

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

FORM 10-K

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

For the fiscal year ended December 31, 2021

Or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the transition period from _____ to _____

Commission file number 000-53851

Mobivity Holdings Corp.

(Exact Name of Registrant as Specified in Its Charter)

Nevada
(State or Other Jurisdiction of
Incorporation or Organization)

26-3439095
(I.R.S. Employer
Identification No.)

3133 West Frye Road, # 215
Chandler, Arizona 85226
(Address of Principal Executive Offices and Zip Code)

(877) 282-7660
(Telephone Number)

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

Securities registered pursuant to section 12 (g) of the Act:
Common Stock, \$.001 par value

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the 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 and post such files). Yes No

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

Large accelerated filer
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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. Yes No

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates as of June 30, 2021 was \$26,270,789.

As of March 30, 2022, the registrant had 58,573,885 shares of common stock issued and outstanding.

MOBIVITY HOLDINGS CORP.
ANNUAL REPORT ON FORM 10-K
FISCAL YEAR ENDED DECEMBER 31, 2020
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FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K, or Form 10-K, contains “forward-looking statements” that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially and adversely from those expressed or implied by such forward-looking statements. The forward-looking statements are contained principally in Item 1—“Business,” Item 1.A—“Risk Factors” and Item 7—“Management’s Discussion and Analysis of Financial Condition and Results of Operations” but appear throughout the Form 10-K. Examples of forward-looking statements include, but are not limited to our expectations, beliefs or intentions regarding our potential product offerings, business, financial condition, results of operations, strategies or prospects and other matters that do not relate strictly to historical facts or statements of assumptions underlying any of the foregoing. These statements are often identified by the use of words such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “ongoing,” “opportunity,” “plan,” “potential,” “predicts,” “seek,” “should,” “will,” or “would,” and similar expressions and variations or negatives of these words. These forward-looking statements are based on the expectations, estimates, projections, beliefs and assumptions of our management based on information currently available to management, all of which are subject to change. Such forward-looking statements are subject to risks, uncertainties and other factors that are difficult to predict and could cause our actual results and the timing of certain events to differ materially and adversely from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below in Item 1.A – “Risk Factors”. Furthermore, such forward-looking statements speak only as of the date of this Form 10-K. We undertake no obligation to update or revise publicly any forward-looking statements to reflect events or circumstances after the date of such statements for any reason, except as otherwise required by law.

Part I

Item 1. Business

General Information

Mobivity Holdings Corp. (the “Company” or “we”) is in the business of developing and operating proprietary platforms over which brands and enterprises can conduct national and localized, data-driven marketing campaigns.

Mobivity’s Recurrency platform enables multi-unit retailers to leverage the power of their own data to yield maximum customer spend, frequency and loyalty while achieving the highest Return on Marketing Spend (ROMS) possible. Mobivity’s customers use Recurrency to:

- ① Transform messy point-of-sale (POS) data collected from thousands of points of sale into usable intelligence.
- ① Measure, predict, and boost guest frequency and spend by channel.
- ① Deploy and manage one-time use offer codes and attribute sales accurately across every channel, promotion and media program.
- ① Deliver 1:1 promotions and offers with customized Mobile Messaging, Personalized Receipt Promotions and Integrated Loyalty programs.

Mobivity’s Recurrency, delivered as a Software-as-a-Service (“SaaS”) platform, is used by leading brands including Subway, Sonic Drive-In, Chick-fil-A, Checkers/Rally’s and Circle K’s across more than 40,000 retail locations globally.

We’re living in a data-driven economy. In fact, by 2003 — when the concept of “big data” became common vernacular in marketing - as much data was being created every two days as had been created in all of time prior to 2003. Today, Big Data has grown at such a rate that 90% of the world’s data has been created in the past two years. Unfortunately, despite there being so much data accumulated, only one percent of data is being utilized today by most businesses.

The challenge for multi-unit retailers isn’t that they don’t have enough data; in fact, national retailers are collecting millions of detailed transactions daily from thousands of points of sale around the world. The challenge is being able to make sense of this transaction data, which is riddled with data entry errors, collected by multiple POS systems and complicated by a taxonomy compiled by thousands of different franchisee owners. To normalize such an overwhelming amount of data into usable intelligence and then leverage it to optimize media investment and promotion strategy requires numerous teams of data analysts and data scientists that many retailers and restaurant operators simply don’t have. Which is why so many technology and data companies, that can help solve these challenges, have been invested in and acquired by brands including, McDonald’s, Starbucks and Yum Brands.

Mobivity's Recurrency platform fills this need with a self-service SaaS offering, enabling operators to intelligently optimize their promotions, media and marketing spend. Recurrency drives system-wide sales producing on average a 13% increase in guest spend and a 26% improvement in frequency, ultimately delivering an average Return on Marketing Spend of 10X. In other words, for every dollar invested in marketing, retailers using Recurrency to manage, optimize and deliver multi-channel consumer promotions generate an average of ten dollars in *incremental* revenue from their customers.

The Recurrency Platform

Mobivity's Recurrency™ platform unlocks valuable POS and mobile data to help transform customer transactions into actionable and attributable marketing insights. Our technology provides transactional data, in real-time, that uncovers market-basket information and attributes both online and traditional promotions. Recurrency is comprised of seven components.

POS Data Capture

Recurrency captures, normalizes, integrates, and stores transaction data and is compatible with most POS systems used by restaurants and retailers today. The result is a clean useful dataset upon which to predict and influence customers' buying behavior and deliver basket-level insights.

Analytics Powered by Machine Learning

Recurrency uses Machine Learning ("ML") to uncover patterns in the buying behaviors of consumers and leverages that data to suggest pricing optimizations, and guide marketing campaigns.

Offers and Promotions

Recurrency provides a digital wallet system for creating and managing dynamic offers and promotions, enabling accurate and complete closed-loop attribution across all channels, media and marketing efforts. Retailers can deploy one-time, limited-use and multi-use promotions across all online and offline marketing channels that are scannable at the POS or redeemable online, enabling fraud-free, controllable promotion delivery and attribution at scale. Marketing teams can use the comprehensive attribution analysis and insights to optimize media mix and spend for maximum Return on Marketing Spend ("ROMS").

Predictive Offers

Recurrency leverages the normalized data captured at the POS and applies Artificial Intelligence ("AI") to build profiles of both known and anonymous customers, analyzes pre and post-redemption behavior and then predicts offers that will drive the highest increases in customer spend and frequency at the lowest discount possible. The result is optimized, personalized promotions that produce the highest ROMS possible.

Personalized Receipt Promotions

Recurrency unlocks the power of transactional data to create relevant and timely customer messages printed on the receipts already being generated at the POS. Both clients and agencies are using Recurrency to drive better results and make decisions around offers, promotions, and customer engagement through the medium of the printed receipt. Software integrated with leading POS systems, such as Oracle, MICROS, or installed directly onto receipt printer platforms, such as Epson's OmniLink product, dynamically controls what is printed on receipts including images, coupons, announcements, or other calls-to-action, such as invitations to participate in a survey. Recurrency offers a Web-based interface where users can design receipt content and implement business rules to dictate what receipt content is printed in particular situations. All receipt content is also transmitted to cloud-based Recurrency for storage and analysis.

Customized Mobile Messaging

Recurrency transforms standard short message service ("SMS"), multimedia messaging service ("MMS"), and rich communication services ("RCS") into a data-driven marketing medium. Recurrency tracks and measures offer effectiveness at a more granular level than other solutions, allowing clients to create smarter offers and drive higher redemption rates. Our proprietary platform connects to all wireless carriers so that any consumer, on any wireless service (for example, Verizon), can join our customer's SMS/MMS mobile marketing campaign. Our customers use Recurrency's self-service interface to build, segment, target and optimize mobile messaging campaigns to drive increased guest frequency and spend. Recurrency is an industry leader in RCS messaging and has an industry leading broadcast reach.

Belly Loyalty

Mobivity's Belly Loyalty solution drives increased customer engagement and frequency with a customer-facing digital rewards platform via an app and digital pad. Using Belly, customers can customize rewards and leverage pre-built email campaigns and triggers to encourage greater frequency as well as identify and reactivate lapsed customers.

Company Strategy

Our objective is to build an industry-leading Software-as-a-Service (“SaaS”) product that connects consumers to merchants and brands. The key elements to our strategy are:

- ① *Exploit the competitive advantages and operating leverage of our technology platform.* The core of our business is our proprietary POS Data Capture technology. Several years of development went into designing POS Data Capture such that the process of intercepting POS data and performing actions, such as controlling the receipt printer with receipt is scalable, portable to a wide variety of POS platforms, and does not impact performance factors including the print speed of a typical receipt printer. Furthermore, we believe the transmission of POS data to Mobivity’s cloud-based data stores presents a very competitive and innovative method of enabling POS data access. Additionally, we believe that our Recurrency platform is more advanced than technologies offered by our competitors and provides us with a significant competitive advantage. With more than ten years of development, we believe that our platform operates SMS/MMS text messaging transactions at a “least cost” relative to competitors while also being capable of supporting SMS/MMS text messaging transactional volume necessary to support our goal of several thousand end users. Leveraging our Recurrency platform allows for full attribution of SMS/MMS offers, which we believe is a unique combination of both SMS/MMS text messaging and POS data.
- ① *Evolve our sales and customer support infrastructure to uniquely serve very large customer implementations such as franchise-based brands who operate a large number of locations.* Over the past few years, we have focused our efforts on the development of our technology and solutions with the goal of selling and supporting small and medium-sized businesses. Going forward, we intend to increase significantly our investments in sales and customer support resources tailored to selling to customers that operate franchise brands. Today we support more than 30,000 merchant locations globally.
- ① *Acquire complementary businesses and technologies.* We will continue to search and identify unique opportunities which we believe will enhance our product features and functionality, revenue goals, and technology. We intend to target companies with some or all of the following characteristics: (1) an established revenue base; (2) strong pipeline and growth prospects; (3) break-even or positive cash flow; (4) opportunities for substantial expense reductions through integration into our platform; (5) strong sales teams; and (6) technology and services that further build out and differentiate our platform. Our acquisitions have historically been consummated through the issuance of a combination of our common stock and cash.
- ① *Build our intellectual property portfolio.* We currently have nine issued patents that we believe have significant potential application in the technology industry. We plan to continue our investment in building a strong intellectual property portfolio.

While these are the key elements of our current strategy, there can be no guarantees that our strategy will not change or that our strategy will be successful.

Recent Developments

Unsecured Promissory Note Investments in 2020

During the year ended December 31, 2020, we issued to one of our directors, unsecured Notes in the principal aggregate amount of \$700,000, which are due and payable two years after issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay any of the Notes without notice, subject to a two percent (2%) pre-payment penalty. We conducted the private placement of our securities in December 2020. The Note holder participated in the warrant exercise described below and settled principal of \$1,200,000 of principal under our 2019 and 2020 private placement Notes in addition to accrued interest under the notes totaling \$192,208, into 1,113,767 shares of our common stock. As of December 31, 2020, we had \$500,000 as a remaining balance of these 2020 Notes and accrued interest of \$8,958. This balance of \$500,000 in principle and \$43,750 in accrued interest was paid in full on June 30, 2021, at which time the company recorded and extinguishment of debt in the amount of \$891,103.

On April 10, 2020, we entered into a commitment loan with Chase Bank, N.A. under the CARES act and SBA Paycheck Protection Program, in the principal aggregate amount of \$891,103, which is due and payable two years after issuance. This note bears interest on the unpaid balance at the rate of one percent (1%) per annum. The note contains a deferral period of six months, for which no interest or principal payments are due. Full forgiveness of the loan was obtained by meeting certain SBA requirements. The entire loan was forgiven on July 21, 2021.

On April 22, 2020, we entered into a commitment loan with TD Bank under the Canadian Emergency Business Account (“CEBA”), in the principal aggregate amount of \$40,000 CAD, which is due and payable on December 31, 2022. This note bears interest on the unpaid balance at the rate of zero percent (0%) per annum during the initial term. Under this note no interest or principal payments are due until January 1, 2023. Under the conditions of the loan, twenty-five percent (25%) of the loan will be forgiven if seventy-five percent (75%) is repaid prior to the initial term date.

During the year ended December 31, 2021, we issued to one of our directors, secured Notes in the principal aggregate amount of \$3,478,125, including cash in the amount of \$3,206,250 and \$271,875 of principal and accrued interest under the above-described Note that was rolled into the Credit Facility, which are due and payable two years after issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. On November 19, 2021, a payment of \$200,000 was paid toward the principal balance of the note. As of December 31, 2021, we have \$3,278,125 as a remaining balance of these 2021 Notes and accrued interest of \$149,040.

During the year ended December 31, 2021, we issued to Talkot Capital LLC, unsecured Notes in the principal aggregate amount of \$271,875, which are due and payable two years after issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. As of December 31, 2021, we have \$271,875 as a remaining balance of these 2021 Notes and accrued interest of \$23,200.

2022 Warrant Exercises

On February 7, 2022, seventeen warrant holders exercised their common stock purchase warrant for 3,163,190 shares at the exercise price of \$.80 per share, resulting in additional capital of \$2,530,552. As an inducement for the holder's exercise of the warrants, we issued the holders 2,530,552 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in February 2025.

Industry Background

Traditionally only sophisticated e-commerce brands, such as Amazon, were capable of personalizing and targeting their marketing to consumers as they navigated online shopping experiences that tracked their every move, all the way to check out. But despite the scale and success of e-commerce, it still accounts for just around 10% of commerce conducted in the U.S. The other 90% of "offline" merchants struggle to leverage data to combine with digital marketing channels and replicate the same personalized marketing tactics employed by successful e-commerce operators. Particularly, merchants are challenged with connecting purchase data collected by traditional point-of-sale terminals and mapping those transactions back to consumers to ensure that follow on marketing messages are personalized to the consumers purchase history.

Offline marketers will increasingly invest in technologies that leverage data to power personalized, digital consumer experiences and mimic how e-commerce marketers operate. This is a trend that has growing support from various industry analysts as well. McKinsey recently reported that "data activated marketing" can boost sales 15%-20% and significantly improve the ROI on marketing spend across marketing channels. While the upside of data driven marketing may seem obvious, marketers are also converging their digital and offline worldviews when it comes to thinking about how they allocate their marketing budgets. Gartner's 2015-2016 Chief Marketing Officer (CMO) Spend Survey reported that 98 percent of CMOs no longer make a clear distinction between marketing online and offline and say the disciplines are merging. We believe that these trends reveal a material insight into how the market is converging towards our value proposition and will further propel our growth; as the market increasingly convinces itself of the upside of targeting its marketing based off of consumer data, as suggested by the McKinsey study, and the Gartner study suggests that offline and digital marketing disciplines are merging, then our unique approach to merging offline point-of-sale data with digital channels.

Data driven marketing will also leverage the rapidly emerging field of "cognitive computing," where computers are becoming intelligent – often referred to as "artificial intelligence". Google CEO, Sundar Pichai, has described how Google is shifting from a mobile first world, to an AI first world; and actions speak louder than words - Google has acquired more artificial intelligence startups than Facebook and Microsoft combined. A recent forecast by Tractica (a market intelligence firm that focuses on human interaction with technology) suggests that annual worldwide AI revenue will grow at a combined annual growth rate of more than 49% to \$36.8 billion by 2025. One of the key drivers to progress in this field is called "machine learning," which aims to give computers the ability to learn without being explicitly programmed. This could open up entirely new possibilities where marketing becomes not just automated, but autonomous and entirely free of human intervention. Machine learning is powered by collecting massive amounts of data that can "train" machines to think on their own; an article in Fortune last year went as far as calling "data the new oil". Jim Hare, research vice president at Gartner, proclaimed "As AI accelerates up the Hype Cycle, many software providers are looking to stake their claim in the biggest gold rush in recent years."

The Mobivity Solution

Our Recurrency platform is designed to leverage point-of-sale data, along with cognitive computing, to increase visits, spend, and loyalty from consumers. We do this by **capturing** transaction detail, **analyzing** the data, and **motivating** customers and employees to take actions that improve business performance.

- ① *Capture*: Recall that more than 90% of our economy still functions “offline”. Our Recurrency solution plays an integral part in bringing brick and mortar businesses into the digital future by creating an extensible point of access to their POS data. Recapture is a lightweight software client that can be installed in just about any POS system and immediately enables applications to operate off of real-time POS data.
- ① *Analyze*. Often times marketers spend a large portion of their budget on marketing programs with little to no visibility into attributable sales. A 2016 IAB/Winterberry study reported cross-channel measurement and attribution would be the No. 1 tactic occupying respondents’ time last year, a whopping 63 percent year-over-year increase from the previous year. This is because understanding consumers’ offline behavior is mission-critical for brands and agencies looking to bridge the gap between the online and offline worlds. Our Recurrency solution allows for easy access to POS data enabling full attribution of our campaigns, along with potentially linking offline POS data to other forms of digital marketing such as social or search advertising.
- ① *Motivating Consumers*. We motivate consumers and employees to improve business performance through our Recurrency solution. This is where our ability to engage consumers through their mobile phone and track their behavior to any of these offline cash registers, combines with machine learning and artificial intelligence techniques to dial-in targeted marketing engagements that cause consumers to spend more. Recurrency has engaged more than nine million consumers across more than 30,000 retail locations while examining billions of purchase transactions. In one study, we worked with the analytics and data team of one of our largest clients where we studied the behavior of consumers both before and after their enrollment in an SMS marketing program. Together, we took a universe of hundreds of thousands of consumers and examined their purchases for a period of time before they joined. We then tracked their purchases after they joined the program and learned that these consumers increased their overall spend by forty five percent. Restaurants fight tooth and nail for every 1% increase in spend, so this was an amazing result. Another brand challenged us to increase their customer frequency which had historically been an average of just one visit every 60 days. By leveraging our Recurrency platform, we were able to create a targeted offer program that printed coupons on consumers’ receipts. In some cases, consumers returned in eight days – far better than the historical average of 60 days. Within 90 days since launching the program, consumers were returning within days (instead of months) and the program is on pace to generate an ROI of more than 400%.

In the future, we intend to develop additional platform features with the goal of driving additional value by helping brick and mortar brands leverage POS data to drive business growth.

Marketing and Sales

We market and sell the services offered over our proprietary platform directly through our own sales force, via resellers, and in some cases through agents.

- ① *Direct Sales*. Our direct sales force is predominantly comprised of a team of representatives employed by us to promote and sell our services both domestically and internationally.
- ① *Resellers*. We sell our services via wholesale pricing of licensing and transactional fees to various resellers who market and sell the Mobivity services under their own brand.
- ① *Agents*. We also engage independent agents to market and sell our services under the Mobivity brand in return for payment of a commission or revenue share for customers they introduce to us.
- ① In addition to our direct and indirect sales channels, we also market our services online through our Website, Facebook, Twitter, LinkedIn, and other online channels. We also participate in various trade and industry events to build awareness and promote exposure to our services and brand.

Our services are predominantly marketed and sold in the form of a recurring software licensing fee that is determined by desired features and the number of physical locations our customers would like to deploy the services in. For example, a customer who exclusively utilizes our SMS/MMS feature for one location will pay a much lower recurring licensing fee than a marketer who desires our full breadth of product features and needs to drive localized marketing campaigns across 500 locations in various cities or locales.

In addition to license fees, we also arrange for a transaction fee in special cases where our customers require greater bandwidth or throughput to process large volumes of mobile messaging transactions. For example, a customer may want to utilize our services for a major sporting event when there may be tens of thousands of fans who are expecting a “score alert” sent to their mobile phone via a SMS/MMS text message. In this case, the required resources to facilitate a large number of SMS/MMS messages in a short period of time is much higher and therefore we may charge an additional per-SMS/MMS text message fee to our customer.

Research and Development

We have developed an internal and external software development team with many years of experience in the mobile advertising and marketing industries. Our research and development activities are focused on enhancements to our platform, including extending our technology into payment processing, location-based services, application analytics, and other technical opportunities in the evolving mobile industry.

Our total engineering, research and development expenditures in 2021 and 2020 were \$3,583,773 and \$3,535,742, respectively.

Competition

Combining POS data, cognitive computing, and various marketing applications is relatively new. The majority of our competitors are start-ups or early stage growth companies helping to pioneer the technology necessary to extract POS data and integrate that data with technology channels such as mobile messaging, e-mail, social media, and others. Competitors in this arena include Punchh, Personica, Bridg, Sparkfly, Paytronix and PosIQ.

We also believe that POS manufacturers could also pose a competitive threat by vertically integrating similar features and capabilities into their core products. Leading vendors in the POS space include Oracle/Micros, NCR, IBM, Square, First Data/Clover, and others.

We believe that the key competitive factors that differentiate us from our competitors include:

- ① *Intellectual Property.* We currently own nine patents that cover various approaches to facilitating SMS/MMS text messaging solutions and manipulating receipt content.
- ② *Competitive pricing.* We are unaware of any solution in the market that offers the ability to aggregate and analyze POS data, activate mobile messaging campaigns, convert print receipts into targeted marketing transactions, and shape employee performance in real-time all from a single platform (Recurrency). Our platform approach will allow for bundled pricing strategies, or a la carte tactics, that could create unfair pricing advantages.
- ③ *Scalability.* We believe that our platform is more scalable than most if not all of our competitors. We have scaled from around 1,000 POS integrations to more than 20,000 in just three years. Aside from the POS manufacturers themselves, we are unaware of any other solutions provider who is currently integrated with as many POS devices as we are.

Seasonality

Our business, as is typical of companies in our industry, is highly seasonal. This is primarily due to traditional marketing and advertising spending being heaviest during the holiday season while brands, advertising agencies, mobile operators and media companies often close out annual budgets towards the end of the calendar year. Seasonal trends have historically contributed to, and we anticipate, will continue to contribute to fluctuations in our quarterly results, including fluctuations in sequential revenue growth rates.

Intellectual Property-

We regard the protection of our developed technologies and intellectual property rights as an important element of our business operations and crucial to our success. We rely primarily on a combination of patent laws, trademark laws, copyright laws, trade secrets, confidentiality procedures and contractual provisions to protect our proprietary technology. We require our employees, consultants and advisors to enter into confidentiality agreements. These agreements provide that all confidential information developed or made known to the individual during the course of the individual's relationship with us is to be kept confidential and not disclosed to third parties except under specific circumstances. In the case of our employees, the agreements provide that all of the technology which is conceived by the individual during the course of employment is our exclusive property. The development of our technology and many of our processes are dependent upon the knowledge, experience and skills of key scientific and technical personnel.

As of the date of this report we own eight patents. U.S. Patent numbers 7,991,388 B1 and 8,244,216 B1 were issued on August 2, 2011 and August 14, 2012, respectively.

These patents cover a geo-bio-metric personal identification number, a service that authenticates a user from a feature phone or smart phone using a number of mobile attainable attributes: geolocation, facial image, accelerometer (which measures the physical orientation or movement of the device itself), and text messaging. The purpose of the geo-bio-metric PIN service is to authenticate a user while verifying the following: the user is currently using his or her other phone; the user is at the location that their phone is at; the user is not at another location and using their phone through a proxy; and an impostor is not using the phone.

In March 2011, we acquired US Patent number 6,788,769 B1 which covers a method and system for using telephone numbers as a key to address email and online content without the use of a look-up database. Using this system, a phone number is used to access a website or an email address in exactly the same way it is used to dial a telephone. The patent expires in March of 2021.

U.S. Patent numbers 8,463,306 and 8,818,434 were issued on June 11, 2013 and August 26, 2014, respectively. U.S. Patent 9,307,430 was issued on April 5, 2016. These patents cover a method and system for testing a SMS/MMS text messaging network. The method and system allows for real-time testing of the initiation and completion of SMS/MMS text messages and any delivery delays across the major American mobile phone carriers, and accurately measures the progress on SMS/MMS broadcasts and records when a broadcast has been completed.

U.S. Patent number 9,495,671 was granted on November 15, 2016. U.S. Patent 9,727,853 was issued on August 8, 2017. These patents cover a system to generate value added messages on receipts printed by point-of-sale (POS) systems based on various rules determined by information conveyed on the purchase receipt such as location, time of day, or other purchase data. The patent application claims priority to a patent application filed in 2006.

U.S. Patent number 10,475,017 B2 was granted on November 12, 2019. This patent covers a point-of-sale terminal and a computer-readable storage medium that generates transaction information for a commercial transaction, the transaction information including customer information and purchase information. The point-of-sale terminal may generate nutritional information based on the purchase information. The point-of-sale terminal may send the customer information, the purchase information, and location information identifying a location of the POS terminal to an advertising server and may receive responsive advertising content from the advertising server. The point-of-sale terminal may print a receipt including the transaction information, the nutritional information, and the advertising content.

Our issued and any future patents that we may issue may not survive a legal challenge to their scope, validity or enforceability, or provide significant protection for us. The failure of our patents, or the failure of our copyright and trade secret laws to adequately protect our technology, might make it easier for our competitors to offer similar products or technologies. In addition, patents may not issue from any of our current or any future applications.

As of the date of this report we own trademarks for Boomtext, SmartReceipt, Livelenz, and several trademarks from the Belly acquisition.

Government Regulation

The growth and development of the mobile messaging market and the market for electronic storage of personal information has resulted in a variety of stringent consumer protection laws, many of which impose significant burdens on companies that store personal information. Depending on the products and services that they offer, mobile data service providers may be subject to regulations and laws applicable to providers of mobile, Internet and VOIP services, including domestic and international laws and regulations relating to user privacy and data protection, defamation, pricing, advertising, taxation, gambling, sweepstakes, promotions, billing, real estate, consumer protection, accessibility, content regulation, quality of services, telecommunications, mobile, television and intellectual property ownership and infringement. We expect that the regulation of our industry generally will continue to increase and that we will be required to devote increasing amounts of legal and other resources to address this regulation. In addition, the application of existing domestic and international laws and regulations relating to issues such as user privacy and data protection, marketing, advertising, consumer protection and mobile disclosures in many instances is unclear or unsettled.

In addition to its regulation of wireless telecommunications providers generally, the U.S. Federal Communications Commission, or FCC, has examined, or is currently examining, how and when consumers enroll in mobile services, what types of disclosures consumers receive, what services consumers are purchasing and how much consumers are charged. In addition, the Federal Trade Commission, or FTC, has been asked to regulate how mobile marketers can use consumers' personal information. Consumer advocates claim that many consumers do not know when their information is being collected from cell phones and how such information is retained, used and shared with other companies. Consumer groups have asked the FTC to identify practices that may compromise privacy and consumer welfare; examine opt-in procedures to ensure consumers are aware of what data is at issue and how it will be used; investigate marketing tactics that target children; and create policies to halt abusive practices. The FTC has expressed interest, in particular, in the mobile environment and services that collect sensitive data, such as location-based information.

The principal laws and regulations that pertain to us and our customers in connection with their utilization of our platform, include:

- ① *Deceptive Trade Practice Law in the U.S.* The FTC and state attorneys general are given broad powers by legislatures to curb unfair and deceptive trade practices. These laws and regulations apply to mobile marketing campaigns and behavioral advertising. The general guideline is that all material terms and conditions of the offer must be "clearly and conspicuously" disclosed to the consumer prior to the buying decision. The balancing of the desire to capture a potential customer's attention, while providing adequate disclosure, can be challenging in the mobile context due to the lack of screen space available to provide required disclosures.
- ① *Behavioral Advertising.* Behavioral advertising is a technique used by online publishers and advertisers to increase the effectiveness of their campaigns. Behavioral advertising uses information collected from an individual's web-browsing behavior, such as the pages they have visited or the searches they have made, to select which advertisements to display to that individual. This data can be valuable for online marketers looking to personalize advertising initiatives or to provide geo-tags through mobile devices. Many businesses adhere to industry self-governing principles, including an opt-out regime whereby information may be collected until an individual indicates that he or she no longer agrees to have this information collected. The FTC and EU member states are considering regulations in this area, which may include implementation of a more rigorous opt-in regime. An opt-in policy would prohibit businesses from collecting and using information from individuals who have not voluntarily consented. Among other things, the implementation of an opt-in regime could require substantial technical support and negatively impact the market for our mobile advertising products and services. A few states have also introduced bills in recent years that would restrict behavioral advertising within the state. These bills would likely have the practical effect of regulating behavioral advertising nationwide because of the difficulties behind implementing state-specific policies or identifying the location of a particular consumer. There have also been a large number of class action suits filed against companies engaged in behavioral advertising.
- ① *Behavioral Advertising-Privacy Regulation.* Our business is affected by U.S. federal and state, as well as EU member state and foreign country, laws and regulations governing the collection, use, retention, sharing and security of data that we receive from and about our users. In recent years, regulation has focused on the collection, use, disclosure and security of information that may be used to identify or that actually identifies an individual, such as an Internet Protocol address or a name. Although the mobile and Internet advertising privacy practices are currently largely self-regulated in the U.S., the FTC has conducted numerous discussions on this subject and suggested that more rigorous privacy regulation is appropriate, including regulation of non-personally identifiable information which could, with other information, be used to identify an individual. Within the EU, member state data protection authorities typically regard IP addresses as personal information, and legislation adopted recently in the EU requires consent for the placement of a cookie on a user device. In addition, EU data protection authorities are following with interest the FTC's discussions regarding behavioral advertising and may follow suit by imposing additional privacy requirements for mobile advertising practices.
- ① *Marketing-Privacy Regulation.* In addition, there are U.S. federal and state laws and EU member state and other country laws that govern SMS/MMS and telecommunications-based marketing, generally requiring senders to transmit messages (including those sent to mobile devices) only to recipients who have specifically consented to receiving such messages. U.S. federal, EU member state and other country laws also govern e-mail marketing, generally imposing an opt-out requirement for emails sent within an existing business relationship.
- ① *SMS/MMS and Location-Based Marketing Best Practices and Guidelines.* We voluntarily comply with the guidelines of the Mobile Marketing Association, or MMA, a global association of 700 agencies, advertisers, mobile device manufacturers, wireless operators and service providers and others interested in the potential of marketing via the mobile channel. The MMA has published a code of conduct and best practices guidelines for use by those involved in mobile messaging activities. The guidelines were developed by a collaboration of the major carriers and they require adherence to them as a condition of service. We voluntarily comply with the MMA code of conduct, which generally require notice and user consent for delivery of location-based services. In addition, the Cellular Telephone Industry Association, or CTIA, has developed Best Practices and Guidelines to promote and protect user privacy regarding location-based services.
- ① *TCPA.* The United States Telephone Consumer Protection Act, or TCPA, prohibits unsolicited voice and text calls to cell phones through the use of an automatic telephone-dialing system ("ATDS") unless the recipient has given prior consent. The statute also prohibits companies from initiating telephone solicitations to individuals on the national Do-Not-Call list, and restricts the hours when such messages may be sent. Violations of the TCPA can result in statutory damages of \$500 per violation (i.e., for each individual text message). U.S. state laws impose additional regulations on voice and text calls. We believe that our platform does not employ an ATDS within the meaning of the TCPA based on case law construing that term.
- ① *CAN-SPAM.* The U.S. Controlling the Assault of Non-Solicited Pornography and Marketing Act, or CAN SPAM Act, prohibits all commercial e-mail messages, as defined in the law, to mobile phones unless the device owner has given "express prior authorization." Recipients of such messages must also be allowed to opt-out of receiving future messages the same way they opted-in. Senders have ten business days to honor opt-out requests. The FCC has compiled a list of domain names used by wireless service providers to which marketers may not send commercial e-mail messages. Senders have 30 days from the date the domain name is posted on the FCC site to stop sending unauthorized commercial e-mail to addresses containing the domain name. Violators are subject to fines of up to \$6.0 million and up to one year in jail for some spamming activities. Carriers, the FTC, the FCC, and State Attorneys General may bring lawsuits to enforce alleged violations of the Act.

- ① *Communications Privacy Acts.* Foreign and U.S. federal and state laws impose liability for intercepting communications while in transit or accessing the contents of communications while in storage. EU member state laws also require consent for our receiving this information, and if our carrier customers fail to obtain such consent we could be subjected to civil or even criminal penalties.
- ① *Security Breach Notification Requirements.* EU member state laws require notice to the member state data protection authority of a data security breach involving personal data if the breach poses a risk to individuals. In addition, Germany enacted a broad requirement to notify individuals in the event of a data security breach that is likely to be followed by notification requirements to data subjects in other EU member states. In the U.S., various states have enacted data breach notification laws, which require notification of individuals and sometimes state regulatory bodies in the event of breaches involving certain defined categories of personal information. Japan and Uruguay have also enacted security breach notice requirements. This new trend suggests that breach notice statutes may be enacted in other jurisdictions, including by the U.S. at the federal level, as well.
- ① *Children.* The Children's Online Privacy Protection Act prohibit the knowing collection of personal information from children under the age of 13 without verifiable parental consent, and strictly regulate the transmission of requests for personal information to such children. Other countries do not recognize the ability of children to consent to the collection of personal information. In addition, it is likely that behavioral advertising regulations will impose special restrictions on use of information collected from minors for this purpose.
- ① *Data Privacy Acts.* Individual states and countries have enacted or are moving forward with privacy compliance rules based on industry and types of data collected, such as the California Consumer Privacy Act ("CCPA"), Nevada's Senate Bill 220 and the EU's General Data Protection Regulation ("GDPR"). The acts provide residents the right to know what data is being collected about them and have access to it, whether that information is sold and the ability to refuse that data being sold, as well as the ability to opt out of its collection. Penalties for non-compliance vary by state and country, for instance the maximum penalty of the CCPA is \$7,500 for intentional violations. The largest financial impact of CCPA on a business is the provisioning of the right of consumers to bring forward lawsuits. These situations may arise from instances where their "non-encrypted or non-redacted personal information" is breached, regardless of the harm done to the data. Under the CCPA, consumers can collect between \$100 and \$750 for each event. If the damages are greater than \$750, then the consumer may receive even more.

Employees

As of March 20, 2022, we had 37 employees, consisting of 19 full-time and one part-time in research and development, 12 full-time in sales and marketing, and six full-time in general and administrative.

Item 1A. Risk Factors.

Risks Relating to Our Business

We may need additional financing to execute our business plan and fund operations, which additional financing may not be available on reasonable terms or at all. As of December 31, 2021, we had working capital deficit of \$4,454,560. We raised \$2,530,552 in warrant conversion in February 2022. While we believe that our additional cash from our warrant conversion along with our expected cash flow from operations, may not be sufficient to fund our 12-month plan of operations, there can be no assurance that we will not require significant additional capital within 12 months. Also, we expect that we may require additional capital beyond the next 12 months unless we are able to achieve and maintain a profitable operation. In the event we require additional capital we will endeavor to raise additional funds through various financing sources, including the sale of our equity and debt securities and the procurement of commercial debt financing. However, there can be no guarantees that such funds will be available on commercially reasonable terms, if at all. If such financing is not available on satisfactory terms, we may be unable to expand or continue our business as desired and operating results may be adversely affected. Any debt financing will increase expenses and must be repaid regardless of operating results and may involve restrictions limiting our operating flexibility. If we issue equity securities to raise additional funds, the percentage ownership of our existing stockholders will be reduced, and our stockholders may experience additional dilution in net book value per share.

Our ability to obtain needed financing may be impaired by such factors as the capital markets, both generally and specifically in our industry, and the fact that we are not yet profitable, which could impact the availability or cost of future financings. If the amount of capital we are able to raise from financing activities, together with our revenues from operations, is not sufficient to satisfy our capital needs, we may be required to reduce or even cease operations.

Our business may be adversely affected by the COVID-19 outbreak. In December 2019, a novel strain of coronavirus, COVID-19, was reported to have surfaced in Wuhan, China. During 2020, this coronavirus spread to other countries, including the United States, and efforts to contain the spread of COVID-19 intensified. The United States and other countries had a series of lock-downs and self-isolation procedures, which have significantly limited business operations and restricted internal and external meetings. Further, the outbreak and any preventative or protective actions that we or our customers may take in respect of COVID-19 may result in a period of disruption to other work in progress. Our customers' businesses could be disrupted, and our future costs and potential revenues and technology evaluations could be negatively affected. Any resulting financial impact cannot be reasonably estimated at this time but may materially affect our business and financial condition. The extent to which COVID-19 impacts our results will depend on future developments, which are highly uncertain and cannot be predicted. New information may emerge concerning the severity and variants of COVID-19 along with the development of vaccines and the actions to contain COVID-19 or treat its impact, among others.

Our sales efforts to large enterprises require significant time and effort and could hinder our ability to expand our customer base and increase revenue. Attracting new customers to our large enterprise division requires substantial time and expense, especially in an industry that is so heavily dependent on personal relationships with executives. We cannot assure that we will be successful in establishing new relationships or maintaining or advancing our current relationships. For example, it may be difficult to identify, engage and market to customers who do not currently perform mobile marketing or advertising or are unfamiliar with our current services or platform. Further, many of our customers typically require input from one or more internal levels of approval. As a result, during our sales effort, we must identify multiple people involved in the purchasing decision and devote a sufficient amount of time to presenting our products and services to those individuals. The complexity of our services often requires us to spend substantial time and effort assisting potential customers in evaluating our products and services including providing demonstrations and benchmarking against other available technologies. We expect that our sales process will become less burdensome as our products and services become more widely known and used. However, if this change does not occur, we will not be able to expand our sales effort as quickly as anticipated and our sales will be adversely affected.

We may not be able to enhance our platform to keep pace with technological and market developments, or to remain competitive against potential new entrants in our markets. The market for mobile marketing and advertising services is emerging and is characterized by rapid technological change, evolving industry standards, frequent new product introductions and short product life cycles. Our current platform and services may not in the future be acceptable to marketers and advertisers. To keep pace with technological developments, satisfy increasing customer requirements and achieve acceptance of our marketing and advertising campaigns, we will need to enhance our current mobile marketing solutions and continue to develop and introduce on a timely basis new, innovative mobile marketing services offering compatibility, enhanced features and functionality on a timely basis at competitive prices. Our inability, for technological or other reasons, to enhance, develop, introduce and deliver compelling mobile marketing services in a timely manner, or at all, in response to changing market conditions, technologies or customer expectations could have a material adverse effect on our operating results or could result in our mobile marketing services platform becoming obsolete. Our ability to compete successfully will depend in large measure on our ability to maintain a technically skilled development and engineering staff and to adapt to technological changes and advances in the industry, including providing for the continued compatibility of our mobile marketing services platform with evolving industry standards and protocols. In addition, as we believe the mobile marketing market is likely to grow substantially, other companies which are larger and have significantly more capital to invest than us may emerge as competitors. For example, in August of 2019 Attentive Mobile raised \$40M in private venture financing. Similarly, in November of 2019, Punchh raised \$40M in private venture funding. New entrants could seek to gain market share by introducing new technology or reducing pricing. This may make it more difficult for us to sell our products and services, and could result in increased pricing pressure, reduced profit margins, increased sales and marketing expenses or the loss of market share or expected market share, any of which may significantly harm our business, operating results and financial condition.

Our services are provided on mobile communications networks that are owned and operated by third parties who we do not control and the failure of any of these networks would adversely affect our ability to deliver our services to our customers. Our mobile marketing and advertising platform is dependent on the reliability of mobile operators who maintain sophisticated and complex mobile networks. Such mobile networks have historically, and particularly in recent years, been subject to both rapid growth and technological change. If the network of a mobile operator with which we are integrated should fail, including because of new technology incompatibility, the degradation of network performance under the strain of too many mobile consumers using it, or a general failure from natural disaster or political or regulatory shut-down, we will not be able provide our services to our customers through such mobile network. This in turn, would impair our reputation and business, potentially resulting in a material, adverse effect on our financial results.

If our platform does not scale as anticipated, our business will be harmed. We must be able to continue to scale to support potential ongoing substantial increases in the number of users in our actual commercial environment and maintain a stable service infrastructure and reliable service delivery for our mobile marketing and advertising campaigns. In addition, we must continue to expand our service infrastructure to handle growth in customers and usage. If our mobile marketing services platform does not efficiently and effectively scale to support and manage a substantial increase in the number of users while maintaining a high level of performance, the quality of our services could decline and our business will be seriously harmed. In addition, if we are unable to secure data center space with appropriate power, cooling and bandwidth capacity, we may not be able to efficiently and effectively scale our business to manage the addition of new customers and overall mobile marketing campaigns.

The success of our business depends, in part, on wireless carriers continuing to accept our customers' messages for delivery to their subscriber base. We depend on wireless carriers to deliver our customers' messages to their subscriber base. Wireless carriers often impose standards of conduct or practice that significantly exceed current legal requirements and potentially classify our messages as "spam," even where we do not agree with that conclusion. In addition, the wireless carriers use technical and other measures to attempt to block non-compliant senders from transmitting messages to their customers; for example, wireless carriers block short codes or Internet Protocol addresses associated with those senders. There can be no guarantee that we, or short codes registered to us, will not be blocked or blacklisted or that we will be able to successfully remove ourselves from those lists. Although our services typically require customers to opt-in to a campaign, minimizing the risk that our customers' messages will be characterized as spam, blocking of this type could interfere with our ability to market products and services of our customers and communicate with end users and could undermine the effectiveness of our customers' marketing campaigns. To date we have not experienced any material blocking of our messages by wireless carriers, but any such blocking could have an adverse effect on our business and results of operations.

We depend on third party providers for a reliable Internet infrastructure and the failure of these third parties, or the Internet in general, for any reason would significantly impair our ability to conduct our business. We outsource all of our data center facility management to third parties who host the actual servers and provide power and security in multiple data centers in each geographic location. These third-party facilities require uninterrupted access to the Internet. If the operation of our servers is interrupted for any reason, including natural disaster, financial insolvency of a third-party provider, or malicious electronic intrusion into the data center, our business would be significantly damaged. As has occurred with many Internet-based businesses, on occasion in the past, we have been subject to "denial-of-service" attacks in which unknown individuals bombarded our computer servers with requests for data, thereby degrading the servers' performance. While we have historically been successful in relatively quickly identifying and neutralizing these attacks, we cannot be certain that we will be able to do so in the future. If either a third-party facility failed, or our ability to access the Internet was interfered with because of the failure of Internet equipment in general or we become subject to malicious attacks of computer intruders, our business and operating results will be materially adversely affected.

Failure to adequately manage our growth may seriously harm our business. We operate in an emerging technology market and have experienced, and may continue to experience, significant growth in our business. If we do not effectively manage our growth, the quality of our products and services may suffer, which could negatively affect our brand and operating results. Our growth has placed, and is expected to continue to place, a significant strain on our managerial, administrative, operational and financial resources and our infrastructure. Our future success will depend, in part, upon the ability of our senior management to manage growth effectively. This will require us to, among other things:

- ① implement additional management information systems;
- ② develop additional levels of management within our company;
- ③ locate additional office space in various countries; and
- ④ maintain close coordination among our engineering, operations, legal, finance, sales and marketing and customer service and support organizations.

Moreover, as our sales increase, we may be required to concurrently deploy our services infrastructure at multiple additional locations or provide increased levels of customization. As a result, we may lack the resources to deploy our mobile marketing services on a timely and cost-effective basis. Failure to accomplish any of these requirements would seriously harm our ability to deliver our mobile marketing services platform in a timely fashion, fulfill existing customer commitments or attract and retain new customers.

The gathering, transmission, storage and sharing or use of personal information could give rise to liabilities or additional costs of operation as a result of governmental regulation, legal requirements, civil actions or differing views of personal privacy rights. We transmit and store a large volume of personal information in the course of providing our services. Federal, state and international laws and regulations govern the collection, use, retention, sharing and security of data that we receive from our customers and their users. Any failure, or perceived failure, by us to comply with U.S. federal, state, or international privacy or consumer protection-related laws, regulations or industry self-regulatory principles could result in proceedings or actions against us by governmental entities or others, which could potentially have an adverse effect on our business, operating results and financial condition. Additionally, we may also be contractually liable to indemnify and hold harmless our customers from the costs or consequences of inadvertent or unauthorized disclosure of their customers' personal data which we store or handle as part of providing our services.

The interpretation and application of privacy, data protection and data retention laws and regulations are currently unsettled in the U.S. and internationally, particularly with regard to location-based services, use of customer data to target advertisements and communication with consumers via mobile devices. Such laws may be interpreted and applied inconsistently from country to country and inconsistently with our current data protection policies and practices. Complying with these varying international requirements could cause us to incur substantial costs or require us to change our business practices in a manner adverse to our business, operating results or financial condition.

As privacy and data protection have become more sensitive issues, we may also become exposed to potential liabilities as a result of differing views on the privacy of personal information. These and other privacy concerns, including security breaches, could adversely impact our business, operating results and financial condition.

In the U.S., we have voluntarily agreed to comply with wireless carrier technological and other requirements for access to their customers' mobile devices, and also trade association guidelines and codes of conduct addressing the provision of location-based services, delivery of promotional content to mobile devices and tracking of users or devices for the purpose of delivering targeted advertising. We could be adversely affected by changes to these requirements, guidelines and codes, including in ways that are inconsistent with our practices or in conflict with the rules or guidelines in other jurisdictions.

We currently rely on a small concentration of customers to use our products to generate our revenues, and the loss or change in any of these significant relationships could materially reduce our revenues. Although we believe we have a good relationship with these customers, our contracts with these customers are short-term in nature. Should these customers choose to terminate their contracts with us or if material events occur that are detrimental to these customers or their operations, it could have a significant negative impact on our financial performance.

We currently operate in limited vertical markets. Our customers primarily operate in the quick serve restaurant ("QSR") industry and we expanded to the convenience store market. Should this industry be impacted by economical or other unforeseen events, it could have a significant negative impact on our financial performance.

Risks Related to our Common Stock

There has been a limited trading market for our common stock. There has been a limited trading market for our common stock on the Over-the-Counter Bulletin Board. The lack of an active market may impair the ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the fair market value of your shares. An inactive market may also impair our ability to raise capital by selling shares of capital stock and may impair our ability to acquire other companies or technologies by using common stock as consideration.

The market price of our common stock may be, and is likely to continue to be, highly volatile and subject to wide fluctuations. The market price of our common stock is likely to be highly volatile and could be subject to wide fluctuations in response to a number of factors that are beyond our control, including:

- ① dilution caused by our issuance of additional shares of common stock and other forms of equity securities, which we expect to make in connection with future acquisitions or capital financings to fund our operations and growth, to attract and retain valuable personnel and in connection with future strategic partnerships with other companies;
- ① announcements of new acquisitions or other business initiatives by our competitors;
- ① our ability to take advantage of new acquisitions or other business initiatives;
- ① quarterly variations in our revenues and operating expenses;
- ① changes in the valuation of similarly situated companies, both in our industry and in other industries;
- ① changes in analysts' estimates affecting us, our competitors and/or our industry;
- ① changes in the accounting methods used in or otherwise affecting our industry;
- ① additions and departures of key personnel;
- ① announcements by relevant governments pertaining to additional quota restrictions; and
- ① fluctuations in interest rates and the availability of capital in the capital markets.

Some of these factors are beyond our control, and the impact of these risks, singly or in the aggregate, may result in material adverse changes to the market price of our common stock and/or our results of operations and financial condition.

We do not expect to pay dividends in the foreseeable future. We do not intend to declare dividends for the foreseeable future, as we anticipate that we will reinvest any future earnings in the development and growth of our business. Therefore, investors will not receive any funds unless they sell their common stock, and stockholders may be unable to sell their shares on favorable terms or at all. Investors cannot be assured of a positive return on investment or that they will not lose the entire amount of their investment in the common stock.

Our common stock may be considered to be a “penny stock” and, as such, any the market for our common stock may be further limited by certain SEC rules applicable to penny stocks. To the extent the price of our common stock remains below \$5.00 per share or we have net tangible assets of \$2,000,000 or less, our common shares will be subject to certain “penny stock” rules promulgated by the SEC. Those rules impose certain sales practice requirements on brokers who sell penny stock to persons other than established customers and accredited investors (generally institutions with assets in excess of \$5,000,000 or individuals with net worth in excess of \$1,000,000). For transactions covered by the penny stock rules, the broker must make a special suitability determination for the purchaser and receive the purchaser’s written consent to the transaction prior to the sale. Furthermore, the penny stock rules generally require, among other things, that brokers engaged in secondary trading of penny stocks provide customers with written disclosure documents, monthly statements of the market value of penny stocks, disclosure of the bid and asked prices and disclosure of the compensation to the brokerage firm and disclosure of the sales person working for the brokerage firm. These rules and regulations adversely affect the ability of brokers to sell our common shares and limit the liquidity of our securities.

We are a “smaller reporting company” and, as such are allowed to provide less disclosure than larger public companies. We are currently a “smaller reporting company,” meaning that we are not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a smaller reporting company and have a public float of less than \$75 million and annual revenues of less than \$50 million during the most recently completed fiscal year. As a “smaller reporting company”, we are able to provide simplified executive compensation disclosures in our SEC filings, are exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that independent registered public accounting firms provide an attestation report on the effectiveness of internal control over financial reporting, and have certain other decreased disclosure obligations in their SEC filings, including, among other things, only being required to provide two years of audited financial statements in annual reports. Decreased disclosures in our SEC filings due to our status as a “smaller reporting company” may make it harder for investors to analyze our results of operations and financial prospects.

Item 1B. Unresolved Staff Comments.

Not applicable.

Item 2. Properties.

We had a lease through January 2021 for 10,395 square feet of office space located at 55 N. Arizona Ave., Suite 310, Chandler, Arizona. Monthly rental payments, excluding common area maintenance charges, were \$20,140. We have entered into a new lease starting in February of 2021 for 8,898 square feet of office space located at 3133 W. Frye Road, Suite 215, Chandler, Arizona. Monthly rental payments, excluding common area maintenance charges, will be \$25,953 to \$28,733. The first twelve months of the lease included a 50% abatement period.

We have a lease through April 2022 for 3,248 square feet of office space located in Halifax, Nova Scotia, at a monthly rental expense of \$3,371 per month, excluding common area maintenance charges.

Item 3. Legal Proceedings.

As of the date of this report, the company has one pending legal proceeding related to TCPA (Telephone Consumer Protection Act) Violation. We are currently in the process of settling with the claimant.

Item 4. Not applicable.

Part II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matter and Issuer Purchases of Equity Securities

Our common stock is quoted on the OTC Bulletin Board under the stock symbol “MFON”.

Our common stock trades only sporadically and has experienced in the past, and is expected to experience in the future, significant price and volume volatility.

The following table shows the reported high and low closing bid quotations per share for our common stock based on information provided by the OTC Bulletin Board for the periods indicated. Quotations reflect inter-dealer prices, without markup, markdown or commissions and may not represent actual transactions.

Year Ended December 31, 2021	High	Low
Fourth Quarter	\$ 1.62	\$ 1.34
Third Quarter	\$ 1.77	\$ 1.43
Second Quarter	\$ 2.00	\$ 1.35
First Quarter	\$ 2.17	\$ 1.53

Year Ended December 31, 2020	High	Low
Fourth Quarter	\$ 1.85	\$ 0.88
Third Quarter	\$ 0.95	\$ 0.65
Second Quarter	\$ 0.89	\$ 0.56
First Quarter	\$ 1.11	\$ 0.65

Holders of Record

As of March 20, 2021, there were 145 holders of record of our common stock, not including shares held in street name.

Dividend Policy

We have not paid any cash dividends since our inception and do not contemplate paying dividends in the foreseeable future. It is anticipated that earnings, if any, will be retained for the operation of our business.

Stock Repurchases

We did not repurchase any of our common stock in 2021 or 2020.

Securities Authorized for Issuance Under Equity Compensation Plans

The following table sets forth additional information as of December 31, 2021 with respect to the shares of common stock that may be issued upon the exercise of options and other rights under our existing equity compensation plans and arrangements in effect as of December 31, 2021. The information includes the number of shares covered by, and the weighted average exercise price of, outstanding options and the number of shares remaining available for future grant, excluding the shares to be issued upon exercise of outstanding options.

Plan Category	Number of securities to be issued upon exercise of outstanding options (a)	Weighted-average exercise price of outstanding options	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans not approved by security holders ⁽¹⁾	6,246,466	\$ 1.20	(161,451)
Equity compensation plans approved by security holders	—	—	—
Total	6,246,466	\$ 1.20	(161,451)

(1) Comprised of our 2010 and 2013 Incentive Stock Plans.

Item 6. Selected Financial Data

As a smaller reporting company, as defined by Section 10(f)(1) of Regulation S-K, we are not required to provide the information set forth in this Item.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the financial statements and the related notes and other information that are included elsewhere in this Form 10-K. This discussion contains forward-looking statements based upon current expectations that involve risks and uncertainties, such as our plans, objectives, expectations, and intentions. Actual results and the timing of events could differ materially from those anticipated in these forward looking statements as a result of a number of factors, including those set forth under the cautionary note regarding “Forward Looking Statements” contained in Item 1.A – “Risk Factors”.

Overview

Mobivity Holdings Corp. (the “Company” or “we”) is in the business of developing and operating proprietary platforms over which brands and enterprises can conduct national and localized, data-driven marketing campaigns.

Mobivity’s Recurrency platform enables multi-unit retailers to leverage the power of their own data to yield maximum customer spend, frequency and loyalty while achieving the highest Return on Marketing Spend (ROMS) possible. Mobivity’s customers use Recurrency to:

- ① Transform messy point-of-sale (POS) data collected from thousands of points of sale into usable intelligence.
- ① Measure, predict, and boost guest frequency and spend by channel.
- ① Deploy and manage one-time use offer codes and attribute sales accurately across every channel, promotion and media program.
- ① Deliver 1:1 promotions and offers with customized Mobile Messaging, Personalized Receipt Promotions and Integrated Loyalty programs.

Mobivity’s Recurrency, delivered as a SaaS platform, is used by leading brands including Subway, Sonic Drive-In, Chick-fil-A, Checkers/Rally’s and Circle K’s across more than 40,000 retail locations globally.

We’re living in a data-driven economy. In fact, by 2003 — when the concept of “big data” became common vernacular in marketing - as much data was being created every two days as had been created in all of time prior to 2003. Today, Big Data has grown at such a rate that 90% of the world’s data has been created in the past two years. Unfortunately, despite there being so much data accumulated, only one percent of data is being utilized today by most businesses.

The challenge for multi-unit retailers isn’t that they don’t have enough data; in fact, national retailers are collecting millions of detailed transactions daily from thousands of points of sale around the world. The challenge is being able to make sense of this transaction data, which is riddled with data entry errors, collected by multiple POS systems and complicated by a taxonomy compiled by thousands of different franchisee owners. To normalize such an overwhelming amount of data into usable intelligence and then leverage it to optimize media investment and promotion strategy requires numerous teams of data analysts and data scientists that many retailers and restaurant operators simply don’t have. Which is why so many technology and data companies, that can help solve these challenges, have been invested in and acquired by brands including, McDonald’s, Starbucks and Yum Brands.

Mobivity’s Recurrency platform fills this need with a self-service SaaS offering, enabling operators to intelligently optimize their promotions, media and marketing spend. Recurrency drives system-wide sales producing on average a 13% increase in guest spend and a 26% improvement in frequency, ultimately delivering an average Return on Marketing Spend of 10X. In other words, for every dollar invested in marketing, retailers using Recurrency to manage, optimize and deliver multi-channel consumer promotions generate an average of ten dollars in *incremental* revenue from their customers.

Recent Events

Unsecured Promissory Note Investments in 2020

During the year ended December 31, 2020, we issued to one of our directors, unsecured Notes in the principal aggregate amount of \$700,000, which are due and payable two years after issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay any of the Notes without notice, subject to a two percent (2%) pre-payment penalty. We conducted the private placement of our securities in December 2020. The Note holder participated in the warrant exercise described below and settled principal of \$1,200,000 of principal under our 2019 and 2020 private placement Notes in addition to accrued interest under the notes totaling \$192,208, into 1,113,767 shares of our common stock. As of December 31, 2020, we had \$500,000 as a remaining balance of these 2020 Notes and accrued interest of \$8,958. This balance of \$500,000 in principle and \$43,750 in accrued interest was paid in full on June 30, 2021.

On April 10, 2020, we entered into a commitment loan with Chase Bank, N.A. under the CARES act and SBA Paycheck Protection Program, in the principal aggregate amount of \$891,103, which is due and payable two years after issuance. This note bears interest on the unpaid balance at the rate of one percent (1%) per annum. The note contains a deferral period of six months, for which no interest or principal payments are due. Full forgiveness of the loan was obtained by meeting certain SBA requirements. The entire loan was forgiven on July 21, 2021, at which time the company recorded and extinguishment of debt in the amount of \$891,103.

On April 22, 2020, we entered into a commitment loan with TD Bank under the Canadian Emergency Business Account (“CEBA”), in the principal aggregate amount of \$40,000 CAD, which is due and payable on December 31, 2022. This note bears interest on the unpaid balance at the rate of zero percent (0%) per annum during the initial term. Under this note no interest or principal payments are due until January 1, 2023. Under the conditions of the loan, twenty-five percent (25%) of the loan will be forgiven if seventy-five percent (75%) is repaid prior to the initial term date.

Unsecured Promissory Note Investments in 2021

During the year ended December 31, 2021, we issued to Talkot Capital LLC, unsecured Notes in the principal aggregate amount of \$ 271,875, which are due and payable two years after issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. As of December 31, 2021, we have \$271,875 as a remaining balance of these 2021 Notes and accrued interest of \$23,200.

Secured Promissory Note Investments in 2021

During the year ended December 31, 2021, we issued to one of our directors, Secured Notes in the principal aggregate amount of \$3, 478,125, including cash in the amount of \$3,206,250 and \$271,875 of principal and accrued interest under the above-described Note that was rolled into the Credit Facility, which are due and payable two years after issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay the advances and accrued interest, in whole or in part, without notice, penalty or charge. On November 19, 2021, a payment of \$200,000 was paid toward the principal balance of the note. As of December 31, 2021, we have \$3,278,125 as a remaining balance of these 2021 Notes and accrued interest of \$149,040

Warrant Exercises

On February 7, 2022 seventeen warrant holders exercised their common stock purchase warrant for 3,163,190 shares at the exercise price of \$.80 per share, resulting in additional capital of \$2,530,552. In February of 2022, warrant holders exercised warrants to purchase common stock at \$.80 per share. As an inducement for the holder’s exercise of the warrants, we issued the holders 2,530,552 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in February 2025.

Results of Operations

Year Ended December 31, 2021 Compared to Year Ended December 31, 2020

Revenues

Revenues consist primarily of a suite of products under the Recurrency platform. The Recurrency platform is comprised of POS Data Capture, Analytics, Offers and Promotions, Predictive Offers, Personalized Receipt Promotions, Customized Mobile Messaging, Belly Loyalty, and other revenues.

Revenues for the twelve months ended December 31, 2021 were \$8,174,884, a decrease of \$5,081,003, or 38.3%, compared to \$13,255,887 for the twelve months ended December 31, 2020. This decrease is primarily due to the reduction of \$1,683,274 of revenue from non-recurring engineering fees paid by a large customer to accelerate expanded capabilities of our Offers and Promotions solution in 2020 and a decrease in revenue of \$1,683,270 due to restructuring of customer contract related to Smart Receipt services. In addition, there was a decrease in revenue of \$600,000 for a contract cancelled in January of 2021.

Cost of Revenues

Cost of revenues consist primarily of cloud-based software licensing fees, short code maintenance expenses, personnel related expenses, and other expenses.

Cost of revenues for the twelve months ended December 31, 2021 was \$4,302,370, a decrease of \$446,074, or 9%, compared to \$4,748,444 for the twelve months ended December 31, 2020. This decrease is primarily due to lower messaging volume and decreased application costs associated with the decrease in volume. The gross profit margin was 47% and 64% for the twelve months ended December 31, 2021 and 2020, respectively. Lower gross profit margin in 2021 is primarily due to the reduction in non-recurring engineering revenues for 2021.

Bad Debt

Bad Debt expense for the twelve months ended December 31, 2021 was \$774,312, an increase of \$774,312, or 100%, compared to \$0 for the twelve months ended December 31, 2020. This increase is due primarily to the restructuring of a large current contract that had 18 months of remaining ASC 606 deductions that were all recognized at the end of 2021.

General and Administrative

General and administrative expenses consist primarily of administrative salaries and personnel related expenses, legal fees, stock-based compensation expense, consulting costs and other expenses.

General and administrative expenses for the twelve months ended December 31, 2021 were \$3,584,721, a decrease of \$333,214, or 8%, compared to \$3,917,935 for the twelve months ended December 31, 2020. The decrease in general and administrative expense was primarily due a decrease in office supplies due to limited use of the office during COVID-19.

Sales and Marketing Expense

Sales and marketing expenses consist primarily of salaries and personnel related expenses, stock-based compensation expense, sales travel, consulting costs and other expenses.

Sales and marketing expenses for the twelve months ended December 31, 2021 were \$4,002,565, an increase of \$1,676,856, or 72%, compared to \$2,325,709 for the twelve months ended December 31, 2020. The increase in 2021 was due to the addition of sales and marketing personnel coupled with new marketing initiatives in the first half of 2021.

Engineering, Research, and Development Expense

Engineering, research, and development expenses consist primarily of salaries and personnel related expenses, stock-based compensation expense, consulting costs and other expenses.

Engineering, research, and development expenses for the twelve months ended December 31, 2021, were \$3,583,773, an increase of \$48,031 or 1%, compared to \$3,535,742 for the twelve months ended December 31, 2020.

Depreciation and Amortization Expense

Depreciation and amortization expense consist of depreciation on our equipment and amortization of our intangible assets.

Depreciation and amortization expenses for the twelve months ended December 31, 2021, were \$707,073 an increase of \$32,131, or 4.8%, compared to \$674,942 for the twelve months ended December 31, 2020. This increase is primarily attributable to the increased amortization of our developed and acquired technologies.

Intangible Asset Impairment

Intangible Asset Impairment expenses for the twelve months ended December 31, 2021 were \$8,286, an decrease of \$600, or 6.8%, compared to \$8,886 for the twelve months ended December 31, 2020.

Goodwill Impairment

Goodwill Impairment expenses for the twelve months ended December 31, 2021 were \$85,169, an increase of \$85,169, or 100%, compared to \$0 for the twelve months ended December 31, 2020. The increase is due to a decrease in expected cash flow for our current Belly products over the next five years.

Interest Income

Interest income consists of stated interest income on our cash balances.

Interest income for the twelve months ended December 31, 2021 was \$5, compared to \$1,221 for the twelve months ended December 31, 2020. This decrease of \$1,216, or 99%, related to lower earnings on cash positions held throughout the year as compared to the prior year.

Interest Expense

Interest expense consists of stated or implied interest expense on our notes payable, amortization of note discounts, and amortization of deferred financing costs.

Interest expense for the twelve months ended December 31, 2021 was \$267,966, a decrease of \$18,930, or 6.6%, compared to \$286,896 for the twelve months ended December 31, 2020. The decrease is primarily attributable to the interest on short- and long-term borrowings during the year.

Loss on Disposal of Fixed Assets

Loss on disposal of fixed assets consists of an asset being disposed of for less than its carrying value.

Loss on disposal of fixed assets for the twelve months ended December 31, 2021 was \$880, a decrease of \$7,928 or 90%, compared \$8,808 to the twelve months ended December 31, 2020. The decrease is due to reduced amount of assets that were disposed of during the year.

Loss on Settlement of Debt

Loss on settlement of debt consists of loss recognized with the conversion of related party notes that were converted to equity.

The loss on settlement for the twelve months ended December 31, 2021 was \$0, a decrease of \$668,260, or 100%, compared to \$668,260 for the twelve months ended December 31, 2020.

Extinguishment of Debt

The gain on extinguishment of debt for the twelve months ended December 31, 2021 was \$891,103, an increase of \$891,103 or 100%, compared to \$0 for the twelve months ending December 31, 2020. The increase was due to full forgiveness of the our Paycheck Protection Program loan.

Foreign Currency

The Company's financial results are impacted by volatility in the Canadian/U.S. Dollar exchange rate. The average U.S. Dollar exchange rate for the year ended December 31, 2021 and 2020 was \$1 Canadian equals \$0.79 and \$0.75 U.S. Dollars, respectively. The Company's functional or measurement currency is the U.S. Dollar. Based on a U.S. Dollar functional currency, the following are the key areas impacted by foreign currency volatility:

- ① The Company sells products primarily in U.S. Dollars; therefore, reported revenues are not highly impacted by foreign currency volatility.
- ② A portion of the Company's expenses are incurred in Canadian Dollars and therefore fluctuate in U.S. Dollars as the U.S. Dollar varies. A weaker U.S. Dollar results in an increase in translated expenses, and a stronger U.S. Dollar results in a decrease.
- ③ Changes in foreign currency rates also impact the translated value of the Company's working capital that is held in Canadian Dollars. Foreign exchange rate fluctuations result in foreign exchange gains or losses based upon movement in the translated value of Canadian working capital into U.S. Dollars.

The change in foreign currency was a loss of \$8,661 and a gain of \$117 for the years ended December 31, 2021 and 2020, respectively.

Liquidity and Capital Resources

We have \$735,424 of cash as of December 31, 2021. We had a net loss of \$8.3 million for the year then ended, and we used \$4.5 million of cash in our operating activities during 2021. We raised \$2,530,552 in warrant conversion in February 2022. While we believe that our additional cash from our warrant conversion along with our expected cash flow from operations, may not be sufficient to fund our 12-month plan of operations, there can be no assurance that we will not require significant additional capital within 12 months.

If our cash reserves prove insufficient to sustain operations, we plan to raise additional capital by selling shares of capital stock or other equity or debt securities. However, there are no commitments or arrangements for future financings in place at this time, and we can give no assurance that such capital will be available on favorable terms or at all. We may need additional financing thereafter until we can achieve profitability. If we cannot, we will be forced to curtail our operations or possibly be forced to evaluate a sale or liquidation of our assets. Any future financing may involve substantial dilution to existing investors.

Although we are actively pursuing financing opportunities, we may not be able to raise cash on terms acceptable to us or at all. There can be no assurance that we will be successful in obtaining additional funding. Financings, if available, may be on terms that are dilutive to our shareholders, and the prices at which new investors would be willing to purchase our securities may be lower than the current price of our ordinary shares. The holders of new securities may also receive rights, preferences or privileges that are senior to those of existing holders of our ordinary shares. If additional financing is not available or is not available on acceptable terms, we will have to curtail our operations in the short term.

Cash Flows

	For the Year Ended	
	December 31,	
	2021	2020
Net cash provided by (used in):		
Operating activities	\$ (4,484,598)	\$ (1,329,111)
Investing activities	(378,472)	(297,195)
Financing activities	2,364,722	4,661,479
Effect of foreign currency translation on cash flow	(49,048)	(25,952)
Net change in cash	<u>\$ (2,547,396)</u>	<u>\$ 3,009,221</u>

Operating Activities

We used cash in operating activities totaling \$4,484,598 in 2021 and \$1,329,111 in 2020, respectively. The increase in cash used in operating activities in 2020 compared to 2019 was due primarily to the expansion in our sales and marketing departments.

Investing Activities

Investing activities during 2021 included \$299,253 of capitalized software development costs, \$0 of purchases related to securing new patents and \$79,219 of equipment purchases. Investing activities during 2020 included \$266,365 of capitalized software development costs, \$17,505 of purchases related to securing new patents, and \$13,325 of equipment purchases.

Financing Activities

Financing activities for 2021 include net proceeds from the sale of common stock units of \$0, proceeds from related party notes payable of \$3,206,250 offset by payments on notes payable of \$561,528 and payments of related party notes payable of \$280,000.

Critical Accounting Policies and Estimates

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires the use of estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Our management periodically evaluates the estimates and judgments made, including those related to share-based compensation and valuation of the derivative liability. Management bases its estimates and judgments on historical experience and on various factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates.

The following critical accounting policies affect the more significant judgments and estimates used in the preparation of the Company's consolidated financial statements.

Income Taxes

We account for income taxes using the assets and liability method, which recognizes deferred tax assets and liabilities determined based on the difference between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established to reduce deferred tax assets when, based on available objective evidence, it is more likely than not that the benefit of such assets will not be realized. We recognize in the consolidated financial statements only those tax positions determined to be more likely than not of being sustained.

Revenue Recognition and Concentrations

Our Recurrency platform is a hosted solution. We generate revenue from licensing our software to clients in our software as a service model, per-message and per-minute transactional fees, and customized professional services. We recognize license/subscription fees over the period of the contract, service fees as the services are performed, and per-message or per-minute transaction revenue when the transaction takes place. Under Topic 606, revenue is recognized when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. We consider authoritative guidance on multiple deliverables in determining whether each deliverable represents a separate unit of accounting. Some customers are billed on a month-to-month basis with no contractual term and are collected by credit card or electronic funds transfer. Revenue is recognized at the time that the services are rendered, and the selling price is fixed with a set range of plans. Cash received in advance of the performance of services is recorded as deferred revenue.

Accounting Standards Update ("ASU") No. 2014-09, Revenue from Contracts with Customers (Accounting Standards Codification 606 ("ASC 606")), is a comprehensive revenue recognition standard that superseded nearly all existing revenue recognition guidance. The Company adopted this standard effective January 1, 2018, applying the modified retrospective method. Upon adoption, the Company discontinued revenue deferral under the sell-through model and commenced recording revenue upon delivery to distributors, net of estimated returns. Generally, the new standard results in earlier recognition of revenues.

We determine revenue recognition through the following steps:

- ① identification of the contract, or contracts, with a customer;
- ① identification of the performance obligations in the contract;
- ① determination of the transaction price;
- ① allocation of the transaction price to the performance obligations in the contract; and
- ① recognition of revenue when, or as, we satisfy a performance obligation.

During the years ended December 31, 2021 and 2020 two customers accounted for 73% and 77% of our revenues, respectively.

Share-based compensation expense

Share-based compensation cost is measured at the date of grant, based on the calculated fair value of the stock-based award, and is recognized as expense over the employee's requisite service period (generally the vesting period of the award). We estimate the fair value of employee stock options granted using the Black-Scholes Option Pricing Model. Key assumptions used to estimate the fair value of stock options include the exercise price of the award, the fair value of our common stock on the date of grant, the expected option term, the risk-free interest rate at the date of grant, the expected volatility and the expected annual dividend yield on our Company's common stock. We have elected to account for forfeitures as they occur to determine the amount of compensation cost to be recognized in each period.

Derivative Financial Instruments

We do not use derivative instruments to hedge exposures to cash flow, market or foreign currency risks.

We review the terms of the common stock, warrants and convertible debt we issue to determine whether there are embedded derivative instruments, including embedded conversion options, which are required to be bifurcated and accounted for separately as derivative financial instruments. In circumstances where the host instrument contains more than one embedded derivative instrument, including the conversion option, that is required to be bifurcated, the bifurcated derivative instruments are accounted for as a single, compound derivative instrument.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

Item 8. Financial Statements



REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and
Stockholders of Mobivity Holdings Corp.

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Mobivity Holdings Corp. (the Company) as of December 31, 2021 and 2020, and the related consolidated statements of operations and comprehensive loss, stockholders' equity (deficit), and cash flows for each of the years in the two-year period ended December 31, 2021, and the related notes (collectively referred to as the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 3 to the financial statements, the Company has suffered net losses from operations and has a net capital deficiency, which raises substantial doubt about its ability to continue as a going concern. Management's plans regarding those matters are discussed in Note 3. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

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

Critical Audit Matters

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

Revenue Recognition

As discussed in Note 2, the Company recognizes revenue upon transfer of control of promised services to customers in an amount that reflects the consideration the Company expects to receive in exchange for those products or services.

Auditing management's evaluation of agreements with customers involves significant judgment, given the fact that some agreements require management's evaluation and allocation of the standalone transaction prices to the performance obligations.

To evaluate the appropriateness and accuracy of the assessment by management, we evaluated management's assessment in relationship to the relevant agreements.

M&K CPAS, PLLC

We have served as the Company's auditor since 2012.

Houston, TX

March 30, 2022

Mobivity Holdings Corp.
Consolidated Balance Sheets

	December 31, 2021	December 31, 2020
ASSETS		
Current assets		
Cash	\$ 735,424	\$ 3,282,820
Accounts receivable, net of allowance for doubtful accounts of \$56,340 and \$33,848, respectively	578,303	305,693
Contracts receivable, current	—	943,904
Other current assets	227,458	272,736
Total current assets	1,541,185	4,805,153
Goodwill	411,183	496,352
Right to use lease assets	1,187,537	57,482
Intangible assets, net	1,124,720	1,368,329
Contracts receivable, long term	—	1,415,856
Other assets	173,325	25,230
TOTAL ASSETS	\$ 4,437,950	\$ 8,168,402
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities		
Accounts payable	\$ 3,823,909	\$ 1,935,411
Accrued interest	172,239	47,316
Accrued and deferred personnel compensation	495,533	224,881
Deferred revenue and customer deposits	377,170	606,597
Related party notes payable, net - current maturities	819,531	80,000
Notes payable, net - current maturities	69,052	561,676
Operating lease liability	229,240	58,173
Other current liabilities	9,071	566,303
Total current liabilities	5,995,745	4,080,357
Non-current liabilities		
Related party notes payable, net - long-term	2,498,711	500,000
Notes payable, net - long-term	39,086	999,001
Operating lease liability	1,188,589	13,296
Other long-term liabilities	—	831,535
Total non-current liabilities	3,726,386	2,343,832
Total liabilities	9,722,131	6,424,189
Commitments and Contingencies (See Note 13)		
Stockholders' equity (deficit)		
Common stock, \$0.001 par value; 100,000,000 shares authorized; 55,410,695 and 55,410,695, shares issued and outstanding	55,411	55,411
Equity payable	100,862	100,862
Additional paid-in capital	102,446,921	101,186,889
Accumulated other comprehensive income (loss)	(52,088)	(23,446)
Accumulated deficit	(107,835,287)	(99,575,503)
Total stockholders' equity (deficit)	(5,284,181)	1,744,213
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)	\$ 4,437,950	\$ 8,168,402

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Consolidated Statements of Operations and Comprehensive Loss

	For the Year Ended December 31,	
	2021	2020
Revenues		
Revenues	\$ 8,174,884	\$ 13,255,887
Cost of revenues	4,302,370	4,748,444
Gross profit	3,872,514	8,507,443
Operating expenses		
Bad Debt	774,312	—
General and administrative	3,584,721	3,917,935
Sales and marketing	4,002,565	2,325,709
Engineering, research, and development	3,583,773	3,535,742
Goodwill Impairment	85,169	—
Intangible asset impairment	8,286	8,886
Depreciation and amortization	707,073	674,942
Total operating expenses	12,745,899	10,463,214
Loss from operations	(8,873,385)	(1,955,771)
Other income/(expense)		
Interest income	5	1,221
Gain on Extinguishment of Debt	891,103	—
Interest expense	(267,966)	(286,896)
Loss on disposal of fixed assets	(880)	(8,808)
Loss on settlement of debt	—	(668,260)
Foreign currency gain (loss)	(8,661)	117
Total other income (expense)	613,601	(962,626)
Loss before income taxes	(8,259,784)	(2,918,397)
Income tax expense	—	—
Net Loss	(8,259,784)	(2,918,397)
Other comprehensive income (loss), net of income tax		
Foreign currency translation adjustments	(28,642)	(32,226)
Comprehensive loss	\$ (8,288,426)	\$ (2,950,623)
Net loss per share:		
Basic and Diluted	\$ (0.15)	\$ (0.06)
Weighted average number of shares:		
Basic and Diluted	55,410,695	51,575,454

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Consolidated Statement of Stockholders' Equity (Deficit)

	<u>Common Stock</u>		Equity <u>Payable</u>	Additional <u>Paid-in Capital</u>	Accumulated Other Comprehensive <u>Income (Loss)</u>	Accumulated <u>Deficit</u>	Total Stockholders' <u>Equity (Deficit)</u>
	<u>Shares</u>	<u>Dollars</u>					
Balance, December 31, 2019	51,380,969	\$ 51,381	\$ 100,862	\$ 94,781,738	\$ 8,780	\$ (96,657,106)	\$ (1,714,345)
Issuance of common stock for cash	1,556,459	1,556	—	1,932,411	—	—	1,933,967
Issuance of common stock for debt settlement	1,359,500	1,360	—	1,639,448	—	—	1,640,808
Issuance of common stock for warrants exercised	1,113,767	1,114	—	2,059,354	—	—	2,060,468
Stock based compensation	—	—	—	773,938	—	—	773,938
Foreign currency translation adjustment	—	—	—	—	(32,226)	—	(32,226)
Net loss	—	—	—	—	—	(2,918,397)	(2,918,397)
Balance, December 31, 2020	55,410,695	\$ 55,411	\$ 100,862	\$ 101,186,889	\$ (23,446)	\$ (99,575,503)	\$ 1,744,213
Fair value of options issued with related party debt	—	—	—	262,758	—	—	262,758
Stock based compensation	—	—	—	997,274	—	—	997,274
Foreign currency translation adjustment	—	—	—	—	(28,642)	—	(28,642)
Net loss	—	—	—	—	—	(8,259,784)	(8,259,784)
Balance, December 31, 2021	55,410,695	\$ 55,411	\$ 100,862	\$ 102,446,921	\$ (52,088)	\$ (107,835,287)	\$ (5,284,181)

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Consolidated Statements of Cash Flows

	For the Year Ended	
	December 31,	
	2021	2020
OPERATING ACTIVITIES		
Net loss	\$ (8,259,784)	\$ (2,918,397)
Adjustments to reconcile net loss to net cash used in operating activities:		
Bad debt expense	774,312	25,583
Loss on settlement of debt	—	668,260
Gain on Extinguishment of Debt	(891,103)	
Stock-based compensation	997,274	773,938
Loss on disposal of fixed assets	880	8,808
Intangible Asset Impairment	8,286	8,886
Goodwill Impairment	85,169	
Depreciation and amortization expense	707,073	696,574
Amortization of debt discount	31,000	—
Increase (decrease) in cash resulting from changes in:		
Accounts receivable	(365,213)	282,734
Contracts receivable, current	—	(416,956)
Other current assets	40,133	338,233
Operating lease assets/liabilities	(2,575)	(33,590)
Contracts receivable, long-term	707,928	(155,485)
Other assets	2,330	14,040
Accounts payable	1,888,498	(1,321,012)
Accrued interest	168,673	204,232
Accrued and deferred personnel compensation	270,590	(20,402)
Other liabilities - non-current	(415,766)	91,317
Other liabilities - current	(2,876)	257,838
Deferred revenue and customer deposits	(229,427)	166,288
Net cash used in operating activities	(4,484,598)	(1,329,111)
INVESTING ACTIVITIES		
Purchases of equipment	(79,219)	(13,325)
Cash paid for patents	—	(17,505)
Capitalized software development costs	(299,253)	(266,365)
Net cash used in investing activities	(378,472)	(297,195)
FINANCING ACTIVITIES		
Payments on notes payable	(561,528)	(473,586)
Payments on related party notes payable	(280,000)	(60,700)
Proceeds from notes payable	—	920,990
Proceeds from related party notes payable	3,206,250	700,000
Proceeds from issuance of common stock, net of issuance costs	—	3,574,775
Net cash provided by financing activities	2,364,722	4,661,479
Effect of foreign currency translation on cash flow	(49,048)	(25,952)
Net change in cash	(2,547,396)	3,009,221
Cash at beginning of period	3,282,820	273,599
Cash at end of period	\$ 735,424	\$ 3,282,820
Supplemental disclosures:		
Cash paid during period for:		
Interest	\$ 68,389	\$ 75,464
Taxes	\$ —	\$ 851
Non cash investing and financing activities:		
Initial ROU asset and lease liability	\$ 1,458,527	\$ 1,392,208
Debt Discount on Related Party Debt	\$ 262,658	\$ —
Fixed Assets contribution by lessor	\$ 110,000	\$ —
Refinancing of debt-related party	\$ 43,750	\$ —

See accompanying notes to consolidated financial statements.

Mobivity Holdings Corp.
Notes to Consolidated Financial Statements

1. Nature of Operations

Mobivity Holdings Corp. (the “Company” or “we”) is in the business of developing and operating proprietary platforms over which brands and enterprises can conduct national and localized, data-driven marketing campaigns.

Mobivity’s Recurrency platform enables multi-unit retailers to leverage the power of their own data to yield maximum customer spend, frequency and loyalty while achieving the highest Return on Marketing Spend (ROMS) possible. Mobivity’s customers use Recurrency to:

- ① Transform messy point-of-sale (POS) data collected from thousands of points of sale into usable intelligence.
- ② Measure, predict, and boost guest frequency and spend by channel.
- ③ Deploy and manage one-time use offer codes and attribute sales accurately across every channel, promotion and media program.
- ④ Deliver 1:1 promotions and offers with customized Mobile Messaging, Personalized Receipt Promotions and Integrated Loyalty programs.

Mobivity’s Recurrency, delivered as a SaaS platform, is used by leading brands including Subway, Sonic Drive-In, Chick-fil-A, Checkers/Rally’s and Circle K’s across more than 40,000 retail locations globally.

We’re living in a data-driven economy. In fact, by 2003 — when the concept of “big data” became common vernacular in marketing - as much data was being created every two days as had been created in all of time prior to 2003. Today, Big Data has grown at such a rate that 90% of the world’s data has been created in the past two years. Unfortunately, despite there being so much data accumulated, only one percent of data is being utilized today by most businesses.

The challenge for multi-unit retailers isn’t that they don’t have enough data; in fact, national retailers are collecting millions of detailed transactions daily from thousands of points of sale around the world. The challenge is being able to make sense of this transaction data, which is riddled with data entry errors, collected by multiple POS systems and complicated by a taxonomy compiled by thousands of different franchisee owners. To normalize such an overwhelming amount of data into usable intelligence and then leverage it to optimize media investment and promotion strategy requires numerous teams of data analysts and data scientists that many retailers and restaurant operators simply don’t have. Which is why so many technology and data companies, that can help solve these challenges, have been invested in and acquired by brands including, McDonald’s, Starbucks and Yum Brands.

Mobivity’s Recurrency platform fills this need with a self-service SaaS offering, enabling operators to intelligently optimize their promotions, media and marketing spend. Recurrency drives system-wide sales producing on average a 13% increase in guest spend and a 26% improvement in frequency, ultimately delivering an average Return on Marketing Spend of 10X. In other words, for every dollar invested in marketing, retailers using Recurrency to manage, optimize and deliver multi-channel consumer promotions generate an average of ten dollars in *incremental* revenue from their customers.

We generate revenue by charging the resellers, brands and enterprises a per-message transactional fee, or through fixed or variable software licensing fees.

2. Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiary, Live Lenz Inc. All significant intercompany balances and transactions have been eliminated.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Significant estimates used are those related to stock-based compensation, asset impairments, the valuation and useful lives of depreciable tangible and certain intangible assets, the fair value of common stock used in acquisitions of businesses, the fair value of assets and liabilities acquired in acquisitions of businesses, the fair value of options issued with related party debt, and the valuation allowance of deferred tax assets. Management believes that these estimates are reasonable; however, actual results may differ from these estimates.

Reclassifications

Certain prior year amounts have been reclassified to conform to the current year's presentation. The reclassifications had no effect on previously reported net loss.

Acquisitions

We account for acquired businesses using the purchase method of accounting. Under the purchase method, our consolidated financial statements reflect the operations of an acquired business starting from the completion of the acquisition. In addition, the assets acquired and liabilities assumed are recorded at the date of acquisition at their respective estimated fair values, with any excess of the purchase price over the estimated fair values of the net assets acquired recorded as goodwill.

Cash and Cash Equivalents

We minimize our credit risk associated with cash by periodically evaluating the credit quality of our primary financial institution. Our balances at times may exceed federally insured limits. We have not experienced any losses on our cash accounts.

Accounts Receivable, Allowance for Doubtful Accounts and Concentrations

Accounts receivable are carried at their estimated collectible amounts. We grant unsecured credit to substantially all of our customers. Ongoing credit evaluations are performed, and potential credit losses are charged to operations at the time the account receivable is estimated to be uncollectible. Since we cannot necessarily predict future changes in the financial stability of our customers, we cannot guarantee that our reserves will continue to be adequate.

As of December 31, 2021 and 2020, we recorded an allowance for doubtful accounts of \$56,340 and \$33,848, respectively.

From time to time, we may have a limited number of customers with individually large amounts due. Any unanticipated change in one of the customer's credit worthiness could have a material effect on the results of operations in the period in which such changes or events occurred.

As of December 31, 2021, we had three customer whose balance represented 94% of total accounts receivable. As of December 31, 2020, we had two customers whose balance represented 77% of total accounts receivable.

Goodwill and Intangible Assets

Goodwill is tested for impairment at a minimum on an annual basis. Goodwill is tested for impairment at the reporting unit level by first performing a qualitative assessment to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying value. If the reporting unit does not pass the qualitative assessment, then the reporting unit's carrying value is compared to its fair value. The fair values of the reporting units are estimated using market and discounted cash flow approaches. Goodwill is considered impaired if the carrying value of the reporting unit exceeds its fair value. The discounted cash flow approach uses expected future operating results. Failure to achieve these expected results may cause a future impairment of goodwill at the reporting unit.

We conducted our annual impairment tests of goodwill as of December 31, 2021 and 2020. As a result of these tests, we a total impairment charges of \$85,169.

Intangible assets consist of patents and trademarks, purchased customer contracts, purchased customer and merchant relationships, purchased trade names, purchased technology, and non-compete agreements. Intangible assets are amortized over the period of estimated benefit using the straight-line method and estimated useful lives ranging from one to twenty years. No significant residual value is estimated for intangible assets. We evaluate long-lived assets (including intangible assets) for impairment whenever events or changes in circumstances indicate that the carrying amount of a long-lived asset may not be recoverable. An asset is considered impaired if its carrying amount exceeds the undiscounted future net cash flow the asset is expected to generate.

The Company's evaluation of its long-lived assets completed resulted in \$8286 and \$0 of intangible impairment expense during the years ended December 31, 2021 and December 31, 2020.

Software Development Costs

Software development costs include direct costs incurred for internally developed products and payments made to independent software developers and/or contract engineers. The Company accounts for software development costs in accordance with the FASB guidance for the costs of computer software to be sold, leased, or otherwise marketed (“ASC Subtopic 985-20”). Software development costs are capitalized once the technological feasibility of a product is established and such costs are determined to be recoverable. Technological feasibility of a product encompasses technical design documentation and integration documentation, or the completed and tested product design and working model. Technological feasibility is evaluated on a project-by-project basis. Amounts related to software development that are not capitalized are charged immediately to the appropriate expense account. Amounts that are considered ‘research and development’ that are not capitalized are immediately charged to engineering, research, and development expense.

Capitalized costs for those products that are cancelled or abandoned are charged to impairment expense in the period of cancellation. Commencing upon product release, capitalized software development costs are amortized to “Amortization Expense - Development” based on the straight-line method over a twenty-four month period.

The Company evaluates the future recoverability of capitalized software development costs on an annual basis. For products that have been released in prior years, the primary evaluation criterion is ongoing relations with the customer. The Company’s evaluation of its capitalized software development asset resulted in impairment charges of \$0 for the year ended December 31, 2021 and \$8,886 for the year ended December 31, 2020.

Impairment of Long-Lived Assets

We evaluate long-lived assets (including intangible assets) for impairment whenever events or changes in circumstances indicate that the carrying amount of a long-lived asset may not be recoverable. An asset is considered impaired if its carrying amount exceeds the undiscounted future net cash flow the asset is expected to generate.

Foreign Currency Translation

The Company translates the financial statements of its foreign subsidiary from the local (functional) currency into US Dollars using the year or reporting period end or average exchange rates in accordance with the requirements of Accounting Standards Codification subtopic 830-10, Foreign Currency Matters (“ASC 830-10”). Assets and liabilities of these subsidiaries were translated at exchange rates as of the balance sheet date. Revenues and expenses are translated at average rates in effect for the periods presented. The cumulative translation adjustment is included in the accumulated other comprehensive gain (loss) within shareholders’ equity. Foreign currency transaction gains and losses arising from exchange rate fluctuations on transactions denominated in a currency other than the functional currency are included in the unaudited Condensed Consolidated Statements of Income and Comprehensive Income.

Derivative Financial Instruments

We do not use derivative instruments to hedge exposures to cash flow, market or foreign currency risks.

We review the terms of the common stock, warrants and convertible debt we issue to determine whether there are embedded derivative instruments, including embedded conversion options, which are required to be bifurcated and accounted for separately as derivative financial instruments. In circumstances where the host instrument contains more than one embedded derivative instrument, including the conversion option, that is required to be bifurcated, the bifurcated derivative instruments are accounted for as a single, compound derivative instrument.

Revenue Recognition and Concentrations

Our Recurrency platform is a hosted solution. We generate revenue from licensing our software to clients in our software as a service model, per-message and per-minute transactional fees, and customized professional services. We recognize license/subscription fees over the period of the contract, service fees as the services are performed, and per-message or per-minute transaction revenue when the transaction takes place. Under Topic 606, revenue is recognized when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. We consider authoritative guidance on multiple deliverables in determining whether each deliverable represents a separate unit of accounting. Some customers are billed on a month-to-month basis with no contractual term and are collected by credit card. Revenue is recognized at the time that the services are rendered, and the selling price is fixed with a set range of plans. Cash received in advance of the performance of services is recorded as deferred revenue.

During the years ended December 31, 2021 and 2020, two customers accounted for 55% and 77% of our revenues, respectively.

Comprehensive Income (Loss)

Comprehensive loss is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. We are required to record all components of comprehensive loss in the consolidated financial statements in the period in which they are recognized. Net loss and other comprehensive loss, including foreign currency translation adjustments and unrealized gains and losses on investments, are reported, net of their related tax effect, to arrive at comprehensive loss. For the twelve months ended December 31, 2021 and 2020, the comprehensive loss was \$8,288,426 and \$2,950,623 respectively.

Stock-based Compensation

We primarily issue stock-based awards to employees in the form of stock options. We determine compensation expense associated with stock options based on the estimated grant date fair value method using the Black-Scholes valuation model. We recognize compensation expense using a straight-line amortization method over the respective vesting period.

Research and Development Expenditures

Research and development expenditures are expensed as incurred, and consist primarily of compensation costs, outside services, and expensed materials.

Advertising Expense

Direct advertising costs are expensed as incurred and consist primarily of E-commerce advertisements, sales enablement, content creation, and other direct costs. Advertising expense was \$962,049 and \$399,266 for years ended December 31, 2021 and 2020, respectively. We also include the cost of attending trade shows under marketing expense. We recorded \$50,267 and \$81,852 of expense related to those activities for the years ended December 31, 2021 and 2020, respectively.

Income Taxes

We account for income taxes using the assets and liability method, which recognizes deferred tax assets and liabilities determined based on the difference between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established to reduce deferred tax assets when, based on available objective evidence, it is more likely than not that the benefit of such assets will not be realized. We recognize in the consolidated financial statements only those tax positions determined to be more likely than not of being sustained.

Computation of Net Loss per Common Share

Basic net loss per share is based upon the weighted average number of common shares outstanding. Diluted net loss per share is based on the assumption that all potential common stock equivalents (convertible notes payable, stock options, and warrants) are converted or exercised. The calculation of diluted net loss per share excludes potential common stock equivalents if the effect is anti-dilutive. Our weighted average common shares outstanding for basic and diluted are the same because the effect of the potential common stock equivalents is anti-dilutive.

We had the following dilutive common stock equivalents as of December 31, 2021 and 2020 which were excluded from the calculation because their effect was anti-dilutive.

	December 31,	
	2021	2020
Outstanding employee options	6,246,466	6,007,552
Outstanding restricted stock units	1,685,141	1,436,728
Outstanding warrants	3,246,690	2,691,459
	<u>11,178,297</u>	<u>10,135,739</u>

Recent Accounting Pronouncements

Accounting standards promulgated by the FASB are subject to change. Changes in such standards may have an impact on the Company's future financial statements. The following are a summary of recent accounting developments.

In August 2020, the FASB issued ASU 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity ("ASU 2020-06" or the "ASU"). ASU No. 2020-06 requires that the if-converted method of computing diluted Earnings per Share. The company adopted January 1, 2022.

3. Going Concern

We have \$735,424 of cash as of December 31, 2021. We had a net loss of \$8.3 million for the year then ended, and we used \$4.5 million of cash in our operating activities during 2021. In 2020, we had a net loss of \$2.9 million and used \$1.3 million of cash in our operating expenses. We raised \$2,530,552 in cash exercise of warrants in February 2022. There is substantial doubt that our additional cash from our warrant conversion along with our expected cash flow from operations, will be sufficient to fund our 12-month plan of operations, there can be no assurance that we will not require significant additional capital within 12 months.

As shown in the accompanying financial statements, the Company has incurred net losses from operations resulting in an accumulated deficit of \$107,835,287 as of December 31, 2021. Further losses are anticipated in the development of the Company's business raising substantial doubt about the Company's ability to continue as a going concern. The ability to continue as a going concern is dependent upon the Company generating profitable operations in the future and/or obtaining the necessary financing to meet its obligations and repay its liabilities arising from normal business operations when they come due. Management intends to finance operating costs over the next twelve months with the proceeds from the sale of securities, and/or revenues from operations. These financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts, or amounts and classification of liabilities that might result from this uncertainty.

4. Goodwill and Intangible Assets

Goodwill

The following table presents goodwill and impairment for the years ended December 31, 2021 and 2020:

	Goodwill
December 31, 2019	\$ 496,352
Acquired	—
Impairment	—
December 31, 2020	496,352
Acquired	—
Impairment	(85,169)
December 31, 2021	<u>\$ 411,183</u>

We conducted our annual impairment test of goodwill as of December 31, 2021 and 2020, which resulted in impairment charges of \$85,169.

Intangible assets

The following table presents components of identifiable intangible assets for the years ended December 31, 2021 and 2020:

	December 31, 2021				December 31, 2020			
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)
Patents and trademarks	\$ 105,543	\$ (47,948)	\$ 57,595	14	\$ 197,528	\$ (126,499)	\$ 71,029	14
Customer and merchant relationships	2,321,112	(1,775,579)	545,533	10	2,321,112	(1,678,727)	642,385	10
Trade name	197,955	(165,562)	32,393	10	197,950	(156,506)	41,444	10
Acquired technology	621,030	(508,839)	112,191	10	621,030	(492,539)	128,491	10
Non-compete agreement	79,300	(50,088)	29,212	2	79,300	(34,228)	45,072	2
	<u>\$ 3,324,940</u>	<u>\$ (2,548,017)</u>	<u>\$ 776,924</u>		<u>\$ 3,416,920</u>	<u>\$ (2,488,499)</u>	<u>\$ 928,421</u>	

During the years ended December 31, 2021 and 2020, we recorded amortization expense related to our intangible assets of \$163,760 and \$150,701, respectively, which is included in depreciation and amortization in the consolidated statement of operations.

During the years ended December 31, 2021 and 2020, we recorded impairment of \$8,286 and \$0 respectively related to our intangible assets.

Expected future intangible asset amortization as of December 31, 2021 is as follows:

Year ending December 31,	Amount
2022	\$ 142,945
2023	140,435
2024	103,839
2025	96,091
Thereafter	197,523
Total	<u>\$ 776,924</u>

5. Software Development Costs

The Company has capitalized certain costs for software developed or obtained for internal use during the application development stage as it relates to specific contracts. The amounts capitalized include external direct costs of services used in developing internal-use software and for payroll and payroll-related costs of employees directly associated with the development activities. The balance is included in the net intangible assets on the balance sheet.

The following table presents details of our software development costs for the years ended December 31, 2021 and 2020:

December 31, 2021				December 31, 2020			
Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (Years)
\$ 2,565,525	\$ (2,217,729)	\$ 347,796	2	\$ 2,266,272	\$ (1,826,364)	\$ 439,908	2
<u>\$ 2,565,525</u>	<u>\$ (2,217,729)</u>	<u>\$ 347,796</u>		<u>\$ 2,266,272</u>	<u>\$ (1,826,364)</u>	<u>\$ 439,908</u>	

Software development costs are being amortized on a straight-line basis over their estimated useful life of two years.

During the years ended December 31, 2021 and 2020, we capitalized \$299,253 and \$266,365 respectively of software development. We recorded amortization expense for software development costs of \$391,365 and \$518,087, respectively which is included in depreciation and amortization in the consolidated statement of operations.

During the years ended December 31, 2021 and 2020, we recorded impairment charges of \$0 and \$8,886, respectively related to our software development costs.

The estimated future amortization expense of software development costs as of December 31, 2021 is as follows:

Year ending December 31,	Amount
2022	255,501
2023	92,288
2024	8
2025	—
Thereafter	—
Total	<u>\$ 347,797</u>

6. Operating Lease Assets

Adoption of Accounting Standards Codification ("ASC") Topic 842, "Leases." The Company adopted Topic 842 on January 1, 2019, using the modified retrospective method and the optional transition method to record the adoption impact through a cumulative adjustment to equity. Results for reporting periods beginning after January 1, 2019, are presented under Topic 842, while prior periods are not adjusted and continue to be reported under the accounting standards in effect for those periods.

The following are additional details related to leases recorded on our balance sheet as of December 31, 2020:

Leases Assets	Classification	Balance at December 31, 2021
Current		
Operating lease assets	Operating lease assets	\$ —
Noncurrent		
Operating lease assets	Noncurrent operating lease assets	1,187,537
Total lease assets		<u>\$ 1,187,537</u>
Liabilities		
Current		
Operating lease liabilities	Operating lease liabilities	\$ 229,240
Noncurrent		
Operating lease liabilities	Noncurrent operating lease liabilities	\$ 1,188,589
Total lease liabilities		<u>\$ 1,417,829</u>

During the year ended December 31, 2021, we recorded amortization expense of \$106,302 and during the year ended December 31, 2020, we recorded a credit to amortization expense of \$17,214 related to the accretion of the lease liability, which is included in depreciation and amortization in the consolidated statement of operations.

Rent expense was \$258,368 and \$317,774 for the years ended December 31, 2021 and 2020, respectively.

We have entered into a new lease starting in February of 2021 for 8,898 square feet of office space located at 3133 W. Frye Road, Suite 215, Chandler, Arizona. Monthly rental payments, excluding common area maintenance charges, will be \$25,953 to \$28,733. The first twelve months of the lease includes a 50% abatement period. An operating lease asset and liability will be recorded when the lease commences in accordance with ASC 842.

The maturity analysis below summarizes the remaining future undiscounted cash flows for our operating leases, a reconciliation to operating lease liabilities reported on the Condensed Consolidated Balance Sheet, our weighted-average remaining lease term and weighted average discount rate:

Year ending December 31,	Amount
2022	\$ 318,055
2023	324,220
2024	330,894
2025	337,567
2026	344,241
Thereafter	28,735
Total future lease payments	1,683,712
Less: imputed interest	(265,883)
Total	<u>\$ 1,417,829</u>

Weighted Average Remaining Lease Term (years)

Operating leases	6.00
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Weighted Average Discount Rate

Operating leases	6.75%
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7. Notes Payable and Interest Expense**Notes Payable**

The following table presents details of our notes payable as of December 31, 2021 and 2020:

Facility	Maturity	Interest Rate	Balance at December 31, 2021	Balance at December 31, 2020
BDC Term Loan	October 15, 2021	23.5%	\$ —	\$ 160,088
ACOA Note	February 1, 2024	—	76,642	111,430
Wintrust Bank	November 1, 2021	Prime + 1.5%	—	366,666
TD Bank	December 31, 2022	—	31,496	31,390
Chase Bank	April 10, 2022	1%	—	891,103
Related Party Notes	various	15%	3,318,242	580,000
Total Debt			3,426,380	2,140,677
Less current portion			(888,583)	(641,676)
Long-term debt, net of current portion			\$ 2,537,797	\$ 1,499,001

Principal payments on notes payables are due as follows:

Year ending December 31,	Amount
2022	\$ 1,106,676
2023	1,808,523
2024	447,231
2025	63,950
2026	—
Thereafter	—
Total future debt payments	3,426,380

BDC Term Loan

On January 8, 2016, Livelenz, a wholly-owned subsidiary of the Company (“Livelenz”), entered into an amendment of their original loan agreement dated August 26, 2011 with the Business Development Bank of Canada (“BDC”). Under this agreement the loan would have matured, and the commitments would have terminated on September 15, 2019.

On July 26, 2019, Livelenz, entered into an amendment of their original loan agreement dated August 26, 2011 with the Business Development Bank of Canada (“BDC”). Under this agreement the loan will mature, and the commitments will terminate on October 15, 2021. In accordance with the amendment, the Company will commence monthly payments beginning on August 15, 2019 of principal in the amount of \$8,500 CAD in addition to the monthly payment of accrued interest at 23.5%. These payments increased to \$10,000 CAD on November 15, 2019, \$12,000 CAD on May 15, 2020, and will increase to \$14,000 CAD on March 15, 2021 with the final payments of \$16,000 CAD on September 15, 2021.

During year ended December 31, 2021 the BDC loan was repaid in full with the final payment \$80,000 CAD on October 15, 2021 in addition to the monthly interest. During the twelve months ended December 31, 2020 we repaid \$88,000 CAD of principal.

ACOA Note

On November 6, 2017, Livelenz (a wholly-owned subsidiary of the Company), entered into an amendment of the original agreement dated December 2, 2014 with the Atlantic Canada Opportunities Agency (“ACOA”). Under this agreement the note will mature without interest and repayments began on June 1, 2016, while the commitments will terminate on February 1, 2024. The monthly principal payment amount of \$3,000 CAD increased to \$3,500 CAD beginning on November 1, 2019, and will increase to \$4,000 CAD on August 1, 2021, \$4,500 CAD on August 1, 2022 and \$2,215 CAD during the remaining term of the agreement. During the twelve months ended December 31, 2020, we repaid \$10,485 CAD of principal. Nine months of payments were voluntarily deferred by ACOA due to COVID-19.

During the twelve months ended December 31, 2021 \$45,052 CAD in principle was paid toward the ACOA loan.

Wintrust Loan

On November 14, 2018, we entered into a Loan and Security Agreement with Wintrust Bank. The Loan and Security Agreement provides for a single-term loan to us in the original principal amount of \$1,000,000. Interest accrues on the unpaid principal amount at the rate of prime plus 1.5%. The loan is a three-year loan and was interest-only payable for the first six months of the loan. Commencing on May 1, 2019, we made monthly payments of principal in the amount of \$33,333 in addition to the monthly payment of accrued interest. The loan is secured by all of our assets other than our intellectual property. We used the proceeds of the loan to re-finance a loan in the principal amount of \$1,000,000 we assumed as part of the acquisition of the Belly assets.

On August 7, 2020, the Company entered into an amendment of their original loan agreement dated November 14, 2018 with Wintrust Bank. Under this agreement, the covenant calculation was amended to calculate covenants under a borrowing base methodology. The Company had defaulted under the March 31, 2020 and June 30, 2020 covenants, which were waived upon execution of the amendment and there were no defaults after the amendment. During the twelve months ended December 31, 2020, we repaid \$400,000 of principal. The loan was paid in full on June 30, 2021.

Chase Loan

On April 10, 2020, we entered into a commitment loan with Chase Bank, N.A. under the CARES act and SBA Paycheck Protection Program, in the principal aggregate amount of \$891,103, which is due and payable two years after issuance. This note bears interest on the unpaid balance at the rate of one percent (1%) per annum. The note contains a deferral period of six months, for which no interest or principal payments are due. Forgiveness of the loan may be obtained by meeting certain SBA requirements. The entire loan was forgiven on July 21, 2021, at which time the company recorded a gain on extinguishment of debt in the amount of \$891,103.

TD Bank Loan

On April 22, 2020, we entered into a commitment loan with TD Bank under the Canadian Emergency Business Account (“CEBA”), in the principal aggregate amount of \$40,000 CAD, which is due and payable on December 31, 2022. This note bears interest on the unpaid balance at the rate of zero percent (0%) per annum during the initial term. Under this note no interest or principal payments are due until December 31, 2022. Under the conditions of the loan, twenty-five percent (25%) of the loan will be forgiven if seventy-five percent (75%) is repaid prior to the initial term date.

Related Party Notes

During February 2018, we conducted a private placement of Unsecured Promissory Notes (individually, a “Note” and collectively, the “Notes”) in the aggregate principal amount of \$1,080,000 to certain investors, officers and directors of the Company. Each Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum and the principal and accrued interest is due and payable no later than December 1, 2018. We may prepay any of the Notes without notice, subject to a two percent (2%) pre-payment penalty. The Note offer was conducted by our management and there were no commissions paid by us in connection with the solicitation. During 2019, we repaid \$1,000,000 and had \$80,000 as a remaining balance of these Notes plus accrued interest. As of December 31, 2021 the balance is \$0.

During the year ended December 31, 2019 we issued unsecured Notes in the principle aggregate amount of \$3,500,000, which become due two years after the date of issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay any of the Notes without notice, subject to a two percent (2%) pre-payment penalty.

On July 2, 2019, \$2,500,000 of this Note and the accrued interest of \$82,916 was settled into equity and we recorded a loss on conversion of debt of \$232,462 for the year ended December 31, 2019. As of December 31, 2019, we had a principal balance of \$1,080,000 as a remaining balance of these Notes plus accrued interest.

On February 26, 2020, we issued an unsecured Note in the principle aggregate amount of \$200,000, which becomes due two years after the date of issuance. This Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this Note without notice, subject to a two percent (2%) pre-payment penalty.

On November 18, 2020, we issued two additional unsecured Notes in the principle aggregate amount of \$500,000, which becomes due two years after the date of issuance. This Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this Note without notice, subject to a two percent (2%) pre-payment penalty.

On December 31, 2020 \$1,200,000 of these Notes and the accrued interest of \$192,208 was settled into equity and we recorded a loss on settlement of debt of \$668,260 for the year ended December 31, 2020. In summary, as of December 31, 2020, we have a principal balance of \$580,000 and accrued interest of \$42,492 outstanding.

On June 30, 2021, we entered into a Credit Facility Agreement (the “Credit Agreement”) with one of the Company’s directors. The Company can borrow up to \$3,500,000 under this Credit Agreement. On November 19, 2021, a payment of \$200,000 was paid toward the principal balance of the note. As of December 31, 2021, the company has drawn a total of \$3,478,125 including cash in the amount of \$3,206,250 and \$271,875 of principal and accrued interest under the above-described Note that was rolled into the Credit Facility. As of December 31, 2021, we have accrued interest of \$149,040. The loan is secured by all our tangible and intangible assets including intellectual property. We will repay the principal amount plus accrued interest in 24 equal monthly installments commencing on June 30, 2022, and ending on June 30, 2024. This loan bears interest on unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this Note without notice, penalty or charge. In consideration of the lender’s agreement to provide the facility, the Company issued warrants to purchase shares of its common stock at an exercise price of \$1.67 per share in connection with the issuance of funds under this Credit Agreement. The warrants are exercisable for a period commencing upon issuance of the notes and ending 36 months after issuance of the financing. In addition, the Company has agreed to issue to the lender additional warrants entitling the lender to purchase a number of shares of the Company common stock equal to twenty percent (20%) of the amount of the advances made divided by the volume weighted average price over the 30 trading days preceding the advance (VWAP). Each warrant will be exercisable over a three-year period at an exercise price equal to the VWAP.

During the twelve month period ending December 31, 2021, the Company issued warrants to purchase an aggregate of 600,570 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under this Credit Agreement. The estimated aggregate fair value of the warrants issued is \$262,758 using the Black-Scholes option valuation model as of December 31, 2021.

On July 1, 2021 we entered into an Unsecured Promissory Notes (individually, a “Note” and collectively, the “Notes”) in the aggregate principal amount of \$271,875 to certain investors, officers and directors of the Company. Each Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum and the principal and accrued interest is due and payable no later than July 1, 2023. We may prepay any of the Notes without notice, subject to a two percent (2%) pre-payment penalty. The Note offer was conducted by our management and there were no commissions paid by us in connection with the solicitation. The Company issued warrants to purchase an aggregate of 33,017 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under this Credit Agreement.

During the twelve month period ending December 31, 2021, the Company issued warrants to purchase an aggregate of 600,570 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under this Credit Agreement. The estimated aggregate fair value of the warrants issued is \$262,758 using the Black-Scholes option valuation model as of December 31, 2021.

Interest Expense

The following table summarizes interest expense for the years ended December 31, 2021 and 2020:

	December 31,	
	2021	2020
Interest expense	\$ 267,966	\$ 286,896
Total interest expense	<u>\$ 267,966</u>	<u>\$ 286,896</u>

8. Common Stock and Equity Payable

Common Stock

2020

On March 2, 2020, the Company issued 234,500 shares of common stock in exchange for cash in conjunction with a warrant exercise. The shares were exercised at the strike price of \$1.00 per share.

On September 17, 2020, the Company issued 15,000 shares of common stock in exchange for cash in conjunction with a stock option exercise. The shares were exercised at the strike price of \$0.48 per share.

In December of 2020, the Company commenced a private placement of its common stock with warrant exercises for one unit of our common stock at an exercise price of \$1.25 per share to receive a new warrant to purchase one share of our common stock at an exercise price of \$2.00 per share. As of December 31, 2020, the Company had sold 2,666,459 units of its common stock for gross proceeds of \$3,333,074. In addition, the Company issued 1,113,767 units of its common stock associated with the settlement of \$1,200,000 of principal, \$192,208 of accrued interest, and a loss on settlement of \$668,260 (See Note 6).

On December 31, 2021, the Company recorded stock-based compensation expense of \$260,003 related to restricted stock units for members of our board of directors.

As of December 31, 2020 we had an equity payable balance of \$100,862.

2021

During the year ended December 31, 2021, the Company did not issue any shares but, recorded stock-based compensation expense of \$260,005 related to restricted stock units for members of our board of directors. The company recorded stock-based compensation expense of \$187,501 related to restricted stock units for employee compensation.

9. Stock-based Plans and Stock-based Compensation

Stock-based Plans

We have the 2010 Incentive Stock Option Plan and the 2013 Incentive Stock Option Plan under which we have granted stock options to our directors, officers and employees. As of December 31, 2021, 6,246,466 shares were authorized under the plans and 30,263,320 shares were available for future grant.

We believe that such awards better align the interests of our directors, officers and employees with those of our shareholders. Option awards are generally granted with an exercise price that equals the fair market value of our stock at the date of grant. These option awards generally vest based on four years of continuous service and have 10-year contractual terms.

The following table summarizes stock option activity under our stock-based plans as of and for the years ended December 31, 2021 and 2020:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2019	5,781,884	\$ 1.15	7.16	\$ 527,868
Granted	1,545,000	\$ 1.19	—	\$ —
Exercised	(15,000)	\$ 0.48	—	\$ —
Forfeit/canceled	(814,068)	\$ 0.94	—	\$ —
Expired	(490,264)	\$ 1.07	—	\$ —
Outstanding at December 31, 2020	6,007,552	\$ 1.20	6.77	\$ 4,056,639
Granted	637,500	\$ 1.56	—	\$ —
Exercised	—	\$ 1.61	—	\$ —
Forfeit/canceled	(272,029)	\$ 2.18	—	\$ —
Expired	(126,557)	\$ 1.17	—	\$ —
Outstanding at December 31, 2021	6,246,466	\$ 1.20	7.17	\$ 2,500,847
Expected to vest at December 31, 2021	6,246,466	\$ 1.20	6.14	\$ 4,056,639
Exercisable at December 31, 2021	4,063,765	\$ 1.17	4.84	\$ 2,252,766
Unrecognized expense at December 31, 2021	\$ 1,527,647			

The aggregate intrinsic value of options was calculated as the difference between the exercise price of the underlying awards and the quoted price of our common stock. At December 31, 2021, options to purchase 1,692,332 shares of common stock were in-the-money.

The weighted average grant-date fair value of options granted during the years 2021 and 2020 was \$0.99 and \$0.79, respectively.

2020

On March 24, 2020, the Company granted one employee a total of 15,000 options to purchase shares of the Company common stock at the closing price as of March 24, 2020 of \$0.65 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until March 24, 2030. The total estimated value using the Black-Scholes Model, based on a volatility rate of 77.56% and an option fair value of \$0.43 was \$6,472.

On April 6, 2020, the Company granted four employees a total of 700,000 options to purchase shares of the Company common stock at the closing price as of April 6, 2020 of \$0.70 per share. 500,000 option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until April 6, 2030. 200,000 option shares will vest ratably over forty-eight (48) months and are exercisable until April 6, 2030. The total estimated value using the Black-Scholes Model, based on a volatility rate of 78.21% and an option fair value of \$0.47 was \$326,752.

On November 5, 2020, the Company granted one employee a total of 20,000 options to purchase shares of the Company common stock at the closing price as of November 5, 2020 of \$0.96 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until November 5, 2030. The total estimated value using the Black-Scholes Model, based on a volatility rate of 77.36% and an option fair value of \$0.63 was \$12,689.

On December 7, 2020, the Company granted one employee a total of 600,000 options to purchase shares of the Company common stock at the closing price as of December 7, 2020 of \$1.55 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until December 7, 2030. The total estimated value using the Black-Scholes Model, based on a volatility rate of 77.35% and an option fair value of \$1.03 was \$615,495.

On December 17, 2020, the Company granted six employees a total of 210,000 options to purchase shares of the Company common stock at the closing price as of December 17, 2020 of \$1.83 per share. The option shares will vest 25% on the first anniversary of the grant, then equally in 36 monthly installments thereafter and are exercisable until December 17, 2030. The total estimated value using the Black-Scholes Model, based on a volatility rate of 77.41% and an option fair value of \$1.21 was \$254,373.

2021

On March 26, 2021, the Company granted five employees a total of 67,500 options to purchase shares of the Company common stock at the closing price as of March 26, 2021, of \$1.80 per share. The Option Shares will vest ratably over forty-eight (48) months and are exercisable until March 26, 2031. The total estimated value using the Black-Scholes Model, based on a volatility rate of 73.97% and an option fair value of \$1.16 was \$78,492.

On May 17, 2021, the Company granted one employee a total of 20,000 options to purchase shares of the Company common stock at the closing price as of May 17, 2021, of \$1.67 per share. The option shares will vest ratably over forty-eight (48) months and are exercisable until January 21, 2031. The total estimated value using the Black-Scholes Model, based on a volatility rate of 74.79% and an option fair value of \$0.93 was \$18,628.

On August 11, 2021, the Company granted one employee a total of 5,000 options to purchase shares of the Company common stock at the closing price as of August 11, 2021, of \$1.53 per share. The option shares will vest ratably over forty-eight (48) months and are exercisable until August 11, 2031. The total estimated value using the Black-Scholes Model, based on a volatility rate of 73.29% and an option fair value of \$1.12 was \$5,606.

On December 15, 2021, the Company granted nineteen employees a total of 545,000 options to purchase shares of the Company common stock at the closing price as of December 15, 2021, of \$1.53 per share. The option shares will vest ratably over forty-eight (48) months and are exercisable until February 18, 2029. The total estimated value using the Black-Scholes Model, based on a volatility rate of 71.53% and an option fair value of \$.97 was \$528,434.

Stock-based Compensation Expense

The impact on our results of operations of recording stock-based compensation expense for the years ended December 31, 2021 and 2020 was as follows:

	Years Ended December 31,	
	2021	2020
General and administrative	\$ 289,782	\$ 267,306
Sales and marketing	81,093	75,235
Engineering, research, and development	178,893	171,394
	<u>\$ 549,768</u>	<u>\$ 513,935</u>

As of December 31, 2021, there was approximately \$1,527,647 of unearned stock-based compensation that will be expensed from 2022 through 2026. If there are any modifications or cancellations of the underlying unvested awards, we may be required to accelerate, increase or cancel all or a portion of the remaining unearned stock-based compensation expense. Future unearned stock-based compensation will increase to the extent we grant additional equity awards.

Stock Option Valuation Assumptions

We calculated the fair value of each stock option award on the date of grant using the Black-Scholes option pricing model. The ranges of assumptions were used for the years ended December 31, 2021 and 2020:

	Years Ended December 31,	
	2021	2020
Risk-free interest rate	0.42% to 0.58%	0.42% to 0.58%
Expected life (years)	6.00	6.00
Expected dividend yield	—	—
Expected volatility	59.90% to 80.26%	77.36% to 78.21%

The risk-free interest rate assumption is based upon published interest rates appropriate for the expected life of our employee stock options.

The expected life of the stock options represents the weighted-average period that the stock options are expected to remain outstanding and was determined based on historical experience of similar awards, giving consideration to the contractual terms of the stock-based awards, vesting schedules and expectations of future employee behavior as influenced by changes to the terms of its stock-based awards.

The dividend yield assumption is based on our history of not paying dividends and no future expectations of dividend payouts.

The expected volatility in 2021 and 2020 is based on the historical publicly traded price of our common stock.

Restricted stock units

The following table summarizes restricted stock unit activity under our stock-based plans as of and for the years ended December 31, 2021 and 2020:

	Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2019	1,152,248	\$ 0.86	—	\$ 1,120,404
Awarded	284,480	\$ 0.91	—	\$ 60,003
Released	—	\$ —	—	\$ —
Canceled/forfeited/expired	—	\$ —	—	\$ —
Outstanding at December 31, 2020	1,436,728	\$ 0.86	—	\$ 1,180,407
Awarded	654,663	\$ 1.77	—	\$ 260,005
Released	—	\$ —	—	\$ —
Canceled/forfeited/expired	(406,250)	\$ 2	—	\$ (192,339)
Outstanding at December 31, 2021	<u>1,685,141</u>	<u>\$ 1.18</u>	<u>—</u>	<u>\$ 1,248,073</u>
Vested at December 31, 2021	1,685,141	\$ —	—	\$ 2,595,117
Unvested at December 31, 2021	—	\$ —	—	\$ —
Unrecognized expense at December 31, 2021	\$ —	—	—	\$ —

2020

On March 24, 2020, the Company issued to four independent directors a total of 100,000 restricted stock units. These restricted stock units were issued for the \$65,000 of board compensation earned for the first quarter of 2020. The units were valued at \$65,000 or \$0.65 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will be issued to the director upon the earliest to occur of (A) March 24, 2023, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On August 7, 2020, the Company granted four independent directors a total of 81,252 restricted stock units. The units were valued at \$65,000 or \$0.80 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will be issued to the director upon the earliest to occur of (A) August 7, 2023, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On November 5, 2020, the Company granted four independent directors a total of 67,708 restricted stock units. The units were valued at \$65,000 or \$0.96 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will be issued to the director upon the earliest to occur of (A) November 5, 2023, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On December 17, 2020, the Company granted four independent directors a total of 35,520 restricted stock units. The units were valued at \$65,000 or \$1.83 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will be issued to the director upon the earliest to occur of (A) December 17, 2023, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

In the twelve months ended December 31, 2020, the company recorded \$260,003 respectively, in restricted stock units as board compensation.

2021

On March 26, 2021 an employee was granted 500,000 restricted stock units. These restricted stock units were issued as compensation. The units were valued at \$900,000 or \$1.80 per share, based on the closing stock price on the date of grant. units vested 1/48th monthly for four years. The total units vested in 2021 were 114,583.

On March 26, 2021 the Company issued to four independent directors a total of 36,112 restricted stock units. These restricted stock units were issued for the \$65,000 of board compensation earned for the first quarter of 2021. The units were valued at \$65,000 or \$1.80 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will be issued to the director upon the earliest to occur of (A) March 26, 2024, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On May 12, 2021, the Company granted four independent directors a total of 38,924 restricted stock units. The units were valued at \$65,000 or \$1.67 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will be issued to the director upon the earliest to occur of (A) May 12, 2024, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On August 11, 2021, the Company granted four independent directors a total of 37,144 restricted stock units. The units were valued at \$65,000 or \$1.75 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will be issued to the director upon the earliest to occur of (A) August 11, 2024, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

On December 15, 2021, the Company granted four independent directors a total of 42,484 restricted stock units. The units were valued at \$65,000 or \$1.53 per share, based on the closing stock price on the date of grant. All units vested immediately. The shares of Common Stock associated with the Restricted Stock Unit evidenced by this Agreement will be issued to the director upon the earliest to occur of (A) December 15, 2024, (B) a change in control of the Company, and (C) the termination of the director's service with the Company.

In the twelve months ended December 31, 2021, the company recorded \$447,506 in restricted stock units as board compensation.

Restricted Stock Unit Compensation Expense

The impact on our results of operations of recording stock-based compensation expense for years ended December 31, 2021 and 2020 was as follows:

	Years Ended December 31,	
	2021	2020
General and administrative	\$ 260,005	\$ 260,003
Sales and Marketing	187,501	—
	<u>\$ 447,506</u>	<u>\$ 260,003</u>

10. Warrants to Purchase Common Stock

The following table summarizes investor warrant activity as of and for the years ended December 31, 2021 and 2020:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2019	3,358,459	\$ 1.23	1.27
Granted	2,666,459	\$ —	—
Exercised	(2,900,959)	\$ —	—
Canceled/forfeited/expired	(432,500)	\$ —	—
Outstanding at December 31, 2020	2,691,459	\$ 1.99	2.94
Granted	580,231	\$ —	—
Exercised	—	\$ —	—
Canceled/forfeited/expired	(25,000)	\$ —	—
Outstanding at December 31, 2021	<u>3,246,690</u>	<u>\$ 2.26</u>	<u>3.59</u>

We did not record any stock-based compensation expense for the years ended December 31, 2021 and 2020, respectively in connection with the exercise of investor-based warrants.

Warrants Exercised in 2020

During year ending December 31, 2021 no warrants were exercised.

11. Income Taxes

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was enacted and signed into law in response to the market volatility and instability resulting from the COVID-19 pandemic. It includes a significant number of tax provisions and lifts certain deduction limitations originally imposed by the Tax Cuts and Jobs Act of 2017 (the 2017 Act). The changes are mainly related to: (1) the business interest expense disallowance rules for 2019 and 2020; (2) net operating loss rules; (3) charitable contribution limitations; (4) employee retention credit; and (5) the realization of corporate alternative minimum tax credits. The Company does not anticipate the application of the CARES Act provisions to materially impact the overall Consolidated Financial Statements.

For the years ended December 31, 2021 and 2020 the provisions for income taxes were as follows:

	2021	2020
Federal – current	\$ —	\$ —
State – current	—	—
Foreign – current	—	—
Total	<u>\$ —</u>	<u>\$ —</u>

Under ASC 740, deferred income tax assets and liabilities reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes.

Significant components of our net deferred tax assets and liabilities as of December 31, 2021 and 2020 are as follows:

	<u>2021</u>	<u>2020</u>
Deferred tax assets (liabilities):		
Net operating loss carryforwards	\$ 16,915,000	\$ 14,881,000
Stock based compensation	4,372,000	4,094,000
Accrued compensation	31,000	19,000
Depreciation and amortization	3,783,000	3,867,000
Other	2,000	—
Total deferred tax assets	25,103,000	22,861,000
Valuation allowance for net deferred tax assets	(25,103,000)	(22,861,000)
Total	<u>\$ —</u>	<u>\$ —</u>

The Company has provided a valuation allowance against deferred tax assets recorded as of December 31, 2021 and 2020 due to uncertainties regarding the realization of such assets.

The net change in the total valuation allowance for the year ended December 31, 2021 was an increase of approximately \$2,479,000. The net change in the total valuation allowance for the year ended December 31, 2020 was an increase of approximately \$568,000. In assessing the valuation of deferred tax assets, the Company considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during periods in which those temporary differences become deductible. The Company considers projected future taxable income and planning strategies in making this assessment. Based on the level of historical operating results and projections for the taxable income for the future, the Company has determined that it is more likely than not that the deferred tax assets will not be realized. Accordingly, the Company has recorded a valuation allowance to reduce deferred tax assets to zero. There can be no assurance that the Company will ever be able to realize the benefit of some or all of the federal and state loss carryforwards, either due to ongoing operating losses or due to ownership changes, which limit the usefulness of the loss carryforwards.

As of December 31, 2021, the Company has available net operating loss carryforwards of approximately \$64,000,000 for federal income tax purposes, which will start to expire in 2026. The net operating loss carryforwards for state purposes are approximately \$61,000,000 and will start to expire in 2028.

The difference between the provision for income taxes and income taxes computed using the U.S. federal income tax rate for the years ended December 31, 2021 and 2020 was as follows:

	<u>2021</u>	<u>2020</u>
Computed expected tax expense	\$ (1,735,000)	\$ (613,000)
State taxes, net of federal benefit	(799,000)	(141,000)
Expiration of NOL carryforwards	87,000	44,000
Other	(32,000)	142,000
Change in valuation allowance	2,479,000	568,000
Total	<u>\$ —</u>	<u>\$ —</u>

The Company has determined that during 2010 it experienced a “change of ownership” as defined by Section 382 of the Internal Revenue Code. As such, utilization of net operating loss carryforwards and credits generated before the 2010 change in ownership will be limited to approximately \$207,000 per year until such carryforwards are fully utilized. The pre change net operating loss carryforward was approximately \$6,000,000. Since 2010 the Company has not conducted a study to assess whether a change of control has occurred or whether there have been multiple changes of control since inception due to the significant complexity and cost associated with such a study. If the Company has experienced a change of control, as defined by Section 382, at any time since 2010, utilization of the net operating loss carryforwards tax credit carryforwards would be subject to further annual limitation under Section 382. Any limitation may result in expiration of a portion of the net operating loss carryforwards before utilization.

The Company files income tax returns in the U.S. federal jurisdiction, Arizona, and California. Because the Company is carrying forward federal and state net operating losses from 2006, the Company is subject to U.S. federal and state income tax examinations by tax authorities for all years since 2006. The Company does not have a liability for any uncertain tax positions. As of December 31, 2021, no accrued interest or penalties are recorded in the financial statements.

12. Fair Value Measurements of Financial Instruments

The following table summarizes our financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2021:

Description	Level 1	Level 2	Level 3	Gains (Losses)
Goodwill (non-recurring)	\$ —	\$ —	\$ 411,183	\$ —
Intangibles, net (non-recurring)	\$ —	\$ —	\$ 1,124,720	\$ —

The following table summarizes our financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2020:

Description	Level 1	Level 2	Level 3	Gains (Losses)
Goodwill (non-recurring)	\$ —	\$ —	\$ 496,352	\$ —
Intangibles, net (non-recurring)	\$ —	\$ —	\$ 1,368,329	\$ —

The Company recorded goodwill, intangible assets and an earn-out payable as a result its business combinations, and these assets were valued with the assistance of a valuation consultant and consisted of Level 3 valuation techniques.

The Company's financial instruments consist of cash, accounts receivable, accounts payable, and accrued liabilities. The estimated fair value of cash, accounts receivable, accounts payable and accrued liabilities approximate their carrying amounts due to the short-term nature of these instruments. None of these instruments are held for trading purposes.

13. Commitments and Contingencies

Litigation

As of the date of this report, the company has one pending legal proceeding related to TCPA (Telephone Consumer Protection Act) Violation. We are currently in the process of settling with the claimant.

Operating Lease

As described in Note 6, the Company had a lease through January 2021 for 10,395 square feet of office space located at 55 N. Arizona Ave., Suite 310, Chandler, Arizona. Monthly rental payments, excluding common area maintenance charges, are \$20,140. As of December 31, 2021, we have an operating lease asset balance for this lease of \$0 and an operating lease liability balance for this lease of \$0 recorded in accordance with ASC 842.

We have entered into a new lease starting in February of 2021 for 8,898 square feet of office space located at 3133 W. Frye Road, Suite 215, Chandler, Arizona. Monthly rental payments, excluding common area maintenance charges, will be \$25,953 to \$28,733. The first twelve months of the lease included a 50% abatement period. As of December 31, 2021, we have an operating lease asset balance for this lease of \$1,177,094 and an operating lease liability balance for this lease of \$1,404,533 recorded in accordance with ASC 842.

The Company also has a lease through April 2022 for 3,248 square feet of office space located in Halifax, Nova Scotia, at a monthly rental expense of \$3,371 per month, excluding common area maintenance charges. As of December 31, 2021, we have an operating lease asset balance for this lease of \$10,443 and an operating lease liability balance for this lease of \$13,296 recorded in accordance with ASC 842.

14. Employee Benefit Plan

The Company has an employee savings plan (the "Plan") pursuant to Section 401(k) of the Internal Revenue Code (the "Code"), covering all of its employees. Participants in the Plan may contribute a percentage of compensation, but not in excess of the maximum allowed under the Code. The Company may make contributions at the discretion of its Board of Directors. During the years ended December 31, 2021 and 2020, the Company made no contributions to the Plan.

15. Related Party Transactions

Unsecured Promissory Note Investments in 2019

During the year ended December 31, 2018, we commenced an offer to certain investors, officers and directors of the Company Unsecured Promissory Notes (individually, a “Note” and collectively, the “Notes”). In 2019, we issued to one of our directors, unsecured Notes in the principal aggregate amount of \$3,500,000, which are due and payable two years after issuance. These notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay any of the Notes without notice, subject to a two percent (2%) pre-payment penalty. We conducted the private placement of our securities in July 2019. The Note holder participated in the private placement by settling principal of \$2,500,000 and accrued interest under the notes totaling \$82,916, for 2,582,916 units of our securities. The remaining 2019 Notes for \$1,000,000 aggregated principal were settled with the December of 2020 private placement. As of December 31, 2020, we have \$80,000 as a remaining balance of these Notes and accrued interest of \$33,533.

Unsecured Promissory Note Investments in 2020

On February 26, 2020, we issued an unsecured Note in the principle aggregate amount of \$200,000, which becomes due two years after the date of issuance. This Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this Note without notice, subject to a two percent (2%) pre-payment penalty.

On November 18, 2020, we issued two additional unsecured Notes in the principle aggregate amount of \$500,000, which becomes due two years after the date of issuance. This Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this Note without notice, subject to a two percent (2%) pre-payment penalty.

On December 31, 2020 \$1,200,000 of these Notes and the accrued interest of \$192,208 was settled into equity and we recorded a loss on settlement of debt of \$668,260 for the year ended December 31, 2020. In summary, as of December 31, 2020, we have a principal balance of \$580,000 and accrued interest of \$42,492 outstanding.

On January 25, 2021, we repaid \$65,000 for an unsecured Note. On January 27, 2021, we repaid the remaining \$15,000 of the unsecured Note and accrued interest of \$34,379.

Unsecured Promissory Note Investments in 2021

On July 1, 2021 we entered into an Unsecured Promissory Notes (individually, a “Note” and collectively, the “Notes”) in the aggregate principal amount of \$271,875 to certain investors, officers and directors of the Company. Each Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum and the principal and accrued interest is due and payable no later than July 1, 2023. We may prepay any of the Notes without notice, subject to a two percent (2%) pre-payment penalty. The Note offer was conducted by our management and there were no commissions paid by us in connection with the solicitation. The Company issued warrants to purchase an aggregate of 33,017 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under this Credit Agreement.

Secured Promissory Note Investment in 2021

On June 30, 2021, we entered into a Credit Facility Agreement (the “Credit Agreement”) with one of the Company’s directors. The Company can borrow up to \$3,500,000 under this Credit Agreement. On November 19, 2021, a payment of \$200,000 was paid toward the principal balance of the note. On November 19, 2021, a payment of \$200,000 was paid toward the principal balance of the note. As of December 31, 2021, the company has drawn a total of \$3,478,125 including cash in the amount of \$3,206,250 and \$271,875 of principal and accrued interest under the above-described Note that was rolled into the Credit Facility. As of December 31, 2021, we have accrued interest of \$149,040. The loan is secured by all our tangible and intangible assets including intellectual property. We will repay the principal amount plus accrued interest in 24 equal monthly installments commencing on June 30, 2022 and ending on June 30, 2024. This loan bears interest on unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this Note without notice, penalty or charge. In consideration of the lender’s agreement to provide the facility, the Company issued warrants to purchase shares of its common stock at an exercise price of \$1.67 per share in connection with the issuance of funds under this Credit Agreement. The warrants are exercisable for a period commencing upon issuance of the notes and ending 36 months after issuance of the financing. In addition, the Company has agreed to issue to the lender additional warrants entitling the lender to purchase a number of shares of the Company common stock equal to twenty percent (20%) of the amount of the advances made divided by the volume weighted average price over the 30 trading days preceding the advance (VWAP). Each warrant will be exercisable over a three-year period at an exercise price equal to the VWAP.

During the twelve month period ending December 31, 2021, the Company issued warrants to purchase an aggregate of 600,570 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under this Credit Agreement. The estimated aggregate fair value of the warrants issued is \$262,758 using the Black-Scholes option valuation model as of December 31, 2021.

16. Subsequent Events

2022 Warrants Exercise

On February 7, 2022 seventeen warrant holders exercised their common stock purchase warrant for 3,163,190 shares at the exercise price of \$.80 per share, resulting in additional capital of \$2,530,552. As an inducement for the holder's exercise of the warrants, we issued the holders 2,530,552 new warrants to purchase common stock at \$1.50 per share over a three-year period expiring in February 2025.

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

None

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Securities Exchange Act of 1934 (the "Exchange Act") is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's ("SEC") rules and forms. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management to allow timely decisions regarding required disclosure.

As required by paragraph (b) of Rules 13a-15 or 15d-15 under the Exchange Act, our management, with the participation of our president (our principal executive officer) and our chief financial officer (our principal financial officer and principal accounting officer) evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this annual report, being December 31, 2021 (the "Evaluation Date"). Based on such evaluation and subject to the foregoing, such officers have concluded that, as of the Evaluation Date, the Company's disclosure controls and procedures are not effective at the reasonable assurance level to ensure that information required to be disclosed by the Company in the reports that the Company 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 to ensure that information required to be disclosed by the Company in the reports that the Company files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within our company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. The term "internal control over financial reporting" is defined as a process designed by, or under the supervision of, an issuer's principal executive and principal financial officers, or persons performing similar functions, and effected by the issuer's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and
- (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer.

Under the supervision of our Chief Executive Officer, being our principal executive officer, and our Chief Financial Officer, being our principal financial officer and principal accounting officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2021 using the criteria established in Internal Control—2013 Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Based on this evaluation under the criteria established in Internal Control – Integrated Framework, our management concluded that our internal control over financial reporting was not effective as of December 31, 2021.

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

Changes in Internal Control

There was no change in our internal control over financial reporting, as defined in Rules 13a-15(f) under the Exchange Act, that occurred during the fiscal year ended December 31, 2021 and 2020 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

PART III

Item 10. Directors and Executive Officers

Directors and Executive Officers

The following table sets forth information concerning our executive officers and directors, including their ages, as of March 20, 2022:

Name	Age	Position
Dennis Becker	47	Chief Executive Officer and Chairman of the Board
Lisa Brennan	55	Chief Financial Officer
John Harris	72	Lead Director and Chairman of Compensation Committee
Philip Guarascio	79	Chairman of Governance and Nominating Committee and Director
Doug Schneider	58	Director
Tom Akin	68	Chairman of Audit Committee and Director

Dennis Becker - Chief Executive Officer, Executive Chairman and Director

Dennis Becker was appointed our Chief Executive Officer and a Director effective as of our acquisition of Mobivity, Inc. in November 2010. Mr. Becker has also served as President and Chief Executive Officer of Mobivity, Inc. since September 2007. Our board of directors appointed Mr. Becker as Chairman of the Board of Directors effective as of March 31, 2017. Mr. Becker was a founder of Frontieric Corporation, a pioneer in providing complex call routing and merchant processing applications, where he was Chief Executive Officer from 2002 to 2005. Mr. Becker was also Chief Executive Officer of Bexel Technologies, which served solutions to large enterprises, from 1999 to 2001. Mr. Becker studied Computer Science at the University of Oregon and served in the United States Air Force.

Mr. Becker has extensive knowledge of the mobile message marketing industry. As a result of these and other professional qualifications, we have concluded that Mr. Becker is qualified to serve as a director.

Lisa Brennan - Chief Financial Officer

On December 7, 2020, the board of directors of the Company appointed Lisa Brennan to serve as Chief Financial Officer of the Company. Ms. Brennan has over 25 years of executive financial management experience with both public and private companies. Ms. Brennan was most recently the CFO of Network Group, LLC, a co-working company. Previously, Ms. Brennan was the CFO and VP Financial Planning at Merchant Customer Exchange “MCX”, a mobile payment technology business, culminating in the company’s acquisition by JPMorgan Chase. Ms. Brennan holds a BA, Summa Cum Laude, in Mathematics and Economics from Wellesley College, MS in mathematics from Brandeis University, and an MBA from the Massachusetts Institute of Technology Sloan School of Business.

Ms. Brennan is the daughter of Philip Guarascio, a member of our Board of Directors. Ms. Brennan has extensive knowledge of Generally Accepted Accounting Principles and preparation of financial statements for a publicly traded company. As a result of these and other professional qualifications, we have concluded that Ms. Brennan is qualified to serve as an officer.

John Harris – Non-Executive Chairman and Chairman of Compensation Committee

Mr. Harris has been a director since January 2011. Mr. Harris has served as an operating partner with Glendon Todd Capital, a Dallas based private equity firm from February 2011 to February 2015. From 2010 to 2012 Mr. Harris was CEO and investor with Chemical Information Services, a leading provider of database services to the chemical and pharmaceutical industries. From 2006 to 2009, Mr. Harris was President and CEO of eTelecare Global Solutions; a business process outsourcing (“BPO”) company delivering technical support, sales, and customer care services to the Fortune 1000 market. In that capacity, he successfully led the company’s IPO, privatization and ultimate merger in 2009 that created a \$1 billion BPO services company. Previously, Mr. Harris served in various executive level positions with Electronic Data Systems over a 25-year period. Mr. Harris graduated from the University of West Georgia with a BBA and MBA and is on the Board of Advisors to the Richardson School of Business. He has held board positions with a number of public and private telecommunications and technology services companies, and he currently sits on the board of The Hackett Group and is the head of their compensation committee.

Mr. Harris has extensive knowledge of corporate management. As a result of these and other professional qualifications, we have concluded that Mr. Harris is qualified to serve as a director.

Philip Guarascio - Chairman of Governance and Nominating Committee and Director

Mr. Guarascio has served as a director since March 2014. Mr. Guarascio has been the Chairman and Chief Executive Officer of PG Ventures LLC since May 2000 where he serves as a marketing and advertising business consultant. He was Lead Executive, Marketing and Sales at the National Football League from 2003-2007 and has been a consultant for the William Morris Agency since October 2001. For 16 years, Mr. Guarascio was with General Motors where he served as Vice President of Corporate Advertising and Marketing primarily responsible for worldwide advertising resource management, managing consolidated media placement and before that as General Manager of Marketing and Advertising for General Motors’ North American Operations. Mr. Guarascio introduced the GM Card and managed the General Motors corporate brand to a 20 percent increase in customer purchase consideration. He joined General Motors in 1985 after 21 years with the New York advertising agency, D’Arcy, Masius, Benton & Bowles.

Mr. Guarascio has extensive experience in the marketing and advertising industry. Based on this and other professional qualifications, we have concluded that Mr. Guarascio is qualified to serve as a director.

Doug Schneider - Director

Mr. Schneider has been a director since December 2010. Mr. Schneider has a twenty-year track record of leadership and success in launching, building, and managing high-tech service-oriented companies. He has served as Executive Vice President of the SMB Solutions for the Melbourne IT Group since July 2012 and oversees a \$75MM per year hosting and domain registration business across North American and Asia Pacific. From 2011 to 2012, Mr. Schneider served as CEO for Transaction Wireless, a venture backed technology company where he still resides on the board. From 2007 to 2010, Mr. Schneider was the CEO of Genea Energy, a clean tech company that provides an innovative and comprehensive SaaS based energy services platform for commercial office building portfolios. Mr. Schneider received a Bachelor’s degree in Mechanical Engineering from University of California, Davis and an M.B.A. from the Kellogg School of Management at Northwestern University. He also serves as an industry advisor to Pelion Venture Partners, a venture capital firm focused on the information technology sector.

Mr. Schneider has extensive knowledge of corporate management. As a result of these and other professional qualifications, we have concluded that Mr. Schneider is qualified to serve as a director.

Thomas Akin – Chairman of the Audit Committee and Director

Mr. Akin has been a director since March 2015. Mr. Akin has been the Managing General Partner of Talkot Partners I, Talkot Partners II, LLC, Talkot Crossover Fund, LP, and Talkot Capital LLC since 1996 and was appointed as a director in March 2015. Mr. Akin served as the Chief Executive Officer of Dynex Capital Inc, from February 2008 to 2013. Mr. Akin had been with Merrill Lynch and Co., including served as its Managing Director of the Western United States for Merrill Lynch Institutional Services from 1991 to 1994 and as Regional Director of the San Francisco and Los Angeles regions for Merrill Lynch Institutional Services from 1981 to 1991. Mr. Akin had been with Salomon Brothers from 1978 to 1981. He has been an Executive Chairman of Dynex Capital Inc. since January 2014 and has been its the Chairman since May 30, 2003. He served as the Chairman of Infotec since 2001. Mr. Akin has been a Director of Acacia Technologies Group of Acacia Research Corp. since May 1998, Dynex Capital Inc, since May 2003, Acacia Research Corp. since May 1998 and eFax.com, Inc. since July 1996. He serves as a Director of ADX. He served as a Director CombiMatrix Corporation since May 1998. Mr. Akin holds a B.A. in Biology from the University of California at Santa Cruz and an M.B.A. from the University of California at Los Angeles.

Because Mr. Akin has extensive experience as a professional investor and public company director, we have concluded that Mr. Akin is qualified to serve as a director.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, requires our directors and executive officers, and persons who beneficially own more than ten percent of a registered class of our equity securities, to file with the SEC initial reports of ownership and reports of changes of ownership of common stock and our other equity securities. Officers, directors and greater than ten percent stockholders are required by SEC regulation to furnish us with copies of all Section 16(a) forms they file.

To our knowledge, based solely on a review of the copies of such reports furnished to us and written representations that no other reports were required, during the fiscal year ended December 31, 2021, our officers, directors and greater than ten percent beneficial owners complied with all Section 16(a) filing requirements applicable to them.

Additional Information about our Board and its Committees

All of our directors except Mr. Becker are considered by our board of directors to be “independent” as defined in Rule 5605(a)(2) of the NASDAQ Marketplace Rules.

Audit Committee

During the year ended December 31, 2021, our audit committee was comprised of Thomas Akin, John Harris, and Doug Schneider. Our board of directors has appointed Mr. Akin to serve as chairman of the audit committee effective as of April 1, 2017. All members of our audit committee are independent, as independence is defined in Rule 5605(a)(2) of the NASDAQ Marketplace Rules.

Compensation Committee

During the year ended December 31, 2021, our compensation committee was comprised of John Harris, Phil Guarascio and Tom Akin. Mr. Harris currently serves as compensation committee chair.

Governance and Nominating Committee

During the year ended December 31, 2021, our governance and nominating committee was comprised of Phil Guarascio, John Harris and Thomas Akin. Mr. Guarascio currently serves as governance and nominating committee chair.

Committee Interlocks and Insider Participation

None of our executive officers serve on the board of directors of another entity, whose executive officers serves on our board of directors.

Code of Ethics

We have adopted a code of ethics for all our employees, including our chief executive officer, principal financial officer and principal accounting officer or controller, and/or persons performing similar functions, which is available on our website, under the link entitled “Code of Ethics”.

Item 11. Executive Compensation

The following table summarizes the total compensation earned by our Chief Executive Officer and our other two most highly paid executive officers for the years ended December 31, 2021 and 2020. In reviewing the table, please note that:

- ① Lynn Tiscareno served as our Chief Financial Officer from August 2019 to December 6, 2020; and
- ② Lisa Brennan has served as our Chief Financial Officer since December 7, 2020.

Summary Compensation Table*

Name and Principal Position	Year	Salary	Bonus	Stock Awards (1)	Option Awards (1)	All Other Compensation	Total
Dennis Becker, Chairman & CEO	2020	\$ 310,000	\$ 65,000	\$ —	\$ —	\$ —	\$ 375,000
	2020	\$ 296,646	\$ —	\$ —	\$ —	\$ —	\$ 296,646
Lisa Brennan, CFO	2021	\$ 225,000	\$ —	\$ —	\$ —	\$ —	\$ 225,000
	2020	\$ 12,981	\$ —	\$ —	\$ 615,495	\$ —	\$ 628,476
Lynn Tiscareno, former CFO	2021	\$ 923	\$ 15,000	\$ —	\$ —	\$ —	\$ 15,923
	2020	\$ 177,877	\$ —	\$ —	\$ 95,358	\$ —	\$ 273,235

* In accordance with the rules and regulations promulgated by the Securities and Exchange Commission, the table omits columns that are not applicable.

(1)The value of the stock and stock option compensation was computed using the Black-Scholes Option Pricing Model and represents the aggregate grant date fair value computed in accordance with ASC Topic 718. For information on the method and assumptions used to calculate the compensation costs, see Note 9 to our audited consolidated financial statements contained herein.

The following table presents the outstanding option awards held by each of our named executive officers as of December 31, 2020, including the value of the options awards.

Outstanding Equity Awards at December 31, 2021*

Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Equity Incentive Plan Awards; Number of Securities Underlying Unexercised Unearned Options (#) Unexercisable	Option Exercise Price	Option Expiration Date
Dennis Becker, CEO & Chairman	100,000	—	\$ 1.28	1/22/2025
Dennis Becker, CEO & Chairman	1,251,978	—	\$ 1.80	6/17/2023
Dennis Becker, CEO & Chairman	1,000,000	—	\$ 0.60	5/15/2027
Dennis Becker, CEO & Chairman	500,000	500,000	\$ 1.04	5/17/2029
Lisa Brennan, CFO	450,000	150,000	\$ 1.55	12/7/2030

* In accordance with the rules and regulations promulgated by the Securities and Exchange Commission, the table omits columns that are not applicable.

Employment Agreements

Dennis Becker

On January 11, 2011, we entered into an employment agreement with Dennis Becker. Under the terms of the agreement, Mr. Becker will serve as our President and Chief Executive Officer for an initial term of three years from December 24, 2010 (the "Effective Date"). Unless terminated no less than 90 days prior to the expiration date by either party, the agreement is renewed automatically for successive one-year periods. Under the agreement, Mr. Becker is paid a base annual salary of \$120,000. The base salary is subject to an annual increase at the sole discretion of our board of directors. In addition to regular annual increases, the base salary will be increased by \$30,000 (up to a cumulative maximum of \$60,000) for each acquisition of the stock or all or substantially all of the assets of a third party entity, or the formation of joint ventures resulting in operating cash flows minus capital expenditures and dividends of no less than \$25,000 during a three month period ending six months after the completion of each such acquisition or formation of such joint venture. In addition, his salary will be increased to \$225,000 in the event we complete a financing transaction of no less than \$3,000,000 and we complete one acquisition. The board may further award him, at its sole discretion, an annual bonus of up to 50% of his base salary and grant him stock options.

On June 17, 2013, the Company granted Mr. Becker an option to purchase 1,251,978 shares of Company common stock, over a ten-year period from the date of grant, at an exercise price of \$1.80 per share, representing the closing price of the Company's common stock on June 17, 2013. The options vested and first become exercisable at the rate of 1/48th per month over a 48-month period commencing on the date of grant.

Effective March 30, 2015, based on the successful results of the March 2015 capital raise, the board increased Mr. Becker's annual base salary by \$50,000 to \$275,000, awarded him a bonus payment of \$30,000, and also granted him options to purchase 100,000 shares of our common stock at an exercise price of \$1.28 with 25% vesting after 1 year from date of grant and 1/36 per month afterwards.

Effective November 17, 2016, the board increased Mr. Becker's annual base salary by \$35,000 to \$310,000 based on his annual merit review.

On May 15, 2017, the Company granted Mr. Becker an option to purchase 1,000,000 shares of Company common stock, over a ten-year period from the date of grant, at an exercise price of \$0.60 per share, representing the closing price of the Company's common stock on May 15, 2017. The options will vest and first become exercisable at the rate of 25% vesting after 1 year from date of grant and 1/36 per month afterwards.

On May 17, 2019, the Company granted Mr. Becker an option to purchase 1,000,000 shares of Company common stock, over a ten-year period from the date of grant, at an exercise price of \$1.04 per share, representing the closing price of the Company's common stock on May 17, 2019. 500,000 options vested immediately, and 500,000 options will vest and first become exercisable on May 17, 2023. Mr. Becker's options shall otherwise be on terms and conditions contained in the Company's current equity incentive plan.

If the agreement is terminated by us without cause (as defined in the agreement) or if we notify Mr. Becker that we will not renew the agreement, we will be required to pay him a severance payment equal to six months of his base salary payable in regular intervals following such termination or expiration of the agreement.

The agreement includes non-compete, non-solicitation, intellectual property assignment and confidentiality provisions that are customary in our industry.

Lisa Brennan

On December 7, 2020, we appointed Lisa Brennan as Chief Financial Officer. In connection with the appointment, the Company entered into an employment agreement dated December 7, 2020 with Ms. Brennan.

Pursuant to her employment agreement, the Company agreed to pay Ms. Brennan an annual base salary of \$225,000, subject to annual review by the board. Ms. Brennan will be eligible for annual performance bonuses of up to 30% of her base salary for meeting key performance requirements, quotas, and assigned objectives determined annually by the board. Also pursuant to her employment agreement with the Company, Ms. Brennan is eligible to participate in all benefits, plans, and programs, including improvements or modifications of the same, which are now, or may hereafter be, available to other executive employees of Company. Ms. Brennan's employment agreement contains standard provisions concerning noncompetition, nondisclosure, and indemnification.

Pursuant to Ms. Brennan's employment agreement, the Company has granted Ms. Brennan an option to purchase 600,000 shares of Company common stock, over a ten-year period from the date of grant, at an exercise price of \$1.55 per share, representing the closing price of the Company's common stock on December 7, 2020. The options will vest and first become exercisable at the rate of 1/48th per month over a 48-month period commencing on the date of grant. Ms. Brennan's options shall otherwise be on terms and conditions contained in the Company's current equity incentive plan.

In the event Ms. Brennan's employment with the Company is terminated by the Company without cause, the Company shall pay Ms. Brennan, in addition to all other amounts then due and payable, three (3) additional monthly installments of her base salary.

The agreement includes non-compete, non-solicitation, intellectual property assignment and confidentiality provisions that are customary in our industry.

Non-Employee Director Compensation

2021 Director Compensation Table

Name	Fees Earned	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	Deferred Compensation Earnings	All Other Compensation	Total
Doug Schneider	\$ 65,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 65,000
John Harris	\$ 65,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 65,000
Thomas Akin	\$ 65,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 65,000
Phil Guarascio	\$ 65,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 65,000

The Company recorded an expense of \$65,000 per director related to restricted stock units for members of our board of directors for the twelve months ended December 31, 2021.

Item 12. Security Ownership of Certain Beneficial Owners and Management

The following table sets forth as of March 19, 2021, certain information regarding the beneficial ownership of our common stock. The table sets forth the beneficial ownership of (i) each person who, to our knowledge, beneficially owns more than 5% of our outstanding shares of Common Stock; (ii) each of our directors and executive officers; and (iii) all of our executive officers and directors as a group. The number of shares owned includes all shares beneficially owned by such persons, as calculated in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The number of shares beneficially owned by a person includes shares of common stock underlying options or warrants held by that person that are currently exercisable or exercisable within 60 days of March 19, 2021. The shares issuable pursuant to the exercise of those options or warrants are deemed outstanding for computing the percentage ownership of the person holding those options and warrants but are not deemed outstanding for the purposes of computing the percentage ownership of any other person. Unless otherwise indicated, the address of each shareholder is c/o the Company, 3133 W. Frye Road, Chandler, AZ 85226.

Name of Beneficial Owner	Shares Beneficially Owned	Percentage of Shares Beneficially Owned (1)
Dennis Becker (2)	3,043,981	5 %
Lisa Brennan (3)	—	—
Doug Schneider (4)	496,805	1 %
John Harris (5)	532,575	1 %
Phil Guarascio (6)	444,678	1 %
Thomas Akin (7)	16,190,620	29 %
Executive Officers and Directors as a Group (six persons)	20,708,659	37 %
5% Beneficial Owners		
Bruce Terker	6,361,082	11 %
Cornelis F. Wit	3,700,141	7 %

(1) Applicable percentage of ownership is based upon 55,410,695 shares of common stock outstanding as of March 23, 2022.

(2) Includes 2,851,978 shares of common stock issuable pursuant to presently exercisable stock options, including options that will vest within 60 days of March 19, 2021.

(3) Includes no shares of common stock issuable pursuant to presently exercisable stock options, including options that will vest within 60 days of March 19, 2021.

(4) Includes 356,490 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of March 19, 2021. Includes 74,447 shares of common stock owned of record by The Schneider Family Trust.

- (5) Includes 406,743 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of March 19, 2021.
- (6) Includes 367,681 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of March 19, 2021.
- (7) Includes 7,423,232 shares of Common Stock owned of record by Talkot Fund, L.P., 305,814 shares of common stock issuable upon settlement of restricted stock units, including restricted stock units that will vest within 60 days of March 19, 2021 and 1,541,459 of stock warrants to purchase Common Stock.

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

Certain Relationships and Related Transactions

During February 2018, we conducted a private placement of Unsecured Promissory Notes (individually, a “Note” and collectively, the “Notes”) in the aggregate principal amount of \$1,080,000 to certain investors, officers and directors of the Company. Each Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum and the principal and accrued interest is due and payable no later than December 1, 2018. We may prepay any of the Notes without notice, subject to a two percent (2%) pre-payment penalty. The Note offer was conducted by our management and there were no commissions paid by us in connection with the solicitation. During 2019, we repaid \$1,000,000 and had \$80,000 as a remaining balance of these Notes plus accrued interest.

During the year ended December 31, 2019 we issued unsecured Notes in the principle aggregate amount of \$3,500,000, which become due two years after the date of issuance. These Notes bear interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay any of the Notes without notice, subject to a two percent (2%) pre-payment penalty.

On July 2, 2019, \$2,500,000 of this Note and the accrued interest of \$82,916 was settled into equity and we recorded a loss on conversion of debt of \$232,462 for the year ended December 31, 2019. As of December 31, 2019, we had a principal balance of \$1,080,000 as a remaining balance of these Notes plus accrued interest.

On February 26, 2020, we issued an unsecured Note in the principle aggregate amount of \$200,000, which becomes due two years after the date of issuance. This Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this Note without notice, subject to a two percent (2%) pre-payment penalty.

On November 18, 2020, we issued two additional unsecured Notes in the principle aggregate amount of \$500,000, which becomes due two years after the date of issuance. This Note bears interest on the unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this Note without notice, subject to a two percent (2%) pre-payment penalty.

On December 31, 2020 \$1,200,000 of these Notes and the accrued interest of \$192,208 was settled into equity and we recorded a loss on conversion of debt of \$668,260 for the year ended December 31, 2020. In summary, as of December 31, 2020, we have a principal balance of \$580,000 and accrued interest of \$42,492 outstanding.

On January 25, 2021, we repaid \$65,000 for an unsecured Note. On January 27, 2021, we repaid the remaining \$15,000 of the unsecured Note and accrued interest of \$34,379.

On June 30, 2021, we entered into a Credit Facility Agreement (the “Credit Agreement”) with one of the Company’s directors. The Company can borrow up to \$3,500,000 under this Credit Agreement. On November 19, 2021, a payment of \$200,000 was paid toward the principal balance of the note. As of December 31, 2021, the company has drawn a total of \$3,478,125 including cash in the amount of \$3,206,250 and \$271,875 of principal and accrued interest under the above-described Note that was rolled into the Credit Facility. As of December 31, 2021, we have accrued interest of \$149,040. The loan is secured by all our tangible and intangible assets including intellectual property. We will repay the principal amount plus accrued interest in 24 equal monthly installments commencing on June 30, 2022 and ending on June 30, 2024. This loan bears interest on unpaid balance at the rate of fifteen percent (15%) per annum. The Company may prepay this Note without notice, penalty or charge. In consideration of the lender’s agreement to provide the facility, the Company issued warrants to purchase shares of its common stock at an exercise price of \$1.67 per share in connection with the issuance of funds under this Credit Agreement. The warrants are exercisable for a period commencing upon issuance of the notes and ending 36 months after issuance of the financing. In addition, the Company has agreed to issue to the lender additional warrants entitling the lender to purchase a number of shares of the Company common stock equal to twenty percent (20%) of the amount of the advances made divided by the volume weighted average price over the 30 trading days preceding the advance (VWAP). Each warrant will be exercisable over a three-year period at an exercise price equal to the VWAP.

During the twelve month period ending December 31, 2021, the Company issued warrants to purchase an aggregate of 600,570 shares of its common stock at the stated exercise price per share in connection with the issuance of funds under this Credit Agreement. The estimated aggregate fair value of the warrants issued is \$262,758 using the Black-Scholes option valuation model as of December 31, 2021.

The board conducts an appropriate review of and oversees all related party transactions on a continuing basis and reviews potential conflict of interest situations where appropriate. The board has not adopted formal standards to apply when it reviews, approves or ratifies any related party transaction. However, the board has followed the following standards: (i) all related party transactions must be fair and reasonable to us and on terms comparable to those reasonably expected to be agreed to with independent third parties for the same goods and/or services at the time they are authorized by the board and (ii) all related party transactions should be authorized, approved or ratified by the affirmative vote of a majority of the directors who have no interest, either directly or indirectly, in any such related party transaction.

Indemnification Agreements with Directors and Executive Officers

We have entered into indemnity agreements with certain directors, officers and other key employees of ours under which we agreed to indemnify those individuals under the circumstances and to the extent provided for in the agreements, for expenses, damages, judgments, fines, settlements and any other amounts they may be required to pay in actions, suits or proceedings which they are or may be made a party or threatened to be made a party by reason of their position as a director, officer or other agent of ours, and otherwise to the fullest extent permitted under Nevada law and our bylaws. We also have an insurance policy covering our directors and executive officers with respect to certain liabilities, including liabilities arising under the Securities Act of 1933, as amended, or otherwise. We believe that these provisions and insurance coverage are necessary to attract and retain qualified directors, officers and other key employees.

Item 14. Principal Accounting Fees and Services

The following table represents aggregate fees billed to us for the years ended December 31, 2021 and 2020 by M&K CPAs, our principal auditors for such periods. All fees described below were approved by the board of directors.

	2021	2020
Audit Fees	\$ 41,000	\$ 56,000
Audit-Related Fees	33,000	31,500
Tax Fees	6,000	5,574
All Other Fees	—	—
Total Fees	<u>\$ 80,000</u>	<u>\$ 93,074</u>

Board of Directors' Pre-Approval Policies and Procedures

The board of directors has adopted a policy for the pre-approval of audit and non-audit services rendered by our independent auditors, M&K CPAs, who's firm ID is 2738. The policy generally pre-approves specified services in the defined categories of audit services, audit-related services and tax services up to specified amounts. Pre-approval may also be given as part of the board's approval of the scope of the engagement of the independent auditors or on an individual explicit case-by-case basis before the independent auditors are engaged to provide each service.

The board of directors has determined that the rendering of the services other than audit services by M&K CPAs is compatible with maintaining the principal accountant's independence.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) Financial Statements

The Financial Statements of Mobivity Holdings Corp. and Report of Independent Registered Public Accounting Firm are included in a separate section of this Form 10-K beginning on page F-1.

(a)(2) Financial Statement Schedules

The schedules required to be filed by this item have been omitted because of the absence of conditions under which they are required, or because the required information is included in the financial statements or the notes thereto.

Exhibit Number	Description
3.1	Articles of Incorporation (1)
3.2	Bylaws (1)
3.3	Amendment to Bylaws (2)
3.4	Articles of Merger filed August 6, 2012 (4)
3.5	Amendment No. 2 to the Bylaws, effective as of May 20, 2013 (8)
3.6	Amendment to Articles of Incorporation filed with the Nevada Secretary of State on November 12, 2013 (6)
4.1	Description of Capital Stock*
10.1	Employment Agreement dated December 24, 2010 with Dennis Becker (3)**
10.2	2013 Stock Incentive Plan of the Company adopted July 18, 2013 (5) **
10.3	Loan and Security Agreement dated November 14, 2018 between the Company and Wintrust Bank (6)
10.4	Employment Agreement dated December 7, 2020 with Lisa Brennan* **
21.1	List of Subsidiaries (6)
31.1	Certification of Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
31.2	Certification of Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
32.1	Certification of Chief Executive Officer, and Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*
101.INS	XBRL Instance Document*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document*

* Filed herewith

** Indicates management compensatory plan, contract or arrangement

(1) Incorporated by reference to the Registration Statement on Form S-1 filed with the SEC on October 20, 2008, File No. 333-154455

(2) Incorporated by reference to the Company's Current Report on Form 8-K filed December 2, 2011

(3) Incorporated by reference to the Company's Current Report on Form 8-K filed January 18, 2011

(4) Incorporated by reference to the Company's Current Report on Form 8-K filed August 10, 2012

(5) Incorporated by reference to the Company's Quarterly Report on Form 10-Q filed August 14, 2013

(6) Incorporated by reference to the Company's Annual Report on Form 10-K filed April 15, 2019

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DATE: March 30, 2022

MOBIVITY HOLDINGS CORP.

/s/ Dennis Becker
Dennis Becker
Chief Executive Officer

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Dennis Becker</u>	Chief Executive Officer and Chairman of the Board	March 30, 2022
<u>/s/ Lisa Brennan</u>	Chief Financial Officer	March 30, 2022
<u>/s/ Philip Guarascio</u>	Director	March 30, 2022
<u>/s/ John Harris</u>	Director	March 30, 2022
<u>/s/ Doug Schneider</u>	Director	March 30, 2022
<u>/s/ Thomas Akin</u>	Director	March 30, 2022

DESCRIPTION OF CAPITAL STOCK

Mobivity Holdings Corp. (“Company”, “we”, “us” and “our”) has one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, namely our common stock, par value \$0.001 per share.

The following is a summary of the rights of our common and of certain provisions of our Articles of Incorporation, as amended (“Articles of Incorporation”), and Bylaws, as amended (“Bylaws”). For more detailed information, please see our Articles of Incorporation and Bylaws, which are incorporated by reference as exhibits to the Annual Report on Form 10-K to which this description is an exhibit.

Common Stock

Our Articles of Incorporation authorizes us to issue up to 100,000,000 shares of common stock, \$0.001 par value per share. Holders of shares of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders generally. Stockholders are entitled to receive such dividends as may be declared from time to time by the Board out of funds legally available therefore, and in the event of liquidation, dissolution or winding up of the company to share ratably in all assets remaining after payment of liabilities. The holders of shares of common stock have no preemptive, conversion, subscription rights or cumulative voting rights.

Dividends

We have never paid cash dividends on our common stock and we do not anticipate the payment of cash dividends on our common stock in the foreseeable future.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Colonial Stock Transfer Co, Inc., 66 Exchange Place, Ste 100., Salt Lake City, UT 84111.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this “Agreement”) is made, entered into and effective as of this 7th day of December, 2020 (the “Effective Date”) by and between **MOBIVITY HOLDINGS CORPORATION**, a Nevada corporation (the “Company”), and **LISA BRENNAN**, an individual resident of the State of Massachusetts (“Employee”).

WHEREAS, the Company and Employee desire to set forth in a written agreement the terms and conditions pursuant to which Employee shall be employed as **Chief Financial Officer** by the Company; and

WHEREAS, the parties intend to supersede all prior oral and written communications, correspondence, letters and negotiations between them with the terms set forth herein with regard to the terms of Employee’s employment.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, each party hereby agrees as follows:

1. **Definitions.** For purposes of this Agreement, the following capitalized terms shall have the definitions set forth below. Other capitalized terms used in this Agreement that are not defined in this **Section 1** shall have the definitions given to them in this Agreement.

(a) “**Board**” means the Board of Directors of the Company, including any authorized committee(s) thereof.

(b) “**Cause**” means:

(i) commission by Employee of a felony;

(ii) Employee’s insobriety, use of illegal drugs, abuse of prescription drugs or abuse of alcohol which adversely and directly effects the company or its reputation l;

(iii) Employee’s engaging in fraud, misappropriation, embezzlement, deceit or other unlawful act or similar acts involving dishonesty or moral turpitude on the part of Employee which adversely and directly effects the company or its reputation;

(iv) Employee’s insubordination, commission of an act of dishonesty, gross negligence, self dealing, willful misconduct, deceit or other unlawful act in connection with the performance of Employee’s duties hereunder, including without limitation, misappropriation of funds or property of the Company, securing or attempting to secure personally any profit in connection with any transaction entered into on behalf of the Company;

(v) Employee’s willful act or gross negligence having the effect of injuring the reputation, business or business relationships of the Company and its subsidiaries or affiliates;

(vi) Employee’s disregard of (A) any provision of any policy, work rule, procedure or standard of the Company; or (B) any directive of the Company or the Board;

(vii) Employee’s violation of any fiduciary obligation to the Company;

- (viii) Employee's violation of any provision of the policies, work rules, procedures or standards of the Company;
- (ix) Employee's failure to perform his duties under this Agreement; or
- (x) Employee's violation of any covenant or obligation under this Agreement or any other agreement with the Company.

"Confidential Information" means any data or information concerning the Company, its parents, subsidiaries and affiliates, or the operations of the Company or its parents, subsidiaries and affiliates, other than Trade Secrets, without regard to form, that is valuable to the Company or its parents, subsidiaries or affiliates and is not generally known by the public or competitors of the Company or its parents, subsidiaries or affiliates. To the extent consistent with the foregoing, Confidential Information includes, but is not limited to, information about the business practices, customers of the Company, its parents, subsidiaries and affiliates (including, without limitation, mailing lists and customer lists and records), lists of the current or potential customers, vendors and suppliers, lists of and other information about the executives and employees, financial information, business strategies, business methods, product information, contracts and contractual arrangements, marketing plans, the type and volume of the business of the Company, its parents, subsidiaries and affiliates, personnel information, information about the Company's vendors, suppliers and strategic partners, price lists, pricing policies, pricing information, business methods, research and development techniques and activities of the Company, its parents, subsidiaries and affiliates, and all information located in the books and records of the Company, its parents, subsidiaries and affiliates. Confidential Information also includes any information or data described above which the Company or any parent, subsidiary or affiliate of the Company obtains from another party and which the Company or such parent, subsidiary or affiliate treats as proprietary or designates as confidential information whether or not owned or developed by the Company or such parent, subsidiary or affiliate.

(c) "Disability" means that Employee qualifies for benefits under the long-term disability plan or policy maintained by the Company, or, in the absence of such a plan or policy, a physical or mental impairment that renders Employee substantially incapable of performing the essential functions of his job as determined by the Company, with or without reasonable accommodations as contemplated by Americans with Disabilities Act.

(d) "Territory" means the United States of America. The parties acknowledge and agree that the foregoing description of the Territory is reasonable and embodies locations where the Company currently conducts its business and operations or reasonably expects to conduct the business in accordance with the Company's business plan.

(e) "Trade Secret" means information of the Company or its parents, subsidiaries or affiliates, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a design, a process, financial data, financial plans, product plans, technology plans, marketing plans, acquisition strategies, strategic plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Trade Secrets also includes any information or data described above which the Company or any parent, subsidiary or affiliate of the Company obtains from another party and which the Company treats as proprietary or designates as trade secrets, whether or not owned or developed by the Company or such parent, subsidiary or affiliate of the Company.

(f) "Work Product" means all discoveries, designs, artwork, Trade Secrets, Confidential Information, trademarks, data, analyses, materials, formulas, strategic plans, acquisition strategies, research,

documentation, computer programs, information technology systems, communication systems, audio systems, manufacturing systems, system designs, inventions (whether or not patentable), copyrightable subject matter, works of authorship, and other proprietary information or work product (including all worldwide rights therein under patent, copyright, trademark, trade secret, confidential information, moral rights and other property rights), which Employee has made or conceived, or may make or conceive, either solely or jointly with others, while providing services to the Company or its subsidiaries or with the use of the time, material or facilities of the Company or its subsidiaries or relating to any actual or anticipated business of the Company or its subsidiaries known to Employee while employed at the Company, or suggested by or resulting from any task assigned to Employee or work performed by Employee for or on behalf of the Company.

2. **Employment, Duties and Term.**

(a) Subject to the terms hereof, the Company hereby employs Employee as Chief Financial Officer, and Employee accepts such employment with the Company on the terms set forth in this Agreement. In such capacity, Employee shall perform the duties appropriate to such office or position, and such other duties and responsibilities commensurate with such position as are assigned to him from time to time by the Board or its designees. Employee shall report to the Company's Executive Chairman and work out of the Company's office in Phoenix, Arizona.

(b) Employee shall devote his full working time and best efforts to the performance of his duties under this Agreement for and on behalf of the Company and shall not work for anyone else or engage in any activity in competition with or detrimental to the Company. Notwithstanding the foregoing, Employee shall be permitted to serve on corporate, civic or charitable boards or committees, so long as the Board consents in advance in writing to such activities, and such activities do not materially interfere with the performance of his responsibilities as an employee of the Company in accordance with this Agreement. Employee represents that he is not subject to any non-competition, confidentiality, trade secrets or other agreement(s) that would preclude, or restrict in any way, Employee from fully performing his services hereunder during his employment with the Company.

(c) Unless earlier terminated as provided herein, Employee's employment under this Agreement shall be for a term commencing on the Effective Date and ending on the date this Agreement is terminated pursuant to Section 4 below (the "Term"). Employee acknowledges and agrees his employment with the Company is on an "at will" basis, meaning that either Employee or the Company may terminate his employment at any time for any reason or no reason, without further obligation or liability, except as expressly set forth in Section 4 below

3. **Compensation.**

(a) **Base Salary.** In consideration of the services rendered by Employee, and subject to the terms and conditions hereof, the Company shall pay Employee during the Term an annual base salary of at least \$225,000 (the "Base Salary"). The Base Salary shall be subject to increase, if at all, based on an annual salary review by the Board commencing on December 31, 2021, and each 12-month period thereafter. The Base Salary shall be payable in accordance with the Company's payroll practices as in effect from time to time.

(b) **Bonuses.** In addition to the Base Salary, the Company shall pay Employee:

(i) Employee will be eligible to receive a bonus of up to thirty percent (25%) of Base Salary per year (a "Bonus") for meeting key performance requirements, quotas, and assigned objectives determined by the Company's Board of Directors. The Bonus shall be paid on dates as determined by the Company's Board of Directors and each Bonus payment is conditioned upon Employee's continued employment with the Company on the date of payment.

(c) **Vacation.** Employee shall receive vacation in accordance with the policies of the Company; provided, however, that Employee shall be given at a minimum four (4) weeks of vacation per calendar year (and pro-rated for any partial calendar year). Any unused vacation may not be carried forward to a subsequent year.

(d) **Benefits.** During the Term, Employee shall be entitled to participate in any other employee benefit plans generally provided by the Company to its full-time employees from time to time, but only to the extent provided in such employee benefit plans and for so long as the Company provides or offers such benefit plans. The Company reserves the right to modify, amend or terminate such benefit plans at any time without prior notice.

(e) **Expense Reimbursement.** During the Term, Employee shall be entitled to be reimbursed in accordance with the policies of the Company, as adopted from time to time, for all reasonable and necessary expenses incurred by Employee in connection with the performance of Employee's duties of employment hereunder. Unless the expense policies provide otherwise, Employee shall submit written requests for payment accompanied with such evidence of fees and expenses incurred as the Company reasonably may require no later than thirty (30) days following the end of the calendar year in which such fees and expenses are incurred, and reimbursement payments shall be made within thirty (30) days after the Company's receipt of Employee's written request.

(f) **Stock Options.** On the Effective Date, Employee shall be granted a stock option to purchase 600,000 shares of the Company's Common Stock (the "Option Shares") at an exercise price equal to the fair market value per share on the Effective Date. The Option Shares will vest at the Company's regular vesting schedule of 1/48th per month for Forty Eight (48) Months. Vesting is conditioned upon Employee's continued employment with the Company. The option will be subject to the terms of the Company's current Stock Option Plan and a Stock Option Agreement between Employee and Company.

4. **Termination.**

(a) This Agreement may be terminated during the Term as follows:

- (i) by mutual agreement of the Company and Employee;
- (ii) by the Company, immediately, without any advance notice from the Company, for Cause;
- (iii) by the Company, upon the death or Disability of Employee;
- (iv) by the Company, upon thirty (30) days prior written notice, without Cause; or
- (v) by Employee, upon thirty (30) days prior written notice.

(b) Upon Employee's separation from service following the termination of this Agreement (the date of such termination referred to herein as the "Termination Date"), the Company shall pay to Employee the following: (i) all Base Salary earned or accrued through the Termination Date; (ii) all accrued and unused vacation time for the calendar year in which the Termination Date occurs; and (iii) reimbursement for any expenses under **Section 3(d)** that were incurred by Employee prior to the Termination Date.

(c) If this Agreement is terminated pursuant to **Section 4(a)(iv)** (by the Company without Cause), then, in addition to the payments set forth in **Section 4(b)** above, the Company shall pay Employee three months (3) months of Base Salary, at the rate in effect as of the Termination Date, which payments shall commence within thirty (30) days following Employee's separation from service, payable as described in **Section**

4(d), and which shall be made in accordance with the regular payroll practices of the Company (the “**Separation Payments**”). Additionally, the Employee’s stock options shall continue to vest for three (3) months following the date of termination and the Employee’s option to exercise such options shall be extended per the period defined in the Company’s Employee Stock Option Plan from the three (3) month anniversary of the Termination Date.

(d) To receive the Separation Payments described in **Section 4(c)**, Employee must execute, not later than ten (10) days following Employee’s separation from service a release of claims against the Company, its affiliates and their respective managers, directors, officers and equity holders, in the form and substance of **Exhibit A**, and Employee must not have thereafter revoked such release. If Employee has not executed the release of claims in favor of the Company and returned it to the Company by the date the payment described in **Section 4(c)** becomes due or if Employee revokes an executed release, Employee shall forfeit all rights to such payment under this Agreement.

(e) “**Separation from service**” as used in this **Section 4** to determine the date of any payment, shall mean the date of Employee’s “separation from service” as defined by Section 409A of the Internal Code Revenue Code of 1986, as amended, and the Treasury regulations and formal guidance issued thereunder.

5. **Confidential Relationship and Protection of Trade Secrets and Confidential Information.** In the course of Employee’s employment by the Company, Employee has had access to and shall have access to the Company’s most sensitive and most valuable Trade Secrets, proprietary information, and Confidential Information concerning the Company and its subsidiaries, their present and future business plans, development projects, artwork, designs, products, formulas, suppliers, customers, acquisition strategies and business affairs which constitute valuable business assets of the Company and its subsidiaries, the use, application or disclosure of any of which shall cause substantial and possible irreparable damage to the business and asset value of the Company. Accordingly, Employee accepts and agrees to be bound by the following provisions:

(a) At any time, upon the request of the Company and in any event upon any termination or expiration of this Agreement, Employee shall deliver to the Company all analyses, strategies, plans, acquisition strategies, artwork, technology plans, memoranda, notes, records, drawings, manuals, files or other documents, and all copies of each, concerning or constituting Confidential Information or Trade Secrets and any other property or files belonging to the Company or any of its subsidiaries that are in the possession of Employee, whether made or compiled by Employee or furnished to or acquired by Employee from the Company.

(b) To protect the Trade Secrets and Confidential Information, Employee agrees that:

(i) Employee shall hold in confidence the Trade Secrets. Except in the performance of services for the Company, Employee shall not at any time use, disclose, reproduce, distribute, transmit, reverse engineer, decompile, disassemble, or transfer the Trade Secrets or any portion thereof.

(ii) Employee shall hold in confidence the Confidential Information. Except in the performance of services for the Company, Employee shall not, at any time during the Term of this Agreement and for five (5) years thereafter, use, disclose, reproduce, distribute, transmit, reverse engineer, decompile, disassemble, or transfer the Confidential Information or any portion thereof.

6. **Restrictive Covenants.** For purposes of this **Section 6**, the “**Company**” shall include the Company and its parents and subsidiaries.

(a) **Restricted Period.** For purposes hereof, the “**Restricted Period**” shall last until the two (2) year anniversary of the Termination Date. If this Agreement is terminated pursuant to **Section 4(a)(iv)** (by the Company without Cause), then the “**Restricted Period**” shall last until the date that is one week after the date of the last Separation Payment paid by the Company.

(b) **Non-Solicitation**. Employee agrees that for purposes hereof, during the Term of this Agreement and in the event of any termination or expiration of this Agreement, until the expiration of the Restricted Period, Employee shall not, anywhere within the Territory, without the prior written consent of the Company, either directly or indirectly, on his own behalf or in the service of or on behalf of others, (i) solicit, contact, call upon, communicate with or attempt to communicate with any supplier of goods or services to the Company, any customer of the Company or prospective customer of the Company, or any representative of any customer or prospective customer of the Company with a view to selling or providing any product, deliverable or service competitive or potentially competitive with any product, deliverable or service sold or provided or under development by the Company during the period of two (2) years immediately preceding the Termination Date (provided that the foregoing restrictions shall apply only to customers or prospective customers of the Company, or representatives of customers or prospective customers of the Company with which Employee had material contact during the two (2) year period immediately preceding the Termination Date); (ii) solicit, induce or encourage any supplier of the Company to terminate or modify any business relationship with the Company; or (iii) otherwise take any action which may reasonably be anticipated to interfere with or disrupt any past, present or prospective business relationship, contractual or otherwise, between the Company and any customer, supplier or agent of the Company. The actions prohibited by this **Section 6(b)** shall not be engaged in by Employee directly or indirectly, whether as employee, independent contractor, manager, salesperson, agent, technical support technician, sales or service representative, or otherwise.

(c) **Non-Recruitment**. During the Term of this Agreement, and in the event of any termination or expiration of this Agreement until the expiration of the Restricted Period, Employee shall not, without the prior written consent of the Company, either directly or indirectly, on his own behalf or in the service of or on behalf of others, solicit or attempt to solicit for employment any person employed by the Company in the Territory, whether or not such person is a full-time employee or a temporary employee of the Company, and whether or not such employment is pursuant to a written agreement or independent contractor agreement and whether or not such employment is for a determined period or is at will.

(d) **Non-Disparagement**. Employee covenants and agrees not to make any statements of any kind, oral or written, that are derogatory or disparaging toward the Company or the management, products, employees, customers or services of the Company; provided, however, that nothing contained herein shall limit Employee's obligation to give truthful testimony to a court or governmental agency, when required to do so by subpoena, court order, law or administrative regulation.

(e) **Reasonableness**. Employee acknowledges and agrees that the covenants contained in this **Section 6** ("**Restrictive Covenants**") are reasonable and valid in all respects. Further, if any Restrictive Covenants, or portion thereof, are declared to be invalid or unenforceable, Employee shall, as soon as possible, execute a supplemental agreement with the Company granting to the Company, to the extent legally permissible, the protection intended to be afforded to the Company by the Restrictive Covenants, or portion thereof, so declared invalid or unenforceable.

(f) **Tolling**. Employee agrees that in the event the enforceability of any of the terms of this **Section 6** shall be challenged in court and Employee is not enjoined from breaching the Restrictive Covenants set forth in this **Section 6**, then if a court of competent jurisdiction finds that the challenged covenants are enforceable, the time period restrictions specified in this **Section 6** shall be deemed tolled upon the filing of the lawsuit involving the enforceability of this **Section 6** until the dispute is finally resolved and all periods of appeal have expired.

7. **Work Product**. All Work Product shall be the exclusive property of the Company. If any of the Work Product may not, by operation of law or otherwise, be considered the exclusive property of the Company, or if ownership of all right, title, and interest to the legal rights therein shall not otherwise vest exclusively in the

Company, Employee hereby assigns to the Company, and upon the future creation thereof automatically assigns to the Company, without further consideration, the ownership of all Work Product. The Company shall have the right to obtain and hold in its own name copyrights, patents, registrations, and any other protection available in the Work Product. Employee shall promptly disclose any and all such Work Product to the Company. Employee agrees to perform, during or after termination of Employee's employment by the Company, and without requiring the Company to provide any further consideration therefore, such further acts as may be necessary or desirable to transfer, perfect and defend the Company's ownership of the Work Product as requested by the Company.

8. **License.** To the extent that any pre-existing materials are contained in the materials Employee delivers to the Company or the Company's customers, and such preexisting materials are not Work Product, Employee grants to the Company an irrevocable, exclusive, worldwide, royalty-free license to: (i) use and distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof and (ii) authorize others to do any of the foregoing. Employee shall notify the Company in writing of any and all pre-existing materials delivered to the Company by Employee. Employee acknowledges that the Company does not wish to incorporate any unlicensed or unauthorized materials into its products or technology. Therefore, Employee agrees that Employee shall not knowingly disclose to the Company, use in the Company's business, or cause the Company to use, any information or material which is confidential to any third party unless the Company has a written agreement with such third party or the Company otherwise has the right to receive and use such information. Employee shall not incorporate into Employee's work any material which is subject to the copyrights, patent or other proprietary right of any third party unless the Company has a written agreement with such third party or otherwise has the right to receive and use such material.

9. **Defense or Prosecution of Claims.** Employee agrees that during his employment and following the termination of his employment for any reason, he shall cooperate at the request of the Company in the defense or prosecution of any lawsuits or claims in which the Company, its affiliates and their respective managers, directors, employees, officers or equity holders may be or become involved and which relate to matters occurring while he was employed by the Company, unless and to the extent that (a) Employee receives a written opinion of counsel, which is provided to the Company, that Employee shall suffer material harm or material prejudice as a result of such cooperation or (b) a material conflict of interest arises or exists with respect to such cooperation, and in each such case Employee shall cooperate to the maximum extent possible without incurring material harm or material prejudice or a material conflict of interest.

10. **Specific Enforcement.** The Company and Employee agree that any violation of **Sections 5, 6, 7, 8, or 9** of this Agreement shall cause irreparable injury to the Company and its affiliates and that, accordingly, the Company shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to seek an injunction enjoining and restraining Employee from doing or planning to do any such act and any other violation or threatened violation of **Sections 5, 6, 7, 8, or 9**. Employee agrees that the Company shall be entitled to recover from Employee all of the Company's costs and expenses, including reasonable attorneys' fees, incurred by the Company in the course of successfully defending or enforcing this Agreement.

11. **No Conflicting Obligations.** Each party represents and warrants to the other party that it or he is not now under any obligation of a contractual or other nature to any person or entity which is inconsistent or in conflict with this Agreement, or which would prevent, limit or impair in any way the performance by it or him of its or his obligations hereunder.

12. **Indemnity.** Employee shall indemnify the Company and its subsidiaries, affiliates, successors and assigns from and against any and all actions, suits, proceedings, liabilities, damages, losses, costs and expenses (including attorneys' and experts' fees) arising out of or in connection with any breach or threatened breach by Employee of any one or more provisions of this Agreement. The existence of any claim, demand, action or cause

of action of Employee against the Company shall not constitute a defense to the enforcement by the Company of any of the covenants or agreements herein.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to principles of conflicts of laws.

14. **Consent to Jurisdiction and Venue; Waiver of Jury Trial.**

(a) Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the United States of America located in the State of Arizona, for any actions, suits or proceedings arising out of or relating to this Agreement (and the parties agree not to commence any action, suit or proceeding relating thereto except in such courts), and further agrees that service of any process, summons, notice or document by U.S. registered or certified mail to such party's principal place of business shall be effective service of process for any action, suit or proceeding arising out of or relating to this Agreement in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement, in the above-named courts, and hereby further irrevocably and unconditionally waives his or its right and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH OF THE PARTIES HEREBY WAIVES AND COVENANTS NOT TO ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE), INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

15. **Remedies Cumulative.** The provisions of this Agreement do not in any way limit or abridge any rights of the Company or any of its subsidiaries or other affiliates under the law of unfair competition, trade secret, copyright, patent, trademark or any other applicable law(s), all of which are in addition to and cumulative of the Company's rights under this Agreement.

16. **Severability.** Each of the provisions of this Agreement shall be deemed separate and severable each from the other. In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason by final judgment of a court of competent jurisdiction, the remaining provisions or portions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law. In the event that any provision or portion of this Agreement shall be determined by any court of competent jurisdiction to be unreasonable or unenforceable, in whole or in part, as written, Employee hereby consents to and affirmatively requests that such court reform such provision or portion of this Agreement so as to be reasonable and enforceable and that such court enforce such provision or portion of this Agreement as so reformed.

17. **No Defense.** The existence of any claim, demand, action or cause of action of Employee against the Company, whether or not based upon this Agreement, shall not constitute a defense to the enforcement by the Company of any covenant or agreement of Employee contained herein.

24. **Prior Agreements.** This Agreement supersedes all previous agreements between the Company and Employee concerning terms and conditions of the employment of Employee by the Company, and all such previous agreements are hereby canceled by mutual consent.

25. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to Employee's employment with the Company, and no statements, representations, promises or inducements made by any party hereto, or agreement of either party, which is not contained in this Agreement or in a writing signed by both parties and expressly providing that it is supplemental to this Agreement, shall be valid or binding.

26. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall for all purposes be deemed to be an original and all of which, when taken together, shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or other electronic transmission.

27. **Section 409A.** This Agreement shall be construed in a manner consistent with the applicable requirements of Section 409A of the Internal Revenue Code of 1986, as amended, and the formal guidance issued thereunder ("Section 409A"), and the Company, in its sole discretion and without the consent of Employee, may amend the provisions of this Agreement if and to the extent the Company determines that such amendment is necessary or appropriate to comply with the applicable requirements of Section 409A. If a payment date that complies with Section 409A is not otherwise provided herein for any payment (in cash or in-kind) or reimbursement that would otherwise constitute a "deferral of compensation" under Section 409A, then such payment or reimbursement, to the extent such payment or reimbursement becomes due hereunder, shall in all events be made not later than two and one-half (2½) months after the end of the later of the fiscal year or the calendar year in which the payment or reimbursement is no longer subject to a substantial risk of forfeiture. The Company shall only reimburse those amounts eligible to be reimbursed under this Agreement for which Employee submits, within thirty (30) days following the end of the calendar year in which the expense was incurred, written requests for payments accompanied with such evidence of fees and expenses incurred as the Company may reasonably require and as may be needed to comply with applicable IRS rules and Treasury regulations.

28. **Independent Review and Advice.** Employee represents and warrants that he executes this Agreement with full knowledge of the contents of this Agreement, the legal consequences thereof, and any and all rights which each party may have with respect to one another; that Employee has had the opportunity to receive independent legal advice with respect to the matters set forth in this Agreement and with respect to the rights and asserted rights arising out of such matters; and that Employee is entering into this Agreement of his own free will.

29. **Survival.** The obligations of the parties under Sections 3(d), 4(b), 4(c), 4(d), 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27 and 28 shall survive the termination or expiration of this Agreement and shall not be extinguished thereby.

(Signatures begin on next page)

IN WITNESS WHEREOF, Employee has hereunder set his hand and seal, and the Company has caused this Employment Agreement to be executed by its duly authorized officer, to be effective as of the Effective Date.

“EMPLOYEE”:

By: /s/ Lisa Brennan, individually

“COMPANY”:

MOBIVITY HOLDINGS CORPORATION

By: /s/ Dennis Becker

Name: Dennis Becker

Title: CEO

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
Pursuant to Rule 13a-14(a) adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Dennis Becker, certify that:

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

Date: March 30, 2022

By: /s/ Dennis Becker
Dennis Becker
Chairman and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER
Pursuant to Rule 13a-14(a) adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Lisa Brennan, certify that:

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

Date: March 30, 2022

By: /s/ Lisa Brennan
Lisa Brennan
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Mobivity Holdings Corp., a Nevada corporation (the “Company”), for the period ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), we, Dennis Becker, Chief Executive Officer of the Company, and Lisa Brennan, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

Dated: March 30, 2022

/s/ Dennis Becker

Dennis Becker
Chairman and Chief Executive Officer
(Principal Executive Officer)

/s/ Lisa Brennan

Lisa Brennan
Chief Financial Officer
(Principal Financial and Accounting Officer)
