

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2024

or

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

For the transition period from _____ to _____

Commission File Number: 001-41147

Fresh Vine Wine, Inc.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of
incorporation or organization)

87-3905007

(I.R.S. Employer
Identification No.)

P.O. Box 78984

(Address of principal executive offices)

Charlotte, NC 28271

(Zip Code)

(855) 766-9463

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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

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

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

Yes No

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

Yes No

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

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

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

As of November 14, 2024, the registrant had 15,976,227 shares of common stock outstanding.

FRESH VINE WINE, INC.

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Cautionary Statement Concerning Forward-Looking Statements

We make forward-looking statements in this Quarterly Report on Form 10-Q. In some cases, you can identify these statements by forward-looking words such as “may,” “might,” “should,” “would,” “could,” “expect,” “plan,” “anticipate,” “intend,” “believe,” “estimate,” “predict,” “potential” or “continue,” and the negative of these terms and other comparable terminology. These forward-looking statements, which are subject to known and unknown risks, uncertainties, and assumptions about us, may include projections of our future financial performance based on our growth strategies and anticipated trends in our business. These statements are only predictions based on our current expectations and projections about future events. There are important factors that could cause our actual results, level of activity, performance, or achievements to differ materially from the results, level of activity, performance or achievements expressed or implied by the forward-looking statements. In particular, you should consider the numerous risks and uncertainties described in the section titled “Risk Factors” and elsewhere in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, in the other reports and documents that we file with the SEC, and in this Quarterly Report on Form 10-Q.

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

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

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

- our ability to complete, on a timely basis or at all, the proposed Business Combination with Adifex Holdings LLC, pursuant to the terms and conditions of the Business Combination Agreement;
- the likelihood of the satisfaction of certain conditions to the completion of the Business Combination and whether and when the Business Combination will be completed;
- the continued listing of our common stock on the NYSE American pending closing of the proposed Business Combination, or new combined company’s ability to satisfy the initial listing standards of the NYSE American;
- the occurrence of any event, change or other circumstance or condition that could give rise to the termination of the Business Combination Agreement;
- the sufficiency of our cash and working capital to support continuing operations and to pay transaction expenses of up to \$10,000,000 through the closing of the proposed Business Combination;
- the effect of the announcement, pendency or completion of the proposed Business Combination on our business relationships, operating results and business generally;
- the outcome of any legal proceedings related to the Business Combination Agreement or the transactions contemplated thereby;
- the expected benefits of, and potential value created by, the Business Combination for our stockholders;;
- the strategy or future operations of the new combined company following the closing of the proposed Business Combination;
- the new combined company’s projected financial performance;
- our ability to continue as a going concern in the absence of obtaining additional financing;
- our ability to obtain additional financing within timeframes required on terms acceptable to us, or at all;
- our ability to regain and maintain compliance with NYSE American continued listing standards;
- the strategy or future operations of our company;
- our company’s projected financial performance;
- expectations concerning Fresh Vine’s relationships and actions with third parties;
- our ability to retain or recruit, or effect changes required in, our officers, key employees or directors;
- future regulatory, judicial and legislative changes in Fresh Vine’s industry;
- our reliance on our brand name, reputation and product quality;
- our ability to adequately address the 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 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 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 remediate any material weakness in, or to maintain effective, internal controls over financial reporting and disclosure controls and procedures;
- 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;
- our ability to pay accrued dividends to the holders of our Series A Convertible Preferred Stock; and
- 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.

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

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

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FRESH VINE WINE, INC.
BALANCE SHEETS

	September 30, 2024 (Unaudited)	December 31, 2023
Assets		
Current assets		
Cash	\$ 72,029	\$ 236,340
Restricted cash	50,039	100,000
Accounts receivable	45,280	172,101
Inventories	232,826	337,873
Prepaid expenses	81,589	42,943
Total current assets	<u>481,763</u>	<u>889,257</u>
Equity investment	500,000	500,000
Total assets	<u>\$ 981,763</u>	<u>\$ 1,389,257</u>
Liabilities, and stockholders' deficit		
Current liabilities		
Accounts payable	\$ 1,156,937	\$ 509,337
Settlement payable	585,976	585,976
Accrued expenses	1,125,942	810,723
Accrued expenses - related parties	309,333	309,333
Deferred revenue	2,685	3,407
Note payable	27,500	—
Convertible notes payable, net of discount	174,969	—
Total current liabilities	<u>3,383,342</u>	<u>2,218,776</u>
Total liabilities	3,383,342	2,218,776
Stockholders' deficit		
Preferred stock, \$0.001 par value - 25,000,000 shares authorized		
Series A preferred stock, 10,000 shares issued and outstanding at September 30, 2024 and December 31, 2023	10	10
Series B preferred stock, 9,135 and 0 shares issued and outstanding at September 30, 2024 and December 31, 2023, respectively	9	—
Common stock, \$0.001 par value - 100,000,000 shares authorized at September 30, 2024 and December 31, 2023; 15,976,227 shares issued and outstanding at September 30, 2024 and December 31, 2023	15,976	15,976
Additional paid-in capital	26,572,493	25,631,255
Accumulated deficit	(28,990,067)	(26,476,760)
Total stockholders' deficit	<u>(2,401,579)</u>	<u>(829,519)</u>
Total liabilities and stockholders' deficit	<u>\$ 981,763</u>	<u>\$ 1,389,257</u>

See accompanying notes to the financial statements.

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

	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Wholesale revenue	\$ 7,766	\$ 744,532	\$ 39,926	\$ 1,192,138
Direct to consumer revenue	55,443	103,427	198,335	394,576
Total net revenue	<u>63,209</u>	<u>847,959</u>	<u>238,261</u>	<u>1,586,714</u>
Cost of revenues	65,046	889,844	240,539	3,631,491
Gain from recovery of inventory reserve	(154,483)	—	—	—
Gross profit (loss)	<u>152,646</u>	<u>(41,885)</u>	<u>(2,278)</u>	<u>(2,044,777)</u>
Selling, general and administrative expenses	459,988	1,141,390	2,393,735	4,784,535
Equity-based compensation	1,626	946,415	4,878	1,734,765
Operating loss	<u>(308,968)</u>	<u>(2,129,690)</u>	<u>(2,400,891)</u>	<u>(8,564,077)</u>
Other income	—	30	39	1,296
Interest expense	6,322	—	6,322	—
Net loss	<u>(315,290)</u>	<u>(2,129,660)</u>	<u>(2,407,174)</u>	<u>(8,562,781)</u>
Preferred dividends – Series A	50,000	15,600	106,133	15,600
Net loss attributable to common stockholders	<u>\$ (365,290)</u>	<u>\$ (2,145,260)</u>	<u>\$ (2,513,307)</u>	<u>\$ (8,578,381)</u>
Weighted average shares outstanding				
Basic	15,976,227	15,976,227	15,976,227	15,085,911
Diluted	15,976,227	15,976,227	15,976,227	15,085,911
Net loss per share – basic	\$ (0.02)	\$ (0.13)	\$ (0.15)	\$ (0.57)
Net loss per share – diluted	\$ (0.02)	\$ (0.13)	\$ (0.15)	\$ (0.57)

See accompanying notes to the financial statements.

FRESH VINE WINE, INC.
STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)
For the Three and Nine Month Periods Ended September 30, 2024 and 2023
(Unaudited)

	Preferred Stock Series A		Preferred Stock Series B		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, December 31, 2022	—	\$ —	—	\$ —	12,732,257	\$ 12,732	\$ 21,420,732	\$ (15,819,858)	\$ (5,613,606)
Rights offering – common stock and warrants issued	—	—	—	—	3,143,969	3,144	2,543,584	—	2,546,728
Equity-based compensation	—	—	—	—	500,000	500	257,172	—	257,672
Stock forfeiture	—	—	—	—	(500,000)	(500)	500	—	—
Net loss	—	—	—	—	—	—	—	(2,010,824)	(2,010,824)
Balance, March 31, 2023	—	—	—	—	15,876,226	15,876	24,221,988	(17,830,682)	6,407,182
Equity-based compensation	—	—	—	—	1,141,332	1,141	373,037	—	374,178
Net loss	—	—	—	—	—	—	—	(4,422,297)	(4,422,297)
Balance, June 30, 2023	—	\$ —	—	\$ —	17,017,558	\$ 17,017	24,595,025	(22,252,979)	2,359,063
Issuance of preferred stock	8,000	8	—	—	—	—	749,992	—	750,000
Accrued preferred dividends, Series A (12%/share)	—	—	—	—	—	—	—	(15,600)	(15,600)
Equity-based compensation	—	—	—	—	—	—	111,748	—	111,748
Stock forfeiture	—	—	—	—	(1,041,331)	(1,041)	1,041	—	—
Net loss	—	—	—	—	—	—	—	(2,129,660)	(2,129,660)
Balance, September 30, 2023	8,000	\$ 8	—	\$ —	15,976,227	\$ 15,976	\$ 25,457,806	\$ (24,398,239)	\$ 1,075,551

	Preferred Stock Series A		Preferred Stock Series B		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, December 31, 2023	10,000	\$ 10	—	\$ —	15,976,227	\$ 15,976	\$ 25,631,255	\$ (26,476,760)	\$ (829,519)
Issuance of Series B preferred stock	—	—	940	1	—	—	90,324	—	90,325
Accrued preferred dividends, Series A (12%/share)	—	—	—	—	—	—	—	(30,000)	(30,000)
Equity-based compensation	—	—	—	—	—	—	1,625	—	1,625
Net loss	—	—	—	—	—	—	—	(1,212,315)	(1,212,315)
Balance, March 31, 2024	10,000	10	940	1	15,976,227	15,976	25,723,204	(27,719,075)	(1,979,884)
Issuance of Series B preferred stock	—	—	8,195	8	—	—	714,684	—	714,692
Accrued preferred dividends, Series A (12%/share)	—	—	—	—	—	—	—	(26,133)	(26,133)
Equity-based compensation	—	—	—	—	—	—	1,626	—	1,626
Net loss	—	—	—	—	—	—	—	(879,569)	(879,569)
Balance, June 30, 2024	10,000	\$ 10	9,135	\$ 9	15,976,227	\$ 15,976	26,439,514	(28,624,777)	(2,169,268)
Accrued preferred dividends, Series A (24%/share)	—	—	—	—	—	—	—	(50,000)	(50,000)
Equity-based compensation	—	—	—	—	—	—	1,626	—	1,626
Issuance of warrants, with convertible notes payable	—	—	—	—	—	—	131,353	—	131,353
Net loss	—	—	—	—	—	—	—	(315,290)	(315,290)
Balance, September 30, 2024	10,000	\$ 10	9,135	\$ 9	15,976,227	\$ 15,976	\$ 26,572,493	\$ (28,990,067)	\$ (2,401,579)

See accompanying notes to the financial statements.

FRESH VINE WINE, INC.
STATEMENTS OF CASH FLOWS
(Unaudited)

	Nine Months Ended September 30,	
	2024	2023
Cash flows from operating activities		
Net loss	\$ (2,407,174)	\$ (8,562,781)
Adjustments to reconcile net loss to net cash used in operating activities:		
Amortization of debt discount	6,322	—
Equity-based compensation	4,878	1,734,765
Inventory write-down	—	1,732,500
Allowance for doubtful accounts	—	37,733
Changes in operating assets and liabilities		
Accounts receivable	126,821	(171,594)
Insurance recovery receivable	—	804,907
Inventories	105,047	1,221,304
Prepaid expenses and other	(38,646)	74,272
Accounts payable	647,600	(34,492)
Accrued compensation	—	(420,413)
Settlement payable	—	(1,250,000)
Accrued expenses	209,085	227,036
Accrued expenses - related parties	—	29,333
Deferred revenue	(722)	(7,973)
Net cash used in operating activities	<u>(1,346,789)</u>	<u>(4,585,403)</u>
Cash flows from financing activities		
Proceeds from notes payable	42,500	—
Proceeds from convertible notes payable and warrants	300,000	—
Proceeds from issuance of Series A preferred stock - net of issuance costs	—	750,000
Proceeds from issuance of Series B preferred stock - net of issuance costs	805,017	—
Proceeds from rights offering - net of issuance costs	—	2,615,014
Payments on note payable	(15,000)	—
Net cash provided by financing activities	<u>1,132,517</u>	<u>3,365,014</u>
Net decrease in cash and restricted cash	(214,272)	(1,220,389)
Cash and restricted cash - beginning of period	336,340	2,080,335
Cash and restricted cash - end of period	\$ 122,068	\$ 859,946
Supplemental disclosure of non-cash investing and financing activities		
Accrued Series A dividends	\$ 106,133	\$ 15,600
Equity warrants issued in conjunction with convertible notes payable	\$ 131,353	—

See accompanying notes to the financial statements.

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

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Business

Fresh Vine Wine, Inc. (“the Company”, “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.

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.

Termination of Agreement and Plan of Merger with Notes Live

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”). On July 31, 2024, the Merger Agreement was terminated.

Liquidity, Going Concern, and Management Plan

Historically, the Company has incurred losses, which has resulted in an accumulated deficit of approximately \$29.0 million as of September 30, 2024. Cash flows used in operating activities were approximately \$1.3 million and \$4.6 million for the nine months ended September 30, 2024 and 2023, respectively. As of September 30, 2024, the Company had an approximately \$2.9 million working capital deficit, inclusive of approximately \$72,000 in cash and \$50,000 in restricted cash.

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

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

The Company received gross proceeds of approximately \$914,000 and \$1 million from preferred stock offerings during the periods ended June 30, 2024 and December 31, 2023, respectively. During the quarter ended September 30, 2024, the Company received \$300,000 from the issuance of convertible notes. Subsequent to September 30, 2024, the Company raised approximately \$4.1 million from the sale of preferred stock, received an additional \$200,000 from the issuance of convertible notes and entered into a Business Combination Agreement (See Note 14 for further details). In addition, under the Business Combination Agreement (as defined below), the Company has agreed to raise up to \$10,000,000 through the sale of its equity or debt securities to cover transaction expenses and for working capital purposes, and the completion of such funding is a condition precedent to completing the Business Combination (as defined below). In addition, the Company will need 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 with receipt of additional financing and the receipt of proceeds from the expected sales of inventory, the Company projects that the existing cash balance will be sufficient to fund current operations into the first quarter of 2025, 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.

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 balance of approximately \$50,000 and \$100,000 as of September 30, 2024 and December 31, 2023, respectively, that the Company's 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 September 30, 2024 and December 31, 2023 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 September 30, 2024 and December 31, 2023, the Company had recorded an inventory allowance of approximately \$0 and \$112,000, respectively.

Investment in Equity Securities

Equity investments that do not provide the Company the ability to exert significant influence over the operating or financial decisions of the investee are accounted for under 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 September 30, 2024, there were no changes recorded for the value of the investment since the initial measurement.

Revenue recognition

The Company's total revenue reflects the sale of wine domestically in the U.S. to wholesale distributors or DTC customers. 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.

ASC 606 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 three and nine months ended September 30, 2024 and 2023:

	Three months ended		Nine months ended	
	September 30, 2024	September 30, 2023	September 30, 2024	September 30, 2023
Wholesale	12.3%	87.8%	16.8%	75.1%
Direct to consumer	87.7%	12.2%	83.2%	24.9%
Total revenue	100.0%	100.0%	100.0%	100.0%

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 September 30, 2024 and December 31, 2023, 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 September 30, 2024 or December 31, 2023, and as such, no interest or penalties were recorded to income tax expense. As of September 30, 2024 and December 31, 2023, 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.

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.

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 2024 and 2023.

Advertising

The Company expenses the costs of advertising as incurred. Advertising expenses were approximately \$7,000 and \$258,000 for the three months ended September 30, 2024 and 2023, respectively and was approximately \$334,000 and \$1.4 million for the nine months ended September 30, 2024 and 2023, 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.

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 \$2.4 million as of September 30, 2024 and has 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.

2. LOSS PER SHARE

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

	Three Months Ended		Nine Months Ended	
	September 30, 2024	September 30, 2023	September 30, 2024	September 30, 2023
Numerator:				
Net loss	\$ (315,290)	\$ (2,129,660)	\$ (2,407,174)	\$ (8,562,781)
Less: dividends on Series A preferred stock	50,000	15,600	106,133	15,600
Net loss attributable to common stockholders	\$ (365,290)	\$ (2,145,260)	\$ (2,513,307)	\$ (8,578,381)
Denominator:				
Basic – weighted shares outstanding	15,976,227	15,976,227	15,976,227	15,085,911
Dilutive effect from shares authorized	—	—	—	—
Diluted – weighted shares outstanding	15,976,227	15,976,227	15,976,227	15,085,911
Basic loss per share	\$ (0.02)	\$ (0.13)	\$ (0.15)	\$ (0.57)
Diluted loss per share	\$ (0.02)	\$ (0.13)	\$ (0.15)	\$ (0.57)

At September 30, 2024 and 2023, 17,502,861 and 5,905,528 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

Inventory is primarily bottled wine which is carried at the lower cost (calculated using the average cost method) or net realizable value. The Company increased the inventory allowance by approximately \$209,000 during the nine months ended September 30, 2023. This write down was recorded in cost of revenue in the financial statements. During the first six months of the 2024 fiscal year, the Company recorded an allowance of approximately \$154,000. However, in the quarter ended September 30, 2024, this allowance was reversed, and the reversal was recorded as a gain from recovery of inventory reserve. The finished goods inventory was approximately \$233,000 and \$338,000 as of September 30, 2024 and December 31, 2023, respectively. This inventory included a valuation reserve of approximately \$0 and \$112,000 as of September 30, 2024 and December 31, 2023, respectively.

4. PREPAID EXPENSES

Prepaid expenses consist of the following at:

	September 30, 2024	December 31, 2023
Prepaid marketing expenses	\$ 63,750	\$ 9,871
Prepaid insurance	17,839	33,072
Total	<u>\$ 81,589</u>	<u>\$ 42,943</u>

5. INVESTMENTS

In connection with the Plan of Merger in December 2023 (as described in Note 1), the Company made a \$500,000 investment for 50,000 shares of Notes Live, Inc. The investment was initially measured at cost. The Company noted no impairment or fair value change as of September 30, 2024.

6. ACCRUED EXPENSES

Accrued expenses consist of the following at:

	September 30, 2024	December 31, 2023
Sponsorship agreements	\$ 832,660	\$ 608,818
Accrued credit card charges	3,580	7,275
Accrued Series A Preferred Stock dividends	148,000	41,867
Legal and professional	47,924	125,704
Other accrued expenses	93,778	27,059
Total	<u>\$ 1,125,942</u>	<u>\$ 810,723</u>

The sponsorship agreements related to marketing contracts with unrelated parties within the sports and entertainment industry. The terms of the agreements ranged from two to four years with annual payments ranging from \$103,000 to \$216,000 per agreement. All sponsorship agreements had terminated by the end of the second quarter of 2024. The total expense relating to these agreements for the three months ended September 30, 2024 and 2023, was approximately \$0 and \$88,000, respectively and for the nine months ended September 30, 2024 and 2023, was approximately \$296,000 and \$265,000, respectively. Subsequent to September 30, 2024, the Company signed a settlement agreement resulting in a gain on settlement of approximately \$370,000.

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

7. NOTES PAYABLE

Set forth below is a summary of the Company's outstanding debts as of September 30, 2024 and December 31, 2023:

	September 30, 2024	December 31, 2023
Convertible notes	360,000	—
Less: discount on convertible notes	(185,031)	—
Total convertible notes, net of discount	174,969	—
Other note payable	27,500	—
Total	\$ 202,469	\$ —

In October 2024, the Company entered into Securities Purchase Agreements (the "Securities Purchase Agreements") with two accredited investors, pursuant to which the Company agreed to sell up to an aggregate principal amount of \$600,000 of secured convertible promissory notes ("Notes") that will be convertible into shares of the Company's common stock, par value \$0.001 per share and warrants. The Notes were issued with original issuance discount of 20%, resulting in gross proceeds of \$500,000 to the Company. The Notes bear no interest unless an event of default occurs, and mature on April 4, 2025. The Notes may be prepaid without penalty. Each Note is convertible into common stock at a conversion price equal to \$0.40. In September 2024 the Company received \$300,000 related to these Notes and after reviewing the transaction details determined it was considered a reportable subsequent event and recorded the transaction as of September 30, 2024.

In connection with the Securities Purchase Agreements, the Company issued warrants with an exercise period of five years to purchase up to 740,000 shares of the common stock at an exercise price of \$0.40 per share.

The Company reviewed the warrants in connection with the Securities Purchase Agreements under ASC 815 and concluded that the warrants are not in scope of ASC 480 and are not subject to the derivative guidance under ASC 815. Accordingly, the warrants were equity classified. As such the principal value of the Notes was allocated using the relative fair value basis of all instruments. As the warrants were issued with another instrument the purchase price was allocated using the relative fair value method (i.e., warrants at its fair value and the Notes at its principal value allocated using the relative fair value of the proceeds received an applied proportionally to the equity classified warrants and Notes).

As of September 30, 2024, the Company received cash proceeds of \$300,000. As such the Company recorded the fair value of the warrants of \$131,353 based on the relative value basis. The Company recorded original issue discount of \$191,353.

As of September 30, 2024, the Notes net of unamortized debt discount was \$174,969. The Company recognized \$6,322 of the amortized debt discount in interest expense for the three months ended September 30, 2024.

Principal maturities of the Company's notes payable are as follows:

Years Ending December 31,	Amount
2024 (three months)	\$ 27,500
2025	360,000
2026	—
2027	—
Total	\$ 387,500

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 ("Rights Offering Warrants") to purchase one share of our common stock. The Rights Offering 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 Rights Offering 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.

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. If the dividend is not paid as of July 31, 2024, the dividend rate increases to 24% per annum. 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.

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

	Three Months Ended		Nine Months Ended	
	September 30, 2024	September 30, 2023	September 30, 2024	September 30, 2023
Series A preferred stock shares issued	—	8,000	—	8,000
Net proceeds	\$ —	\$ 750,000	\$ —	\$ 750,000

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

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

	September 30, 2024	December 31, 2023
Series A preferred stock	\$ 148,000	\$ 41,867

Series B Convertible Preferred Stock

On March 14, 2024, the Company filed with the Secretary of State of the State of Nevada a Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock, par value \$0.001 per share (the “Series B Stock”). The Certificate designates 50,000 shares of the Company’s undesignated preferred stock as Series B Stock and establishes the rights and preferences of Series B Stock.

During the first and second quarters of 2024, the Company entered into multiple Securities Purchase Agreements with accredited investors pursuant to which the Company agreed to issue and sell in a private placement (the “Series B Offering”) shares of Series B Stock.

Pursuant to the Securities Purchase Agreement, each share of Series B Stock will have a stated value equal to \$100.00 (the “Stated Value”). As of September 30, 2024, 9,135 shares of Series B Stock had been sold for a total in gross proceeds of \$913,500.

Each share of Series B Stock shall be convertible at the option of the holder thereof into the number of shares common stock (“Conversion Shares”) calculated by dividing the Stated Value by the Conversion Price (the “Conversion Ratio”)(subject to the limitations described below). For such purposes, the “Conversion Price” means \$0.45. However, if the Company’s common stock fails to continue to be listed or quoted for trading on a stock exchange (currently, the NYSE American), then the “Conversion Price” thereafter will mean the lesser of (i) \$0.45, 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 Floor Price.

Except for stock dividends or distributions for which adjustments are to be made pursuant to antidilution provisions of the Certificate, holders of Series B Stock shall be entitled to receive dividends on shares of Series B Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends actually paid on shares of the common stock when, as and if such dividends are paid on shares of the common stock.

The Company may redeem (i) up to 75% of the issued and outstanding Series B Preferred Shares 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 Series B Preferred Shares 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.

The Series B Stock will vote with the common stock and the Series A Convertible Preferred 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 upon the conversion of Series B Stock in excess of the Exchange Share Cap or the Individual Holder Share Cap. The shares of Series B Stock 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 with respect to each share of Series B Stock 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 or other subscription or similar agreement pursuant to which such share of Series B Stock was issued by the Company.

The Company previously engaged The Oak Ridge Financial Services Group, Inc. to serve as a financial advisor to the Company in connection with capital raising activities. In connection with the Series B Offering, the Company has agreed to pay the Oak Ridge a cash fee equal to 8.0% of the gross proceeds received by the Company in the Offering, in addition to reimbursing Oak Ridge for its out-of-pocket expenses. In addition, the Company issued to Oak Ridge (or its designee) seven-year warrants to purchase up to a total of 300,000 shares of the Company’s common stock at an exercise price equal to \$0.50 per share.

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

	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Series B preferred stock shares issued	—	—	9,135	—
Net proceeds	\$ —	\$ —	\$ 805,017	\$ —

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

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. Equity-based compensation expense related to the additional shares subject to revenue-related performance objectives was not material to the 2024 or 2023 financial statements.

9. EQUITY-BASED COMPENSATION

Shares of Restricted Stock

In April 2023, the members of the Company's Board of Directors, collectively, were granted a total of 100,000 shares of restricted stock. The vesting period is as follows: 25,000 shares vested immediately with 25,000 shares vesting each quarter following the award date.

Total equity-based compensation expense related to shares of restricted stock issuances was \$0 and \$105,346 for the three months ended September 30, 2024 and 2023, respectively and \$0 and \$598,404 for the nine months ended September 30, 2024 and 2023, respectively.

Restricted stock activity as of and for the nine-month period ended September 30, 2024 was as follows:

	Number of Shares of Restricted Stock	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2023	20,000	0.00
Granted	—	—
Vested or released	(20,000)	—
Forfeited	—	—
Outstanding at September 30, 2024	<u>—</u>	<u>—</u>

Vendor Stock Awards

Vendor stock award activity subject to revenue-related performance objectives during the nine months ended September 30, 2024 was as follows:

	Number of Shares of Vendor Stock Awards	Weighted Average Remaining Vesting Term (Years)
Outstanding at December 31, 2023	1,030,000	1.25
Granted	—	—
Vested or released	—	—
Forfeited	—	—
Outstanding at September 30, 2024	<u>1,030,000</u>	<u>0.46</u>

Stock Options

Stock option activity for nine-month period ended September 30, 2024 was as follows:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2023	446,559	\$ 8.88	8.08
Granted	—	—	—
Exercised	—	—	—
Forfeited	(1,666)	—	—
Outstanding at September 30, 2024	<u>444,893</u>	<u>\$ 8.91</u>	<u>7.33</u>
Exercisable at September 30, 2024	<u>69,892</u>	<u>\$ 3.04</u>	<u>7.93</u>

Equity-based compensation expense totaling \$1,626 and \$6,504 has been recognized relating to these stock options during the three months ended September 30, 2024 and 2023, respectively and \$4,877 and \$145,295 for the nine months ended September 30, 2024 and 2023, respectively. The total unrecognized equity-based compensation expense was \$1,381 as of September 30, 2024.

Warrants

As disclosed in Note 8, 3,143,969 warrants were granted as part of the Rights Offering in March 2023. Also noted in Note 8, 300,000 warrants were granted in March 2024 to our financial advisor and placement agent in connection with our offering and sale of Series B Preferred Stock. In September 2024 the Company issued 444,000 warrants in connection with the convertible notes described in Note 7.

Warrant activity for nine-month period ended September 30, 2024 was as follows:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2023	3,553,969	\$ 1.61	4.16
Granted	744,000	0.44	5.62
Vested or released	—	—	—
Forfeited	—	—	—
Outstanding at September 30, 2024	<u>3,997,969</u>	<u>\$ 1.40</u>	<u>3.82</u>

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 non-employee awards ranged from 5 to 10 years based on industry data, vesting period, contractual period, among other factors. The expected volatility was estimated based on historical volatility information of the Company. 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 probable that the performance condition will be satisfied.

10. INCOME TAXES

The Company has federal and state net operating loss carryforwards with a full valuation allowance against the deferred tax assets as of September 30, 2024. No income tax expense or benefit was recorded for the three and nine months ended September 30, 2024 and 2023 due to the Company's net loss position.

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 nine month periods ended September 30, 2024 and 2023, substantially all 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 in the first nine months of 2024 comes from three national distributor customers that operate in several markets. For the nine-month period ended September 30, 2024, approximately 79% of the Company's wholesale revenue came from these three customers. For the three-month period ended September 30, 2024, the customer concentration shifted to two new customers in addition to one customer from the nine-month period. For the three month period ended September 30, 2024, these three customers accounted for 89% of the Company's wholesale revenue. In 2023, for the three and nine month periods ended September 30, 2023, the concentration included two customers from the 2024 periods along with one additional customer. For the three and nine month periods ended September 30, 2023, these customers accounted for 96% and 87%, respectively, of the Company's wholesale revenue. At September 30, 2024, all of the customers mentioned above accounted for 66% 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 \$0 and \$89,333 for the three months ended September 30, 2024 and 2023, respectively and \$0 and \$329,333 for the nine months ended September 30, 2024 and 2023, respectively. The Company had accrued approximately \$309,000 for these license agreements as of September 30, 2024 and December 31, 2023.

13. 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 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. On March 25, 2024, Mr. Michaels filed a Notice and Application for Taxation of Costs and Disbursements. On March 26, 2024, the Company filed its Notice of Appeal. On March 26, 2024, Mr. Michaels served a motion for Pre-verdict and Prejudgment Interest. On March 27, 2024, a Notice of Entry of Judgment was filed and, on March 28, 2024, a Notice of Docketing of Judgment was entered. Mr. Michaels has commenced garnishment proceedings against certain of the Company's bank accounts and other third parties in an attempt to collect on the judgment and such proceedings remain pending.

14. SUBSEQUENT EVENTS

Securities Purchase Agreements – Notes and Warrants

On October 8, 2024, the Company entered into Securities Purchase Agreements (the "Securities Purchase Agreements") with two accredited investors, pursuant to which the Company agreed to sell up to an aggregate principal amount of \$600,000 of secured convertible promissory notes ("Notes") that will be convertible into shares of the Company's common stock, par value \$0.001, and warrants ("Warrants") to purchase up to 740,000 shares of common stock. The Company intends to use the proceeds for general corporate purposes.

The Notes were issued with original issuance discount of 20%, resulting in gross proceeds of \$500,000 to the Company. The Company received \$300,000 of the gross proceeds as of September 30, 2024 and the Notes are reflected in Note 7. The Notes bear no interest unless an event of default occurs, and mature on April 8, 2025. The Notes may be prepaid. Each Note is convertible into common stock at a conversion price equal to \$0.40. A holder of the Note (together with its affiliates) may not convert any portion of the Note to the extent that the holder would beneficially own more than 9.99% of the outstanding shares of the Company's common stock immediately after exercise. The conversion price and number of shares of the Company's common stock issuable upon conversion of the Notes will be subject to adjustment from time to time for any subdivision or consolidation of shares, dilutive issuances and other events.

Additionally, the Notes are secured by certain assets of the Company pursuant to a security agreement that was entered into in connection with the issuance of the Notes (the "Security Agreement"). The obligations under the Notes are guaranteed by a guaranty (the "Guaranty") by the Company in favor of the investors.

The Warrants are immediately exercisable at an initial exercise price equal to \$0.40 per share, and will expire on the 5th anniversary of the issuance date. A holder of the Warrant (together with its affiliates) may not exercise any portion of the Warrants to the extent that the holder would own more than 9.99% of the outstanding shares of the Company's common stock immediately after exercise. The exercise price and number of shares of the Company's common stock issuable upon exercise of the Warrants will be subject to adjustment from time to time for any subdivision or consolidation of shares, dilutive issuances and other events. The Warrants may not be exercised on a cashless basis.

Securities Purchase Agreement – Series B Preferred Stock

The Company's board of directors has approved the issuance and sale of up to approximately 40,000 shares of Series B Preferred Stock at a purchase price of \$100.00 per share in a private placement. As of November 5, 2024, the Company has received securities purchase agreements from accredited investors for the purchase of a total of 40,865 shares of Series B Stock for an aggregate purchase price of \$4.1 million. The Company intends to use the proceeds to cover transaction expenses related to the proposed Business Combination (defined below) and for general working capital purposes.

Each share of Series B Preferred Stock has the powers, designations, preferences, and other rights of the shares of such series as discussed in Note 8.

Secured Promissory Notes Issued in favor of the Company.

The Company and Amaze Software, Inc. (“Amaze”) entered into a promissory note (the “Amaze Note”) effective October 28, 2024, under which the Company agreed to lend to Amaze the principal sum of up to \$3.5 million. The Amaze Note bears interest at 6.00% per annum until the closing date of the Business Combination (defined below). If the Business Combination does not close, the interest rate increases to 12% per annum from the date that negotiations cease. The unpaid principal plus accrued interest is due and payable on the date that is 9 months after the date on which the Company or Amaze provides notice to the other that negotiations have ceased if the Business Combination is not closed. Provided there is no event of default, the Amaze note will be forgiven on the date the Business Combination Agreement (detailed below) closes. The Amaze note is secured by all of the assets of its subsidiary, Amaze Holding Company LLC.

The Company and Adifex Holdings LLC (“Adifex”) entered into a promissory note (the “Adifex Note”) effective October 7, 2024, under which the Company agreed to lend to Adifex the principal sum of up to \$3.5 million. The Adifex Note bears interest at 6.00% per annum. In connection with entering into the Amaze Note, the Company and Adifex cancelled and terminated the Adifex Note and the security agreement effective as of October 7, 2024, between Adifex and the Company, pursuant to a Cancellation of Promissory Note and Security Agreement between the Company and Adifex, effective October 28, 2024. As of October 28, 2024, the Company had made no advances, and no borrowings were outstanding, under the Adifex Note.

Business Combination Agreement with Adifex

On November 3, 2024, the Company entered into a Business Combination Agreement (the “Business Combination Agreement”) with (i) Amaze Holdings Inc., a Delaware corporation and a wholly owned subsidiary of the Company (“Pubco”), (ii) VINE Merger Sub Inc., a Delaware corporation and wholly subsidiary of Pubco (“*VINE Merger Sub*”), (iii) Adifex Merger Sub LLC, a Delaware limited liability company and wholly owned subsidiary of Pubco (“*Adifex Merger Sub*”), and (iv) Adifex Holdings LLC, a Delaware limited liability company (“*Adifex*”). The transactions contemplated by the Business Combination Agreement are referred to as the “*Business Combination*.”

Upon the closing of the Business Combination, (i) VINE Merger Sub will merge with and into the Company (the “VINE Merger”), with the Company as the surviving company in the VINE Merger and, as a result of the VINE Merger, the Company will become a wholly owned subsidiary of Pubco with holders of the Company’s equity interests receiving Pubco common stock, and (ii) Adifex Merger Sub will merge with and into Adifex (the “Adifex Merger”), with Adifex as the surviving company in the Adifex Merger and, as a result of the Adifex Merger, Adifex will become a wholly owned subsidiary of Pubco and the Adifex equity interests will be automatically converted into a pro rata portion of the merger consideration in Pubco common stock.

The Business Combination Agreement contains customary representations, warranties and covenants, including covenants obligating the Company, during the period prior to closing, to conduct its business and operations in the ordinary course of business and not to engage in certain specified activities without Adifex’s prior consent.

Consummation of the Business Combination is subject to the satisfaction or waiver of certain closing conditions, including without limitation, approval by the Company’s stockholders of the Business Combination Agreement, including the Business Combination, completion of the acquisition of Amaze by Adifex, and the Company having raised up to \$10,000,000 through the sale of its equity or debt securities to cover transaction expenses and for working capital purposes.

The Business Combination Agreement may be terminated in certain limited circumstances including (i) by mutual written consent of the Company and Adifex; (ii) by either the Company or Adifex if the VINE Merger and the Adifex Merger have not have been consummated by April 30, 2025 (subject to extension) (iii) by either the Company or Adifex if a court of competent jurisdiction or governmental authority has issued a final and nonappealable order, or taken any other action, having the effect of permanently restraining, enjoining, or otherwise prohibiting any of the transactions contemplated by the Business Combination Agreement; (iv) by either the Company or Adifex upon a breach of any representation, warranty, covenant, or agreement in the Business Combination Agreement by the other party; or (v) by the Company, upon the Company’s board of directors authorizing the Company to enter into a permitted alternative agreement in the manner set forth in the Business Combination Agreement.

Sponsorship Settlement Agreement

On October 8, 2024, the Company settled in arbitration with WFI Stadium and Pro-Football LLC d/b/a Washington Commanders (together as the “Commanders”). The Company paid \$80,000 contemporaneously with the execution of the agreement, which was accrued for as of September 30, 2024. This resulted in a \$370,000 gain on settlement, which will be recognized in the fourth quarter of 2024.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the financial statements and related notes to those statements as included elsewhere in this Quarterly Report on Form 10-Q. In addition to historical financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties, and assumptions. See “Cautionary Note Regarding Forward-looking Statements”. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors, including those discussed in Part I “Item 1A. Risk Factors” included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, and those set forth under “Risk Factors” and elsewhere in this Quarterly Report on Form 10-Q.

Under this “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 Wine, Inc.

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 September 30, 2024, 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.

Recent Developments

On November 3, 2024, the Company entered into a Business Combination Agreement (the “Business Combination Agreement”) with (i) Amaze Holdings Inc., a Delaware corporation and wholly owned subsidiary of the Company (“Pubco”), (ii) VINE Merger Sub Inc., a Delaware corporation and wholly subsidiary of Pubco (“VINE Merger Sub”), (iii) Adifex Merger Sub LLC, a Delaware limited liability company and wholly owned subsidiary of Pubco (“Adifex Merger Sub”), and (iv) Adifex Holdings LLC, a Delaware limited liability company (“Adifex”). The transactions contemplated by the Business Combination Agreement are referred to as the “Business Combination.”

Upon the closing of the Business Combination, (i) VINE Merger Sub will merge with and into the Company (the “VINE Merger”), with the Company as the surviving company in the VINE Merger and, as a result of the VINE Merger, the Company will become a wholly owned subsidiary of Pubco with holders of the Company’s equity interests receiving Pubco common stock, and (ii) Adifex Merger Sub will merge with and into Adifex (the “Adifex Merger”), with Adifex as the surviving company in the Adifex Merger and, as a result of the Adifex Merger, Adifex will become a wholly owned subsidiary of Pubco and the Adifex equity interests will be automatically converted into a pro rata portion of the merger consideration in Pubco common stock. Pubco’s common stock is expected to be listed on the NYSE American.

The Business Combination Agreement contains customary representations, warranties and covenants, including covenants obligating the Company, during the period prior to closing, to conduct its business and operations in the ordinary course of business and not to engage in certain specified activities without Adifex's prior consent.

Consummation of the Business Combination is subject to the satisfaction or waiver of certain closing conditions, including approval by the Company's stockholders of the Business Combination Agreement, including the Business Combination, completion of the acquisition of Amaze Software, Inc. by Adifex, and the Company having raised up to \$10,000,000 through the sale of its equity or debt securities to cover transaction expenses and for working capital purposes.

The Business Combination Agreement may be terminated in certain limited circumstances including (i) by mutual written consent of the Company and Adifex; (ii) by either the Company or Adifex if the VINE Merger and the Adifex Merger have not have been consummated by April 30, 2025 (subject to extension) (iii) by either the Company or Adifex if a court of competent jurisdiction or governmental authority has issued a final and nonappealable order, or taken any other action, having the effect of permanently restraining, enjoining, or otherwise prohibiting any of the transactions contemplated by the Business Combination Agreement; (iv) by either the Company or Adifex upon a breach of any representation, warranty, covenant, or agreement in the Business Combination Agreement by the other party; or (v) by the Company, upon the Company's board of directors authorizing the Company to enter into a permitted alternative agreement in the manner set forth in the Business Combination Agreement.

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.

	Three months ended		Nine months ended	
	September 30,		September 30,	
	2024	2023	2024	2023
Net revenue	\$ 63,209	\$ 847,959	\$ 238,261	\$ 1,586,714
Gross profit (loss)	\$ 152,646	\$ (41,885)	\$ (2,278)	\$ (2,044,777)
Net loss	\$ (315,290)	\$ (2,129,660)	\$ (2,407,174)	\$ (8,562,781)

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 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.

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.

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 direct to consumer 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.

	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Wholesale	12.3%	87.8%	16.8%	75.1%
Direct to consumer	87.7%	12.2%	83.2%	24.9%
Total revenue	100.0%	100.0%	100.0%	100.0%

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 as well as inventory write downs. Fresh Vine expects that cost of revenues will decrease as net revenue decreases.

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 Loss

Gross 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

	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Net revenue	\$ 63,209	\$ 847,959	\$ 238,261	\$ 1,586,714
Cost of revenues	65,046	889,844	240,539	3,631,491
Gain from recovery of inventory reserve	(154,483)	—	—	—
Gross profit (loss)	152,646	(41,885)	(2,278)	(2,044,777)
Selling, general and administrative expenses	459,988	1,141,390	2,393,735	4,784,535
Equity-based compensation	1,626	946,415	4,878	1,734,765
Loss from operations	(308,968)	(2,129,690)	(2,400,891)	(8,564,077)
Other income	—	30	39	1,296
Interest expense	6,322	—	6,322	—
Net loss	\$ (315,290)	\$ (2,129,660)	\$ (2,407,174)	\$ (8,562,781)

Comparison of the Three and Nine months ended September 30, 2024 and 2023

Net Revenue, Cost of Revenues and Gross Profit (Loss)

	Three months ended		Change		Nine months ended		Change	
	September 30,				September 30,			
	2024	2023	\$	%	2024	2023	\$	%
Net revenue	\$ 63,209	\$ 847,959	(784,750)	-93%	\$ 238,261	\$ 1,586,714	(1,348,453)	-85%
Cost of revenues	65,046	889,844	(824,798)	-93%	240,539	3,631,491	(3,390,952)	-93%
Gain from recovery of inventory reserve	(154,483)	—	154,483	N/A	—	—	—	N/A
Gross loss	\$ 152,646	\$ (41,885)	194,531	464%	\$ (2,278)	\$ (2,044,777)	2,042,499	100%

For the three and nine months ended September 30, 2024, net revenue was lower compared to the same periods in 2023 due to business slowing down as the Company worked towards an anticipated merger. Cost of revenues were lower due to net revenue decreasing as well as lower inventory write downs from year to year. Cost of revenues included approximately \$1.7 million in inventory write downs for the nine months ended September 30, 2023 compared to approximately \$0 for the nine months ended September 30, 2024. In the third quarter of 2024, the Company determined the reserve booked during the six months ended June 30, 2024 was no longer needed as it applied to the Merger agreement that was cancelled. The Company then recognized the gain of approximately \$154,000 in change of inventory reserve. Gross loss decreased significantly for both periods in 2024 compared to 2023, which is driven by the overall decrease in net revenue and cost of revenues as the Company focuses on selling the current inventory, and the reversal of the inventory reserve during the three months ended September 30, 2024.

Selling, general and administrative expenses

	Three months ended		Change		Nine months ended		Change	
	September 30,				September 30,			
	2024	2023	\$	%	2024	2023	\$	%
Selling expenses	\$ 45,315	\$ 218,634	(173,319)	-79%	\$ 172,604	\$ 810,755	(638,151)	-79%
Marketing expenses	7,692	268,767	(261,075)	-97%	334,396	1,429,069	(1,094,673)	-77%
General and administrative expenses	406,981	653,989	(247,008)	-38%	1,886,735	2,544,711	(657,976)	-26%
Total selling, general and administrative expenses	\$ 459,988	\$ 1,141,390	(681,402)	-60%	\$ 2,393,735	\$ 4,784,535	(2,390,800)	-50%

For the three and nine months ended September 30, 2024, selling, general and administrative expenses decreased 60% and 50%, respectively, compared to the three and nine months ended September 30, 2023. The decrease related to selling expenses was largely driven by terminations of consultants and contractors in 2024 compared to the same periods of 2023, as well as less travel since overall sales have decreased. General and administrative expenses decreased as the workforce decreased as well as general insurance and legal expenses. The 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 sales trends.

Cash Flows

	Nine months ended	
	September 30,	
	2024	2023
Cash provided by (used in):		
Operating activities	\$ (1,346,789)	\$ (4,585,403)
Investing activities	—	—
Financing activities	1,132,517	3,365,014
Net (decrease) increase in cash and restricted cash	\$ (214,272)	\$ (1,220,389)

Net cash used in operating activities was approximately (\$1.3 million) and (\$4.6 million) for the nine months ended September 30, 2024 and 2023, respectively. Cash used in operating activities decreased in the nine months ended September 30, 2024 primarily because of the decrease in our net loss of approximately \$6.2 million and one-time expenses related to the settlement payable and accrued compensation of approximately \$1.7 million paid to the former Chief Executive Officer in 2023.

Net cash provided by financing activities was approximately \$1.1 million and \$3.4 million for the nine months ended September 30, 2024 and 2023, respectively. The difference is mostly attributed to the Rights Offering of \$2.6 million in 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 \$2.4 million and \$8.6 million during the nine months ended September 30, 2024 and 2023, respectively. As of September 30, 2024, we had an accumulated deficit of approximately \$29.0 million and a total stockholders’ deficit of approximately \$2.4 million. We expect to incur losses in future periods as we continue to operate our business and incur expenses associated with being a public company.

As of September 30, 2024, we had approximately \$122,000 in cash and restricted cash, \$45,000 in accounts receivable, \$233,000 in inventory and \$82,000 in prepaid expenses. On September 30, 2024, current assets amounted to approximately \$482,000 and current liabilities were approximately \$3.4 million, resulting in a working capital deficit (with working capital defined as current assets minus current liabilities) of approximately \$2.9 million.

Since the commencement of its operations, the Company’s operating and other expenses have significantly exceeded its revenues. 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. Since then, 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. Later in 2023, the Company entered into purchase orders with Grocery Outlet, a discount retailer who has become one of the largest wholesalers for the Company.

On August 2, 2023, the Company entered into a Securities Purchase Agreement with two accredited investors pursuant to which the Company issued and sold in a private placement 10,000 shares of Series A Convertible Preferred Stock (the “Series A Stock”) at a per share purchase price equal to \$100.00, for total gross proceeds of \$1.0 million. As of September 30, 2024, we had approximately \$148,000 of accumulated undeclared dividends on the Series A Stock.

On March 14, 2024, the Company filed with the Secretary of State of the State of Nevada a Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock, par value \$0.001 per share (the “Series B Certificate”). The Series B Certificate designates 50,000 shares of the Company’s undesignated preferred stock as Series B Convertible Preferred Stock (“Series B Stock”) and establishes the rights and preferences of the Series B Stock. As of September 30, 2024, the Company issued and sold in a private placement to accredited investors a total of 9,135 shares of Series B Stock at \$100 per share, for total gross proceeds of \$913,500. Subsequent to September 30, 2024, the Company has issued and sold an additional 40,864 shares of Series B Stock, for total gross proceeds of approximately \$4.1 million.

In addition, between September and October 2024, the Company issued and sold in a private placement \$600,000 in aggregate principal amount of secured convertible promissory notes and warrants to purchase up to 740,000 shares of the Company’s common stock. The convertible notes were issued with original issuance discount of 20%, resulting in gross proceeds of \$500,000 to the Company. The convertible notes are convertible into common stock at a conversion price equal to \$0.40. The warrants are immediately exercisable at an initial exercise price equal to \$0.40 per share, and will expire on the 5th anniversary of the issuance date.

As disclosed under Part II, Item 1 (Legal Proceedings) of this report, 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. 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. On March 25, 2024, Mr. Michaels filed a Notice and Application for Taxation of Costs and Disbursements. On March 26, 2024, the Company filed its Notice of Appeal. On March 26, 2024, Mr. Michaels served a motion for Pre-verdict and Prejudgment Interest. On March 27, 2024, a Notice of Entry of Judgment was filed and, on March 28, 2024, a Notice of Docketing of Judgment was entered. Mr. Michaels has commenced garnishment proceedings against certain of the Company's bank accounts and other third parties in an attempt to collect on the judgment and such proceedings remain pending. 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 may be required to post an appeal 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 appeal 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 through the first quarter of 2025. The Company requires additional debt or equity financing to satisfy its existing obligations, sustain existing operations, pay expenses associated with continuing to pursue its plan to re-comply with the listing standards of the NYSE American stock exchange. See "Current Strategy" 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 pursuing its plan to re-comply with the listing standards of the NYSE American stock exchange, 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 Business Combination Agreement

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 an Agreement and Plan of Merger (the "Merger Agreement") with Notes, Live, Inc., a Colorado corporation ("Notes Live"), pursuant to which a newly-formed wholly-owned subsidiary would 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"). On July 31, 2024, the Company and Notes Live mutually agreed to terminate the Merger Agreement.

On November 3, 2024, the Company entered into a Business Combination Agreement (the “Business Combination Agreement”) with (i) Amaze Holdings Inc., a Delaware corporation and wholly owned subsidiary of the Company (“Pubco”), (ii) VINE Merger Sub Inc., a Delaware corporation and wholly subsidiary of Pubco (“VINE Merger Sub”), (iii) Adifex Merger Sub LLC, a Delaware limited liability company and wholly owned subsidiary of Pubco (“Adifex Merger Sub”), and (iv) Adifex Holdings LLC, a Delaware limited liability company (“Adifex”). The transactions contemplated by the Business Combination Agreement are referred to as the “Business Combination.” Subject to the terms and conditions of the Business Combination Agreement, the Company and Adifex would each be a wholly owned subsidiary of Pubco, Pubco’s common stock is expected to be listed on the NYSE American and equity holders of the Company and Adifex would receive Pubco common stock. See Note 14 to our financial statements for further information about the Business Combination Agreement.

Although Fresh Vine has entered into the Business Combination Agreement, completion of the Business Combination is subject to the satisfaction or waiver of certain closing conditions, including without limitation that the Company raises up to \$10,000,000 through the sale of its equity or debt securities to cover transaction expenses and for working capital purposes. We cannot assure you that such financing will be available on acceptable terms, if at all. If, for any reason, the Business Combination does not close, there is no assurance the Company will be able to enter into or complete another strategic transaction like the Business Combination Agreement, and our ability to regain compliance with NYSE American listing standards will be adversely affected.

If the Business Combination is not completed, the Company’s 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 the Company funds its operations and incurs fees and expenses related to the Business Combination. In addition, if the Company’s board of directors were to approve and recommend, and the Company’s stockholders were to approve, a dissolution of the Company, 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 Company’s stockholders. As a result of this requirement, a portion or all of the Company’s assets may need to be reserved pending the resolution of such obligations. In addition, the Company 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 Company’s 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 Company’s stockholders could lose all or a significant portion of their investment in the event of a liquidation and dissolution of the Company.

Financing Transactions

We have funded our operations through debt and equity financing, as described in Item 7 (Management’s Discussion and Analysis of Financial Condition and Results of Operations) of our Annual Report on Form 10-K for the year ended December 31, 2023 under the caption “Financing Transactions,” and as described in this report under the caption “Liquidity and Capital Resources” and Note 14 to our financial statements.

Critical Accounting Policies and Estimates

The Company’s significant accounting policies are detailed in “Note 1: Summary of Significant Accounting Policies” to the financial statements included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2023 and this Quarterly Report on Form 10-Q. The Company follows these policies in preparation of the financial statements.

Off-Balance Sheet Arrangements

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

Accounting Standards and Recent Accounting Pronouncements

None.

Emerging Growth Company Status

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

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not required.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act), defines the term “disclosure controls and procedures” as those controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and that such information is accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as of June 30, 2024. 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 June 30, 2024 due to the material weaknesses in internal control over financial reporting as described below.

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.

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 quarter ended September 30, 2024 that has materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

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. 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. On March 25, 2024, Mr. Michaels filed a Notice and Application for Taxation of Costs and Disbursements. On March 26, 2024, the Company filed its Notice of Appeal. On March 26, 2024, Mr. Michaels served a motion for Pre-verdict and Prejudgment Interest. On March 27, 2024, a Notice of Entry of Judgment was filed and, on March 28, 2024, a Notice of Docketing of Judgment was entered. Mr. Michaels has commenced garnishment proceedings against certain of the Company’s bank accounts and other third parties in an attempt to collect on the judgment and such proceedings remain pending. 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 may be required to post an appeal 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 appeal 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.

Item 1A. Risk Factors

In addition to the other information set forth in this Quarterly Report on Form 10-Q, including the risk factors set forth below, you should carefully consider the risks and uncertainties set forth in our other filings with the SEC, including in our most recent Annual Report on Form 10-K.

Risks Relating to Business Combination

The following factors relate to the Company’s pending business combination pursuant to the Business Combination Agreement dated as of November 3, 2024 that we entered into with (i) Amaze Holdings Inc., a Delaware corporation and wholly owned subsidiary of the Company (“Pubco”), (ii) VINE Merger Sub Inc., a Delaware corporation and wholly subsidiary of Pubco (“VINE Merger Sub”), (iii) Adifex Merger Sub LLC, a Delaware limited liability company and wholly owned subsidiary of Pubco (“Adifex Merger Sub”), and (iv) Adifex Holdings LLC, a Delaware limited liability company (“Adifex”). The transactions contemplated by the Business Combination Agreement are referred to as the “Business Combination.”

The announcement and pendency of the Business Combination Agreement may have an adverse effect on our business, operating results and our stock price, and may result in the loss of employees, customers, suppliers, and other business partners.

We are subject to risks in connection with the announcement and pendency of the Business Combination regardless of whether the Business Combination is completed, including, but not limited to, the following:

- market reaction to the announcement of the Business Combination, which could adversely impact investor confidence in us;
- changes in our business, operations, financial position, and prospects;
- market assessments of the likelihood that the Business Combination will be consummated;
- any delay in the expected timeframe of the Business Combination;
- the number of shares of Pubco common stock issuable to our stockholders will not be increased to account for positive changes in our business, assets, liabilities, prospects, outlook, financial condition, or results of operations during the pendency of the Business Combination, including any successful execution of our current strategy as an independent company or in the event of any change in the market price of, analyst estimates of, or projections relating to, our common stock;

- potential adverse effects on our relationships with our current customers, suppliers and other business partners, or those with which we are seeking to establish business relationships, due to uncertainties about the Business Combination;
- we have incurred, and will continue to incur, significant costs, expenses and fees for professional services and other transaction costs in connection with the Business Combination, and many of these fees and costs are payable by us regardless of whether the Business Combination is consummated;
- potential adverse effects on our ability to attract, recruit, retain, and motivate current and prospective employees who may be uncertain about their future roles and relationships with us following the completion of the Business Combination, and the possibility that our employees could lose productivity as a result of uncertainty regarding their employment following the Business Combination;
- the pendency and outcome of the legal proceedings that may be instituted against us, our directors, executive officers and others relating to the transactions contemplated by the Business Combination Agreement;
- the possibility of disruption to our business, including increased costs and diversion of management time and resources that could otherwise have been devoted to other opportunities that may have been beneficial to us;
- in certain instances, the Business Combination Agreement requires us to reimburse Adifex for all reasonable out-of-pocket fees and expenses incurred by Adifex in connection with the Business Combination Agreement, up to a maximum of \$200,000, which could require us to use available cash that would have otherwise been available for general corporate purposes; and
- other developments beyond our control, including, but not limited to, changes in domestic or global economic conditions that may affect the timing or success of the Business Combination.

The adverse effects of the pendency of the Business Combination could be exacerbated by any delays in completion of the Business Combination or termination of the Business Combination Agreement.

While the Business Combination is pending, we are subject to contractual restrictions that could harm our business, operating results and our stock price.

The Business Combination Agreement includes restrictions on the conduct of our business prior to the completion of the Business Combination, generally requiring us to conduct our business and operations in the ordinary course of business and in material compliance with all applicable laws and the requirements of material contracts, and to not engage in certain specified activities without Adifex's prior consent. We may find that these and other obligations in the Business Combination Agreement may delay or prevent us from or limit our ability to respond effectively to competitive pressures, industry developments and future business opportunities that may arise during such period, even if our management and board of directors think they may be advisable. These restrictions could adversely impact our business, operating results and our stock price and our perceived acquisition value, regardless of whether the Business Combination is completed.

The failure to complete the Business Combination within the expected timeframe or at all may adversely affect our business and our stock price.

The consummation of the Business Combination is subject to a number of closing conditions, including, among other things:

- approval by our stockholders of the Business Combination Agreement, including the Business Combination;
- the SEC having declared the registration statement on Form S-4 to be effective;
- the absence of any injunction or other order of any court of competent jurisdiction that prohibits consummation of the Business Combination;
- completion of the acquisition of Amaze Software, Inc. by Adifex; and
- the Company having raised up to \$10,000,000 through the sale of its equity or debt securities to cover transaction expenses and for working capital purposes.

There can be no assurance that the conditions to the completion of the Business Combination will be satisfied, or that the Business Combination will be completed on the proposed terms, within the expected timeframe or at all. If the Business Combination is not completed, we may be subject to negative publicity or be negatively perceived by the investment or business communities and our stock price could fall to the extent that our current stock price reflects an assumption that the Business Combination will be completed. Furthermore, if the Business Combination is not completed, regardless of the reason, we may suffer other consequences that could adversely affect our business and results of our operations, and our ability to regain and maintain compliance with NYSE American listing standards.

The Business Combination Agreement limits our ability to pursue alternative transactions which could deter a third party from proposing an alternative transaction.

The Business Combination Agreement contains provisions that, subject to certain exceptions, limit our ability to (i) initiate, solicit, or knowingly facilitate the communication, making, submission or announcement of any Acquisition Proposal or Acquisition Inquiry (such terms as defined in the Business Combination Agreement) or take any action that would reasonably be expected to lead to an Acquisition Proposal or Acquisition Inquiry, (ii) furnish any non-public information regarding such party to any person in connection with or in response to an Acquisition Proposal or Acquisition Inquiry, (iii) engage in discussions or negotiations with any person with respect to any Acquisition Proposal or Acquisition Inquiry, (iv) approve, endorse or recommend any Acquisition Proposal or (v) execute or enter into any letter of intent or any contract contemplating or otherwise relating to any Acquisition Transaction (as defined in the Business Combination Agreement). It is possible that these or other provisions in the Business Combination Agreement might discourage a potential competing acquirer that might have an interest in acquiring all or a significant part of our outstanding common stock from considering or proposing an acquisition or might result in a potential competing acquirer proposing to pay a lower per share price to acquire our common stock than it might otherwise have proposed to pay.

We and our directors may be subject to litigation challenging the Business Combination, and an unfavorable judgment or ruling in any such lawsuits could prevent or delay the consummation of the Business Combination and/or result in substantial costs.

Lawsuits and demand letters arising out of the Business Combination may be filed or received in the future. The outcome of any such demands and complaints and any litigation ensuing from such demands and complaints cannot be assured, including the amount of fees and costs associated with defending these claims or any other liabilities that may be incurred in connection therewith. Whether or not any plaintiff's claim is successful, this type of litigation can result in significant costs and divert our attention and resources from the Business Combination and ongoing business activities, which could adversely affect our operations. In addition, if dismissals are not obtained or a settlement is not reached, these lawsuits could prevent or delay completion of the Business Combination.

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

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit Number	Description
10.1	Termination Agreement, dated as of July 31, 2024, by and between Fresh Vine Wine, Inc. and Notes Live, Inc. (incorporated by reference to Exhibit 10.1 to Current Report on Form 8-K filed August 1, 2024)
31.1*	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Principal Accounting Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1*	Certifications of Principal Executive Officer and Principal Accounting Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith.

SIGNATURES:

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

Date: November 14, 2024

FRESH VINE WINE, INC.

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

Date: November 14, 2024

By: /s/ Keith Johnson
Keith Johnson
Interim Chief Financial Officer

CERTIFICATION

I, Michael Pruitt, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Fresh Vine Wine Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15-d-15 (e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2024

/s/ Michael Pruitt

Michael Pruitt

Interim Chief Executive Officer (Principal Executive Officer)

CERTIFICATION

I, Keith Johnson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Fresh Vine Wine Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15-d-15 (e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 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 Quarterly Report on Form 10-Q of Fresh Vine Wine Inc. (the "Company") for the quarter ended September 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Pruitt, Interim Chief Executive Officer, and I, Keith Johnson, Interim Chief Financial Officer, of the Company, certify, pursuant to § 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1350, that to our knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 14, 2024

/s/ Michael Pruitt

Michael Pruitt
Interim Chief Executive Officer
(Principal Executive Officer)

/s/ Keith Johnson

Keith Johnson
Interim Chief Financial Officer
(Principal Financial Officer)