of a written suitability statement. These disclosure requirements may have the effect of reducing the trading activity in the secondary market for our common stock, and therefore stockholders may have difficulty selling their shares.

We will incur significant legal, accounting, and other expenses associated with our public company reporting requirements and corporate governance requirements.

As a public company, we will incur significant legal, accounting, and other expenses that we did not incur as a private company, including costs associated with our public company reporting requirements and corporate governance requirements, including requirements under the Sarbanes-Oxley Act of 2002, as well as new rules implemented by the SEC and the NYSE American.

As an example of reporting requirements, we are evaluating our internal control systems in order to allow management to report on our internal control over financing reporting, as required by Section 404 of the Sarbanes-Oxley Act of 2002. As a company with limited capital and human resources, we anticipate that more of management's time and attention will be diverted from our business to ensure compliance with these regulatory requirements than would be the case with a company that has established controls and procedures. This diversion of management's time and attention may have a material adverse effect on our business, financial condition and results of operations.

We are eligible to be treated as an emerging growth company, and we cannot be certain that the reduced disclosure requirements applicable to emerging growth companies will not make our shares less attractive to investors.

We are an emerging growth company, as defined in the JOBS Act. For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including, among others, (1) not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, (2) reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, (3) exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved and (4) the requirement to present only two years of audited financial statements and only two years of related "Management's discussion and analysis of financial condition and results of operations" in this report. We could be an emerging growth company for up to five years, although circumstances could cause us to lose that status earlier, including if the market value of our common stock held by non-affiliates exceeds \$700.0 million as of the end of the second fiscal quarter in any fiscal year before that time or if we have total annual gross revenues of \$1.07 billion or more during any fiscal year before that time, in which case we would no longer be an emerging growth company as of the fiscal year end, or if we issue more than \$1.0 billion in non-convertible debt during any three-year period before that time we would cease to be an emerging growth company immediately. We cannot predict if investors will find our shares of common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our share price may be more volatile.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We 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 and intend to continue such election 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.

As a result of being a public company, we are obligated to develop and maintain proper and effective internal control over financial reporting and any failure to maintain the adequacy of these internal controls may negatively impact investor confidence in our company and, as a result, the value of our common stock.

We are required pursuant to Section 404 of the Sarbanes-Oxley Act to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. In addition, our independent registered public accounting firm will be required to attest to the effectiveness of our internal control over financial reporting in our first annual report required to be filed with the Securities and Exchange Commission (the “SEC”) following the date we are no longer an emerging growth company. Any failure to maintain effective internal control over financial reporting could severely inhibit our ability to accurately report our financial condition or results of operations. If we are unable to conclude that our internal control over financial reporting is effective, or if our independent registered public accounting firm determines we have a material weakness in our internal control over financial reporting, we could lose investor confidence in the accuracy and completeness of our financial reports, the market price of our common stock could decline, we could be subject to sanctions or investigations by the NYSE American, the SEC or other regulatory authorities and our access to the capital markets could be restricted.

In this report, our management concluded that our disclosure controls and procedures and our internal control over financial reporting were not effective as of December 31, 2023 due to the existence of a material weakness related to internal controls over financial reporting. See Item 9A - Controls and Procedures. Although we intend to engage in activities aimed at remediating these material weaknesses, our remediation activities may not be successful, and our management may continue to conclude that our disclosure controls and procedures and our internal control over financial reporting are not effective in future periods.

Provisions of our corporate governance documents could make an acquisition of our Company more difficult and may prevent attempts by our stockholders to replace or remove our current management, even if beneficial to our stockholders.

Our articles of incorporation and bylaws and the Nevada Revised Statutes contain provisions that could make it more difficult for a third party to acquire us, even if doing so might be beneficial to our stockholders. These provisions include:

- advance notice requirements for stockholder proposals and director nominations;
- the ability of our board of directors to issue new series of, and designate the terms of, preferred stock, without stockholder approval, which could be used to, among other things, institute a rights plan that would have the effect of significantly diluting the stock ownership of a potential hostile acquirer, likely preventing acquisitions that have not been approved by our board of directors; and
- limitations on the ability of stockholders to call special meetings and to take action by written consent.

Because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt to replace current members of our management team. As a result, you may lose your ability to sell your stock for a price in excess of the prevailing market price due to these protective measures, and efforts by stockholders to change the direction or management of the Company may be unsuccessful.

Your percentage ownership in us may be diluted by future issuances of capital stock, which could reduce your influence over matters on which stockholders vote.

Pursuant to our articles of incorporation and bylaws, our board of directors has the authority, without action or vote of our stockholders, to issue all or any part of our authorized but unissued shares of common stock, including shares issuable upon the exercise of options, or shares of our authorized but unissued preferred stock. Issuances of common stock or voting preferred stock would reduce your influence over matters on which our stockholders vote and, in the case of issuances of preferred stock, would likely result in your interest in us being subject to the prior rights of holders of that preferred stock.

An active, liquid trading market for our common stock may not develop, which may limit your ability to sell your shares.

Prior to our December 2021 initial public offering, there was no public market for our common stock. Although we list shares of our common stock on the NYSE American under the symbol “VINE,” an active trading market for our shares may not develop or be sustained going forward. A public trading market having the desirable characteristics of depth, liquidity and orderliness depends upon the existence of willing buyers and sellers at any given time, such existence being dependent upon the individual decisions of buyers and sellers over which neither we nor any market maker has control. The failure of an active and liquid trading market to develop and continue would likely have a material adverse effect on the value of our common stock. The market price of our common stock may decline, and you may not be able to sell your shares of our common stock at or above the price you paid for them, or at all. An inactive market may also impair our ability to raise capital to continue to fund operations by selling shares and may impair our ability to acquire other companies or technologies by using our shares as consideration.

Sales of a substantial number of shares of our common stock in the public market could cause the market price of our common stock to drop significantly, even if our business is performing well.

Sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock.

As a public company, we are subject to additional laws, regulations and stock exchange listing standards, which will result in additional costs to us and may strain our resources and divert our management’s attention.

Prior to our December 2021 initial public offering, we operated on a private basis. As a public reporting company, we are now subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the listing requirements of the NYSE American and other applicable securities laws and regulations. Compliance with these laws and regulations will increase our legal and financial compliance costs and make some activities more difficult, time-consuming or costly. We also expect that being a public company and being subject to new rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. However, the incremental costs that we incur as a result of becoming a public company could exceed our estimate. These factors may therefore strain our resources, divert management’s attention and affect our ability to attract and retain qualified members of our board of directors.

Since we have no current plans to pay regular cash dividends on our common stock, you may not receive any return on investment unless you sell your common stock for a price greater than that which you paid for it.

We do not anticipate paying any regular cash dividends on our common stock in the foreseeable future. Any decision to declare and pay dividends in the future will be made at the discretion of our board of directors and will depend on, among other things, our results of operations, financial condition, cash requirements, contractual restrictions, and other factors that our board of directors may deem relevant. In addition, our ability to pay dividends is, and may be, limited by covenants of existing and any future outstanding indebtedness we incur. Therefore, any return on investment in our common stock is solely dependent upon the appreciation of the price of our common stock on the open market, which may not occur.

If securities or industry analysts do not publish research or reports about our business, if they adversely change their recommendations regarding our shares or if our results of operations do not meet their expectations, our share price and trading volume could decline.

The trading market for our shares will be influenced by the research and reports that industry or securities analysts publish about us or our business. We do not have any control over these analysts. Securities and industry analysts do not currently, and may never, publish research on our Company. If no securities or industry analysts commence coverage of our Company, the trading price of our shares would likely be negatively impacted. In the event securities or industry analysts-initiated coverage, and one or more of these analysts cease coverage of our Company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our share price or trading volume to decline. Moreover, if one or more of the analysts who cover us downgrade our stock, or if our results of operations do not meet their expectations, our share price could decline.

General risks

Our operating results and share price may be volatile, and the market price of our common stock may drop below the price you pay.

Our operating results are likely to fluctuate in the future as a publicly traded company, which may occur during the pendency of the Merger transaction or following completion of the Merger. In addition, securities markets worldwide have experienced, and are likely to continue to experience, significant price and volume fluctuations. This market volatility, as well as general economic, market or political conditions, could subject the market price of our shares to wide price fluctuations regardless of our operating performance. You may not be able to resell your shares at or above the price that you paid or pay for them or at all. Our operating results and the trading price of our shares may fluctuate in response to various factors, many of which are beyond our control, may cause our operating results and the market price and demand for our shares to fluctuate substantially. While we believe that operating results for any particular year or quarter are not necessarily a meaningful indication of future results, fluctuations in our yearly or quarterly operating results could limit or prevent investors from readily selling their shares and may otherwise negatively affect the market price and liquidity of our shares. In addition, in the past, when the market price of a stock has been volatile, holders of that stock have sometimes instituted securities class action litigation against the company that issued the stock. If any of our stockholders brought a lawsuit against us, we could incur substantial costs defending the lawsuit. Such a lawsuit could also divert the time and attention of our management from our business, which could significantly harm our profitability and reputation.

We may require additional debt and equity capital to pursue our business objectives and respond to business opportunities, challenges, or unforeseen circumstances. If such capital is not available to us, our business, financial condition, and results of operations may be materially and adversely affected.

We may require additional capital to pursue our business objectives and respond to business opportunities, challenges, or unforeseen circumstances, including to increase our marketing expenditures to improve our wine brand awareness, build and maintain our product inventory, develop new wines, enhance our operating infrastructure and acquire complementary businesses. Accordingly, we may need to engage in equity or debt financings to secure additional funds. However, additional funds may not be available when we need them on terms that are acceptable to us or at all. Moreover, any debt financing that we secure in the future could involve restrictive covenants, which may make it more difficult for us to obtain additional capital and to pursue business opportunities. Volatility in the credit markets may also have an adverse effect on our ability to obtain debt financing. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences, and privileges superior to those of holders of our common stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, we may be forced to obtain financing on undesirable terms or our ability to continue to pursue our business objectives and to respond to business opportunities, challenges or unforeseen circumstances could be significantly limited, and our business, financial condition and results of operations could be materially and adversely affected.

ITEM 1B. UNRESOLVED STAFF COMMENTS.

Not applicable.

ITEM 1C. CYBERSECURITY.

The Company has not adopted any formal cybersecurity risk management program or formal processes for assessing, identifying, and managing material risks from cybersecurity threats. The full board of directors has oversight responsibility for the Company's overall risk management, including cybersecurity risk, and has not delegated oversight authority for cybersecurity risks to any committee. In fiscal year 2023, we did not identify any cybersecurity threats that have materially affected or are reasonably likely to materially affect our business strategy, results of operations, or financial condition.

ITEM 2. PROPERTIES.

Through October 31, 2022, our principal executive offices located at 505 Highway 169 North, Suite 255, Plymouth, Minnesota 55441 were leased by Rabbit Hole Equity, L.L.C., a Texas limited liability company that serves as a family office that manages a portfolio of business investments held by our former Executive Chairman and his affiliates ("Rabbit Hole Equity"). Pursuant to an unwritten month-to-month arrangement, a portion of Rabbit Hole Equity's lease payments were allocated to the Company. Effective November 1, 2022, we terminated this lease arrangement and currently maintain a virtual administrative office environment. The address, for mailing purposes, of our principal executive offices is P.O. Box 78984, Charlotte, NC 28271.

Our production facility, which we occupied on an alternating proprietorship basis, was located in Napa, California. The initial term of the Alternating Proprietorship Agreement with our "host winery" expired in July 2022, but was renewed and was ultimately terminated in December 2023.

We utilize two warehouse facilities in American Canyon, California. We pay storage fees per pallet and entry and exit processing fees.

We expect that the current properties will be adequate for our current office and production needs.

During the year ended December 31, 2023 and 2022, respectively, we incurred approximately \$0 and \$94,436 in facilities rental expense.

ITEM 3. LEGAL PROCEEDINGS.

We may be subject to legal disputes and subject to claims that arise in the ordinary course of business. Except as set forth below, we are not a party or subject to any pending legal proceedings the resolution of which is expected to have a material adverse effect on our business, operating results, cash flows or financial condition.

Timothy Michaels Lawsuit

The Company was a defendant in a lawsuit styled Timothy Michaels v. Fresh Vine Wine, Inc. filed May 27, 2022 in the Fourth Judicial District Court, Hennepin County, Minnesota. The lawsuit related to a complaint filed by Mr. Michaels resulting from the Company including a restricted “lock-up” legend on shares of the Company’s common stock issued to Mr. Michaels pursuant to a settlement agreement that the Company entered into with Mr. Michaels following termination of his employment and for not removing or directing the Company’s transfer agent to remove such legend. A jury trial commenced on January 23, 2024. During trial, on January 24, 2024, the Company filed a motion for judgement in favor of the Company as a matter of law, which was denied by the Court. On January 25, 2024, the jury in the lawsuit rendered a verdict against the Company awarding damages to Mr. Michaels in the amount of \$585,976.25. On February 22, 2024, the Company filed a renewed motion for post-verdict judgment in favor of the Company as a matter of law. On February 26, 2024, the Judge in the lawsuit denied the renewed motion for post-verdict judgment. The Company is assessing the options available to it, including the possibility of appealing the verdict. Although the Company believes it has legal grounds to appeal the verdict, continued litigation and related actions may be expensive, the outcome of any litigation (including any appeal) is difficult to predict, and the existence of litigation may impact the ability of management to focus on other business matters. Furthermore, the Company will be required to post an appeals bond in order to stay execution of the money judgment pending any appeal. Given the Company’s current financial position, the cost of such an appeals bond is uncertain and may be higher than the typical cost of such a bond or require the Company to provide cash or other collateral.

Website-related Plaintiff’s Lawsuit

On January 26, 2024, the Company was served with a complaint filed in the United States District Court for the Southern District of New York alleging that the Company has failed to design, construct, maintain and operate its Internet website to be fully accessible to and independently usable by blind or visually-impaired persons, thereby denying blind and visually-impaired persons with equal access to the Company’s goods and services in violation of the Title III of the Americans with Disabilities Act of 1990 and the New York Human Rights Law, the New York Civil Rights Law. On February 16, 2024, the Company filed an Answer to the complaint denying the plaintiff’s allegations and asserting affirmative defenses thereto.

ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.

Market Information

Our common stock began trading on the NYSE American under the symbol "VINE" on December 14, 2021. Prior to that date, there was no public trading market for our common stock.

Stockholders

As of March 8, 2024, there were 43 stockholders of record of our common stock, one of which was Cede & Co., a nominee for The Depository Trust Company, or DTC. Shares of common stock that are held by financial institutions as nominees for beneficial owners are deposited into participant accounts at DTC and are considered to be held of record by Cede & Co. as one stockholder.

Dividends

We have never declared or paid any dividends on our common stock and do not anticipate that we will pay any dividends to holders of our common stock in the foreseeable future. Instead, we currently plan to retain any earnings to finance the growth of our business. Any future determination relating to dividend policy will be made at the discretion of our board of directors and will depend on our financial condition, results of operations and capital requirements as well as other factors deemed relevant by our board of directors.

Securities Authorized for Issuance under Equity Compensation Plans

The information required by Item 5 is incorporated herein by reference to Item 12 below.

Recent Sales of Unregistered Securities

The Company has not conducted sales of unregistered securities during the period covering this report except as previously disclosed in the Company's Quarterly Reports on Form 10-Q or in its Current Reports on Form 8-K.

Issuer Purchases of Equity Securities

The Company did not purchase shares of its common stock conducted sales of unregistered securities during the fourth quarter of 2023.

ITEM 6. [RESERVED].

ITEM 7. 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 Annual Report on Form 10-K. 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" included elsewhere in this Annual Report on Form 10-K. 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 this Annual Report on Form 10-K. Under this "Fresh Vine Management's Discussion And Analysis Of Financial Condition And Results Of Operations," "we," "us," "our" "Fresh Vine Wine," "Fresh Vine" and the "Company" refer to Fresh Vine.

Overview

Fresh Vine Wine, Inc. is a producer of low carb, low calorie, premium wines in the United States. Founded in 2019, Fresh Vine brings an innovative "better-for-you" solution to the wine market. We currently sell seven 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.

Fresh Vine's wines are distributed across the United States and Puerto Rico through wholesale, retail, and direct-to-consumer (DTC) channels. Fresh Vine is able to conduct wholesale distribution of our wines in all 50 states and Puerto Rico, and it is licensed to sell through DTC channels in 43 states. As of December 31, 2023, Fresh Vine holds active relationships with wholesale distributors in 50 states. Fresh Vine is 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.

Fresh Vine's 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 "better-for-you" appeal, and overall product quality, Fresh Vine believes that it presents today's consumers with a unique value proposition within this price category. Additionally, Fresh Vine Wine is one of very few products available at this price point that includes a named winemaker, Jamey Whetstone.

Fresh Vine's 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 a healthy and active lifestyle.

Fresh Vine's asset-light operating model allows it 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 Fresh Vine sources product inputs from multiple geographically dispersed vendors, it reduces 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. 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.

	Year ended December 31,	
	2023	2022
Net revenue	\$ 1,826,190	\$ 2,860,001
Gross profit (loss)	\$ (2,585,929)	\$ 308,992
Net loss	\$ (10,615,035)	\$ (15,202,507)

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 fulfillment.

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 "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.

	Year ended December 31,	
	2023	2022
Wholesale	73%	58%
Direct to consumer	27%	32%
Related party service	-%	10%
	<u>100%</u>	<u>100%</u>

Cost of Revenues

Cost of revenues is comprised of all direct product costs such as juice, bottles, caps, corks, labels, and capsules. Additionally, we also categorize boxes and quality assurance testing within our cost of revenues. Fresh Vine expects that cost of revenues will increase as net revenue increases. As the volume of the product inputs increases, Fresh Vine intends 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 year ended December 31, 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 at June 30, 2023 and an additional approximately \$100,000 was written down by December 31, 2023. This is recorded in cost of revenue in the financial statements. The inventory reserve balance at December 31, 2023 is approximately \$112,000.

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 accounting 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.

Results of Operations

	Year ended December 31,	
	2023	2022
Net revenue	\$ 1,826,190	\$ 2,860,001
Cost of revenues	4,412,119	2,551,009
Gross profit (loss)	(2,585,929)	308,992
Selling, general and administrative expenses	6,322,184	11,489,805
Equity-based compensation	1,708,218	4,053,123
Loss from operations	(10,616,331)	(15,233,936)
Other income	1,296	31,429
Net loss	\$ (10,615,035)	\$ (15,202,507)

Comparison of the Fiscal Years ended December 31, 2023 and 2022

Net Revenue, Cost of Revenues and Gross Profit

	Year ended December 31,		Change	
	2023	2022	\$	%
Net revenue	\$ 1,826,190	\$ 2,860,001	1,033,811	-36%
Cost of revenues	4,412,119	2,551,009	1,861,110	73%
Gross profit (loss)	\$ (2,585,929)	\$ 308,992	(2,894,921)	-937%

We had net revenue in fiscal 2023 of \$1,826,190. Net revenue in fiscal 2022 was \$2,860,001. The decrease in net revenue was attributable to decreasing sales and marketing spending, the termination of related party sales agreements and increased billbacks. We generated net revenue of \$1,328,382 during fiscal 2023 from our wholesale distribution channel and \$497,808 of net revenue from our direct-to-consumer sales channel. This revenue distribution represents 73% and 27%, respectively, of our net revenue during the period.

Selling, general and administrative expenses

	Year ended December 31,		Change
	2023	2022	\$
Selling expenses	\$ 965,091	\$ 1,238,568	\$ (273,477)
Marketing expenses	1,576,324	2,746,432	(1,170,108)
General and administrative expenses	3,780,769	7,504,805	(3,724,035)
Total selling, general and administrative expenses	\$ 6,322,184	\$ 11,489,805	\$ (5,167,620)

For the year ended December 31, 2023, selling, general and administrative expenses decreased 45%, compared to the period ended December 31, 2022. Selling, general and administrative expense decreases were largely driven by certain one-time charges associated with the leadership transition in 2022, as well as decreases in general and administrative expenses due to lower staffing headcount and related salaries and less consulting, legal and financial expenses as operational activity decreased from 2022 to 2023. The year-over-year decrease in marketing expenses primarily resulted from decreased advertising, social media marketing, tastings, and other promotion materials and events as selling and marketing expenses are directly related to sale trends.

Cash Flows

	Year ended December 31,	
	2023	2022
Cash provided by (used in):		
Operating activities	\$ (4,809,009)	\$ (13,528,251)
Investing activities	(500,000)	-
Financing activities	3,565,014	(455,355)
Net (decrease) increase in cash	<u>\$ (1,743,995)</u>	<u>\$ (13,983,606)</u>

Net cash used in operating activities was (\$4,809,009) and (\$13,528,251) for the years ended December 31, 2023 and December 31, 2022, respectively. Cash used in operating activities decreased in the period ended December 31, 2023 primarily because of one-time selling, general and administrative expenses in 2022 driven by charges associated with the leadership transition, as well as decreases in general and administrative expenses due to lower staffing headcount and related salaries and less consulting, legal and financial expenses as operational activity decreased from 2022 to 2023. The decrease is also 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 used in investing activities was \$500,000 and \$0 for the years ended December 31, 2023 and December 31, 2022, respectively. Cash used in investing activities in the 2023 period was from the investment made to Notes Live, Inc, see Note 5.

Net cash provided by (used in) financing activities was \$3,565,014 and \$(455,355) for the years ended December 31, 2023 and December 31, 2022, respectively. The difference is due to the Rights Offering of \$2,615,014 and the issuance of preferred stock for a net of \$950,000 during the year ended December 31, 2023.

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 (\$10.6) million and (\$15.2) million during the years ended December 31, 2023 and 2022, respectively. As of December 31, 2023, we had an accumulated deficit of approximately \$26.5 million and a total stockholders' deficit of approximately \$830,000. 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 December 31, 2023, we had \$336,340 in cash and restricted cash, accounts receivable of \$172,101, inventory of \$337,873, and prepaid expenses of \$42,943. On December 31, 2023, current assets amounted to approximately \$889,000 and current liabilities were \$2.1 million resulting in a working capital deficit (with working capital defined as current assets minus current liabilities) of approximately \$1.3 million.

Since the commencement of its operations, the Company's operating and other expenses have significantly exceeded 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 year ended December 31, 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 worked 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 occurring through the last part of 2023. The Company had sales related to this agreement totaling approximately \$829,000 for the year ended December 31, 2023.

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 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 purchased 10,000 shares of Series A Stock at a per share purchase price equal to \$100.00, for total gross proceeds of \$1.0 million. See "Financing Transactions" below for a description of the Company's offering of Series A Stock.

In August 2023, Fresh Vine announced that it had 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. On January 25, 2024, Fresh Vine entered into the Merger Agreement. See Part I, "Item 1 Business - Recent Developments – Anticipated Merger with Notes Live, Inc." included elsewhere in this report.

As disclosed under Item 3 - Legal Proceedings, the Company has been a defendant in a lawsuit styled Timothy Michaels v. Fresh Vine Wine, Inc. filed May 27, 2022 in the Fourth Judicial District Court, Hennepin County, Minnesota. On January 25, 2024, the jury in the lawsuit rendered a verdict against the Company awarding damages to Mr. Michaels in the amount of \$585,976.25. The damages awarded to Mr. Michaels by the trial court are not covered by the Company's insurance policies. The Company is assessing the options available to it, including the possibility of appealing the verdict. Although the Company believes it has legal grounds to appeal the verdict, continued litigation and related actions may be expensive, the outcome of any litigation (including any appeal) is difficult to predict and the existence of continued litigation may impact the ability of management to focus on other business matters. Furthermore, the Company will be required to post an appeals bond in order to stay execution of the money judgment pending any appeal. Given the Company's current financial position, the cost of such an appeals bond is uncertain and may be higher than the typical cost of such a bond or require the Company to provide cash or other collateral.

At the current reduced pace of incurring expenses and without receipt of additional financing, the Company projects that the existing cash balance will be sufficient to fund current operations into the first quarter of 2024. The Company requires additional debt or equity financing to satisfy its existing obligations, sustain existing operations, pay expenses associated with its pending business combination transaction and to satisfy financial related conditions to the closing of such transaction. See "Current Strategy - The Merger" below. 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 will negatively impact the ability to fund operations, generate revenues, maintain or grow the business and otherwise execute the Company's business plan, including its pursuit of its pending business combination transaction, 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.

Current Strategy

The Merger

In August 2023, Fresh Vine announced that it had 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. On January 25, 2024, Fresh Vine entered into the Merger Agreement. See Part I, "Item 1 Business - Recent Developments – Anticipated Merger with Notes Live, Inc." included elsewhere in this report.

Although Fresh Vine has entered into the Merger Agreement and intends to consummate the Merger, there is no assurance that it will be able to successfully consummate the Merger on a timely basis, or at all. Among other conditions to the closing of the Merger, Fresh Vine is required to have cash, cash equivalent assets or other liquid assets at the closing of the Merger in an amount that equals or exceeds the "Net Cash Target," and having no liabilities on its balance sheet or unpaid or unsatisfied obligations that will require a cash expenditure by Fresh Vine after the effective time of the Merger. See "Item 1 – Business - Recent Developments – Anticipated Merger with Notes Live, Inc." If, for any reason, the Merger does not close, the Fresh Vine board of directors may elect to, among other things, attempt to complete another strategic transaction like the Merger, attempt to sell or otherwise dispose of the various assets of Fresh Vine, continue to operate the business of Fresh Vine or dissolve and liquidate its assets.

If the Merger is not completed, the Fresh Vine board of directors may decide that it is in the best interests of the Fresh Vine stockholders to suspend or cease its operations, seek to dissolve the Company and liquidate its assets, or initiate bankruptcy proceedings. In that event, the amount of cash available for distribution to the Fresh Vine stockholders would depend heavily on the timing of such decision and, ultimately, such liquidation, since the amount of cash available for distribution continues to decrease as Fresh Vine funds its operations and incurs fees and expenses related to the Merger. In addition, if the Fresh Vine board of directors were to approve and recommend, and the Fresh Vine stockholders were to approve, a dissolution of Fresh Vine, it would be required under Nevada corporate law to pay its outstanding obligations, as well as to make reasonable provision for contingent and unknown obligations, prior to making any distributions in liquidation to the Fresh Vine stockholders. As a result of this requirement, a portion or all of Fresh Vine's assets may need to be reserved pending the resolution of such obligations. In addition, Fresh Vine may be subject to litigation or other claims related to a liquidation and dissolution of the company. If a liquidation and dissolution were pursued, the Fresh Vine board of directors, in consultation with its advisors, would need to evaluate these matters and make a determination about a reasonable amount to reserve. Accordingly, the Fresh Vine stockholders could lose all or a significant portion of their investment in the event of a liquidation and dissolution of Fresh Vine.

Financing Transactions

We have funded our operations through a combination of debt and equity financings.

Since the Company's inception in May 2019 and prior to its December 2021 initial public offering, Damian Novak, co-founder, and affiliates of Mr. Novak incurred expenses on our behalf or advanced funds to us from time to time as needed to satisfy our working capital requirements and expenses. The reimbursable expenses and advances were reflected as related party payables on our balance sheet and were not evidenced promissory notes or other written documentation. On December 17, 2021, we used a portion of the proceeds from our initial public offering to repay \$2.0 million, representing the outstanding amount of these related party payables, net of related party receivables that Mr. Novak and his affiliates owed to us at that time.

In September 2021, the Company entered into an agreement with an unrelated party to pledge certain eligible accounts receivable for a cash advance at a percentage of the outstanding amount, with the remaining balance due upon collection from the customer. The agreement had an initial term of one year which automatically renews for successive one year terms unless the Company provides a notice of termination at least 60 days prior to the termination date. The receivables are pledged with full recourse, which means we bear the risk of non-payment. The amounts advanced to the Company were classified as a secured loan on our balance sheet and any fees computed on the outstanding amounts are treated as interest expense on our statement of operations. The Company terminated this arrangement effective October 1, 2022.

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. The subscription rights period expired on March 9, 2023, and resulted in stockholders subscribing for 3,143,969 Units. 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 \$2.7 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. The Rights Offering was made pursuant to a registration statement on Form S-1 (Registration No. 333-269082), which was declared effective by the U.S. Securities and Exchange Commission on February 14, 2023, and the prospectus dated February 22, 2023.

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. 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 purchased 4,000 shares of Series A Stock for an aggregate purchase price of \$400,000 at an initial closing (the "Initial Closing") that occurred on August 4, 2023, purchased an additional 4,000 shares of Series A Stock for an aggregate purchase price of \$400,000 at a second closing (the "Second Closing") that occurred on September 7, 2023, and purchased an additional 2,000 shares of Series A Stock for an aggregate purchase price of \$200,000 at a third closing (the "Third Closing") that occurred on December 1, 2023. 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.

Critical Accounting Policies and Estimates

Management uses estimates and assumptions in preparing these financial statements in accordance with accounting principles generally accepted in the United States of America. 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.

While all significant accounting policies are more fully described in Note 1 (Summary of Significant Accounting Policies) to our audited financial statements, we believe that the following accounting policies and estimates are critical to our business operations and understanding of our financial results.

Allowance for Doubtful Accounts

Accounts receivable consists of amounts owed to us for sales of our products on credit and are reported at net realizable value. Credit terms are extended to customers in the normal course of business. We perform ongoing credit evaluations of our customers' financial conditions. We estimate allowances for future returns and doubtful accounts based upon historical experience and its evaluation of the current status of receivables. Accounts considered uncollectible are written off against the allowance. As of December 31, 2023 and 2022 we had \$0 in the allowance for doubtful accounts.

Allowance for Inventory Reserve

Inventories primarily include bottled wine which is carried at the lower of cost (calculated using the first-in-first-out ("FIFO") method) or net realizable value. We reduce the carrying value of inventories that are obsolete or for which market conditions indicate cost will not be recovered to estimated net realizable value. Our estimate of net realizable value is based on analysis and assumptions including, but not limited to, historical experience, future demand and market requirements. Reductions to the carrying value of inventories are recorded in cost of revenues. As of December 31, 2023 and 2022 there was \$111,710 and \$0 inventory reserve related to estimated net realizable value, respectively.

Equity-Based Compensation

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.

We measure equity-based compensation when the service date precedes the grant date based on the fair value of the award as an accrual of equity-based compensation and adjusts the cost to fair value at each reporting date prior to the grant date. In the period in which the grant occurs, the cumulative compensation cost is adjusted to the fair value at the date of the grant.

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 (Summary of Significant Accounting Policies) to our audited 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 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Not required.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

Our financial statements and supplementary data are included beginning on pages F-1 of this report.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

ITEM 9A. CONTROLS AND PROCEDURES.

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 December 31, 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 December 31, 2023 due to the material weakness in internal control over financial reporting as described below.

Management’s Report on Internal Control Over Financial Reporting

We are responsible for establishing and maintaining adequate internal control over financial reporting. As defined in the securities laws, internal control over financial reporting is a process designed by, or under the supervision of, our principal executive and principal financial officer and effected by our Board of Directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the acquisitions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we carried out an evaluation of the effectiveness of our internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) as of December 31, 2023 based on the criteria in “Internal Control - Integrated Framework (2013)” issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) in 2013. Based upon this evaluation, we concluded that our internal control over financial reporting was not effective as of December 31, 2023 due to the following material weaknesses.

Material Weaknesses in Internal Control Over Financial Reporting; 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 and (ii) 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.

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.

This annual report does not include an attestation report of Wipfli, LLP, our independent registered public accounting firm, regarding internal control over financial reporting. Our management report was not subject to attestation by our independent registered public accounting firm pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, which exempts nonaccelerated filers from the independent registered public accounting firm attestation requirement.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) during the fiscal year ended December 31, 2023 that has materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION.

None.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.

Not Applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE.

Executive Officers and Directors

Below is a list of the names, ages, positions and a brief account of the business experience of the individuals who served as our executive officers and directors as of March 8, 2024.

Name	Age	Position
Michael Pruitt	63	Interim Chief Executive Officer and Director
Keith Johnson	66	Interim Chief Financial Officer and Secretary
Rick Nechio	45	President and Head of Sales
Eric Doan	44	Director
Brad Yacullo	60	Director
David Yacullo	57	Director

Michael Pruitt joined the Company's Board of Directors on December 13, 2021, which was the effective date of the registration statement for the Company's initial public offering. Mr. Pruitt founded Avenel Financial Group, a boutique financial services firm concentrating on emerging technology company investments in 1999. In 2001, he formed Avenel Ventures, a technology investment and private venture capital firm. In February 2005, Mr. Pruitt formed Chanticleer Holdings, Inc., then a public holding company (now known as Sonnet BioTherapeutics Holdings, Inc.), and he served as Chairman of the Board of Directors and Chief Executive Officer until April 1, 2020, at which time the restaurant operations of Chanticleer Holdings were spun out into a new public entity, Amergent Hospitality Group, Inc., where Mr. Pruitt continues to serve as its Chairman and Chief Executive Officer. Mr. Pruitt has been a member of the Board of Directors of IMAC Holdings, Inc. (Nasdaq- IMAC) since October 2020 and currently serves on its Compensation Committee and as Chair of its Audit Committee. Mr. Pruitt also served as a director on the board of Hooters of America, LLC from 2011 to 2019. Mr. Pruitt received a B.A. degree from Coastal Carolina University. He currently sits on the Board of Visitors of the E. Craig Wall Sr. College of Business Administration, the Coastal Education Foundation Board, and the Athletic Committee of the Board.

Keith Johnson is an accomplished senior executive and corporate officer with experience in business and technology management, accounting systems, financial controls, business development and management intelligence. Most recently, Mr. Johnson served as Chief Financial Officer of Watertech Equipment & Sales until 2020. Previously, Mr. Johnson served as the Manager of Business Development for Hudson Technologies from November 2012 through September 2013. From August 2010 through November 2012, Mr. Johnson was President of Efficiency Technologies, Inc., the wholly owned operating subsidiary of Efftec International, Inc. He was the President and Chief Executive Officer of YRT² (Your Residential Technology Team) in Charlotte, North Carolina since 2004. Mr. Johnson has a BS in Accounting from Fairfield University in Fairfield, Connecticut. Mr. Johnson serves on the board of directors of Amergent Hospitality Group Inc. and as chairman of its audit committee and a member of its compensation committee. Mr. Johnson previously served on the board of directors of Chanticleer from April 2007 through March 31, 2020 and also served as the chairman of its audit committee and a member of its compensation committee.

Rick Nechio is a co-founder of the Company who served as Chief Marketing Officer from its inception through July 2021, has served as its President since August 2021 and served as interim Chief Executive Officer from June 2022 until April 25, 2023. Mr. Nechio currently serves as President and Head of Sales. Mr. Nechio also served as a director of the Company until February 20, 2023. Mr. Nechio was also a Founding Partner of Appellation Brands LLC and served as a Founding Partner of Nechio & Novak, LLC, and has served as Chairman of Nechio Network, a brand accelerator formed in 2016. Prior the Company's inception, Mr. Nechio served as Vice President Business Development for FitVine Wine from February 2017 to February 2019, and held various positions at Anheuser-Busch InBev, including North American Zone Director Transit from January 2015 to January 2017, Director Retail Development, Trade Relations and Trade Communications from October 2011 to December 2014, and Director, National Retail Sales from May 2010 to October 2011. Mr. From 2007 to 2010, Mr. Nechio piloted an Anheuser-Busch USA High End chain selling program for the Stella Artois brand. Mr. Nechio was also part of the team that developed the Michelob Ultra disruptive brand strategy. Mr. Nechio holds a Bachelor of Science, Business Administration degree from University Veiga de Almeida and has completed an Executive Education Program, Driving Profitability Growth offered by Harvard Business School.

Eric Doan joined the Company's board of directors on December 13, 2021, which was the effective date of the registration statement for the Company's initial public offering. Mr. Doan serves as Chief Financial Officer of Orchard Software Corporation, a position he has held since April 2020. Before joining Orchard Software, Mr. Doan previously held Chief Financial Officer and Chief Operating Officer positions in private equity-backed companies, most recently as Chief Financial Officer of Edmentum Inc. from July 2018 through March 2020, Chief Financial Officer of myON by Renaissance from May 2017 to July 2018, and Chief Operating Officer of Jump Technologies, Inc. from September 2016 to May 2017. Mr. Doan holds bachelor's degrees in Zoology and Classical Humanities and a Master of Business Administration (MBA) from Miami University.

Brad Yacullo joined the Company's Board of Directors on December 13, 2021, which was the effective date of the registration statement for the Company's initial public offering. Mr. Yacullo co-founded Agra Energy in March 2017 and serves as its Chief Operating Officer. Agra Energy is a company that converts dairy manure into a renewable sulfur free synthetic fuel. Mr. Yacullo joined ACE Outdoor, a boutique outdoor media company, in 2007 and served as a partner until the company was sold in September 2021. Previously, Mr. Yacullo served as Sales Executive at Cisco Systems from January 1995 until January 2003. Mr. Yacullo began his career in January 1991 at Platinum Technology, where he sold enterprise level software to many industries. Mr. Yacullo holds a Bachelor of Science degree in Business Administration, with a major in information systems, from Drake University.

David Yacullo joined the Company's Board of Directors on December 13, 2021, which was the effective date of the registration statement for the Company's initial public offering. Mr. Yacullo currently serves as Owner/Chairman of Outdoor Solutions, LLC since 2018. Prior to that, Mr. Yacullo served as Chief Revenue Officer of Van Wagner Outdoor, a position he held from 2019 through 2022, until the company was sold to Outfront Media. From 2016 until 2018, Mr. Yacullo served as Chief Revenue Officer of Holt Media Companies, Inc. Prior to that, Mr. Yacullo founded Outdoor Media Group (OMG) in 2001 and served as its Chief Executive Officer from 2003 until 2016. Mr. Yacullo began his career working for Outdoor Services Inc. (OSI) from 1989 through 2001, where he served in various positions, including as its President.

Family Relationships

Messrs. Brad and David Yacullo, two of our directors, are brothers. There are no other family relationships between any of the other directors or executive officers.

Board Composition and Director Independence

Our business and affairs are managed under the direction of our board of directors. Our bylaws provide that our board of directors shall consist of one or more members and that the number of directors may be fixed from time to time by a majority vote of the directors then in office. Our board of directors is currently comprised of the four individuals identified above.

When considering whether directors have the experience, qualifications, attributes and skills to enable the Board of Directors to satisfy its oversight responsibilities effectively in light of our business and structure, our Board of Directors focuses primarily on the information discussed in each of the directors' individual biographies set forth above.

Our Board of Directors periodically reviews relationships that directors have with our Company to determine whether our directors are "independent directors" as such term is defined in Section 803 of the NYSE American LLC Company Guide. Our Board of Directors has determined that each of Eric Doan, Brad Yacullo and David Yacullo is an independent director. In making this determination, the Board of Directors considered the relationships that such individuals have with our Company and other facts and circumstances that the Board of Directors deemed relevant in determining their independence, including ownership interests in us. Under Section 803A of the NYSE American Company Guide, employment by a director as an executive officer on an interim basis does not disqualify that director from being considered independent following such employment, provided the interim employment does not last longer than one year; however a director is not considered independent while serving as an interim officer. As a result, the Board of Directors has determined that Michael Pruitt is not independent while serving as interim Chief Executive Officer.

Board Leadership Structure and Risk Oversight

Damian Novak, one of our founders, served as Executive Chair of our Board of Directors from our December 2021 initial public offering until February 20, 2023. Effective February 20, 2023, our Board of Directors appointed Michael Pruitt to serve as Non-Executive Chair of the Board of Directors. At the time, we believed that having a chair separate from the Chief Executive Officer created an environment that is more conducive to objective evaluation and oversight of management's performance, increasing management accountability and improving the ability of the Board to monitor whether management's actions are in the best interests of the Company and our stockholders. On July 19, 2023, the Board of Directors appointed Michael Pruitt to serve as our interim Chief Executive Officer following the termination of employment of our prior Chief Executive Officer. Given the current streamlined composition of the Company's executive management and the Board of Directors, we believe that having Mr. Pruitt serve in such capacities provides for efficiency in pursuing the Company's objectives, while being subject to oversight by the full Board of Directors, which monitors whether management's actions are in the best interests of the Company and our stockholders.

Board Committees

Our Board of Directors has a standing audit committee, compensation committee nominating and corporate governance committee. Each committee operates under its own written charter adopted by the Board of Directors, which are available on our website at ir.freshvinewine.com/info/.

Audit Committee

The audit committee is responsible for overseeing financial reporting and related internal controls, risk, and ethics and compliance, including but not limited to review of filings and earnings releases, selection and oversight of the independent registered public accounting firm, oversight of internal audit, interactions with management and the board, and communications with external stakeholders. During 2023, our audit committee was composed of Eric Doan and Michael D. Pruitt, with Mr. Doan serving as Chair of the committee. Upon his appointment as interim Chief Executive Officer in July 2023, Mr. Pruitt ceased serving on the audit committee and was replaced by David Yacullo. Our Board of Directors has determined that each of Messrs. Doan and David Yacullo meet the definition of "independent director" under the rules of the NYSE American and under Rule 10A-3 under the Exchange Act and that each is an "audit committee financial expert" as that term is defined in Item 407(d)(5)(ii) of Regulation S-K promulgated under the Exchange Act.

Compensation Committee

The compensation committee is responsible for establishing the compensation philosophy and ensuring that elements of our compensation program encourage high levels of performance among the executive officers and positions the Company for growth. The compensation committee ensures our compensation program is fair, competitive, and closely aligns the interests of our executive officers with the Company's short and long-term business objectives. The compensation committee is responsible for determining the compensation of our officers and directors, or recommending that such compensation be approved by the full board of directors. Our Chief Executive Officer may not be present during voting or deliberations regarding the Chief Executive Officer's compensation. The compensation committee also administers the Company's equity incentive plans and approves all equity grants made thereunder. Our compensation committee is composed of one director, Eric Doan, who is an "independent director" under the rules of the NYSE American.

Compensation Committee Interlocks and Insider Participation

During the year ended December 31, 2023, Mr. Doan served as the sole member of the compensation committee. Mr. Doan has never been an executive officer or employee of ours or had a relationship requiring disclosure under Item 404 of Regulation S-K promulgated under the Securities Exchange Act of 1934, as amended. None of our officers currently serves, or has served during the last completed year, on the compensation committee or the board of directors of any other entity that has one or more officers serving as a member of our board of directors or our compensation committee.

Nominating and Corporate Governance Committee

The nominating and corporate governance committee is responsible for selecting directors to be nominated for election to our Board of Directors or recommending such nominees for selection by the full board. The nominating and corporate governance committee is also responsible for board effectiveness and governance, with duties that include board succession planning, director recruiting, shaping the Company's governance policies and practices, and director education and self-evaluations. Our nominating and corporate governance committee is composed of one director, Eric Doan.

Board Oversight of Risk Management

While the full board of directors has the ultimate oversight responsibility for the risk management process, its committees oversee risk in certain specified areas. In particular, our audit committee oversees management of enterprise risks as well as financial risks. Our compensation committee is responsible for overseeing the management of risks relating to our executive compensation plans and arrangements and the incentives created by the compensation awards it administers. Our nominating and corporate governance committee oversees risks associated with corporate governance, business conduct and ethics, and is responsible for overseeing the review and approval of related party transactions. Pursuant to the board of directors' instruction, management reports on applicable risks to the relevant committee or the full board of directors, as appropriate, with additional review or reporting on risks conducted as needed or as requested by the board of directors and its committees.

Code of Ethics

We have adopted a code of conduct that applies to all of our officers, employees and directors, and a separate code of ethics that applies to our Chief Executive Officer and senior financial officers. Our code of conduct and code of ethics are available on our Internet website at ir.freshvinewine.com/info/.

Diversity

The Nominating Committee and Governance of the Board of Directors considers and makes recommendations to the Board on all matters pertaining to the effectiveness of the Board, such as the size and composition of the Board, including the recognition of diversity characteristics and equal opportunity (which is the policy of treating directors and others without discrimination, especially on the basis of their sex, ethnicity, religion, disability, national origin, sexual orientation or identification, veteran status, race or age).

Delinquent Section 16(a) Reports

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires our officers and directors, and persons who own more than ten percent of a registered class of our equity securities, to file electronically reports of ownership and changes in ownership of such securities with the SEC. Based on review of the copies of Forms 3 and 4 (and amendments thereto, if any) filed electronically with the SEC during the year ended December 31, 2023 and Forms 5 (and amendments thereto, if any) filed electronically with the SEC with respect to such year, or written representations that no Forms 5 were required, we believe that the following is the list of our officers, directors and greater than ten percent beneficial owners who have failed to file on a timely basis all Section 16(a) filing requirements during the fiscal year ended December 31, 2023: Eric Doan filed a Form 4 on April 5, 2023 which was due on April 4, 2023; CSS LLC/IL filed a Form 4 on April 21, 2023 which was due on April 20, 2023; Dheri Hitesh filed a Form 4 on May 31, 2023 which was due on May 29, 2023; CSS LLC/IL filed a Form 4 on September 1, 2023 which was due on August 31, 2023.

ITEM 11. EXECUTIVE COMPENSATION.

This section provides an overview of the compensation of (i) each individual who served as Fresh Vine's principal executive officer during 2023, (ii) Fresh Vine's two most highly compensated other executive officers who were serving as executive officers at the end of 2023 and who received total compensation of more than \$100,000 during such year, and (iii) up to two additional individuals that would have qualified under clause (ii) above but for the fact that they were not serving as executive officers at the end of 2023. These individuals are referred to as Fresh Vine's "named executive officers." Fresh Vine's named executive officers are:

- Michael Pruitt, Interim Chief Executive Officer;
- Roger Cockroft, Former Chief Executive Officer;
- Rick Nechio, President and Former Interim Chief Executive Officer; and

Mr. Pruitt currently serves as of Interim Chief Executive Officer, a position he has held since July 19, 2023. Mr. Nechio served as Interim Chief Executive Officer from June 13, 2022 until April 25, 2023, and continues to work for Fresh Vine as President and Head of Sales. Mr. Cockcroft served as Fresh Vine's Chief Executive Officer from April 25, 2023 until July 14, 2023.

Summary Compensation Table

The following table sets forth the compensation awarded to, earned by or paid to our named executive officers in respect of their service to us during fiscal years 2023 and 2022.

Name and principal Position	Year	Salary	Bonus	Stock Awards⁽⁴⁾	Option Awards⁽⁵⁾	Non-equity incentive plan compensation	All other compensation	Total compensation
Michael Pruitt ⁽¹⁾	2023	\$ -	\$ -	\$ - ⁽⁵⁾	\$ -	\$ -	\$ -	\$ -
Interim Chief Executive Officer	2022	N/A	N/A	N/A ⁽⁶⁾	N/A	N/A	N/A	N/A
Roger Cockcroft ⁽²⁾	2023	\$ 53,125	\$ -	\$ 379,726 ⁽⁷⁾	\$ 241,431 ⁽⁸⁾	\$ -	\$ -	\$ 674,282
Former Chief Executive Officer	2022	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Rick Nechio ⁽³⁾	2023	\$ 150,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 150,000
President and Former Interim Chief Executive Officer	2022	\$ 268,750	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 268,750

- (1) Michael Pruitt was appointed as Interim Chief Executive Officer on a July 19, 2023.
- (2) Roger Cockcroft served as Fresh Vine's Chief Executive Officer from April 25, 2023 until the termination of his employment on July 14, 2023.
- (3) Rick Nechio served as Chief Marketing Officer through July 2021, has served as President since August 2021 and served as interim Chief Executive Officer from June 13, 2022 until April 25, 2023. Mr. Nechio currently serves as President and Head of Sales.
- (4) These amounts represent compensation expense recognized for financial statement purposes under ASC Topic 718. For a discussion of the assumptions relating to our valuations of these stock awards and stock options, please see Note 9 to the interim financial statements included in this prospectus. These amounts reflect our accounting expense for these stock awards and stock options and do not correspond to the actual value that may be recognized by the named executive officer.
- (5) Excludes the grant date fair value of 20,000 restricted stock award granted on April 1, 2023 in connection with service on Fresh Vine's board of directors.
- (6) Excludes the grant date fair value of 10,000 restricted stock units granted on March 2, 2022 in connection with service on Fresh Vine's board of directors.
- (7) Reflects the grant date fair value of 463,917 shares of restricted stock and a restricted stock unit with a target payout amount equal to \$154,726, each of which was granted on April 25, 2023.
- (8) Reflects the grant date fair value of a 1,000,000 share stock option granted on April 25, 2023.

Narrative Disclosure to Summary Compensation Table

Michael Pruitt has served as a director of Fresh Vine since its December 2021 initial public offering. On July 19, 2023, Mr. Pruitt was appointed to serve as Fresh Vine's Interim Chief Financial Officer, a position he holds without any written agreement and without compensation.

Rick Nechio has served as President of Fresh Vine since August 2021 and served as interim Chief Executive Officer from June 13, 2022 until April 25, 2023. Mr. Nechio currently serves as President and Head of Sales. Mr. Nechio was employed by us during 2023 and 2022 pursuant to an unwritten employment arrangement pursuant to which he received a base salary, which is subject to adjustment, from time to time, at the discretion of Fresh Vine's board of directors. Upon our initial public offering in December of 2021, Mr. Nechio began receiving an annual base salary of \$300,000. Effective October 15, 2022, Mr. Nechio's annual base salary was reduced to \$150,000. Mr. Nechio did not receive bonus payments for 2023 or 2022.

Effective April 25, 2023, Roger Cockroft was appointed to serve as Chief Executive Officer of Fresh Vine, a position he held until the termination of his employment on July 14, 2023. Mr. Cockroft's employment was governed by an employment agreement, the terms of which are described below.

Employment Agreements

Roger Cockroft Employment Agreement

In connection with the Chief Executive Officer appointment, Fresh Vine entered into an employment agreement with Mr. Cockroft dated April 25, 2023. Under the employment agreement, which was for an indefinite term, Mr. Cockroft was entitled to receive annual base salary of \$450,000 and was eligible to receive an annual cash bonus commencing in 2024 (the "Bonus"), the target amount of which will be equal to 50% of his base salary. The amount of the actual Bonus payable for each year was to be determined by the Fresh Vine board of directors (or a compensation committee thereof) based on the satisfaction of performance objectives to be determined by the Fresh Vine board of directors (or a compensation committee thereof). Achievement of performance objectives for each year was to be determined by the Fresh Vine board of directors (or compensation committee thereof) upon the filing of Fresh Vine's Annual Report on Form 10-K for the applicable performance year (the "Vesting Date"); and the Bonus, if earned, was to be paid in a lump sum promptly following such determination, provided that Mr. Cockroft remained employed by Fresh Vine on such date. The Bonus was payable in a combination of cash and shares of common stock issued out of Fresh Vine's 2021 Equity Incentive Plan (the "Equity Incentive Plan") valued at the closing price of Fresh Vine's common stock on the Vesting Date. Unless agreed otherwise, the cash portion of the Bonus was to be the minimum amount of income withholding taxes resulting from payment of the entire Bonus. To the extent that there were not sufficient available shares reserved for issuance under the Equity Incentive Plan (or successor plans) to support Bonus payments otherwise payable in stock, Fresh Vine was to pay such Bonus payments in cash. Mr. Cockroft was also eligible to receive additional discretionary bonuses based upon his performance on behalf of Fresh Vine and/or Fresh Vine's performance in such amounts, in such manner and at such times as may be determined by the Fresh Vine board of directors or a committee thereof, and was eligible to participate in the standard benefits which Fresh Vine generally provides to its full-time employees under its applicable plans and policies.

During the first 12 months of his employment term, 50% of Mr. Cockroft's salary, or \$225,000, was to be paid in cash installments in accordance with regular payroll practices. In lieu of cash salary in the amount of the remaining \$225,000, Fresh Vine granted Mr. Cockroft an inducement award of 463,917 shares of restricted stock (the "Restricted Stock") upon the commencement of his employment. The Restricted Stock award was subject to transfer and forfeiture restrictions that were scheduled to lapse in four installments as nearly equal in amount as possible on the three, six, nine and twelve month anniversaries of the grant date, subject to continued employment.

Also upon commencement of his employment, Mr. Cockroft was granted (i) a 1,000,000 share stock option award (the "Stock Option"), and (ii) a restricted stock unit award ("RSUs"). The Stock Option had an exercise price equal to \$1.00 per share and, subject to continued employment, was scheduled to vest with respect to 250,000 shares on the one-year anniversary of the grant date and, thereafter, was scheduled to vest in 36 monthly installments as nearly equal in amount as possible (approximately 20,883 shares) commencing on the 13th month anniversary of the grant date and continuing on each one month anniversary thereafter. The RSUs had a target payout amount equal to \$154,726, which represents 50% of Mr. Cockroft's salary (i.e., \$225,000), but prorated for the partial 2023 year during which he was employed. The amount of the RSU award actually payable was to be determined by the Fresh Vine board of directors (or a compensation committee thereof) in its discretion based on Mr. Cockroft's satisfaction of 2023 performance objectives that were to be determined by the Fresh Vine board of directors (or a compensation committee thereof). The RSUs were to be settled in shares of Fresh Vine common stock valued at the most recent closing price of such common stock on the payment date.

The grants of the Restricted Stock award, the Stock Option and the RSUs were made separately from Fresh Vine's 2021 Equity Incentive Plan (the "Equity Incentive Plan") as inducements material to Mr. Cockroft entering into employment with Fresh Vine in accordance with Section 711(a) of the NYSE American LLC Company Guide, and each was approved by Fresh Vine's independent compensation committee. Although granted separately from the Equity Incentive Plan, the Restricted Stock grant, the Stock Option and the Restricted Stock Units were subject to the terms contained in the Equity Incentive Plan, except as otherwise provided for in the agreements governing such awards (the "Restricted Stock Agreement," "Stock Option Agreement," and "RSU Agreement," respectively).

Under his employment agreement, if Mr. Cockroft's employment were terminated by Fresh Vine for any reason other than Cause (as defined in the employment agreement), or Mr. Cockroft resigned as an employee for Good Reason (as defined in the employment agreement), so long as he signed and did not revoke a release agreement, he was entitled to receive severance in the form of continued base salary over a period of six months. In addition, upon the occurrence of a Change in Control (as defined in the employment agreement), the vesting of all outstanding unvested equity-based incentive awards would accelerate. The employment agreement included a provision allowing Fresh Vine to reduce the payment to which Mr. Cockroft would be entitled upon a Change-in-Control transaction to the extent needed for him to avoid paying an excise tax under Internal Revenue Code Section 280G, unless he would be better off, on an after-tax basis, receiving the full amount of such payments and paying the excise taxes due.

Mr. Cockroft's employment agreement contained customary confidentiality and intellectual property covenants and a non-solicitation restriction that provided, among other things, that Mr. Cockroft will not solicit our employees, consultants, customers, suppliers or other business relations for a period of one year after termination of employment.

Mr. Cockroft's employment with Fresh Vine terminated on July 14, 2023.

Fresh Vine Wine, Inc. 2021 Equity Incentive Plan

Fresh Vine has adopted a 2021 Equity Incentive Plan (the “2021 Plan”). The 2021 Plan authorizes the granting of stock-based awards to purchase up to 1,800,000 shares of Fresh Vine common stock. Under the 2021 Plan, the Fresh Vine board of directors or a committee of one or more non-employee directors designated by Fresh Vine’s board of directors administers the 2021 Plan and will have the power to make awards, to determine when and to whom awards will be granted, the form of each award, the amount of each award, and any other terms or conditions of each award consistent with the terms of the 2021 Plan. Awards may be made to Fresh Vine’s employees, directors and consultants. The types of awards that may be granted under the 2021 Plan include incentive and non-qualified stock options, restricted and unrestricted stock, restricted and unrestricted stock units, stock appreciation rights, performance units and other stock-based awards. Each award agreement will specify the number and type of award, together with any other terms and conditions as determined by the Fresh Vine board of directors or committee in their sole discretion.

Outstanding Equity Awards at Fiscal Year-End Table

The following table sets forth certain information regarding outstanding equity awards held by the named executive officers as of December 31, 2023:

	Options					Restricted Stock	
	Grant Date	Number of Securities Underlying Options Exercisable	Number of Securities Underlying Options Unexercisable	Option Exercise Price	Option Expiration Date	Number of Shares of Stock That Have Not Vested	Market Value Of Shares of Stock That Have Not Vested
Michael Pruitt	4/1/2023	—	—	\$ N/A	N/A	5,000	\$ 2,195
Roger Cockcroft	N/A	—	—	\$ N/A	N/A	—	—
Rick Nechio	11/30/2021	—	375,001	\$ 10.00	11/30/2031	—	—

DIRECTOR COMPENSATION

Prior to our December 2021 initial public offering, Fresh Vine’s directors did not receive compensation for serving as members of the board of directors. Effective March 2, 2022, Fresh Vine granted 10,000 restricted stock units (“RSUs”) under its 2021 Equity Incentive Plan to each of Fresh Vine’s seven directors serving at such time as compensation for their services as directors of Fresh Vine during 2022. Each RSU represented the right to receive one share of Fresh Vine common stock upon vesting, with vesting occurring on June 18, 2022. The Fresh Vine board of directors (or a compensation committee thereof) periodically reevaluates the form and amount of director compensation and make adjustments that it deems to be appropriate. Fresh Vine also reimburses its directors for reasonable expenses incurred in the performance of the directors’ services upon submission of invoices and receipts for such expenses.

Fresh Vine adopted a new director compensation program commencing in 2023. Under this program, Fresh Vine pays quarterly cash compensation of \$5,000 to each non-employee member of the Fresh Vine board of directors, which is paid in quarterly installments in arrears on the last day of each calendar quarter (or, if not a business day, then the next business day), prorated for partial quarterly periods as appropriate (the “Director Fees”). In addition, on April 1, 2023 (or as soon as was administratively possible thereafter), each non-employee member of Fresh Vine’s board of directors received a grant of 20,000 shares of restricted stock. The restricted stock vested with respect to 5,000 shares on the grant date, and will vests with respect to 5,000 shares on each of July 1, 2023, October 1, 2023 and January 1, 2024, subject to the directors’ continuing to serve as a director through the applicable vesting date.

Director Compensation Table

The following table sets forth information regarding the compensation earned for service on our board of directors by our non-employee directors during the fiscal year ended December 31, 2023.

Name	Fees Earned or Paid in Cash (\$)	Stock Awards ⁽¹⁾ (\$)	Total (\$)
Damian Novak ⁽²⁾	-	-	-
Rick Nechio ⁽³⁾	-	-	-
Eric Doan	20,000	8,780	28,780
Michael Pruitt	20,000	8,780	28,780
Brad Yacullo	20,000	8,780	28,780
David Yacullo	20,000	8,780	28,780
Michelle Whetstone ⁽⁴⁾	10,000	8,780	18,780

(1) The amounts reported represent compensation expense recognized for financial statement purposes under ASC Topic 718. In the case of each of our current directors, the stock award was granted on April 1, 2023. For a discussion of the assumptions relating to our valuations of stock awards and stock options, please see Note 10 to the financial statements of Fresh Vine included in this report. These costs reflect our accounting expense for these stock options and do not correspond to the actual value that may be recognized by the directors.

(2) Mr. Novak ceased serving as a director on March 14, 2023.

(3) Mr. Nechio ceased serving as a director on February 20, 2023.

(4) Ms. Whetstone was appointed to the Fresh Vine board of directors on February 20, 2023 and ceased serving as a director on July 17, 2023.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.

Equity Compensation Plan Information

We maintain Fresh Vine Wine, Inc.'s 2021 Equity Incentive Plan (the "2021 Plan"), which, as of December 31, 2023 is approved to grant up to an aggregate of 1,800,000 shares of our common stock. The purpose of the 2021 Plan is to increase stockholder value and to advance the interests of the Company by furnishing a variety of economic incentives designed to attract, retain and motivate employees, certain key consultants and directors of the Company. Incentives may consist of opportunities to purchase or receive shares of our common stock or other incentive awards. At December 31, 2023, 69,892 shares were reserved for issuance pursuant to outstanding options, and 1,730,108 shares remained available for issuance pursuant to future grants. The 2021 Plan was approved by Fresh Vine Wine, Inc.'s stockholders.

Effective November 30, 2021, we entered into stock option agreements (the "Founders' Option Agreements") with four of our co-founders, Damian Novak, Rick Nechio, Nina Dobrev and Julianne Hough. In connection with these agreements, we established a founders' option pool comprised of 1,500,004 shares of our common stock (the "Founders' Option Pool"). Under the agreements, each co-founder was granted a ten-year option to purchase 25% of the shares comprising the Founders' Option Pool. The options will be exercisable, subject to the satisfaction of vesting conditions, at a price per share equal to \$10.00, which was the initial public offering price of our common stock in our initial public offering. Effective February 20, 2023, Damian Novak resigned as Executive Chairman of the Company and removed himself from his management duties with the Company. Upon his resignation as a director of the Company, the 375,001 share option granted to Mr. Novak pursuant to his Founder Option Agreement, none of which was vested, terminated. Upon the termination of their respective license agreements with the Company, the 375,001 share option granted to each of Ms. Dobrev and Ms. Hough pursuant to her Founder Option Agreement, none of which was vested, terminated.

The following table sets forth certain information as of December 31, 2023 with respect to the 2021 Plan and the Founders' Option Agreements.

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (A)	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (B)	Number of Securities Remaining Available for Future Issuances Under Equity Compensation Plans (Excluding Securities Reflected in Column(A))
Equity Compensation Plans Approved by Security Holders:			
2021 Equity Incentive Plan Total	69,892	\$ 3.04	1,730,108
Equity Compensation Plans Not Approved by Security Holders:			
Founders' Option Agreements	375,001	10.00	-
Total	<u>444,893</u>	<u>\$ 8.91</u>	<u>1,730,108</u>

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information with respect to the beneficial ownership of our common stock as of March 8, 2024 for (a) each person, or group of affiliated persons, known by us to own beneficially more than 5% of our outstanding shares of common stock, (b) each member of our board of directors, (c) each of our "named executive officers," as identified in the summary compensation table included in Item 11 – Executive Compensation under the caption "Summary Compensation Table," and (d) all of our directors and executive officers as a group.

Beneficial ownership is determined in accordance with SEC rules. The information is not necessarily indicative of beneficial ownership for any other purpose. In general, under these rules a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares voting power or investment power with respect to such security. A person is also deemed to be a beneficial owner of a security if that person has the right to acquire beneficial ownership of such security within 60 days. To our knowledge, except as otherwise indicated, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all common stock beneficially owned by that person.

The percentage of beneficial ownership shown in the table is based on 15,976,227 shares of common stock outstanding as of March 8, 2024.

Except as otherwise noted below, the address for each person or entity listed in the table is c/o Fresh Vine Wine, Inc., P.O. Box 78984, Charlotte, NC 28271.

Name of Beneficial Owner	Shares of Common Stock Beneficially Owned	Shares of Fresh Vine Preferred Stock Beneficially Owned(1)	Percentage of Common Stock	Percentage of Fresh Vine Preferred Stock
Directors and executive officers:				
Michael D. Pruitt	30,000 ⁽²⁾	0	*	—
Keith Johnson	0	0	*	—
Rick Nechio	1,573,472 ⁽³⁾	0	9.85%	—
Eric Doan	30,000 ⁽²⁾	0	*	—
Brad Yacullo	30,000 ⁽²⁾	0	*	—
David Yacullo	30,000 ⁽²⁾	0	*	—
All directors and executive officers as a group (6 persons)	1,693,472	0	10.60%	—
Other 5% stockholders				
CSS, LLC ⁽⁴⁾	1,010,096 ⁽⁵⁾	0	5.95%	—
Stephen Edgar Apolant ⁽⁶⁾	875,899 ⁽⁷⁾	5,000	5.48%	50.0%
EROP Enterprises, LLC ⁽⁸⁾	797,213 ⁽⁹⁾	5,000	4.99%	50.0%
Nina Dobrev	1,450,622 ⁽¹⁰⁾	0	9.08%	—
Julianne Hough	1,207,574 ⁽¹¹⁾	0	7.56%	—

* Less than 1%

(1) The holders of Fresh Vine Preferred Stock vote with the common stock as a single class on all matters being submitted to a vote of Fresh Vine stockholders at the Fresh Vine special meeting, with the exception of Proposal No. 4. The shares of Fresh Vine Preferred Stock vote on an adjusted as-converted to common stock basis. For purposes of determining voting rights, each share of Fresh Vine Preferred Stock is convertible into the number of shares common stock (“Conversion Shares”) calculated by dividing the “Stated Value” of \$100.00 (plus the amount of accrued dividends on such shares of Fresh Vine Preferred Stock) by an assumed conversion price of \$0.47, taking into account, however, certain conversion limitations set forth in the Certificate of Designation of Preferences, Rights and Limitations of the Fresh Vine Convertible Preferred Stock.

(2) Includes 10,000 shares that were or are subject to transfer and forfeiture restrictions that lapse as follows: 5,000 shares on October 1, 2023 and 5,000 shares on January 1, 2024.

(3) Based solely on a Form 4 filed by Mr. Nechio on February 21, 2023.

(4) The address of CSS, LLC is 175 W. Jackson Blvd, Suite 440, Chicago, IL 60604.

(5) Includes warrants to purchase 1,010,096 shares of common stock that are currently exercisable, as reported on a Schedule 13G filed by CSS, LLC on February 9, 2024.

- (6) The address of the reporting person is 98 Cuttermill Road, Suite 441S, Great Neck, NY 11021.
- (7) Consists of 125,899 shares of common stock held by NYF Group Inc. and 750,000 shares of common stock held by Equity Markets ADV LLC. Stephen Edgar Apolant is the sole stockholder of both entities and exercises sole voting and dispositive control over the shares of Fresh Vine capital stock held by these entities. Does not include shares of Fresh Vine common stock issuable upon conversion of 5,000 shares of Fresh Vine Preferred Stock held by NYF Group Inc. Fresh Vine Preferred Stock may be converted into Fresh Vine common stock by the holder subject to a 4.99% beneficial ownership limitation and a 19.9% exchange share cap applicable to all holders of Fresh Vine Preferred Stock. The reporting person's holdings of Fresh Vine common stock already exceed the beneficial ownership limitation. Based on a Schedule 13G filed by the reporting stockholder on December 11, 2023.
- (8) The address of EROP Enterprises, LLC is 30000 Millcreek Avenue, Suite 375, Alpharetta, GA 30022.
- (9) Reflects shares of Fresh Vine common stock issuable upon conversion of shares of Fresh Vine Preferred Stock. Among other conversion limitations, the Certificate of Designation of Preferences, Rights and Limitations of the Fresh Vine Preferred Stock contains "blocker" provisions that limits the holder(s)' ability to convert the Fresh Vine Preferred Stock to the extent that such exercise would cause the stockholder's and certain related parties' beneficial ownership in Fresh Vine to exceed 4.99% of Fresh Vine's shares outstanding, as well as conversion limitations resulting from the Exchange Share Cap and the Individual Holder Share Cap described in the Certificate of Designation of Preferences, Rights and Limitations of the Fresh Vine Preferred Stock. The calculation of beneficial ownership in the table above reflects the 4.99% beneficial ownership conversion limitation..
- (10) Consists of shares held by the Nina Dobrev Trust dated September 17, 2018, of which Nina Dobrev serves as trustee. Ms. Dobrev has sole voting and dispositive power with respect to the shares held by the Nina Dobrev Trust.
- (11) Consists of shares held by Jaybird Investments, LLC, a limited liability company wholly-owned by Julianne Hough. Ms. Hough has sole voting and dispositive power with respect to the shares held by Jaybird Investments, LLC.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.

Related Party Transactions Policy

We have adopted a policy with respect to the review, approval and ratification of related party transactions. Under the policy, our audit committee is responsible for reviewing and approving related party transactions. In the course of its review and approval of related party transactions, our audit committee will consider the relevant facts and circumstances to decide whether to approve such transactions.

Transactions with Related Persons

In addition to the compensation arrangements discussed in Item 11 (“Executive Compensation”), the following is a description of each transaction since January 1, 2023 and each currently proposed transaction in which:

- we have been or are to be a participant;
- the amount involved exceeds or will exceed \$120,000; and
- any of our directors, executive officers, or holders of more than 5% of our capital stock, or any immediate family member of, or person sharing the household with any of these individuals had or will have a direct or indirect material interest.

License Agreements with Nina Dobrev and Julianne Hough

In March 2021, we entered into five-year license agreements with each of Nina Dobrev and Jaybird Investments, LLC, an entity managed by Julianne Hough, which were amended in November 2021 in connection with our initial public offering (as so amended, the “License Agreements”), pursuant to which Ms. Dobrev and Ms. Hough, respectively, each agreed to use commercially reasonable efforts to help grow and promote our business and varietals of wine and 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 or other channels, on and in conjunction with the sale and related pre-approved advertising and promotion of our varietals of wine and marketing materials. Ms. Dobrev and Ms. Hough agreed not to grant any similar license or render services of any sort on behalf of or in connection with any party in the wine category anywhere in the world during the term of her agreement, other than with respect to Company; however, the agreements did not prevent Ms. Dobrev or Ms. Hough from (i) appearing in the news, entertainment or information portion of any program or event, regardless of those programs or event’s sponsorship or tie-ins; or (ii) becoming a passive investor in any other company provided that if the company is in the category of wine, such investment must be financial only and Ms. Dobrev or Ms. Hough, as applicable, may not provide services or grant any rights in or to her name, likeness, image, and other indicia of identity in connection with such investment.

Upon entering into the License Agreements, we issued to each of Ms. Dobrev and Hough (or their designees) 156,500 units representing membership interests in Fresh Grapes, LLC, which represented 969,272 shares each on a post-LLC Conversion basis. In addition, each of Ms. Dobrev and Ms. Hough were entitled to an annual license fee equal to \$300,000 per year commencing upon the completion of our initial public offering, and to reimburse of reasonable out of pocket expenses incurred in connection with the promotion of the Company’s varietals of wine.

The License Agreements, as amended, provided that each of Ms. Dobrev and Ms. Hough have the right to terminate her agreement if, as of the end of calendar year 2023, we have not achieved at least \$5.0 million in EBITDA in either fiscal 2022 or fiscal 2023. In connection with entering into the November 2021 amendments, Nechio & Novak, LLC then a Company stockholder) assigned and transferred to each of Ms. Dobrev and Ms. Hough (or their designees) 20,702 additional units representing membership interests in Fresh Grapes, LLC, which represented 128,217 shares each on a post-LLC Conversion basis. Pursuant to the amendments, we agreed to indemnify and reimburse the licensees for any United States federal and state income taxes that may become due and payable by them solely as a result of the assignment and transfer of the additional units, and to gross-up such payments for income taxes resulting from the indemnification payments.

The License Agreements, as amended, provided that each of Ms. Dobrev and Ms. Hough have the right to terminate her agreement if, as of the end of calendar year 2023, we have not achieved at least \$5.0 million in EBITDA in either fiscal 2022 or fiscal 2023. In addition, Ms. Dobrev and Ms. Hough had the right to terminate their respective License Agreements prior to the scheduled expiration date upon a material breach by Fresh Vine that is not cured within 30 days after receiving notice of such breach. On August 8, 2023, Fresh Vine received written letters from each of Ms. Dobrev and Jaybird Investments, LLC, notifying Fresh Vine that they were terminating the License Agreements prior to the scheduled expiration dates, effective September 7, 2023 (the “Termination Date”). Pursuant to the License Agreements, upon termination of thereof, the rights and licenses granted under thereunder were revoked, and Fresh Vine was required to cease the marketing and sale of products that feature the licensor’s name, likeness, image, and other indicia of identity, provided that Fresh Vine could continue to use approved marketing materials and sell off the remaining product inventory for a sell-off period of up to 90 days.

Founders’ Option Agreements

Effective November 30, 2021, we entered into stock option agreements with four of our co-founders, Damian Novak, Rick Nechio, Nina Dobrev and Julianne Hough. In connection with these agreements, we have established a founders’ option pool comprised of 1,500,004 shares of our common stock, which will represent 15% of our outstanding common stock immediately prior to our initial public offering (the “Founders’ Option Pool”). Under the agreements, each co-founder was granted a ten-year option to purchase 25% of the shares comprising the Founders’ Option Pool.

The options are exercisable, subject to the satisfaction of vesting conditions, at a price per share equal to \$10.00 (our initial public offering price). The options will vest, if at all, during the three year period that commenced on December 17, 2021 (the closing date of our initial public offering) and ending on the third anniversary thereof (the “Performance Period”), with 20% of the option shares vesting upon the average of the closing sale prices of our common stock over a period of ten consecutive trading days being equal to or greater than the applicable price set forth in the following schedule (each a “Trigger Price”):

Percent of Shares To Be Vested	Trigger Price
20%	\$ 20.00
20%	\$ 30.00
20%	\$ 40.00
20%	\$ 50.00
20%	\$ 60.00

All portions of the options that have not vested prior to the expiration of the Performance Period and all of co-founders’ rights to and under such non-vested portions of the options will terminate upon such expiration. In addition, if, prior to any vesting date, a co-founder ceases to provide services to the Company either as a member of our Board of Directors a Company employee (with respect to Messrs. Novak and Nechio) or a Company ambassador and licensor under such co-founder’s license agreement with the Company (with respect to Ms. Dobrev and Ms. Hough), that portion of such co-founder’s option scheduled to vest on such vesting date, and all portions of such option scheduled to vest in the future, will not vest and all of such co-founder’s rights to and under such non-vested portions will terminate. Upon his resignation as a director of the Company, the 375,001 share option granted to Mr. Novak pursuant to his Founder Option Agreement, none of which was vested, terminated. Upon the termination of their respective license agreements with the Company, the 375,001 share option granted to each of Ms. Dobrev and Ms. Hough pursuant to her Founder Option Agreement, none of which was vested, terminated.

Director and Officer Indemnification Agreements

We have entered into indemnification agreements (the “Indemnification Agreements”) with each of our current and former officers and directors. The Indemnification Agreements clarify and supplement indemnification provisions already contained in the Company’s bylaws (the “Bylaws”) and generally provide that the Company shall indemnify the indemnitees to the fullest extent permitted by applicable law, subject to certain exceptions, against expenses, judgments, fines and other amounts actually and reasonably incurred in connection with their service as a director or officer and also provide for rights to advancement of expenses and contribution.

Founder Anderson Consulting-related Forfeitures

In conjunction with entering into a Settlement Agreement with Janelle Anderson in February 2023, Rick Nechio and Damian Novak, two of the Company’s founders, 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 such number of shares of the Company’s common stock to Ms. Anderson without subjecting the Company’s other stockholders to dilution therefrom.

Consulting Agreement with Whetstone Consulting

Effective February 20, 2023, the Company’s board of directors elected Michelle Hawkins Whetstone as a director of the Company. Ms. Whetstone is the spouse of Jamey Whetstone, the Company’s winemaker. On June 12, 2019, we entered into a consulting agreement with Whetstone Consulting, through which our winemaker, Jamey Whetstone, does business, which agreement was subsequently amended on May 15, 2020, as amended and restated on March 16, 2021 and further amended and restated on April 13, 2022 (the “Whetstone Consulting Agreement”). The Whetstone Consulting Agreement was terminated in May 2023 upon the commencement of Mr. Whetstone’s employment with the Company. Ms. Whetstone resigned as a director of the Company on July 17, 2023.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES.

The following table represents aggregate fees billed to us for the fiscal years ended December 31, 2023 and December 31, 2022, by Wipfli LLP, independent registered public accountants, our principal accountants.

	<u>2023</u>	<u>2022</u>
Audit Fees (1)	\$ 225,000	\$ 165,000
Audit-Related Fees (2)	-	-
Tax Fees (3)	-	-
All Other Fees (4)	-	-
	<u>\$ 225,000</u>	<u>\$ 165,000</u>

- (1) Audit Fees were principally for services rendered for the audit of our financial statements, reviews of our interim financial statements, the issuance of accountant consents, and services that are normally provided by Wipfli LLP in connection with the financial statement audit. Audit Fees for 2023 also included fees for the review of our registration statement on Form S-1 for our subscription rights offering, and for the issuance of comfort letters.
- (2) Audit-related fees were for assurance and related services that are reasonably related to the performance of the audit or review of our consolidated financial statements and are not reported under "Audit fees."
- (3) Tax Fees consist of fees for tax compliance, tax advice, and tax planning.
- (4) All Other Fees typically consist of fees for permitted non-audit products and services provided.

Audit committee pre-approval policy and procedures

Pursuant to the audit committee charter, the audit committee reviews and approves, the scope and plans for the audits and the audit engagement fees and terms and approves in advance, all audit and non-audit and tax services to be performed by the independent auditor that are not otherwise prohibited by law or regulations and any associated fees. Following the adoption of the pre-approval policy, the audit committee has pre-approved all services performed by the independent registered public accounting firm.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES.

The following exhibits and financial statements are filed as part of, or are incorporated by reference into, this report:

(1) Financial Statements

The following financial statements are filed with this Annual Report and can be found beginning at page F-1 of this report:

- Report of independent registered public accounting firm
- Balance sheets as of December 31, 2023 and 2022
- Statements of operations for the years ended December 31, 2023 and 2022
- Statements of changes in stockholders' equity/(deficit) for the years ended December 31, 2023 and 2022
- Statements of cash flows for the years ended December 31, 2023 and 2022
- Notes to financial statements

(2) Financial Statement Schedules

Separate financial schedules have been omitted because such information is inapplicable or is included in the financial statements or notes described above.

(3) Exhibits

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

ITEM 16. FORM 10-K SUMMARY.

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: March 8, 2024

FRESH VINE WINE, INC

By: /s/ Michael Pruitt
Michael Pruitt
Interim Chief Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Michael Pruitt and Keith Johnson, and each of them, as his or her true and lawful attorney-in-fact and agent with full power of substitution and resubstituting, for such individual in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or the individual's substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1934, this report has been signed below by the following persons on behalf of the registrant in the capacities and on the dates indicated.

<u>Signatures</u>	<u>Title</u>	
<u>/s/ Michael Pruitt</u> Michael Pruitt	Interim Chief Executive Officer and Director (Principal executive officer)	March 8, 2024
<u>/s/ Keith Johnson</u> Keith Johnson	Interim Chief Financial Officer (Principal financial and accounting officer) and Secretary	March 8, 2024
<u>/s/ Eric Doan</u> Eric Doan	Director	March 8, 2024
<u>/s/ Brad Yacullo</u> Brad Yacullo	Director	March 8, 2024
<u>/s/ David Yacullo</u> David Yacullo	Director	March 8, 2024

EXHIBIT INDEX
FRESH VINE WINE, INC.
FORM 10-K

Exhibit Number	Description
2.1	Agreement and Plan of Merger, dated as of January 25, 2024, by and among Fresh Vine Wine, Inc., FVW Merger Sub, Inc., and Notes, Live, Inc. (incorporated by reference to Exhibit 2.1 to Current Report on Form 8-K filed January 29, 2024)
3.1	Plan of Conversion (incorporated by reference to Exhibit 3.1 to Annual Report on Form 10-K filed March 31, 2022)
3.2	Articles of Incorporation of Fresh Vine Wine, Inc. (incorporated by reference to Exhibit 3.1 to Current Report on Form 8-K filed December 20, 2021)
3.3	Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to Current Report on Form 8-K filed on August 2, 2023)
3.4	Amendment No. 1 to Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock (incorporated by reference to Exhibit 3.2 to Current Report on Form 8-K filed on August 2, 2023)
3.5*	Bylaws of Fresh Vine Wine, Inc. (as amended through January 25, 2024)
4.1	Form of specimen certificate representing shares of common stock of Fresh Vine Wine, Inc. (incorporated by reference to Exhibit 4.1 to Registration Statement on Form S-1/A (File No. 333-261037) filed on November 29, 2021)
4.2	Form of Underwriter Warrant (incorporated by reference to Exhibit 4.1 to Current Report on Form 8-K filed December 20, 2021)
4.3	Form of Common Stock Purchase Warrant issued in rights offering (incorporated by reference to Exhibit 4.3 to Registration Statement on Form S-1/A-1 (File No. 333-269082) filed on January 27, 2023)
4.4	Form of Warrant Agency Agreement between Fresh Vine Wine, Inc. and Computershare Trust Company, N.A. (incorporated by reference to Exhibit 4.4 to Registration Statement on Form S-1/A-1 (File No. 333-269082) filed on January 27, 2023)
4.5	Description of the Capital Stock Registered Pursuant to Section 12 of the Securities Exchange Act of 1934 (incorporated by reference to Exhibit 4.3 to Annual Report on Form 10-K filed March 31, 2022)
10.1†	Alternating Proprietorship Agreement dated July 2019 by and between Fior di Sole, LLC and Fresh Grapes, LLC (incorporated by reference to Exhibit 10.2 to Registration Statement on Form S-1 (File No. 333-261037) filed on November 12, 2021)
10.2	Custom Winemaking and Bottling Agreement dated September 2019 by and between Fior di Sole, LLC and Fresh Grapes, LLC (incorporated by reference to Exhibit 10.3 to Registration Statement on Form S-1 (File No. 333-261037) filed on November 12, 2021)
10.3#	Form of Founders' Option Agreement (incorporated by reference to Exhibit 10.9 to Registration Statement on Form S-1/A (File No. 333-261037) filed on November 29, 2021)
10.4#	Fresh Vine Wine, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.2 to Current Report on Form 8-K filed December 20, 2021)
10.5#	Form of Indemnification Agreement between Fresh Vine Wine, Inc. and each of its officers and directors (incorporated by reference to Exhibit 10.13 to Registration Statement on Form S-1/A (File No. 333-261037) filed November 29, 2021)
10.6#	Form of Restricted Stock Unit Agreement, pursuant to the Fresh Vine Wine, Inc. 2021 Equity Incentive Plan, between Fresh Vine Wine, Inc. and each of Timothy Michaels and Elliot Savoie (incorporated by reference to Exhibit 10.11 to Registration Statement on Form S-1/A filed November 29, 2021)

10.7#	Separation Agreement and Release dated as of February 24, 2022 by and between Fresh Vine Wine, Inc. and Timothy Michaels (incorporated by reference to Exhibit 10.1 to Current Report on Form 8-K filed February 25, 2022)
10.8#	Amendment No. 1 to Restricted Stock Unit Agreement dated as of February 24, 2022 by and between Fresh Vine Wine, Inc. and Timothy Michaels (incorporated by reference to Exhibit 10.2 to Current Report on Form 8-K filed February 25, 2022)
10.9#	Form of Stock Option Agreement under the Fresh Vine Wine, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.18 to Annual Report on Form 10-K filed March 31, 2022)
10.10#	Form of Employee Restricted Stock Unit Agreement under the Fresh Vine Wine, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.19 to Annual Report on Form 10-K filed March 31, 2022)
10.11#	Form of Director Restricted Stock Unit Agreement granted under the Fresh Vine Wine, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.20 to Annual Report on Form 10-K filed March 31, 2022)
10.12#	Form of Employee Restricted Stock Agreement under The Fresh Vine Wine, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to Quarterly Report on Form 10-Q filed May 16, 2022)
10.13	Consulting Agreement dated effective December 15, 2022 by and between Fresh Vine Wine, Inc. and Tribe of Five, LLC (incorporated by reference to Exhibit 10.1 to Current Report on Form 8-K filed December 20, 2022)
10.14#	Form of Director Restricted Stock Agreement under the Fresh Vine Wine, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.31 to Annual Report on Form 10-K filed March 31, 2023)
10.15	Securities Purchase Agreement dated August 2, 2023 (incorporated by reference to Exhibit 10.1 to Current Report on Form 8-K filed on August 2, 2023)
10.16	Form of Notes Live Voting and Support Agreement (incorporated by reference to Exhibit 10.1 to Current Report on Form 8-K filed on January 29, 2024)
10.17	Form of Fresh Vine Voting and Support Agreement (incorporated by reference to Exhibit 10.2 to Current Report on Form 8-K filed on January 29, 2024)
10.18	Form of Lock-Up Agreement (incorporated by reference to Exhibit 10.3 to Current Report on Form 8-K filed on January 29, 2024)
19.1*	Fresh Vine Wine, Inc. Policy on Avoidance of Insider Trading
23.1*	Consent of Wipfli LLP
24.1	Power of Attorney (included on the signature page of this report)
31.1*	Section 302 Certification of the Chief Executive Officer
31.2*	Section 302 Certification of the Chief Financial Officer
32.1*	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. §1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
97.1*	Fresh Vine Wine, Inc. Clawback Policy
101.INS	Inline XBRL Instance Document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.

Management contract or compensatory plan

† Certain portions of this exhibit have been omitted because they are both (i) not material and (ii) would be competitively harmful if publicly disclosed.

The audited financial statements for the periods ended December 31, 2023 and December 31, 2022 are included on the following pages:

INDEX TO FINANCIAL STATEMENTS

	Page
Financial Statements:	
Report of Independent Registered Public Accounting Firm (PCAOB ID# 00344)	F-2
Balance Sheets	F-3
Statements of Operations	F-4
Statements of Changes in Stockholders' Equity (Deficit)	F-5
Statements of Cash Flows	F-6
Notes to Financial Statements	F-7

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders
Fresh Vine Wine, Inc.

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Fresh Vine Wine, Inc. (the “Company”) as of December 31, 2023 and 2022, and the related statements of operations, changes in stockholders’ equity (deficit), and cash flows for the years then ended, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has a history of operating losses and insufficient cash flows from operations, that raises substantial doubt about its ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

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

/s/ Wipfli LLP

Minneapolis, Minnesota
March 8, 2024

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

FRESH VINE WINE, INC.
BALANCE SHEETS
December 31, 2023 and 2022

	<u>December 31,</u> <u>2023</u>	<u>December 31,</u> <u>2022</u>
Assets		
Current assets		
Cash	\$ 236,340	\$ 2,080,335
Restricted cash	100,000	-
Accounts receivable	172,101	259,317
Due from employees – net of credit loss allowance of \$0 and \$20,000, respectively	-	37,733
Insurance recovery receivable	-	804,907
Inventories	337,873	3,696,198
Prepaid expenses and other	42,943	961,211
Deferred offering costs	-	68,286
Total current assets	<u>889,257</u>	<u>7,907,987</u>
Equity investment	500,000	-
Prepaid expenses (long-term)	-	678,167
Total assets	<u>\$ 1,389,257</u>	<u>\$ 8,586,154</u>
Liabilities, and stockholders' equity (deficit)		
Current liabilities		
Accounts payable	\$ 509,337	\$ 589,204
Accrued compensation	-	420,413
Settlement payable	585,976	1,250,000
Accrued expenses	810,723	422,931
Accrued expenses - related parties	309,333	280,000
Deferred revenue	3,407	10,000
Total current liabilities	<u>2,218,776</u>	<u>2,972,548</u>
Total liabilities	2,218,776	2,972,548
Commitment and contingencies – Note 12		
Stockholders' equity (deficit)		
Series A convertible preferred stock; \$0.001 par value – 25,000,000 shares authorized at December 31, 2023 and 2022; 10,000 and 0 shares issued and outstanding at December 31, 2023 and 2022, respectively	10	-
Common stock, \$0.001 par value - 100,000,000 shares authorized at December 31, 2023 and 2022; 15,976,227 and 12,732,257 shares issued and outstanding at December 31, 2023 and 2022, respectively	15,976	12,732
Additional paid-in capital	25,631,255	21,420,732
Accumulated deficit	(26,476,760)	(15,819,858)
Total stockholders' equity (deficit)	<u>(829,519)</u>	<u>5,613,606</u>
Total liabilities and stockholders' equity (deficit)	<u>\$ 1,389,257</u>	<u>\$ 8,586,154</u>

See accompanying notes to the financial statements.

FRESH VINE WINE, INC.
STATEMENTS OF OPERATIONS
For the Years Ended December 31, 2023 and 2022

	Year ended December 31,	
	2023	2022
Wholesale revenue	\$ 1,328,382	\$ 1,651,451
Direct to consumer revenue	497,808	911,326
Related party service revenue	-	297,224
Total net revenue	1,826,190	2,860,001
Cost of revenues	4,412,119	2,551,009
Gross profit (loss)	(2,585,929)	308,992
Selling, general and administrative expenses	6,322,184	11,489,804
Equity-based compensation	1,708,218	4,053,123
Operating loss	(10,616,331)	(15,233,936)
Other income	1,296	31,429
Net loss	(10,615,035)	(15,202,507)
Preferred dividends	41,867	-
Net loss attributable to common stockholders	\$ (10,656,902)	\$ (15,202,507)
Weighted average shares outstanding		
Basic	15,329,617	12,550,096
Diluted	15,329,617	12,550,096
Net loss per share - basic	\$ (0.69)	\$ (1.21)
Net loss per share - diluted	\$ (0.69)	\$ (1.21)

See accompanying notes to the financial statements.

FRESH VINE WINE, INC.
STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)
For the Years Ended December 31, 2023 and 2022

	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	-	-	532,244	532	2,506,291	-	2,506,823
Vendor stock issuance	-	-	970,000	970	1,232,330	-	1,233,300
Stock forfeitures	-	-	(970,000)	(970)	970	-	-
Net Loss	-	-	-	-	-	(15,202,507)	(15,202,507)
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
Issuance of preferred stock	10,000	10	-	-	949,990	-	950,000
Dividends declared – preferred stock – Series A (\$12.00/share)	-	-	-	-	-	(41,867)	(41,867)
Equity-based compensation	-	-	1,641,332	1,641	715,408	-	717,049
Stock forfeitures	-	-	(1,541,331)	(1,541)	1,541	-	-
Net loss	-	-	-	-	-	(10,615,035)	(10,615,035)
Balances at December 31, 2023	10,000	\$ 10	15,976,227	\$ 15,976	\$ 25,631,255	\$ (26,476,760)	\$ (829,519)

See accompanying notes to the financial statements.

FRESH VINE WINE, INC.
STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2023 and 2022

	<u>2023</u>	<u>2022</u>
Cash flows from operating activities		
Net loss	\$ (10,615,035)	\$ (15,202,507)
Adjustments to reconcile net loss to net cash used in operating activities:		
Amortization	-	3,990
Equity-based compensation	1,708,218	4,053,123
Inventory write-down	1,844,210	-
Allowance for doubtful accounts	37,733	-
Changes in operating assets and liabilities		
Accounts receivable	87,216	(51,157)
Accounts receivable - related party	-	153,075
Insurance recovery receivable	804,907	(804,907)
Receivables with recourse	-	146,314
Related party receivables	-	376,000
Due from employee	-	(37,733)
Inventories	1,514,115	(3,537,138)
Prepaid expenses and other	605,268	189,776
Accounts payable	(79,867)	172,488
Accrued compensation	(420,413)	3,999
Settlement payable	(664,024)	1,250,000
Accrued expenses	345,923	210,065
Accrued expenses - related parties	29,333	(249,617)
Deferred revenue	(6,593)	(3,750)
Related party payables	-	(200,272)
Net cash used in operating activities	<u>(4,809,009)</u>	<u>(13,528,251)</u>
Cash flows from investing activities		
Equity investment	(500,000)	-
Net cash used in investing activities	<u>(500,000)</u>	<u>-</u>
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	950,000	-
Payments for deferred offering costs	-	(68,286)
Proceeds from rights offering – net of issuance costs	2,615,014	-
Net cash provided by (used in) financing activities	<u>3,565,014</u>	<u>(455,355)</u>
Net decrease in cash	(1,743,995)	(13,983,606)
Cash and restricted cash - beginning of year	<u>2,080,335</u>	<u>16,063,941</u>
Cash and restricted cash - end of year	<u>\$ 336,340</u>	<u>\$ 2,080,335</u>
	<u>2023</u>	<u>2022</u>
Supplemental disclosure of non-cash activities investing and financing activities:		
Dividends declared but not paid	\$ 41,867	\$ -

See accompanying notes to the financial statements.

FRESH VINE WINE, INC.
Notes to Financial Statements
December 31, 2023 and 2022

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Business

Fresh Vine Wine, Inc. (“the Company”, “our”, “we”), 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. 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 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 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.

Liquidity, Going Concern, and Management Plan

Historically, the Company has incurred losses, which has resulted in an accumulated deficit of approximately \$26.5 million as of December 31, 2023. Cash flows used in operating activities were \$4.8 million and \$13.5 million for the years ended December 31, 2023 and 2022, respectively. As of December 31, 2023, the Company had approximately a \$1.3 million deficiency in working capital, inclusive of \$236,000 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-K, such matters create a substantial doubt regarding the Company’s ability to meet their financial needs and continue as a going concern.

The Company received gross proceeds of \$1 million from a preferred stock offering during the year ended December 31, 2023. Subsequent to year end, the Company entered into an Agreement and Plan of Merger (Agreement) with Notes Live, Inc. See Note 15 for further details on the Agreement. 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 of 2023, 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.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

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 allowance for doubtful accounts, allowance for inventory obsolescence, equity-based compensation for employees and non-employees, and the valuation of deferred tax assets.

Cash

The Company maintains its accounts at two financial institutions. At times throughout the year, the Company's cash balances may exceed amounts insured by the Federal Deposit Insurance Corporation. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk.

Restricted Cash

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

Accounts Receivable

Accounts receivable consists of amounts owed to the Company for sales of the Company's products on credit and are reported at net realizable value. Credit terms are extended to customers in the normal course of business. The Company performs ongoing credit evaluations of its customers' financial conditions. The Company estimates allowances for future returns and doubtful accounts based upon historical experience and its evaluation of the current status of receivables. Accounts considered uncollectible are written off against the allowance. As of December 31, 2023 and 2022 there was no allowance for doubtful accounts.

Inventories

Inventories primarily include bottled wine which is carried at the lower of cost (calculated using the average cost method) or net realizable value.

The Company reduces the carrying value of inventories that are obsolete or for which market conditions indicate cost will not be recovered to estimated net realizable value. The Company's estimate of net realizable value is based on analysis and assumptions including, but not limited to, historical experience, future demand, and market requirements. Reductions to the carrying value of inventories are recorded in cost of revenues. As of December 31, 2023 and 2022, the Company had recorded an inventory allowance of approximately \$112,000 and \$0, respectively.

Deferred Offering Costs

Deferred offering costs primarily consist of legal, accounting, SEC filing fees, and any other fees relating to the Company's subscription rights offering and preferred equity offering. The deferred offering costs as of December 31, 2022 were capitalized as incurred and were offset against proceeds from the sale of rights at the closing of the Company's capital raise completed on March 14, 2023.

Investment in Equity Securities

The Company has elected the measurement alternative for non-marketable equity securities under ASC 321 Investments – Equity Securities. In accordance with ASC 321, the non-marketable equity securities are initially measured at cost and reviewed at year end for impairment and fair value changes. As of December 31, 2023, there were no changes recorded for the value of the investment since the initial measurement.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

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.

Products are sold for cash or on credit terms. Credit terms are established in accordance with local and industry practices, and typically require payment within 30-60 days of delivery or shipment, as dictated by the terms of each agreement. The Company has elected the practical expedient to not account for significant financing components as its payment terms are less than one year, and the Company determines the terms at contract inception. The Company's sales terms do not allow for the right of return.

The following table presents the percentages of total revenue disaggregated by sales channels for the years ended December 31, 2023 and 2022:

	Year ended December 31,	
	2023	2022
Wholesale	72.7%	57.7%
Direct to consumer	27.3%	31.9%
Related party service	-%	10.4%
Total revenue	100.0%	100.0%

Contract Balances and Receivables

When the Company receives pre-orders or payment from a customer prior to transferring the product under the terms of a contract, the Company records deferred revenue, which represents a contract liability. The Company will record deferred revenue when cash is collected from customers prior to the wine shipment date. The Company does not recognize revenue until control of the wine is transferred and the performance obligation is met. When the Company does not receive payment from a customer prior to or at the transfer of the product under the terms of a contract, the Company records an accounts receivable.

Contract liabilities as of December 31, 2023 and 2022, and January 1, 2022 were \$3,407, \$10,000 and \$13,750, respectively. Revenue recognized in 2023 and 2022 from contract liabilities as of December 31, 2022 and December 31, 2021 was \$10,000 and \$13,750, respectively.

Receivables with customers as of December 31, 2023 and 2022, and January 1, 2022, were \$172,101, \$259,317 and \$208,160, respectively.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Fair Value of Financial Instruments

The Company's accounting for fair value measurements of assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring or nonrecurring basis adheres to the Financial Accounting Standards Board (FASB) fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

- Level 1 Inputs: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the Company at the measurement date.
- Level 2 Inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Level 3 Inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

The level in the fair value hierarchy within which a fair measurement in its entirety falls is based on the lowest level input that is significant to the fair value measurement in its entirety.

The carrying values of cash, accounts receivable, accounts payable, deferred revenue and other financial working capital items approximate fair value at December 31, 2023 and 2022, due to the short maturity nature of these items.

Income Taxes

The Company recognizes uncertain tax positions in accordance with ASC 740 on the basis of evaluating whether it is more likely than not that the tax positions will be sustained upon examination by tax authorities. For those tax positions that meet the more-likely-than not recognition threshold, the Company recognizes the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement. The Company recognizes interest and/or penalties related to uncertain tax positions in income tax expense. There were no uncertain tax positions as of December 31, 2023 or 2022, and as such, no interest or penalties were recorded to income tax expense. As of December 31, 2023 and 2022, the Company has no unrecognized tax benefits. There are no unrecognized tax benefits included on the balance sheet that would, if recognized, impact the effective tax rate. The Company does not anticipate there will be a significant change in unrecognized tax benefits within the next 12 months.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Equity-Based Compensation

The Company measures equity-based compensation cost at the grant date based on the fair value of the award and recognizes the compensation expense over the requisite service period, which is generally the vesting period. The Company recognizes any forfeitures as they occur. As of December 31, 2023 and 2022, there was \$0 and \$991,167 of unrecognized equity-based compensation expense recorded in prepaid expenses and other assets. The license agreements were terminated during the third quarter of 2023 and the remaining balance was recognized as expense during this period.

The Company measures equity-based compensation when the service inception date precedes the grant date based on the fair value of the award as an accrual of equity-based compensation and adjusts the cost to fair value at each reporting date prior to the grant date. In the period in which the grant occurs, the cumulative compensation cost is adjusted to the fair value at the date of the grant.

See Note 9 for further discussion of equity-based compensation incurred in 2023 and 2022.

Advertising

The Company expenses the costs of advertising as incurred. Advertising expense for the years ended December 31, 2023 and 2022, was \$1,576,325 and \$3,059,429, respectively.

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 irrevocably opts out of the extended transition period provided in the JOBS Act.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

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’ deficit of approximately \$712,000 as of December 31, 2023 and have had losses from continuing operations and/or net losses in each of the fiscal years ended December 31, 2020, 2021, 2022 and 2023. 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.

On November 21, 2023, the Company received notification (the “Acceptance Letter”) from NYSE American that the Company’s plan to regain compliance with NYSE American’s listing standards was accepted. The Acceptance Letter also stated that the Company is not in compliance with Section 1003(a)(i) of the Company Guide, which requires an issuer to have stockholders’ equity of \$2.0 million or more if it has reported losses from continuing operations and/or net losses in two out of its three most recent fiscal years. NYSE American has granted the Company a plan period through March 8, 2025 to regain compliance with Sections 1003(a)(i) and (ii) of the Company Guide. If the Company is not in compliance with all continued listing standards by that date or if the Company does not make progress consistent with the plan during the plan period, the Company will be subject to delisting proceedings.

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. LOSS PER SHARE

Basic net loss per share is determined by dividing net loss attributable to 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 shows the components of diluted shares for the years ending:

	December 31, 2023	December 31, 2022
Numerator:		
Net loss	\$ (10,615,035)	\$ (15,202,507)
Less: dividends on preferred stock	41,867	-
Net loss attributable to common stockholders	<u>\$ (10,656,902)</u>	<u>\$ (15,202,507)</u>
Denominator:		
Basic – weighted shares outstanding	15,329,617	12,550,096
Dilutive effect from shares authorized	-	-
Diluted – weighted shares outstanding	<u>15,329,617</u>	<u>12,550,096</u>
Basic loss per share	\$ (0.69)	\$ (1.21)
Diluted loss per share	\$ (0.69)	\$ (1.21)

At December 31, 2023 and 2022, 14,748,862 and 2,721,562 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.

3. INVENTORIES

Inventories primarily include bottled wine which is carried at the lower cost (calculated using the average cost method) or net realizable value. During 2023, the Company recorded a \$1.8 million inventory write down to net realizable value, which is recorded in cost of revenue in the financial statements. The 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 December 31, 2023 includes a valuation reserve of \$112,000. Inventories consist of the following at:

	December 31, 2023	December 31, 2022
Inventory – finished goods	\$ 337,873	\$ 3,683,159
Inventory – merchandise	-	13,039
Total	<u>\$ 337,873</u>	<u>\$ 3,696,198</u>

4. PREPAID EXPENSES AND OTHER ASSETS

Prepaid expenses and other assets consist of the following at:

	December 31, 2023	December 31, 2022
Prepaid marketing expenses - current	\$ 9,871	\$ 313,000
Prepaid marketing expenses - long-term	-	678,167
Inventory deposits	-	569,377
Other prepaid expenses	33,072	78,834
Total	<u>\$ 42,943</u>	<u>\$ 1,639,378</u>

5. INVESTMENTS

In December 2023, the Company made a \$500,000 investment for 50,000 shares of Notes Live, Inc. as part of the letter of intent entered into with Notes Live, Inc. See Note 15 for Agreement and Plan of Merger with Notes Live, Inc. The investment was initially measured at cost. The Company noted no impairment or fair value change as of December 31, 2023.

6. ACCRUED COMPENSATION

During the year ended December 31, 2022, the Company made certain leadership changes to better align with the Company's operating goals, including advertising and marketing plans, as well as cash preservation initiatives. As of December 31, 2022, accrued compensation primarily related to unpaid bonus amounts to the Chief Executive Officer totaling \$420,413. This bonus was paid in 2023. The balance of accrued compensation is \$0 as of December 31, 2023.

7. ACCRUED EXPENSES

Accrued expenses consist of the following at:

	December 31, 2023	December 31, 2022
Sponsorship agreements	\$ 608,818	\$ 234,494
Accrued credit card charges	7,275	21,013
Series A Stock dividends	41,867	-
Legal and professional	125,704	89,200
Other accrued expenses	27,059	78,224
Total	<u>\$ 810,723</u>	<u>\$ 422,931</u>

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 ranging from \$103,000 to \$216,000 per agreement. The total expense relating to these agreements for the years ended December 31, 2023 and 2022, was \$374,325 and \$353,931, respectively. During the third quarter of 2022, in accordance with the Company's cash preservation initiatives, the Company terminated one of its marketing contracts, resulting in the reversal of \$141,000 of expenses, in an effort to control its marketing expenses.

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

8. 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 the Company refers 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 the Company refers to as the over-subscription privilege. Upon the closing of the Rights Offering, which occurred on March 14, 2023, the Company 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, the Company 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 Convertible Preferred Stock

On July 27, 2023, the Company filed with the Secretary of State of the State of Nevada a Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock, par value \$0.001 per share (the "Series A Stock"), which was amended on August 1, 2023 prior to the issuance of any shares of Series A Stock by filing Amendment No. 1 thereto (as so amended, the "Certificate"). The Certificate designates 10,000 shares of the Company's undesignated preferred stock as Series A Stock and establishes the rights and preferences of Series A Stock.

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 "Offering") shares of 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 provided 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. The Securities Purchase Agreement provided that the Company will issue and sell to the Purchasers, and the Purchasers will purchase, an additional 2,000 shares of Series A Stock at an optional closing (the "Optional Closing"), which occurred on December 1, 2023.

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.

8. STOCKHOLDERS' EQUITY (continued)

Series A Convertible Preferred Stock (continued)

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:

	For the year ended December 31, 2023
Series A Stock shares issued	10,000
Net proceeds	\$ 950,000

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:

	For the year ended December 31, 2023
Series A Stock	\$ 41,867

Third Party Vendor Engagements and Related Founder Share Forfeitures

In December 2022, Rick Nechio and Damian Novak, two of the Company's founders, together agreed to forfeit and transfer back to the Company without consideration a total of 970,000 shares of common stock of the Company held by them, to enable the Company to preserve cash by issuing such number of shares to certain of the Company's service providing vendors without subjecting the Company's other stockholders to dilution therefrom. Also in December 2022, the Company entered into agreements to issue 970,000 shares to such vendors in transactions exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"). Recipients of the shares included our third-party sales and distribution management service provider, as well as certain advertising, public relations, consulting, and legal service providers. Pursuant to agreements with certain of these vendors, the Company has agreed to issue up to an additional 1,030,000 shares of common stock upon the Company achieving specified revenue-related performance objectives within identified timeframes. The Company recorded equity-based compensation totaling \$1,233,300 during 2022 related to the share awards. Equity-based compensation expense related to the additional shares subject to revenue-related performance objectives was not material to the 2023 or 2022 financial statements.

9. EQUITY-BASED COMPENSATION

As of December 31, 2023 and 2022, there was \$0 and \$991,167, respectively, 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 celebrity endorsers. The license agreements were terminated during Q3 2023 and the full balance of \$991,167 was recognized as expense during the year ended December 31, 2023.

Restricted Stock Units

On February 24, 2022, the Company entered into a separation agreement with the former Chief Operating Officer (COO). Among other things, the Company agreed to provide the former COO with cash and expense reimbursements totaling \$175,000 and an amendment of the COO's Restricted Stock Agreement to accelerate the vesting of the 251,851 restricted stock units. Due to the modification of the terms of this award, the fair value was remeasured as of the modification date. Total equity-based compensation expense related to this restricted stock unit awards was \$1,658,485 for the year ended December 31, 2022. During the second quarter of 2022, these awards were fully vested and the shares of common stock underlying the awards had been delivered.

During the second quarter of 2022, the Company granted 47,800 restricted stock units to employees of the Company, all of which vested and were delivered in the second quarter of 2022. Total equity-based compensation expense related to these restricted stock units was \$219,648 for the year ended December 31, 2022.

On March 2, 2022, the Company granted 70,000 restricted stock units to members of the Company's Board of Directors that fully vested on June 18, 2022. Total equity-based compensation expense related to these restricted stock units was \$285,600 for the year ended December 31, 2022.

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. These restricted stock units had a vesting period that coincided with the Company filing its Form 10-K for the year ended December 31, 2023 and had a stipulation that each of the executives attained performance objectives. These employees terminated during the third quarter of 2023 and therefore the stock units were forfeited.

9. EQUITY-BASED COMPENSATION (continued)

Restricted Stock Units (continued)

Restricted stock unit activity as of and for the years ended December 31, 2023 and 2022 was as follows

	Number of RSUs	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2021	377,777	0.45
Granted	117,800	0.33
Forfeited	(495,577)	-
Outstanding at December 31, 2022	-	-
Granted	614,883	0.86
Forfeited	(614,883)	-
Outstanding at December 31, 2023	-	-

Shares of Restricted Stock

During the year ended December 31, 2022, the Company granted 10,000 shares of restricted stock to an employee upon commencement of employment in May 2022, of which 3,334 shares vested immediately with the remaining 6,666 shares scheduled to vest in two equal installments in May 2023 and May 2024. Restricted stock consists of shares of common stock that are subject to transfer and forfeiture restrictions that lapse upon vesting. Total equity-based compensation expense related to the grant of these shares of restricted stock was \$9,264 for the year ended December 31, 2022. Effective January 2023, this employee resigned from the Company and 6,666 unvested shares of restricted stock were forfeited.

During the year ended December 31, 2022, the Company hired a new Chief Financial Officer. Pursuant to the employment agreement, the Company granted 100,000 shares of restricted stock. The restricted stock vests in three equal installments with the first third vesting immediately on the grant date of March 30, 2022, and the remaining tranches were scheduled to vest on the one year and two year anniversaries of the grant date subject to continued employment with the Company through the applicable vesting date. Effective June 24, 2022, this employee resigned from the Company and 66,666 unvested shares of restricted stock were forfeited. Total equity-based compensation expense related to these shares of restricted stock was \$110,602 for the year ended December 31, 2022.

In January 2023, 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. Total equity-based compensation expense related to these shares of restricted stock was \$565,500 for the year ended December 31, 2023.

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 April 2023, the Company Board of Directors were granted a total of 100,000 shares of restricted stock. Total equity-based compensation expense related to these shares of restricted stock was \$39,510 for the year ended December 31, 2023.

Restricted stock activity for the years ended December 31, 2023 and 2022 was as follows:

	Number of Shares of Restricted Stock	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2021	-	-
Granted	110,000	9.27
Vested or released	(36,668)	-
Forfeited	(66,667)	-
Outstanding at December 31, 2022	6,666	0.90
Granted	1,641,332	0.57
Vested or released	(570,000)	-
Forfeited	(1,057,998)	-
Outstanding at December 31, 2023	20,000	0.00

9. EQUITY-BASED COMPENSATION (continued)

Vendor Stock Awards

Vendor stock award activity subject to revenue-related performance objectives during the years ended December 31, 2023 and 2022 was as follows:

	Number of Shares of Vendor Stock Awards	Weighted Average Remaining Vesting Term (Years)
Outstanding at December 31, 2021	-	-
Granted	1,030,000	2.25
Vested or released	-	-
Forfeited	-	-
Outstanding at December 31, 2022	<u>1,030,000</u>	<u>2.25</u>
Granted	-	-
Vested or released	-	-
Forfeited	-	-
Outstanding at December 31, 2023	<u><u>1,030,000</u></u>	<u><u>1.25</u></u>

Stock Options

On March 11, 2022, the Company granted the option to purchase 427,001 shares of common stock at \$3.47 per share to its Chief Executive Officer, pursuant to the Chief Executive Officer's employment agreement with the Company. The shares vest in three equal installments on the nine month, one year, and two year anniversaries of the grant date and are exercisable for 10 years from the grant date. On June 8, 2022, the Chief Executive Officer's employment with the Company ended resulting in the forfeiture of the entire award, which remained unvested at the time.

On March 30, 2022, in addition to the restricted stock granted to the Company's new Chief Financial Officer, the Company granted the Chief Financial Officer an option to purchase 200,000 shares of common stock at \$3.30 per share, pursuant to the employment agreement. The shares vest in three equal installments. The first third vested immediately on the grant date of March 30, 2022, and the remaining tranches were scheduled to vest on the one year and two year anniversaries of the grant date subject to continued employment with the Company through the applicable vesting date. The options are exercisable for 10 years from the grant date or, if earlier, ninety (90) days following termination of employment. Effective June 24, 2022, this employee resigned from the Company and the unvested options were subsequently forfeited.

9. EQUITY-BASED COMPENSATION (continued)

Stock Options (continued)

Effective September 1, 2022, the Company entered into an Employment Transition and Consulting Agreement with the previous interim Chief Financial Officer. Pursuant to the Transition and Consulting Agreement, the Company granted a stock option to purchase 69,892 shares of the Company's common stock at a per share exercise price equal to \$3.04 (the fair market value of the Company's common stock on the date of grant). The stock option vested with respect to 3,584 shares on the last calendar day of September, October and November of 2022, and the balance of the stock option vested in monthly installments as nearly equal as possible (approximately 6,571 shares each) on the last calendar day of each month from December 2022 through August 2023. The total expense recognized for the years ended December 31, 2023 and 2022 was \$125,783 and \$41,449, respectively.

In November 2021, the Company executed founder option agreements with four Class F members. The terms of the agreements grant each founder the right and option to purchase common stock up to 25% of the total shares in the Founders' Option Pool upon the consummation of the Company's IPO. The Founder's Option Pool is a pool of shares reserved for founding members of the Company and will be comprised of 15% of the total shares of common stock outstanding immediately prior to the initial closing of the IPO. The options will vest in 20% installments. Each installment will vest upon the closing price of common stock reaching certain milestones ranging from 200% to 600% of the IPO price. If the vesting condition is not achieved within three years of the grant date, the options will forfeit. As of December 31, 2023 and 2022, the options have not reached any of the vesting milestones required and as such, the probability of reaching each milestone has been factored into the value to be recognized over the three-year vesting period. As of December 31, 2023, three of the four members had terminated their agreements and only 375,000 options remained.

Equity-based compensation expense totaling \$112,040 and \$223,224 has been recognized relating to these stock options during 2023 and 2022, respectively. The total unrecognized equity-based compensation expense was \$6,259 and \$176,835 as of December 31, 2023 and 2022, respectively.

Stock option activity for the years ended December 31, 2023 and 2022 was as follows:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2021	1,830,000	\$ 9.86	8.18
Granted	701,893	3.37	10.00
Exercised	-	-	-
Forfeited	(957,001)	-	-
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 December 31, 2023	446,559	\$ 8.88	8.08
Exercisable at December 31, 2023	71,559	\$ 3.03	8.67

9. EQUITY-BASED COMPENSATION (continued)

Warrants

On December 17, 2021, in connection with the Company's IPO, the Company granted to the underwriter warrants to purchase up to 110,000 shares of common stock at \$12 per share. These warrants vest one year from the date of issuance and are exercisable for four years after the vesting date.

As disclosed in Note 8, 3,143,969 warrants were granted as part of the Rights Offering in March 2023.

As of and for the years ended December 31, 2023 and 2022, the warrants to purchase common shares of the Company outstanding were as follows:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2021	110,000	\$ 12.00	4.96
Granted	-	-	-
Vested or released	-	-	-
Forfeited	-	-	-
Outstanding at December 31, 2022	110,000	\$ 12.00	3.71
Granted	3,143,969	1.25	5.00
Vested or released	-	-	-
Forfeited	-	-	-
Outstanding at December 31, 2023	3,253,969	\$ 1.61	4.16

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 New York Stock Exchange on the grant date. The risk-free interest rate is based on the rate for U.S. Treasury securities at the date of grant with maturity dates approximately equal to the expected life at the grant date. The expected term for employee and nonemployee awards ranged from 5 to 10 years based on industry data, vesting period, contractual period, among other factors. The expected volatility was estimated at 75% 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. For awards with a performance condition, stock compensation is recognized over the requisite service period if it is probably that the performance condition will be satisfied.

10. INCOME TAXES

Components of the provision for income taxes for the years ended December 31, 2023 and 2022 were as follows:

	2023	2022
Current	\$ -	\$ -
Deferred	-	-
Total	<u>\$ -</u>	<u>\$ -</u>

No income tax benefit was recorded for the years ended December 31, 2023 and 2022 due to net losses and recognition of a valuation allowance. The following table represents a reconciliation of the tax expense computed at the statutory federal rate and the Company's tax expense for the years ending December 31, 2023 and 2022:

	2023		2022	
Tax expense (benefit) at statutory rate	\$ (2,229,000)	21.0%	\$ (3,193,000)	21.0%
State income tax expense (benefit), net of federal tax effect	(377,000)	3.6%	(162,000)	1.1%
Change in valuation allowance on deferred tax assets	2,360,000	-22.2%	3,355,000	-22.1%
Stock award forfeiture	440,000	-4.3%	-	-0.0%
Change in deferred tax rate	(102,000)	1.0%	-	0.0%
Return to provision adjustments	(92,000)	0.9%	-	0.0%
Income tax expense (benefit)	<u>\$ -</u>	0.0%	<u>\$ -</u>	0.0%

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company's deferred tax assets relate primarily to its net operating loss carry forwards and other balance sheet basis differences. In accordance with ASC 740, "Income Taxes," the Company recorded a valuation allowance to fully offset the net deferred tax asset, because it is more likely than not that the Company will not realize future benefits associated with these deferred tax assets at December 31, 2023 and 2022. The tax effects of temporary differences and carry forwards that give rise to significant portions of the deferred tax assets are as follows:

	December 31, 2023	December 31, 2022
Deferred tax assets:		
Deferred revenue	\$ 1,000	\$ 3,000
Amortization	1,000	1,000
Stock based compensation	120,000	868,000
Net operating losses	5,686,000	3,002,000
Inventory reserve	27,000	-
Accrued expenses	407,000	-
Prepaid expenses	(8,000)	-
Valuation allowance	(6,234,000)	(3,874,000)
Net deferred tax assets:	<u>\$ -</u>	<u>\$ -</u>

At December 31, 2023, the Company had federal and state net operating loss carry forwards of approximately \$23.9 million and \$9.1 million, respectively. At December 31, 2022, the Company had federal and state net operating loss carryforwards of approximately \$13.3 million and \$2.2 million, respectively. The net operating loss carry forwards have no expiration.

The Company recognizes uncertain tax positions in accordance with ASC 740 on the basis of evaluating whether it is more likely than not that the tax positions will be sustained upon examination by tax authorities. For those tax positions that meet the more-likely-than not recognition threshold, the Company recognized the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement. As of December 31, 2023 and 2022, the Company has no unrecognized tax benefits. There are no unrecognized tax benefits included on the balance sheet that would, if recognized, impact the effective tax rate. The Company does not anticipate there will be a significant change in unrecognized tax benefits within the next 12 months.

The Company is subject to U.S. federal or state income tax examinations. The Company's federal, state and local income tax returns are subject to examination by taxing authorities for the three years after the returns are filed, and the Company's federal, state, and local income tax returns for 2022 and 2021 remain open to examination. Prior to the Company's December 2021 conversion to a corporation, the Company was a limited liability company and therefore was a disregarded legal entity for income tax purposes. The Company's policy is to recognize interest and penalties related to uncertain tax positions as a component of general and administrative expense.

11. SUPPLIER AND CUSTOMER CONCENTRATION

The Company has an agreement with an unrelated party for various wine making activities, including production, bottling, labelling, and packaging. 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 years ended December 31, 2023 and 2022, 100% and 96%, respectively, of the Company's inventory purchases were from this supplier.

The Company also engages with other suppliers 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 years ended December 31, 2023 and 2022, 74% and 58% of the Company's wholesale revenue came from these customers, respectively. At December 31, 2023 and 2022, these customers accounted for 73% and 90%, respectively, of accounts receivable.

12. COMMITMENTS AND CONTINGENCIES

License agreements

During March 2021, the Company entered into two license agreements with certain equity investors for marketing and advertising services. These two agreements were terminated during the third quarter of 2023 and the remaining prepaid license fee was expensed. The net expense relating to the agreements was \$1,000,500 and \$380,000 for the years ended December 31, 2023 and 2022, respectively.

Sponsorship Agreements

The estimated expense for the sponsorship agreements as described in Note 7 for the periods subsequent to December 31, 2023 is as follows:

	<u>Sponsorship Agreements</u>
2024	\$ 162,553

13. TRANSACTIONS WITH RELATED PARTIES

The Company had an arrangement with Rabbit Hole Equity, LLC (RHE), a related party due to common ownership, under which RHE provided development, administrative and financial services to the Company. RHE is solely owned by the majority member of Nechio and Novak, LLC, which is the majority shareholder of the Company. Under the agreement, the Company will pay or reimburse RHE, as applicable, for any expenses it, or third parties acting on its behalf, incurs for the Company. For any selling, general and administrative activities performed by RHE or RHE employees, RHE, as applicable, charged back the employee salaries and wages, rent and related utilities. Beginning in December 2021, the Company entered into a payroll arrangement with a third party and now incurs employee salary and wage expenses directly.

The shared expenses are as follows for the years ended December 31, 2023 and 2022:

	<u>2023</u>	<u>2022</u>
Rent	\$ -	\$ 94,436
Utilities	-	5,470
	<u>\$ -</u>	<u>\$ 99,906</u>

In October 2021, the Company issued a promissory note to a Class F member in exchange for \$216,000. The term of the note was the later of 2 months from the date of the note or upon successful consummation of the IPO. The annual interest rate on the note was the maximum legal amount allowed under the applicable usury laws minus 1%, which was 7% at December 31, 2021. The Company may repay all or any portion of the principal balance at any time without penalty. The total amount of interest accrued on this note as of December 31, 2021 was \$9,125. In January 2022, the Company repaid the \$216,000 promissory note in full plus accrued interest of \$9,125.

In October 2021, the Company entered into a service agreement with Appellation Brands, LLC, a related party due to common ownership in the wine industry, to provide representation and distribution services. As of June 13, 2022, the original agreement was terminated. Prior to termination, the Company received a management fee of \$50,000 per month plus a tiered fee ranging between \$5.00 and \$6.50 per case of the products sold. For the year ended December 31, 2022, the Company had recognized \$297,224 in service revenue related to this agreement. In the year ended December 31, 2022, the Company purchased inventory from Appellation Brands, LLC in the amount of \$195,116.

In January 2022, the Company entered into a consulting agreement with FELCS, LLC, an entity owned by Damian Novak to provide consulting and advisory services to the Company in exchange for \$25,000 per month. The agreement expires in December 2022, subject to automatic one-year renewals unless written notice to terminate the contract is given by either party. For the year ended December 31, 2022, the Company recognized \$275,000 in total expense related to this agreement. This agreement was terminated in November 2022.

In April 2022, the Company amended its agreement with Whetstone Consulting to include additional bonus commissions ranging from \$5,000 to \$100,000 subject to specific distribution milestones in addition to the existing \$5,000 per month base compensation. The agreement has an initial term of one year and automatically renews for successive one-year periods unless terminated by either party with advance notice. This agreement terminated in May 2023 when the consultant was hired as an employee of the company. For the years ended December 31, 2023, and 2022, the Company recognized base compensation and commissions expense related to this agreement totaling \$40,000 and \$90,000, respectively.

14. 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. A jury trial commenced on January 23, 2024. During trial, on January 24, 2024, the Company filed a motion for judgement in favor of the Company as a matter of law, which was denied by the Court. On January 25, 2024, the jury in the lawsuit rendered a verdict against the Company awarding damages to Mr. Michaels in the amount of \$585,976.25, which is included in settlement payable in the accompanying balance sheet. On February 22, 2024, the Company filed a renewed motion for post-verdict judgment in favor of the Company as a matter of law. On February 26, 2024, the Judge in the lawsuit denied the renewed motion for post-verdict judgment.

Website-related Plaintiff’s Lawsuit

On January 26, 2024, the Company was served with a complaint filed in the United States District Court for the Southern District of New York alleging that the Company has failed to design, construct, maintain and operate its Internet website to be fully accessible to and independently usable by blind or visually-impaired persons, thereby denying blind and visually-impaired persons with equal access to the Company’s goods and services in violation of the Title III of the Americans with Disabilities Act of 1990 and the New York Human Rights Law, the New York Civil Rights Law. On February 16, 2024, the Company filed an Answer to the complaint denying the plaintiff’s allegations and asserting affirmative defenses thereto.

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.

14. LEGAL PROCEEDINGS (continued)

Janelle Anderson Litigation Settlement and Related Founder Share Forfeitures (continued)

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.

15. SUBSEQUENT EVENTS

Agreement and Plan of Merger with Notes Live, Inc.

On January 25, 2024, the Company, FVW Merger Sub, Inc., a Colorado corporation and a wholly-owned subsidiary of the Company ("Merger Sub"), and Notes Live, Inc., a Colorado corporation ("Notes Live"), entered into an Agreement and Plan of Merger (the "Merger Agreement") pursuant to which, among other things, and subject to the satisfaction or waiver of certain conditions set forth in the Merger Agreement, Merger Sub will merge with and into Notes Live, with Notes Live continuing as a wholly-owned subsidiary of the Company and the surviving corporation of the merger (the "Merger").

15. SUBSEQUENT EVENTS (continued)

Agreement and Plan of Merger with Notes Live, Inc. (continued)

Subject to the terms and conditions of the Merger Agreement, at the closing of the Merger, (i) each then outstanding share of Notes Live common stock (collectively, “Notes Live common stock”) (which comprises all of Notes Live’s outstanding capital stock) will be converted into the right to receive a number of shares of Fresh Vine common stock calculated in accordance with the Merger Agreement (the “Exchange Ratio”), (ii) each then outstanding warrant to purchase Notes Live common stock will be exchanged (or otherwise amended) for a warrant exercisable (at an exercise price adjusted to reflect to the Exchange Ratio) to acquire that number of shares of Fresh Vine common stock equal to the number of warrant shares multiplied by the Exchange Ratio, and (iii) any then outstanding Notes Live promissory note that is convertible into Notes Live common stock will be exchanged, or otherwise amended, such that it will be convertible from and after the Merger into shares of Fresh Vine common stock at a per share conversion price adjusted to reflect the Exchange Ratio. Each share of Fresh Vine common stock and each option and warrant to purchase Fresh Vine common stock that is outstanding at the effective time of the Merger will remain outstanding in accordance with its terms and such shares of Fresh Vine common stock, options and warrants will be unaffected by the merger (subject adjustment based on the proposed Reverse Split described below).

As contemplated by the Merger Agreement, Fresh Vine intends to effect a reverse stock split at or around the effect date of the merger at a ratio that results in the Fresh Vine common stock satisfying the initial listing standards of the NYSE American stock exchange and the exchange ratio in the Merger being as near to one as reasonably practicable (i.e., so that each share of Notes Live capital stock will be exchanged in the Merger for approximately one share of Fresh Vine common stock) (the “Reverse Split”).

At the effective time of the Merger, the board of directors of Fresh Vine is expected to consist of seven members, all of whom will be designated by Notes Live.

Consummation of the Merger is subject to certain closing conditions, as described in the Merger Agreement.

The Merger Agreement contains certain termination rights of each of Fresh Vine and Notes Live. Upon termination of the Merger Agreement under specified circumstances, Fresh Vine may be required to pay Notes Live a termination fee of \$1.0 million and/or reimburse Notes Live’s expenses up to a maximum of \$500,000, and Notes Live may be required to pay Fresh Vine a termination fee of \$1.0 million, reimburse Fresh Vine’s expenses up to a maximum of \$500,000, and/or, at the election of Fresh Vine, redeem the Fresh Vine Equity Investment at the same price per share as the purchase price paid by Fresh Vine therefor.

Concurrently with the execution of the Merger Agreement, (a) officers, directors and certain 10% or greater shareholders of Notes Live (solely in their respective capacities as Notes Live shareholders) holding approximately 42% of the outstanding shares of Notes Live capital stock entitled to vote have entered into voting and support agreements with Fresh Vine to vote, among other things, all of their shares of Notes Live capital stock in favor of adoption of the Merger Agreement and the transactions contemplated thereby, and against any alternative acquisition proposals (the “Notes Live Support Agreements”), and (b) certain officers, directors and stockholders of Fresh Vine have entered into voting and support agreements with Notes Live to vote, among other things, all of their shares of Fresh Vine capital stock in favor of the Fresh Vine Shareholder Matters and against any alternative acquisition proposals (the “Fresh Support Agreements”, and together with the Notes Live Support Agreements, the “Support Agreements”).

BYLAWS

OF

FRESH VINE WINE, INC.

(A NEVADA CORPORATION)

(As amended, effective January 25, 2024)

ARTICLE I—OFFICES

Section 1.01 *Registered Office.* The corporation shall maintain in the State of Nevada a registered office and a registered agent whose business office is identical with such registered office.

Section 1.02 *Locations of Offices.* The corporation may also have offices at such other places both within and without the state of Nevada as the board of directors may from time to time determine or the business of the corporation may require.

ARTICLE II—STOCKHOLDERS

Section 2.01 *Annual Meeting.* The annual meeting of the stockholders shall be held on such date and at such time as is designated by the board of directors and as is provided for in the notice of the meeting. If the election of directors shall not be held on the day designated herein for the annual meeting of the stockholders, or at any adjournment thereof, the board of directors shall cause the election to be held at a special meeting of the stockholders as soon thereafter as may be convenient.

Section 2.02 *Special Meetings.* Special meetings of the stockholders may be called at any time by the chairman of the board, the chief executive officer, the president, or in their absence or disability, by any vice president, or by the board of directors (by action of a majority of the directors). No business shall be acted upon at a special meeting of stockholders except as set forth in the notice of the meeting.

Section 2.03 *Place of Meetings.* The board of directors may designate any place, either within or without the State of Nevada, as the place of meeting for any annual meeting or for any special meeting. If no designation is made, the place of meeting shall be at the principal office of the corporation. The board of directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of electronic communications, videoconferencing, teleconferencing or other available technology in accordance with Section 2.15.

Section 2.04 *Notice of Meetings.* The secretary or assistant secretary, if any, shall cause notice of the time, place, and purpose or purposes of all meetings of the stockholders (whether annual or special), to be mailed at least ten (10) but not more than sixty (60) days prior to the meeting, to each stockholder of record entitled to vote.

Section 2.05 *Waiver of Notice.* Any stockholder may waive notice of any meeting of stockholders (however called or noticed, whether or not called or noticed and whether before, during, or after the meeting), signing a written waiver of notice or a consent to the holding of such meeting, or an approval of the minutes thereof. Attendance at a meeting, in person or by proxy, shall constitute waiver of all defects of notice regardless of whether a waiver of notice, consent to the holding of such meeting, or any approval of the minutes thereof is signed or any objections are made, unless attendance is solely for the purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. All such waivers, consents, or approvals shall be made a part of the minutes of the meeting.

Section 2.06 Fixing Record Date. For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect to any change, conversion, or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix in advance a date as the record date for any such determination of stockholders, such date in any case to be not more than sixty (60) days and, in case, of a meeting of stockholders, not less than ten (10) days prior to the date on which the particular action requiring such determination of stockholders is to be taken. If no record date is fixed for the determination of stockholders entitled to notice of or to vote at a meeting, the day preceding the date on which notice of the meeting is mailed shall be the record date. For any other purpose, the record date shall be the close of business on the date on which the resolution of the board of directors pertaining thereto is adopted. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof. Failure to comply with this section shall not affect the validity of any action taken at a meeting of stockholders.

Section 2.07 Voting Lists. The officers of the corporation shall cause to be prepared from the stock ledger at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting, during the whole time thereof, and may be inspected by any stockholder who is present. The original stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section, or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 2.08 Quorum. A majority of the shares of each class, and series of each class, to the extent applicable (unless more than one class and or series votes as a class, in which case a majority of the shares voting as a class) of stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by statute or by the articles of incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders, entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time without notice (other than the announcement at the meeting) until a date and time that a quorum shall be present. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.09 Vote Required. When a quorum is present at any meeting, the vote of the holders of stock having a majority of the voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one on which by express provision of the statutes of the state of Nevada or of the articles of incorporation or as otherwise specifically required by these bylaws a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 2.10 Voting of Stock. Unless otherwise provided in the articles of incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, subject to the modification of such voting rights of any class or classes of the corporation's capital stock by the articles of incorporation. There is no cumulative voting. If and to the extent allowed by the laws of the State of Nevada and of the United States, stockholders may vote electronically.

Section 2.11 Proxies. At each meeting of the stockholders, each stockholder entitled to vote shall be entitled to vote in person or by proxy, provided however, that the right to vote by proxy shall exist only in case the instrument authorizing such proxy to act shall have been executed in writing by the registered holder or holders of such stock, as the case may be, as shown on the stock ledger of the corporation or by his attorney thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of such meeting to the secretary of the corporation or to such other officer or person who may, in the absence of the secretary, be acting as secretary of the meeting. In the event that any such instrument shall designate two or more persons to act as proxy, a majority of such persons present at the meeting, or if only one be present, that one shall (unless the instrument shall otherwise provide) have all of the powers conferred by the instrument on all persons so designated. Persons holding stock in a fiduciary capacity, shall be entitled to vote the stock so held and the persons whose shares are pledged shall be entitled to vote, unless, the transfer by the pledgor in the books and records of the corporation shall have expressly empowered the pledgee to vote thereon, in which case the pledgee, or his proxy, may represent such stock and vote thereon. No proxy shall be voted or acted on after three years from its date, unless the proxy provides for a longer period. If and to the extent allowed by the laws of the State of Nevada and of the United States, stockholders may provide proxies electronically.

Section 2.12 Stockholder Action by Written Consent Without a Meeting. Any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken by a consent in writing by the stockholders holding a majority of the voting power.

Section 2.13 Business at Annual Meeting. At any annual meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the board of directors or (b) by any stockholder of record of the corporation who is entitled to vote with respect thereto and who complies with the notice procedures set forth in this section. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the secretary of the corporation. To be timely, a stockholder's notice must be received at the principal executive offices of the corporation not less than 120 calendar days in advance of the date in the current fiscal year that corresponds to the date in the preceding fiscal year on which the corporation's notice of meeting and related proxy statement were released to stockholders in connection with the previous year's annual meeting of stockholders, except that if no meeting was held in the immediately preceding year or if the date of the annual meeting in the current year varies by more than 30 calendar days' from the corresponding date of such meeting in the preceding fiscal year, such notice by the stockholder proposing business to be brought before the meeting of the stockholders must be received not less than 30 days prior to the date of the current year's annual meeting; provided, that in the event that less than forty (40) days' notice of the date of the meeting is given to stockholders, to be timely, a stockholders notice of business to be brought before the meeting shall be so received not later than the close of business on the 10th day following the day on which such notice of the date of the annual meeting was mailed. A stockholder's notice to the secretary shall set forth as to each matter such stockholder proposes to bring before the annual meeting (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the name and address, as they appear on the corporation's books, of the stockholder of record proposing such business, (c) the class and number of shares of the corporation's capital stock that are beneficially owned by such stockholder, and (d) any material interest of such stockholder in such business. Notwithstanding anything in these bylaws to the contrary, no business shall be brought before or conducted at an annual meeting except in accordance with the provisions of this section. The officer of the corporation or the person presiding at the annual meeting shall, if the facts so warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with such provisions, and if such presiding officer should so determine and declare to the meeting that business was not properly brought before the meeting in accordance with such provisions and if such presiding officer should so determine, such presiding officer shall so declare to the meeting, and any such business so determined to be not properly brought before the meeting shall not be transacted.

Section 2.14 Notification of Nominations. Nominations for the election of directors may be made by the board of directors or by any stockholder who both is entitled to vote for the election of directors and who complies with the notice procedures set forth in this section and any applicable provisions in the corporation's articles of incorporation. Any stockholder entitled to vote for the election of directors at a meeting may nominate persons for election as directors only if written notice of such stockholder's intention to make such nomination is delivered or mailed to and received by the Secretary of the corporation, at the principal executive offices of the corporation not later than one hundred twenty (120) calendar days in advance of the date in the current fiscal year that corresponds to the date in the preceding fiscal year on which the corporation's notice of meeting and related proxy statement were released to stockholders in connection with the previous year's annual meeting of stockholders, except that (i) with respect to an election to be held at an annual meeting of stockholders, if no annual meeting was held in the immediately preceding year or if the date of the annual meeting in the current fiscal year has been changed by more than thirty (30) calendar days from the corresponding date of such meeting in the preceding fiscal year, such notice by the stockholder must be received not less than thirty (30) days prior to the date of the current year's annual meeting; provided further, that in the event that less than forty (40) days' notice of the date of the meeting is given or made to stockholders, to be timely, a stockholders notice shall be so received not later than the close of business on the 10th day, following the day on which such notice of the date of the annual meeting was mailed, and (ii) with respect to an election to be held at a special meeting of stockholders for the election of directors, the close of business on the seventh day following the date on which notice of such meeting is first given to stockholders. Each such notice shall be signed and verified by the issuing stockholder under penalties of perjury, and shall set forth:

- (a) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated;
- (b) a representation that such stockholder is a holder of record of stock of the corporation entitled to vote at such meeting, and intends to appear in person or by proxy at the meeting to nominate the person or person specified in the notice;
- (c) a description of all arrangements or understandings between such stockholder and each nominee, and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by such stockholder; and
- (d) such other information regarding each nominee proposed by such stockholder as would have been required to be included in a proxy statement filed pursuant to the proxy rules promulgated pursuant to the Securities Exchange Act of 1934, as amended, had each nominee been nominated, or proposed to be nominated by the board of directors.

Each such notice must be accompanied by an original signed written consent of each nominee, if elected, to serve as a director of the corporation.

The chairman and/or secretary of a meeting of the stockholders may refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedure.

Section 2.15 Remote Communications. Stockholders may participate in a meeting of stockholders by means of any electronic communications, videoconferencing, teleconferencing or other available technology permitted under the Nevada Revised Statutes (the "NRS"). If any such means are utilized, the corporation shall, to the extent required under the NRS, implement reasonable measures to (a) verify the identity of each person participating through such means as a stockholder, and (b) provide the stockholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to communicate, and to read or hear the proceedings of the meeting in a substantially concurrent manner with such proceedings. For the purposes of establishing a quorum and taking any action at the meeting, participation in a meeting pursuant to this Section 2.15 constitutes presence in person at the meeting. A meeting of stockholders may be held solely by remote communication pursuant to this Section 2.15.

ARTICLE III—DIRECTORS

Section 3.01 Number, Term, and Qualifications. The board of directors shall consist of one or more members, each of whom shall be a natural person. The number of directors which shall constitute the whole board shall be fixed from time to time by a majority vote of the directors then in office even though less than a quorum, or by a sole remaining director. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires. At each annual meeting of stockholders or special meeting in lieu thereof, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the succeeding annual meeting of the stockholders or special meeting in lieu thereof until their successors are duly elected and qualified. Directors need neither be residents of the state of incorporation nor stockholders of the corporation.

Section 3.02 Vacancies and Newly Created Directorships. Vacancies resulting from any increase in the authorized number of directors or any vacancies in the board of directors resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled only by a majority vote of the directors then in office even though less than a quorum, or by a sole remaining director, and not by the stockholders. In the event of any increase or decrease in the authorized number of directors, each director then serving as such shall nevertheless continue as a director until the expiration of his or her current term or his or her prior death, retirement, removal or resignation. In the event of a vacancy in the board of directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full board of directors until the vacancy is filled. Notwithstanding the foregoing, each director shall serve until his or her successor is duly elected and qualified or until his or her death, resignation or removal. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 3.03 General Powers. The business of the corporation shall be managed under the direction of its board of directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the articles of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

Section 3.04 Regular Meetings. A regular meeting of board of directors shall be held without notice immediately following and at the same place as the annual meeting of stockholders. The board of directors may provide by resolution, the time and place, either within or without the state of incorporation, for the holding of additional regular meetings without other notice than such resolution.

Section 3.05 Special Meetings. Special meetings of the board of directors may be called by or at the request of the chairman of the board, the chief executive officer, the president, or any two directors. The person or persons authorized to call special meetings of the board of directors may fix any place, either within or without the state of incorporation, as the place for holding any special meeting of the board of directors called by them.

Section 3.06 Telephonic and Electronic Communications. Members of the board of directors or of any committee designated by the board of directors may participate in a meeting of the board of directors or such committee through electronic communications, videoconferencing, teleconferencing or other available technology permitted under the NRS. If any such means are utilized, the corporation shall, to the extent required under the NRS, implement reasonable measures to (a) verify the identity of each person participating through such means as a director or member of the committee, as the case may be; and (b) provide the directors or members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the directors or members, as the case may be, including an opportunity to communicate and to read or hear the proceedings of the meeting in a substantially concurrent manner with such proceedings. For the purposes of establishing a quorum and taking any action at the meeting, such directors or members of the committee, as the case may be, participating pursuant to this Section 3.06 shall be deemed present in person at the meeting.

Section 3.07 Notice. Notice of any special meeting shall be delivered personally or by telephone or by facsimile or by email to each director or sent by first-class mail, charges prepaid, addressed to each director at that director's address, phone number, facsimile number, or email (as the case may be) as shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by facsimile or by email, it shall be delivered at least twenty-four (24) hours before the time of the holding of the meeting. Any director may waive notice of any meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting solely for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.08 Quorum. A majority of the number of directors then in office shall constitute a quorum for the transaction of business at any meeting of the board of directors, but if less than a majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 3.09 Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the question is one on which by express provision of the statutes of the state of Nevada or of the articles of incorporation or as otherwise specifically required by these bylaws a different vote is required, in which case such express provision shall govern and control the decision of such question, and individual directors shall have no power as such.

Section 3.10 *Written Consent to Action by Directors.* Any action required to be taken at a meeting of the directors of the corporation or any other action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. Such consent shall have the same legal effect as a unanimous vote of all the directors or members of the committee.

Section 3.11. *Interested Directors.* No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, solely because the director or officer is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if: (1) the fact as to his relationship or interest and as to the contract or transaction is known to the board of directors or the committee, and the board of directors or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (2) the fact as to his or her relationship or interest and as to the contract or transaction is known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved, or ratified by the board of directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

Section 3.12 *Committees of Directors.* The board of directors may designate and appoint one or more committees as the board of directors considers appropriate, which shall consist of one or more directors of the corporation. Persons who are not directors of the corporation are not eligible to serve on committees of the board of directors. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Each committee, to the extent provided in the resolution of the board of directors creating same, shall have and may exercise such of the powers and authority of the board of directors in the management of the business and affairs of the corporation as the board of directors may direct and delegate, except, however, those matters which are required by statute to be reserved unto or acted upon by the entire board of directors. The board of directors shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve, any such committee. Unless otherwise provided for in a resolution of the board of directors designating a committee, a majority of the authorized number of members of such committee shall constitute a quorum for the transaction of business of such committee, and the vote of a majority of the members of such committee present at a meeting of such committee at which a quorum is present shall be the act of such committee except where otherwise required by these bylaws or the charter of such committee. Unless otherwise appointed by the board of directors, each committee may fix its own presiding and recording officer or officers, and may meet at such place or places, at such time or times and on such notice (or without notice) as it shall determine from time to time. Each committee shall keep written minutes of its proceedings and shall report such proceedings to the board of directors as appropriate.

Section 3.13 *Compensation.* Unless otherwise restricted by the articles of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors. No such compensation shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 3.14 *Presumption of Assent.* A director of the corporation who is present at a meeting of the board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting, unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 3.15 *Resignation and Removal.* A director may resign at any time by delivering a written resignation to the chief executive officer, the president, a vice president, the secretary or assistant secretary, if any. The resignation shall become effective upon delivery unless otherwise stated therein. Subject to any rights of the holders of preferred stock, if any, and except as otherwise provided in the NRS, any director, or the entire board of directors, may be removed from office by a vote of stockholders representing not less than two-thirds of the voting power of the issued and outstanding stock entitled to vote at an annual or special meeting of the stockholders duly noticed and called in accordance with these bylaws.

ARTICLE IV—OFFICERS

Section 4.1 *Elected Officers.* The board of directors shall elect and appoint a president, a secretary and a treasurer. The board of directors may from time to time, by resolution, elect or appoint such other officers and agents as it may deem advisable, who shall hold office at the pleasure of the board of directors, and shall have such powers and duties and be paid such compensation as may be directed by the board of directors. Any individual may hold two or more offices.

Section 4.2 *Removal; Resignation.* Any officer elected or appointed by the board of directors may be removed by the board of directors with or without cause. Any officer may resign at any time upon written notice to the corporation. Any such removal or resignation shall be subject to the rights, if any, of the respective parties under any contract between the corporation and such officer or agent.

Section 4.3 *Vacancies.* A newly created officer position and a vacancy in any elected officer position because of death, resignation, or removal may be filled by the board of directors.

Section 4.4 *Chief Executive Officer.* The board of directors may appoint a chief executive officer who, subject to the supervision and control of the board of directors, shall have the ultimate responsibility for the management and control of the business and affairs of the corporation, and shall perform such other duties and have such other powers which are delegated to him or her by the board of directors, these bylaws or as may be provided by law.

Section 4.5 *President.* The president, subject to the supervision and control of the board of directors, shall supervise and control the business and affairs of the corporation. The president shall keep the board of directors fully informed as the board of directors may request and shall consult the board of directors concerning the business of the corporation. The president shall perform such other duties and have such other powers which are delegated and assigned to him or her by the board of directors, the chief executive officer, if any, these bylaws or as may be provided by law.

Section 4.6 *Chief Financial Officer.* The board of directors may appoint a chief financial officer. The chief financial officer shall in general have overall supervision of the financial operations of the corporation. The chief financial officer shall perform such other duties and have such other powers which are delegated and assigned to him or her by the board of directors, the chief executive officer, if any, the president, these bylaws or as may be provided by law.

Section 4.7 *Vice Presidents.* The board of directors may appoint one or more vice presidents. In the absence or disability of the president, or at the president's request, the vice president or vice presidents, in order of their rank as fixed by the board of directors, and if not ranked, the vice presidents in the order designated by the board of directors, or in the absence of such designation, in the order designated by the president, shall perform all of the duties of the president, and when so acting, shall have all the powers of, and be subject to all the restrictions on the president. Each vice president shall perform such other duties and have such other powers which are delegated and assigned to him or her by the board of directors, the chief executive officer, if any, the president, these bylaws or as may be provided by law.

Section 4.8 *Secretary.* The secretary shall keep or cause to be kept, in one or more books provided for that purpose, the minutes of all meetings of the board of directors, the committees of the board of directors and the stockholders. The secretary shall see that all notices are duly given in accordance with the provisions of these bylaws and as required by applicable law. The secretary shall see that the books, reports, statements, certificates and other documents and records required by applicable law to be kept and filed are properly kept and filed. The secretary shall perform all other duties commonly incident to his or her office and shall perform such other duties which are assigned to him or her by the board of directors, the chief executive officer, if any, the president, these bylaws or as may be provided by law.

Section 4.9 Assistant Secretaries. An assistant secretary, if appointed by the board of directors, shall, at the request of the secretary, or in the absence or disability of the secretary, perform all the duties of the secretary. He or she shall perform such other duties as are assigned to him or her by the board of directors, the chief executive officer, if any, the president, the secretary, these bylaws or as may be provided by law.

Section 4.10 Treasurer. The treasurer shall exercise general supervision over the receipt, custody and disbursement of corporate funds. The treasurer shall perform all other duties commonly incident to his or her office and such other duties as may, from time to time, be assigned to him or her by the board of directors, the chief executive officer, if any, the president, these bylaws or as may be provided by law.

Section 4.11 Assistant Treasurers. An assistant treasurer, if appointed by the board of directors, shall, at the request of the treasurer, or in the absence or disability of the treasurer, perform all the duties of the treasurer. He or she shall perform such other duties which are assigned to him or her by the board of directors, the chief executive officer (if any), the president, the treasurer, these bylaws or as may be provided by law.

Section 4.12 Execution of Negotiable Instruments, Deeds and Contracts. All checks, drafts, notes, bonds, bills of exchange, and orders for the payment of money of the corporation; all deeds, mortgages, proxies, powers of attorney and other written contracts, documents, instruments and agreements to which the corporation shall be a party; and all assignments or endorsements of stock certificates, registered bonds or other securities owned by the corporation shall be signed in the name of the corporation by such officers or other persons as the board of directors may from time to time designate. Such authority may be general or confined to specific instances as the board of directors may determine. The board of directors may authorize the use of the facsimile or other electronic signatures of any such persons.

Section 4.15 Salaries. The salaries or other compensation of the officers of the corporation shall be fixed from time to time by the board of directors, except that the board of directors may delegate to any person or group of persons the power to fix the salaries or other compensation of any subordinate officers or agents appointed in accordance with the provisions of these bylaws. No officer shall be prevented from receiving any such salary or compensation by reason of the fact that he is also a director of the corporation.

Section 4.16 Surety Bonds. In case the board of directors shall so require, any officer or agent of the corporation shall execute to the corporation a bond in such sums and with such surety or sureties as the board of directors may direct, conditioned on the faithful performance of his duties to the corporation, including responsibility for negligence and for the accounting of all property, monies, or securities of the corporation which may come into his hands.

ARTICLE V—CAPITAL STOCK

Section 5.01 Stock Certificates. The shares of the corporation shall be evidenced by certificates in such form as the board of directors of the corporation may from time to time prescribe; provided that the board of directors may provide by resolution or resolutions that some or all of any or all classes or series of stock of the corporation shall be uncertificated shares. Notwithstanding the foregoing, each holder of uncertificated shares shall be entitled, upon request, to a certificate representing such shares. Shares represented by certificates shall be numbered and registered in a share register as they are issued. Share certificates shall exhibit the name of the registered holder and the number and class of shares and the series, if any, represented thereby and the par value of each share or a statement that such shares are without par value, as the case may be. Except as otherwise provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificated shares of the same class and series shall be identical.

Each certificate shall be signed by the chairman or president or vice-president and treasurer or assistant treasurer or the secretary or assistant secretary or such other officers designated by the board of directors from time to time as permitted by law, and shall bear the seal of the corporation. The corporate seal and any or all of the signatures or corporation officers may be in facsimile if the stock certificate is manually counter-signed by an authorized person on behalf of a transfer agent or registrar other than the corporation or its employee. If an officer, transfer agent or registrar who has signed, or whose facsimile signature has been placed on, a certificate shall have ceased to be such before the certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the time of its issue.

Section 5.02 *Transfer of Stock.* Transfers of stock of the corporation shall be made on the books of the corporation by the holder of record thereof, or by his attorney thereunto duly authorized by a power of attorney duly executed in writing and filed with the secretary of the corporation or any of its transfer agents, and on surrender of the certificate or certificates, properly endorsed or accompanied by proper instruments of transfer, representing such stock. Except as provided by law, the corporation and transfer agents and registrars, if any, shall be entitled to treat the holder of record of any stock as the absolute owner thereof for all purposes, and accordingly shall not be bound to recognize any legal, equitable, or other claim to or interest in such stock on the part of any other person whether or not it or they shall have express or other notice thereof.

Section 5.03 *Regulations.* Subject to any provisions contained in the articles of incorporation, the board of directors may make such rules and regulations as they may deem expedient concerning the issuance, transfer, redemption, and registration of certificates for stock of the corporation.

Section 5.04 *Maintenance of Stock Ledger at Principal Place of Business.* A stock ledger (or ledgers where more than one kind, class, or series of stock is outstanding) shall be kept at the principal place of business of the corporation, or at such other place the board of directors shall determine, containing the names alphabetically arranged of original holders of the corporation, their addresses, their interest, the amount paid on their shares, and all transfers thereof and the number and class of stock held by each. Such stock ledgers shall at all reasonable hours be subject to inspection by persons entitled by law to inspect the same.

Section 5.05 *Transfer Agents and Registrars.* The board of directors may appoint one or more transfer agents and one or more registrars with respect to the certificates representing stock of the corporation, and may require all such certificates to bear the signature of either or both. The board of directors may from time to time define the respective duties of such transfer agents and registrars. No certificate for stock shall be valid until countersigned by a transfer agent, if at the date appearing thereon the corporation had a transfer agent for such stock, and until registered by a registrar, if at such date the corporation had a registrar for such stock.

Section 5.06 *Closing of Transfer Books and Fixing of Record Date.*

- (a) The board of directors shall have power to close the stock ledgers of the corporation for a period of not to exceed sixty (60) days preceding the date of any meeting of stockholders, or the date for payment of any dividend or other distribution, or the date for the allotment of rights or capital stock, or a date in connection with obtaining the approval of stockholders for any purpose.
- (b) In lieu of closing the stock ledgers as aforesaid, the board of directors may fix in advance a date not exceeding sixty (60) days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining any such consent, as a date for the determination of the stockholders entitled to a notice of, and to vote at, any such meeting and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent.
- (c) If the stock ledgers shall be closed or a record date set for the purpose of determining stockholders entitled to notice or to vote at a meeting of stockholders, such books shall be closed for or such record date shall be at least ten (10) days immediately preceding such meeting.

Section 5.07 *Lost or Damaged Certificates.* The corporation may issue a new certificate for stock of the corporation in place of any certificate theretofore issued by it alleged to have been lost or destroyed, and the board of directors may, in its discretion, require the owner of the lost or destroyed certificate or his legal representatives, to give the corporation a bond in such form and amount as the board of directors may direct, and with such surety or sureties as may be satisfactory to the board of directors, to indemnify the corporation and its transfer agents and registrars, if any, against any claims that may be made against it or any such transfer agent or registrar on account of the issuance of such new certificate. A new certificate may be issued without requiring any bond when, in the judgment of the board of directors, it is appropriate to do so.

ARTICLE VI—INDEMNIFICATION

To the fullest extent permitted by the NRS, the corporation shall indemnify and make advancement of expenses to the extent and as required (and in the discretion of the board of directors, as allowed) in the articles of incorporation.

ARTICLE VII—FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors.

ARTICLE VIII—DISTRIBUTIONS

Distributions may be declared, subject to the provisions of the laws of the State of Nevada and the Articles of Incorporation, by the Board and may be paid in cash, property, shares of corporate stock, or any other medium.

ARTICLE IX—AMENDMENTS

Except as otherwise expressly provided in these bylaws, these bylaws may be amended, revised, or repealed or new bylaws may be made adopted, only by a vote of (a) a majority of the board of directors, or (b) stockholders representing not less than a majority of the voting power of the issued and outstanding stock entitled to vote at an annual or special meeting of the stockholders duly noticed and called in accordance with the bylaws.

ARTICLE X FORUM SELECTION

To the fullest extent permitted by law, and unless the Corporation consents in writing to the selection of an alternative forum, the Eighth Judicial District Court of Clark County, Nevada (or, if that court does not have jurisdiction, the federal district court for the District of Nevada or other state courts of the State of Nevada) shall, to the fullest extent permitted by law, be the exclusive forums for (a) any derivative action or proceeding brought in the name or right of the Corporation or on the Corporation's behalf, (b) any action asserting or based upon a claim of breach of any duty owed by any director, officer, employee or agent of the Corporation to the Corporation or to the Corporation's stockholders, (c) any action or assertion of a claim arising pursuant to any provision of Chapter 78 or Chapter 92A of the NRS or the Articles of Incorporation or these Bylaws (as each may be amended from time to time), (d) any action to interpret, apply, enforce or determine the validity of the Articles of Incorporation or these Bylaws or (e) any action asserting a claim against the Corporation governed by the internal affairs doctrine. Notwithstanding the foregoing, the provisions of this Article X will not apply to suits brought to enforce a duty or liability created by the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of, and consented to, the provisions of this Article X.

ARTICLE XI INAPPLICABILITY OF NRS 78.378 THROUGH 78.3793

Section 11.01. Acquisition of Controlling Interest. The provisions of NRS 78.378 through 78.3793, inclusive, shall not apply to any "acquisition" of a "controlling interest" (as each term is defined therein) in the corporation resulting from the Agreement and Plan of Merger Agreement, dated as of January 25, 2024, by and among the corporation, FVW Merger Sub, Inc., a Colorado corporation, and Notes Live, Inc., a Colorado corporation, or any amendments thereto (the "Merger Agreement"), including without limitation the acquisition of shares of the corporation's capital stock issued in the "Merger," or the acquisition of shares of the corporation's capital stock pursuant to the documents, instruments and arrangements contemplated by the Merger Agreement or upon the consummation of any transactions contemplated thereby, including without limitation (i) any deemed acquisition of shares of the corporation's capital stock by parties to the Fresh Vine Shareholder Support Agreements (as defined in the Merger Agreement) and related documents by reason of entering into such Fresh Vine Shareholder Support Agreements and related documents, and (ii) the acquisition of shares of the corporation's common stock upon conversion or exchange of the corporation's Series A Convertible Preferred Stock (which conversion or exchange is a condition to the closing of the transactions contemplated by the Merger Agreement).



FRESH VINE WINE, INC.
POLICY ON AVOIDANCE OF INSIDER TRADING

Updates adopted as of November 2, 2023

The Board of Directors of Fresh Vine Wine, Inc. (the “*Company*”) has adopted this Insider Trading Policy for our directors, employees (including officers) and consultants with respect to the trading of the Company’s securities, as well as the securities of publicly traded companies with whom we have a business relationship.

As a public reporting company, United States federal and state securities laws prohibit the purchase or sale of a company’s securities by persons who are aware of material information about that company that is not generally known or available to the public. These laws also prohibit persons who are aware of such material nonpublic information from disclosing this information to others who may trade. Companies and their controlling persons are also subject to liability if they fail to take reasonable steps to prevent insider trading by company personnel.

It is important that our directors, employees (including officers) and consultants understand the breadth of activities that constitute illegal insider trading and the consequences, which can be severe. Both the U.S. Securities and Exchange Commission (the “*SEC*”) and the Financial Industry Regulatory Agency (FINRA) investigate and are effective at detecting insider trading. The SEC, together with the U.S. Attorneys, pursue insider trading violations vigorously. Cases have been successfully prosecuted against trading by employees through foreign accounts, trading by family members and friends, and trading involving only a small number of shares.

This policy is designed to prevent insider trading or allegations of insider trading, and to protect the Company’s reputation for integrity and ethical conduct. It is your obligation to understand and comply with this policy. Should you have any questions regarding this policy, please contact the Company’s Chief Financial Officer, who serves as the “Compliance Officer” for purposes of this Policy. Consequences of violating this Policy may be severe and may include civil and criminal penalties resulting in significant fines and imprisonment. Violations of this Policy may also subject you to Company-imposed sanctions, including dismissal for cause.



**FRESH VINE WINE, INC.
POLICY ON AVOIDANCE OF INSIDER TRADING**

Updates adopted as of November 2, 2023

Purpose

This Policy on Avoidance of Insider Trading (this “**Policy**”) provides guidelines with respect to transactions in the securities of Fresh Vine Wine, Inc. (the “**Company**”) and the handling of confidential information about the Company and the companies with which the Company does business. The Company’s Board of Directors has adopted this Policy to promote compliance with federal, state and foreign securities laws that prohibit certain persons who are aware of material nonpublic information about a company from trading in securities of that company or providing material nonpublic information to other persons who may trade on the basis of that information.

Scope of Policy

Persons Covered By This Policy

- *Company Officers, Directors, Employees and Others.* This Policy applies to all officers of the Company, all members of the Company’s Board of Directors and all employees of the Company. The Company may also determine that other persons should be subject to this Policy, such as contractors or consultants who have access to material nonpublic information.
- *Family Members.* The same restrictions that apply to you apply to your family members who reside with you (including a spouse, a child, a child away at college, stepchildren, grandchildren, parents, stepparents, grandparents, siblings and in-laws), anyone else who lives in your household and any family members who do not live in your household but whose transactions in Company securities are directed by you or are subject to your influence or control (such as parents or children who consult with you before they trade in Company securities) (collectively referred to as “**Family Members**”). You are responsible for the transactions of these other persons and therefore should make them aware of the need to confer with you before they trade in Company securities, and you should treat all such transactions for the purposes of this Policy and applicable securities laws as if the transactions were for your own account. This Policy does not, however, apply to person securities transactions of Family Members where the purchase or sale decision is made by a third party not controlled by, influenced by or related to you or your Family Members.

Fresh Vine Wine, Inc.
Policy on Avoidance of Insider Trading (2023)

- *Entities that You Influence or Control.* This Policy applies to entities that you influence or control, including any corporations, partnerships or trusts (collectively referred to as “**Controlled Entities**”), and transaction by these Controlled Entities should be treated for purposes of this Policy and applicable securities laws as if they were for your own account.

Transactions Covered By This Policy

This Policy applies to transactions in the Company’s securities (collectively referred to in this Policy as “**Company Securities**”), including common stock, options to purchase common stock, common stock purchase warrants and any other type of securities that the Company may issue, as well as derivative securities that are not issued by the Company such as exchange-traded put or call options or swaps relating to the Company’s Securities.

Administration of This Policy

The Company has appointed its Chief Financial Officer, to serve as the Compliance Officer for purposes of this Policy, and in such officer’s absence another employee designated by the Compliance Officer, shall be responsible for administration of this Policy. All determinations and interpretations by the Compliance Officer shall be final and not subject to further review.

Statement of Policy

It is the policy of this Company that no person who is subject to this Policy who is aware of material nonpublic information relating to the Company may, directly, or indirectly through family members or other persons or entities:

1. Engage in transactions in Company Securities, except as otherwise specified in this Policy under the heading “Exceptions From This Policy”;
2. Recommend the purchase or sale of any Company Securities;
3. Disclose material nonpublic information to persons within the Company whose jobs do not require them to have that information, or outside of the Company to other persons, including, but not limited to, family, friends, business associates, investors and expert consulting firms, unless any such disclosure is made in accordance with the Company’s policies regarding the protection or authorized external disclosure of information regarding the Company; or
4. Assist anyone engaged in the above activities.

In addition, it is the policy of this Company that no person who is subject to this Policy who, in the course of working for the Company, learns of material nonpublic information about a company with which the Company does business (such as a customer or supplier) and those with which the Company may be negotiating major transactions (such as an acquisition, investment or sale) may trade in that company’s securities until the information becomes public or is no longer material. Information that is not material to the Company may nevertheless be material to one of those other firms.

There are no exceptions to this Policy, except as specifically noted herein. Transactions that may be necessary or justifiable for independent reasons (such as the need to raise money for an emergency expenditure), or small transactions, are not excepted from this Policy. The securities laws do not recognize any mitigating circumstances, and, in any event, even the appearance of an improper transaction must be avoided to preserve the Company’s reputation for adhering to the highest standards of conduct.

Fresh Vine Wine, Inc.
Policy on Avoidance of Insider Trading (2023)

Definition of Material Nonpublic Information

Note that “inside information” has two important elements--materiality and public availability.

Material Information. Information is considered “material” if a reasonable investor would consider it important in deciding whether to buy, hold or sell securities. Any information that could reasonably be expected to affect the Company’s stock price, whether it is positive or negative, should be considered material. There is no bright-line standard for assess materiality, rather, materiality is based on an assessment of all of the facts and circumstances, and is often evaluated by enforcement authorities with the benefit of hindsight. For this reason, questions concerning the materiality of particular information should be resolved in favor of materiality, and trading should be avoided. Although it is not possible to define all categories of material information, some examples of information that ordinarily would be regarded as material are:

- Financial results, projections of future earnings or losses, or other financial guidance;
- An acquisition, disposition, license, sublicense or other transaction involving the Company’s major products, services or significant company assets;
- News of a pending or prospective merger, acquisition or tender offer transaction or an acquisition or disposition of significant assets;
- News regarding the gain or loss of a significant customer, service agreement or supplier;
- Major events regarding the Company’s securities, including the offering of additional securities or the declaration of a stock split;
- Proposed or pending equity or debt securities offerings;
- Severe financial liquidity problems;
- Actual or threatened major litigation, or the resolution of such litigation;
- A change in management; and
- Pending or threatened significant litigation, or the resolution of such litigation.

When Information is Considered Public. Information that has not been disclosed to the public is generally considered to be nonpublic information. In order to establish that the information has been disclosed to the public, it may be necessary to demonstrate that the information has been widely disseminated. Information generally would be considered widely disseminated if it has been released broadly to the marketplace, such as pursuant to the issuance of a press release, filing of a public disclosure document with the SEC, publication in a widely-available newspaper, magazine or news website, or broadcast on widely available radio or television programs. By contrast, information would likely not be considered widely disseminated if it is available only to the Company’s employees and/or consultants, or if it is only available to a select group of analysts, broker and institutional investors.

Fresh Vine Wine, Inc.
Policy on Avoidance of Insider Trading (2023)

Once information is widely disseminated, it is still necessary to afford the investing public with sufficient time to absorb the information. As a general rule, information should not be considered fully absorbed by the marketplace until the second full trading day after the information is released. For example, if the Company announces financial earnings before trading begins on a Tuesday, you should not trade in Company Securities until the opening of the market on Thursday (assuming you are not aware of other material nonpublic information at that time). However, if the Company announces earnings after trading begins on that Tuesday, you should not trade in Company Securities until the opening of the market on Friday. Depending on the particular circumstances, the Company may determine that a longer or shorter period of time should apply to the release of specific material nonpublic information.

Exceptions From This Policy

Exceptions for Transactions Under Company Plans. This Policy does not apply in the case of the following transactions, except as specifically noted:

- ***Stock Option Exercises.*** This Policy does not apply to the grant or exercise of a stock option acquired pursuant to the Company's equity incentive plans, or to the exercise of a "net exercise" or tax withholding right pursuant to which a person has elected to have the Company withhold shares subject to an option to satisfy payment of the option exercise price or tax withholding requirements. This Policy does apply, however, to any sale of stock of the underlying stock or to a cashless exercise of the option through a broker (i.e., a "broker-assisted cashless exercise"), or any other market sale for the purpose of generating the cash needed to pay the exercise price of an option or tax obligations triggered by that exercise.
- ***Restricted Stock Awards.*** This Policy does not apply to the vesting of restricted stock, or the exercise of a tax withholding right pursuant to which you elect to have the Company withhold shares of stock to satisfy tax withholding requirements upon vesting of any restricted stock. This Policy does apply, however, to any market sale of restricted stock, including a market sale for the purpose of generating the cash needed to pay taxes triggered upon vesting of restricted stock.
- ***Performance Shares and Restricted Stock Units.*** This Policy does not apply to the issuance of shares under performance share awards or restricted stock units awards, or to the exercise of a tax withholding right pursuant to which a person has elected to have the Company withhold shares of stock to satisfy tax withholding requirements upon the issuance of such shares. This Policy does apply, however, to any market sale of Company Securities, including a market sale for the purpose of generating the cash needed to pay taxes triggered upon the issuance of such shares.
- ***401(k) Plan.*** If the Company sponsors a 401(k) plan that allows you to purchase Company Securities through the periodic contribution of money to the plan pursuant to a payroll deduction election, this Policy will not apply to such purchases. This Policy will apply, however, to certain elections that you may make under such a 401(k) plan, including: (a) an election to increase or decrease the percentage of your periodic contributions that will be allocated to the Company stock fund; (b) an election to make an intra-plan transfer of an existing account balance into or out of the Company stock fund; (c) an election to borrow money against your 401(k) plan account if the loan will result in a liquidation of some or all of your Company stock fund balance; and (d) an election to pre-pay a plan loan if the pre-payment will result in allocation of loan proceeds to the Company stock fund. This Policy will also apply to your sales of Company Securities purchased under the plan.

- *Employee Stock Purchase Plan.* If the Company sponsors an employee stock purchase plan, this Policy will not apply to purchases of Company Securities in any such plan resulting from your periodic contribution of money to the plan pursuant to the election you made at the time of your enrollment in the plan. This Policy also will not apply to purchases of Company Securities resulting from lump sum contributions to such a plan, provided that you elected to participate by lump sum payment at the beginning of the applicable enrollment period. This Policy will apply, however, to your election to participate in such a plan for any enrollment period, and to your sales of Company Securities purchased pursuant to the plan.
- *Dividend Reinvestment Plan.* This Policy will not apply to purchases of Company Securities under a Company dividend reinvestment plan resulting from your reinvestment of dividends paid on Company Securities. This Policy will apply, however, to voluntary purchases of Company Securities resulting from additional contributions you choose to make to such a dividend reinvestment plan, and to your election to participate in the plan or increase your level of participation in the plan. This Policy will also apply to your sale of any Company Securities purchased pursuant to such a plan.
- *Other Similar Transactions.* Any other purchase of Company Securities from the Company or sales of Company Securities to the Company are not subject to this Policy.

Exceptions for Transactions Not Involving a Purchase or Sale. Bona fide gifts of securities are not transactions subject to this Policy unless the person making the gift has reason to believe that the recipient intends to sell the Company securities while the officer, employee, director or other person subject to this Policy is aware of material nonpublic information. Further, transactions in mutual funds that are invested in Company Securities are not transactions subject to this Policy.

Exception for Approved 10b5-1 Plans. Trades by covered persons in the Company's securities that are executed pursuant to an approved and compliant 10b5-1 plan are not subject to the prohibition on trading on the basis of material nonpublic information contained in this Policy or to the restrictions set forth above relating to pre-clearance procedures and blackout periods. Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, provides an affirmative defense from insider trading liability under the federal securities laws for trading plans that meet certain requirements. In general, a 10b5-1 plan must be entered into before you are aware of material nonpublic information. Once the plan is adopted, you must not exercise any influence over the amount of securities to be traded, the price at which they are to be traded or the date of the trade. The plan must either specify (including by formula) the amount, pricing and timing of transactions in advance or delegate discretion on those matters to an independent third party. The Company requires that all 10b5-1 plans, and any amendments or modification thereof, be approved in writing in advance by the Compliance Officer and meet the requirements of Rule 10b5-1 and the Company's "Guidelines for 10b5-1 Plans," which is attached as Exhibit A to this Policy. A 10b5-1 plan should be submitted for approval at least five business days prior to the entry into the 10b5-1 plan. No further pre-approval of transactions conducted pursuant to the 10b5-1 Plan will be required.

Fresh Vine Wine, Inc.
Policy on Avoidance of Insider Trading (2023)

Additional Procedures – Blackout Periods; Preclearance

The Company has established additional procedures in order to assist the Company in the administration of this Policy, to facilitate compliance with laws prohibiting insider trading while in possession of material nonpublic information, and to avoid the appearance of any impropriety.

- The “Blackout Periods” outlined below are applicable to all persons subject to this Policy.
- The pre-clearance procedures outlined below are only applicable to members of the Company’s Board of Directors and the Company’s executive officers that are Section 16 individuals (the “*Insiders*”); however, other persons may be notified by the Compliance Officer from time to time that they will be considered to be Insiders and subject to the pre-clearance requirements if the Compliance Officer believes that, in the normal course of their duties, they are likely to have regular access to material non-public information.

Blackout Procedures. To help prevent inadvertent violations of the federal securities laws and to avoid even the appearance of trading on the basis of inside information, the Company has designated certain “***Blackout Periods***” during which all persons subject to this Policy may not trade in Company Securities, directly or through family members or other persons or entities. Even if a Blackout Period is not in effect, at no time may you trade in Company Securities if you are aware of material nonpublic information about the Company.

Quarterly Blackout Periods. The Company’s announcement of its quarterly financial results almost always has the potential to have a material effect on the market for the Company’s securities. Therefore, to avoid even the appearance of trading on the basis of material nonpublic information, persons subject to this Policy, as well as their Family Members or Controlled Entities, may not conduct any transactions involving the Company’s Securities (other than as specified by this Policy), during a Blackout Period beginning on the 14th day prior to the end of each fiscal quarter and ending following the expiration of two full trading days after the Company’s public release of its earnings results for that quarter. If the 14th day falls on a weekend, the applicable Blackout Period will begin at the close of business on the last trading day prior to that weekend.

Event-Specific Trading Restriction Periods. From time to time, an event may occur that is material to the Company and is known by only a few directors, officers, employees and/or others subject to this Policy. So long as the event remains material and nonpublic, the persons designated and notified by the Compliance Officer may not trade Company Securities. In addition, the Company’s financial results may be sufficiently material in a particular fiscal quarter that, in the judgment of the Compliance Officer, designated persons should refrain from trading in Company Securities even sooner than the typical Blackout Period described above. In that situation, the Compliance Officer may notify these persons that they should not trade in the Company’s Securities. The existence of an event-specific trading restriction period or extension of a Blackout Period will not be announced to the Company as a whole, and should not be communicated to any other person. If, however, a person whose trades are subject to pre-clearance requests permission to trade in the Company’s securities during an event-specific Blackout, the Compliance Officer will inform the requesting person of the existence of a Blackout Period, without disclosing the reason for the restriction. Any person made aware of the existence of an event-specific blackout should not disclose the existence of the Blackout Period to any other person. The failure of the Compliance Officer to designate a person as being subject to an event-specific Blackout Period will not relieve that person of the obligation not to trade while aware of material nonpublic information.

Exceptions to Black-out Periods. The quarterly trading restrictions and event-driven trading restrictions do not apply to those transactions to which this Policy does not apply, as described above under the headings “Transactions Under Company Plans” and “Transactions Not Involving a Purchase or Sale.” Further, the requirement for pre-clearance, the quarterly trading restrictions and event-driven trading restrictions do not apply to transactions conducted pursuant to approved Rule 10b5-1 plans, described under the heading “Rule 10b5-1 Plans.”

Pre-Clearance Procedures. Insiders, as well as the Family Members and Controlled Entities of such Insiders, may not engage in any transaction involving Company Securities without first obtaining pre-clearance of the transaction from the Compliance Officer; provided, however, that the Compliance Officer may not engage in such transactions without first obtaining pre-clearance from a designated member of the Company’s Board of Directors.

A request for pre-clearance should be submitted to the Compliance Officer or designated Board member (as applicable) at least two business days in advance of the proposed transaction. The Compliance Officer or designated Board member is under no obligation to approve a transaction submitted for pre-clearance, and may determine not to permit the transaction. If a person seeks preclearance and permission to engage in the transaction is denied, then he or she should refrain from initiating any transaction in Company Securities, and should not inform any other person of the restriction.

When a request for pre-clearance is made, the requestor should carefully consider whether he or she may be aware of material non-public information about the Company, and should describe fully those circumstances to the Compliance Officer or designated Board member. If the requestor is a director or a Section 16 officer, the requestor should also indicate whether he or she has effected any non-exempt “opposite-way” transactions within the past six months, and should be prepared to report the proposed transaction on an appropriate Form 4 or Form 5.

Each individual subject to this Policy is responsible for making sure that he or she complies with this Policy, and that any family member, household member or entity whose transactions are subject to this Policy, as discussed herein, also comply with this Policy. Receipt of pre-clearance from the Compliance Officer or designated Board member does not in any way constitute legal advice or insulate an individual from liability under applicable securities laws. See “Personal Responsibility” below.

Special and Prohibited Transactions

The Company considers it improper and inappropriate for those employed by or associated with the Company to engage in short-term or speculative transactions in Company Securities or in other transactions in Company Securities that may lead to inadvertent violations of the insider trading laws. Accordingly, your trading in Company securities is subject to the following additional guidance.

Fresh Vine Wine, Inc.
Policy on Avoidance of Insider Trading (2023)

Short Sales. Short sales of Company Securities (i.e., the sale of a security that the seller does not own) may evidence an expectation on the part of the seller that the seller lacks confidence in the Company's prospects. In addition, short sales may reduce a seller's incentive to seek to improve the Company's performance. For these reasons, short sales of Company Securities are prohibited. In addition, Section 16(c) of the Securities Exchange Act of 1934, as amended, prohibits officers and directors from engaging in short sales.

Publicly Traded Options. Given the relatively short term of publicly-traded options, transactions in options may create the appearance that a director, officer, employee or other person subject to this Policy is trading based on material nonpublic information and focus his or her attention on short-term performance at the expense of the Company's long-term objectives. Accordingly, transactions in put options, call options or other derivative securities, on an exchange or in any other organized market, are prohibited by this Policy.

Hedging Transactions. Hedging transactions can be accomplished through a number of possible mechanisms, including through the use of financial instruments such as prepaid variable forwards, equity swaps, collars and exchange funds. Such hedging transactions might permit a person to own Company Securities without the full risks and rewards of ownership. When that occurs, that person may no longer have the same objectives as the Company's other stockholders. In addition, certain forms of hedging or monetization transactions are extremely complex and can present unique insider trading risks. For these reasons, hedging transactions are prohibited by this Policy.

Margin Accounts and Pledges. Securities held in a margin account as collateral for a margin loan may be sold by the broker without the customer's consent if the customer fails to meet a margin call. Similarly, securities pledged (or hypothecated) as collateral for a loan may be sold in foreclosure if the borrower defaults on the loan. Because a margin or foreclosure sale may occur at a time when you are aware of material nonpublic information or otherwise are not permitted to trade in Company Securities, you are prohibited from, directly or indirectly, holding Company Securities in a margin account or pledging Company Securities as collateral for a loan unless you have received consent in advance from the Compliance Officer. Advance consent may be granted where you wish to pledge Company Securities as collateral for a loan (not including margin debt) and clearly demonstrate the financial capacity to repay the loan without resort to the pledged securities. Even in such situations, the Company strongly discourages you from pledging Company Securities as collateral for a loan. If you wish to pledge Company Securities as collateral for a loan, you must submit a request for approval to the Compliance Officer prior to the proposed execution of documents evidencing the proposed pledge.

Standing and Limit Orders. Standing and limit orders (except standing and limit orders under approved 10b5-1 plans) create heightened risks for insider trading violations similar to the use of margin accounts. There is no control over the timing of purchases or sales that result from standing instructions to a broker, and as a result the broker could execute a transaction when a director, officer, employee, or other person subject to this Policy is in possession of material nonpublic information. The Company therefore discourages placing standing or limit orders on Company Securities. If a person subject to this Policy determines that he or she must use a standing or limit order, the order should be limited to short duration and should otherwise comply with the restrictions and procedures outlined herein under the heading "Additional Procedures –Preclearance; Blackout Periods."

Fresh Vine Wine, Inc.
Policy on Avoidance of Insider Trading (2023)

Post-Termination Transactions

This Policy continues to apply to your transactions in Company securities even after you have terminated employment or other services to the Company or a subsidiary as follows: if you are aware of material nonpublic information when your employment or service relationship terminates, you may not trade in Company Securities until that information has become public or is no longer material. The pre-clearance specified under the heading “Additional Procedures –Prclearance; Blackout Periods – Prclearance Procedures” above, however, will cease to apply to transactions in Company Securities upon the expiration of a Blackout Period or other Company-imposed trading restrictions applicable at the time of the termination of employment of service relationship.

Unauthorized Disclosure

Maintaining the confidentiality of Company information is essential for competitive, security and other business reasons, as well as to comply with securities laws. You should treat all information you learn about the Company or its business plans in connection with your employment or other engagement the Company as confidential and proprietary to the Company. Inadvertent disclosure of confidential or inside information may expose the Company and you to risk of investigation and litigation.

The timing and nature of the Company’s disclosure of material information to outsiders is subject to legal rules, the breach of which could result in substantial liability to you, the Company and its management. Accordingly, it is important that responses to inquiries about the Company by the press, investment analysts or others in the financial community be made on the Company’s behalf only through authorized individuals.

Please refer to other Company policies that may be in place from time to time for more details regarding the Company’s policy on speaking to the media, financial analysts and investors.

Cooperation of Covered Persons

Persons covered by this Policy shall obtain and maintain accurate and complete records of their trading activity in Company securities in order to demonstrate compliance with this Policy. Further, persons covered by this Policy shall respond promptly, accurately and completely to any request from the Compliance Officer for information and/or materials in order to demonstrate or confirm such persons’ compliance with this Policy. Requests may include but are not limited to documentation evidencing trading activity of such persons and their Family Members.

Personal Responsibility

Each individual is responsible for making sure that he or she complies with this Policy, and that any family member, household member or entity whose transactions are subject to this Policy, as discussed herein, also comply with this Policy. In all cases, the responsibility for determining whether an individual is in possession of material nonpublic information rests with that individual, and any action on the part of the Company, the Compliance Officer or any other employee, director or agent of the Company with respect to this Policy (or otherwise) does not in any way constitute legal advice or insulate an individual from liability under applicable securities laws. You could be subject to severe legal penalties and disciplinary action by the Company for any conduct prohibited by this Policy or applicable securities laws, as described below in more detail under the heading “Consequences of Violations.”

Fresh Vine Wine, Inc.
Policy on Avoidance of Insider Trading (2023)

Company Assistance

Your compliance with this Policy is of the utmost importance both for you and for the Company. If you have any questions about this Policy or its application to any proposed transaction, you may obtain additional guidance from the Compliance Officer.

Consequences of Violations

Civil and Criminal Penalties. The purchase and sale of securities while aware of material nonpublic information, or the disclosure of material nonpublic information to others who then trade in Company Securities, is prohibited by federal and state laws. Insider trading violations are pursued vigorously by the SEC, U.S. Attorneys and state enforcement authorities as well as the laws of foreign jurisdictions. Punishment for insider trading violations is severe, and could include significant fines and imprisonment.

Controlling Person Liability. Although regulatory authorities concentrate their efforts on individuals who trade, or tip inside information to others who trade, the federal securities laws also impose liability on companies and other “controlling persons” if they fail to take reasonable steps to prevent insider trading by company personnel.

Company Sanctions. In addition, an individual’s failure to comply with this Policy may also subject the individual to Company-imposed sanctions whether or not the employee’s failure to comply with this Policy results in a violation of law, including without limitation suspension or termination for cause. Needless to say, a violation of law, or even an SEC investigation that does not result in prosecution, can tarnish a person’s reputation and irreparably damage a career.

Conflicts with Other Policies

If the terms of this Policy conflict with any obligations set forth in any codes, handbooks or policies of the Company or its controlled subsidiaries, the terms of this Policy shall control.

Certification

All persons subject to this Policy must certify their understanding of, and intent to comply with, this Policy; provided, however, that any director, employee, officer of the Company, or any consultant to the Company that has been notified that such consultant is subject to this Policy, shall be bound by this Policy even if a certification is not signed by such party, provided that such party has received a copy of this Policy.

Fresh Vine Wine, Inc.
Policy on Avoidance of Insider Trading (2023)



**FRESH VINE WINE, INC.
POLICY ON AVOIDANCE OF INSIDER TRADING**

CERTIFICATION

To Fresh Vine Wine, Inc.:

I certify that I have read and understand the Fresh Vine Wine, Inc. Policy on Avoidance of Insider Trading. I hereby agree to comply with the specific requirements of the Policy in all respects during my employment or other service relationship with Fresh Vine Wine, Inc.

(Signature)

(Date)



FRESH VINE WINE, INC.
POLICY ON AVOIDANCE OF INSIDER TRADING
REQUEST TO TRADE IN COMPANY SECURITIES

TO: Compliance Officer - Fresh Vine Wine, Inc.
FROM: _____
RE: Transaction in Company Securities
DATE: _____

The undersigned intends to engage in transactions in Company Securities as described below:

In connection with such transaction(s), the undersigned hereby requests permission from Fresh Vine Wine, Inc. (the "*Company*") to engage in the above described transaction and hereby certifies to the Company, that, to the best knowledge of the undersigned, I am not in possession of any information that is not also available to the public at large or which could affect the market price of the above security or to which a reasonable investor would attach importance in deciding whether to buy, sell, or retain such security.

Signature

Approved as of _____, 20__.

FRESH VINE WINE, INC.

By: _____
Name: _____
Title: _____

EXHIBIT A

GUIDELINES FOR 10b5-1 PLANS

Trades by covered persons in the Company's securities that are executed pursuant to an approved 10b5-1 plan are not subject to the prohibition on trading on the basis of material nonpublic information contained in the Fresh Vine Wine, Inc. Policy on Avoidance of Insider Trading (the "Policy") or to the restrictions set forth therein relating to pre-clearance procedures and blackout periods. Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, provides an affirmative defense from insider trading liability under the federal securities laws for trading plans that meet the requirements set forth in Rule 10b5-1 promulgated under the Securities Exchange Act of 1934, as amended. In general, a 10b5-1 plan must be entered into before you are aware of material nonpublic information. Once the plan is adopted, you must not exercise any influence over the amount of securities to be traded, the price at which they are to be traded or the date of the trade. The plan must either specify (including by formula) the amount, pricing and timing of transactions in advance or delegate discretion on those matters to an independent third party.

As specified in the Policy, entry into or modification of a 10b5-1 plan must be approved in writing in advance by the Compliance Officer. A 10b5-1 plan (or any amendment or modification thereof) should be submitted for approval at least five days prior to the entry into or modification of the 10b5-1 plan. No further pre-approval of transactions conducted pursuant to the 10b5-1 Plan will be required.

The following guidelines apply to 10b5-1 plans:

- You may not enter into, suspend or otherwise modify a 10b5-1 plan during a Blackout Period or while in possession of material nonpublic information.
- Any entry into, suspension or other modification of a 10b5-1 plan must be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b5-1.
- For directors and officers of the Company, each 10b5-1 plan must include a representation that such director or officer is (i) not aware of material non-public information about the Company or its securities and (ii) adopting the 10b5-1 plan in good faith and not as a scheme to evade the prohibitions of Rule 10b-5.
- Before trading can commence, you must comply with the following mandatory cooling-off period after the adoption, suspension or modification of a 10b5-1 plan:
 - o Officers and Directors – the later of (i) 90 days after adoption or modification and (ii) two business days after the disclosure of the Company's financial results for the fiscal quarter in which the 10b5-1 plan was adopted or modified (not to exceed 120 days); and
 - o All Other Company Personnel – 30 days after adoption or modification.

These cooling off periods are required by SEC rules and designed to minimize the risk that a claim will be made that you were aware of material nonpublic information when you entered into the 10b5-1 plan and that the plan was not entered into in good faith.

- You may not have more than one 10b5-1 plan outstanding at the same time, except in limited circumstances pursuant to Rule 10b5-1 and subject in all cases to preapproval by the Compliance Officer.
- Subject to and in accordance with the terms of Rule 10b5-1, you may not have more than one "single trade" 10b5-1 plan during any 12-month period.

10b5-1 plans must be operated in good faith and otherwise comply with Rule 10b5-1. None of the requirements or plan terms currently contemplated by these Guidelines are exhaustive or limiting on the Company. The Company has the right to require the inclusion of additional provisions in your 10b5-1 plan designed to protect you and/or the Company.

Each director, officer and other Section 16 insider understands that the approval or adoption of a 10b5-1 plan in no way reduces or eliminates such person's obligations under Section 16 of the Exchange Act, including such person's disclosure and short-swing trading liabilities thereunder. If any questions arise, such person should consult with their own counsel in implementing a 10b5-1 plan.

The Company will be required to make certain quarterly disclosures, in accordance with Rule 10b5-1 and the disclosure requirements under the Securities Exchange Act of 1934, as amended, regarding any adoption, modification or termination of a 10b5-1 plan by a director or executive officer. Upon the occurrence of any such adoption, modification or termination, such persons are required to promptly furnish the Compliance Officer information regarding the date of adoption, termination or modification of the 10b5-1 plan, the 10b5-1 plan's duration, the aggregate number of securities to be sold or purchased under the 10b5-1 plan and any other information reasonably requested by the Compliance Officer.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements of Fresh Vine Wine, Inc. on Form S-8 (No. 333-262906) and Form S-1 (No. 333-333-269082) of our report dated March 8, 2024 relating to the financial statements of Fresh Vine Wine, Inc. for the year ended December 31, 2023 appearing in this Annual Report on Form 10-K, which includes an explanatory paragraph relating to the Company's ability to continue as a going concern.

/s/ Wipfli LLP

Minneapolis, Minnesota
March 8, 2024

CERTIFICATION

I, Michael Pruitt, certify that:

1. I have reviewed this annual report on Form 10-K 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: March 8, 2024

/s/ Michael Pruitt

Michael Pruitt
Interim Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Keith Johnson, certify that:

1. I have reviewed this annual report on Form 10-K 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: March 8, 2024

/s/ Keith Johnson

Keith Johnson
Interim Chief Financial Officer
(Principal Financial Officer)

**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 Annual Report on Form 10-K of Fresh Vine Wine Inc. (the "Company") for the year ended December 31, 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: March 8, 2024

/s/ Michael Pruitt

Michael Pruitt
Interim Chief Executive Officer
(Principal Executive Officer)

/s/ Keith Johnson

Michael Pruitt
Interim Chief Financial Officer
(Principal Financial Officer)



Clawback Policy

(Adopted as of November 2, 2023)

The Board of Directors (the "Board") of Fresh Vine Wine, Inc. (the "Company") believes that it is in the best interests of the Company and its shareholders to adopt this Clawback Policy (the "Policy"), which provides for the recovery of certain incentive compensation in the event of an Accounting Restatement (as defined below). This Policy is designed to comply with, and shall be interpreted to be consistent with, Section 10D of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), Rule 10D-1 promulgated under the Exchange Act ("Rule 10D-1") and Section 811 of the NYSE American Company Guide (the "Listing Standards").

1. Administration. Except as specifically set forth herein, this Policy shall be administered by the Board or, if so designated by the Board, a committee thereof (the Board or such committee charged with administration of this Policy, the "Administrator"). The Administrator is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate or advisable for the administration of this Policy. Any determinations made by the Administrator shall be final and binding on all affected individuals and need not be uniform with respect to each individual covered by the Policy. In the administration of this Policy, the Administrator is authorized and directed to consult with the Board or such other committees of the Board, as may be necessary or appropriate as to matters within the scope of such other committee's responsibility and authority. Subject to applicable law, the Administrator may authorize and empower any officer or employee of the Company to take any and all actions necessary or appropriate to carry out the purpose and intent of this Policy (other than with respect to any recovery under this Policy involving such officer or employee).

2. Definitions. For purposes of this Policy, the following definitions shall apply:

(a) "Accounting Restatement" means an accounting restatement of the Company's financial statements due to the Company's material noncompliance with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements (a "Big R" restatement), or that is not material to previously issued financial statements but would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period (a "little r" restatement).

(b) "Administrator" has the meaning set forth in Section 1 hereof.

(c) “Applicable Period” means the three completed fiscal years immediately preceding the date on which the Company is required to prepare an Accounting Restatement, as well as any transition period (that results from a change in the Company’s fiscal year) within or immediately following those three completed fiscal years (except that a transition period that comprises a period of at least nine months shall count as a completed fiscal year). The “date on which the Company is required to prepare an Accounting Restatement” is the earlier to occur of (i) the date the Board, a committee of the Board, or the officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement or (ii) the date a court, regulator or other legally authorized body directs the Company to prepare an Accounting Restatement, in each case regardless of if or when the restated financial statements are filed.

(d) “Covered Executives” means the Company’s current and former “officers,” as defined in Rule 16a-1(f) under the Exchange Act, which include the Company’s president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer of the Company who performs a policy-making function, or any other person who performs similar policy-making functions for the Company.

(e) The “Effective Date” means October 2, 2023 (the effective date of the Listing Standards).

(f) “Erroneously Awarded Compensation” has the meaning set forth in Section 5 of this Policy.

(g) A “Financial Reporting Measure” is any measure that is determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, and any measure that is derived wholly or in part from such measure. Stock price and total shareholder return (“TSR”) (and any measures that are derived wholly or in part from stock price or TSR) shall, for purposes of this Policy, be considered Financial Reporting Measures. A Financial Reporting Measure need not be presented within the Company’s financial statements or included in a filing with the SEC.

(h) “Incentive-Based Compensation” means any compensation that is granted, earned or vested based wholly or in part upon the attainment of a Financial Reporting Measure.

(i) Incentive-Based Compensation is “received” for purposes of this Policy in the Company’s fiscal period during which the Financial Reporting Measure specified in the Incentive-Based Compensation award is attained, even if the payment or grant of such Incentive-Based Compensation occurs after the end of that period.

(j) “SEC” means the U.S. Securities and Exchange Commission.

3. Covered Executives; Incentive-Based Compensation. This Policy applies to Incentive-Based Compensation received by a Covered Executive (a) after beginning services as a Covered Executive; (b) if that person served as a Covered Executive at any time during the performance period for such Incentive-Based Compensation; and (c) while the Company had a listed class of securities on a national securities exchange.

4. Required Recoupment of Erroneously Awarded Compensation in the Event of an Accounting Restatement. If the Company is required to prepare an Accounting Restatement, the Company shall reasonably promptly recoup the amount of any Erroneously Awarded Compensation received by any Covered Executive, as calculated pursuant to Section 5 hereof, during the Applicable Period. For the avoidance of doubt, recovery of Erroneously Awarded Compensation is on a “no fault” basis, meaning that it will occur regardless of whether the Covered Executive engaged in misconduct or was otherwise directly or indirectly responsible, in whole or in part, for the Accounting Restatement.

5. Erroneously Awarded Compensation: Amount Subject to Recovery. The amount of “Erroneously Awarded Compensation” subject to recovery under the Policy, as determined by the Administrator, is the amount of Incentive-Based Compensation received by the Covered Executive that exceeds the amount of Incentive Based Compensation that would have been received by the Covered Executive had it been determined based on the restated amounts included in the Accounting Restatement. This Policy is intended to apply broadly to Incentive-Based Compensation and, with respect to any compensation plans or programs that take into account Incentive-Based Compensation, the amount of Erroneously Awarded Compensation subject to recovery hereunder includes, but is not limited to, the amount contributed to any notional account based on Erroneously Awarded Compensation and any earnings accrued to date on that notional amount. Erroneously Awarded Compensation shall be computed by the Administrator without regard to any taxes paid by the Covered Executive in respect of the Erroneously Awarded Compensation. For Incentive-Based Compensation based on (or derived from) stock price or TSR, where the amount of Erroneously Awarded Compensation is not subject to recalculation from the information in the applicable Accounting Restatement: (a) the Administrator shall determine the amount of Erroneously Awarded Compensation based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or TSR upon which the Incentive-Based Compensation was received; and (b) the Company shall maintain documentation of the determination of that reasonable estimate and provide such documentation to the NYSE American.

6. Method of Recoupment. In event of an Accounting Restatement, the Administrator shall determine the amount of any Erroneously Awarded Compensation received by each Covered Executive and shall promptly deliver a written notice to each Covered Executive containing the amount of any Erroneously Awarded Compensation and a demand for the return or repayment of such compensation, as applicable. Thereafter, the Administrator shall determine, in its sole discretion, the timing and method for promptly recouping Erroneously Awarded Compensation hereunder, which may include without limitation (a) seeking reimbursement of all or part of any cash Incentive-Based Compensation previously paid, (b) seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer, or other disposition of an equity-based awards, (c) cancelling prior cash or equity-based awards, whether vested or unvested or paid or unpaid, (d) cancelling or offsetting against any planned future cash or equity-based awards, and (e) any other method permitted by applicable law or contract. Subject to compliance with any applicable law, the Administrator may affect recovery under this Policy from any amount otherwise payable to the Covered Executive, including amounts payable to such individual under any otherwise applicable Company plan or program, including base salary, bonuses or commissions and compensation previously deferred by the Covered Executive.

7. Reimbursement of Recovery Expenses. If a Covered Executive fails to repay all Erroneously Awarded Compensation to the Company pursuant to the Company's written notification and demand, such Covered Executive shall be required to reimburse the Company for any and all expenses reasonably incurred (including legal fees) by the Company in recovering such Erroneously Awarded Compensation.

8. Duplicative Payment. To the extent that a Covered Executive has already reimbursed the Company for any Erroneously Awarded Compensation received under any duplicative recovery obligations established by the Company or applicable law, such reimbursed amount shall be credited to the amount of the Erroneously Awarded Compensation that is subject to recovery under this Policy.

9. Exemptions to Recovery of Erroneously Awarded Compensation. The Company is authorized and directed pursuant to this Policy to recoup Erroneously Awarded Compensation in compliance with this Policy unless the Compensation Committee of the Board (or in the absence of such a committee, a majority of the independent directors serving on the Board) has determined that recovery would be impracticable solely for the following limited reasons, and subject to the following procedural and disclosure requirements:

(a) The direct expense paid to a third party to assist in enforcing the Policy would exceed the amount to be recovered; or

(b) Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

Before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation based on expense of enforcement under subsection 9(a) above, the Company must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover and provide that documentation to the NYSE American.

10. Prohibition of Indemnification and Insurance. Notwithstanding the terms of any indemnification or insurance policy or any contractual arrangement with any Covered Executive that may be interpreted to the contrary, the Company shall not indemnify or insure any Covered Executives against (a) the loss of any Erroneously Awarded Compensation, or (b) any claims relating to the Company's enforcement of its rights under this Policy, including any payment or reimbursement for the cost of third-party insurance purchased by any Covered Executives to fund potential obligations under this Policy. Further, the Company shall not enter into any agreement that exempts any Incentive-Based Compensation that is granted, paid, or awarded to an Executive Officer from the application of this Policy or that waives the Company's right to recovery of any Erroneously Awarded Compensation, and this Policy shall supersede any such agreement (whether entered into before, on or after the Effective Date).

11. Administrator Indemnification. Any members of the Administrator, and any other members of the Board who assist in the administration of this Policy, shall not be personally liable for any action, determination or interpretation made with respect to this Policy and shall be fully indemnified by the Company to the fullest extent under applicable law and Company policy with respect to any such action, determination or interpretation. The foregoing sentence shall not limit any other rights to indemnification of the members of the Board under applicable law or Company policy.

12. Effective Date; Retroactive Application. This Policy shall be effective as of the Effective Date. The terms of this Policy shall apply to any Incentive-Based Compensation that is received by Covered Executives on or after the Effective Date, even if such Incentive-Based Compensation was approved, awarded, granted or paid to Covered Executives prior to the Effective Date. Without limiting the generality of Section 6 hereof, and subject to applicable law, the Administrator may affect recovery under this Policy from any amount of compensation approved, awarded, granted, payable or paid to the Covered Executive prior to, on or after the Effective Date.

13. Amendment; Termination. The Board may amend, modify, supplement, rescind or replace all or any portion of this Policy at any time and from time to time in its discretion, and shall amend this Policy as it deems necessary to comply with applicable law or any rules or standards adopted by a national securities exchange on which the Company's securities are listed.

14. Other Recoupment Rights; Company Claims. The Board intends that this Policy shall be applied to the fullest extent of the law. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company under applicable law or pursuant to the terms of any similar policy in any employment agreement, equity award agreement, or similar agreement and any other legal remedies available to the Company. Any employment agreement, equity award agreement, compensatory plan or any other agreement or arrangement with a Covered Executive shall be deemed to include, as a condition to the grant of any benefit thereunder, an agreement by the Covered Executive to abide by the terms of this Policy. Nothing contained in this Policy, and no recoupment or recovery as contemplated by this Policy, shall limit in any respect (a) any claims, damages or other legal remedies the Company or any of its affiliates may have against a Covered Executive arising out of or resulting from any actions or omissions by the Covered Executive, or (b) the Company's right to take or not to take any action with respect to any Covered Executive's employment, (c) or, subject to Section 8, the obligation of the Chief Executive Officer or the Chief Financial Officer of the Company to reimburse the Company in accordance with Section 304 of the Sarbanes-Oxley Act of 2002, as amended.

15. Enforceability; Successors. This Policy shall be binding and enforceable against each of the Company's Covered Executives and their beneficiaries, heirs, executors, administrators or other legal representatives, whether or not such Covered Executive executed and delivers a written Clawback Policy Acknowledgement.

16. Mandatory Disclosure. The Company shall file this Policy and, in the event of an Accounting Restatement, will disclose information related to such Accounting Restatement in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable SEC filings.

Clawback Policy Acknowledgment

I, the undersigned, agree and acknowledge that I am fully bound by, and subject to, all of the terms and conditions of the Fresh Vine Wine, Inc. Clawback Policy (as may be amended, restated, supplemented or otherwise modified from time to time, the "Policy"). In the event of any inconsistency between the Policy and the terms of any employment agreement to which I am a party, or the terms of any compensation plan, program or agreement under which any compensation has been granted, awarded, earned or paid, the terms of the Policy shall govern. In the event it is determined by the Committee that any amounts granted, awarded, earned or paid to me must be forfeited or reimbursed to the Company, I will promptly take any action necessary to effectuate such forfeiture and/or reimbursement. Any capitalized terms used in this Acknowledgment without definition shall have the meaning set forth in the Policy.

Date: _____

By: _____

Name:

Title: