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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2020

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-39214

**Casper Sleep Inc.**

(Exact name of Registrant as specified in its Charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)  
**Three World Trade Center**  
**175 Greenwich Street, Floor 39**  
**New York, NY**  
(Address of principal executive offices)

**46-3987647**  
(I.R.S. Employer  
Identification No.)

**10007**  
(Zip Code)

Registrant's telephone number, including area code: (347) 941-1871

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

**Common Stock, \$0.000001 par  
value**  
(Title of each class)

**CSPR**  
(Trading Symbol(s))

**The New York Stock Exchange**  
(Name of each exchange on which  
registered)

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

**None**  
(Title of class)

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 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 such files). Yes  No

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

Large accelerated filer   
Non-accelerated filer   
Emerging growth company

Accelerated filer   
Smaller reporting 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.

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

As of June 30, 2020, the last business day of the registrant's most recently completed second fiscal quarter, the approximate market value of the registrant's common stock held by non-affiliates was \$248,297,162.

The number of shares of registrant's common stock outstanding as of February 26, 2021 was approximately 40,548,574.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive Proxy Statement for its 2021 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K.



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#### **FORWARD-LOOKING STATEMENTS**

This Annual Report on Form 10-K contains forward-looking statements. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. All statements other than statements of historical facts contained in this Annual Report on Form 10-K may be forward-looking statements. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "targets," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. Forward-looking statements contained in this Annual Report on Form 10-K include, but are not limited to statements about our future results of operations and financial position, the anticipated impact of the COVID-19 pandemic on our business; our business strategy, and plans and objectives of management for future operations, including, among others, statements regarding our ongoing actions in response to the COVID-19 pandemic; expected growth and market position; future capital expenditures and debt service obligations. These forward-looking statements speak only as of the date of this Annual Report on Form 10-K. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained in this Annual Report on Form 10-K, whether as a result of any new information, future events or otherwise. The forward-looking statements in this Annual Report on Form 10-K are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. Forward-looking statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements, including, but not limited to the important factors discussed under the caption "Risk Factors" herein. The forward-looking statements in this Annual Report on Form 10-K are based upon information available to us as of the date of this Annual Report on Form 10-K, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements.

## **SUMMARY RISK FACTORS**

Our business is subject to numerous risks and uncertainties, including those described in Part I, Item 1A. "Risk Factors" in this Annual Report on Form 10-K. You should carefully consider these risks and uncertainties when investing in our common stock. The principal risks and uncertainties affecting our business include the following:

- we operate in highly competitive industries, and if we are unable to compete successfully it could have a material adverse effect on our business, financial condition and results of operations;
- our business depends on the strength of our brand, and if we are not able to maintain and enhance our brand we may be unable to sell our products, which could have a material adverse effect on our business, financial condition, and results of operations;
- if we are unable to successfully implement our growth strategies related to launching new products, it could have a material adverse effect on our business, financial condition, and results of operations;
- our growth strategy involves expansion of our retail partnerships, which presents risks and challenges to our business;
- the COVID-19 pandemic has affected, and could continue to adversely affect, our business, financial condition and results of operations;
- our future growth and profitability depend on the effectiveness and efficiency of our marketing programs;
- if we fail to attract new customers, or retain existing customers, or fail to do either in a cost-effective manner, we may not be able to increase sales;
- we have a history of losses and could continue to have operating losses and negative cash flow as we continue to expand our business;
- our efforts to protect and maintain our intellectual property may not be successful;
- our sales growth is dependent upon our ability to implement strategic initiatives and such initiatives may not be effective in generating sales growth;
- if we do not successfully implement our retail store strategy, including optimization of existing stores and our future retail store expansion, our growth and profitability could be harmed;
- a significant portion of our revenue is derived from our mattress products and a decrease in sales of such products could seriously harm our profitability and financial condition;
- we currently rely exclusively on third-party contract manufacturers whose efforts we are unable to fully control;
- we rely on third-party contract manufacturers and third-party distributors, and if we fail to timely and effectively obtain shipments of products from our manufacturers and deliver products to our retail partners and customers, our business and results of operations could be harmed;
- if we fail to manage our supply chain commensurate with demand and successfully and timely deliver merchandise to our retail partners and customers, our results of operations may be adversely affected;
- if tariffs or other restrictions are placed on foreign imports or any related counter-measures are taken by other countries, our business and results of operations could be harmed;
- we are subject to fluctuations in the cost and availability of raw materials and fuel, which could increase our costs or disrupt our production;
- we may experience fluctuations in our quarterly results of operations due to seasonality and other factors, which could make sequential quarter to quarter comparison an unreliable indication of our performance;
- system interruptions that impair customer access to our website or other performance failures in our technology infrastructure could damage our business, reputation and brand and substantially harm our business and results of operations;
- we rely significantly on information technology, or IT, and any failure, inadequacy, interruption or security lapse of that technology, or any failure by us or our service providers to adequately protect our or third-party information assets from cyber-based attacks or other incidents could have a material adverse effect on our business, financial condition, and results of operations;
- we may face exposure to product liability claims and recalls, which could reduce our liquidity and profitability and reduce consumer confidence in our products and have a material adverse effect on our business, financial condition, and results of operations;
- we may not be able to attract and retain qualified key personnel. If we lose the services of these individuals or are unable to attract new talent, it could impair our ability to execute our business strategy and have a material adverse effect on our business, results of operations and financial condition; and
- the market for sleep as a retail category is still emerging and if it does not continue to grow, if it grows more slowly than expected or if it does not achieve the growth potential we expect, or if we do not succeed in becoming a leader or maintaining our leadership in this category, our brand, business, financial condition, or results of operations could be adversely affected.

#### **BASIS OF PRESENTATION**

As used in this Annual Report on Form 10-K, unless the context otherwise requires, references to "we," "us," "our," the "Company," "Casper," and similar references refer to Casper Sleep Inc. together with its subsidiaries.

Certain monetary amounts, percentages, and other figures included in this Annual Report on Form 10-K have been subject to rounding adjustments. Percentage amounts included in this Annual Report on Form 10-K have not in all cases been calculated on the basis of such rounded figures, but on the basis of such amounts prior to rounding. For this reason, percentage amounts in this Annual Report on Form 10-K may vary from those obtained by performing the same calculations using the figures in our consolidated financial statements included elsewhere in this Annual Report on Form 10-K. Certain other amounts that appear in this Annual Report on Form 10-K may not sum due to rounding.

## PART I

### Item 1. Business Overview

Casper Sleep Inc. is a multi-channel Sleep Company offering a portfolio of obsessively engineered sleep products, including mattresses, pillows, bedding, and furniture, through our e-commerce platform, Casper-owned and operated Sleep Shops across North America and a growing list of best-in-class retail partners. We believe sleep is rapidly becoming the third pillar of wellness and is poised to undergo the same massive transformation that fitness and nutrition have as they became major consumer categories. People spend more time sleeping than on any other single activity throughout their lives. When we sleep better, we experience better hours awake, making us more productive, creative, happy, and healthy.

As the wellness equation increasingly evolves to include sleep, the business of sleep is growing and evolving into what we call the Sleep Economy. We are helping to accelerate this transformation. Our mission is to awaken the potential of a well-rested world, and we want Casper to become the top-of-mind brand for best-in-class products and experiences that improve how we sleep.

As a pioneer of the Sleep Economy, we bring the benefits of cutting-edge technology, data, and insights directly to consumers. We focus on building direct relationships with consumers, providing a human experience, and making shopping for sleep joyful. We meet consumers wherever they are, online and in person, providing a fun and engaging experience, while reducing the hassles associated with traditional purchases.

We do all of this because we understand the consumer. Shopping for sleep is a highly considered and personal decision. Today's consumers research their purchases and move freely back and forth from online to offline. At Casper, we put the consumer first in everything we do and invest to ensure long-term valuable relationships where consumers return again and again to shop for more sleep products and services.

We believe great brands win over the long-term and have the ability to change the culture around them. We have endeavored to build a brand that is genuine, trustworthy, and approachable, as well as fun and playful. Through our investment in a sophisticated and integrated marketing strategy, we engage consumers across the entire consumer journey, from our iconic public transit advertising campaigns, to our experiential retail store concepts, to our category-leading social media presence. We see the Casper brand as a valuable asset that we are utilizing to help capture a large share of the Sleep Economy.

Product innovation and excellence lie at the heart of our business. Since the release of our first product, the award-winning Casper mattress, we have expanded into pillows, sheets, duvets, bedroom furniture, sleep accessories, sleep technology, and sleep services. We design and engineer our products in-house and believe our proprietary research and development process puts Casper on the cutting edge of sleep innovations. We employ a team of data-driven researchers, designers, and engineers focused on building a better night's sleep through innovative new products, such as the newest generation of Casper mattresses launched in March 2020 incorporating new materials, technologies and pricing options, all centered around our mission of bringing better sleep to more consumers. We believe that no other company catering to the Sleep Economy has our level of product development talent, resources, data-driven insights, or expertise.

We seek to deliver a joyful shopping experience, regardless of sales channel. Our consumer experience includes knowledgeable and consultative sales associates, appealing and thoughtfully curated stores, immersive in-store trials, engaging and convenient online shopping, and fast and flexible delivery. The Casper experience allows consumers to seamlessly navigate between online and offline channels, eliminating boundaries, and reducing the friction associated with traditional purchases. As of December 31, 2020 we distributed our products directly to customers in North America through our e-commerce platform, 67 Casper retail stores, and over 20 retail partners.

### Our Market

We believe that the Sleep Economy represents a rapidly growing and traditionally fragmented market. Consumers are increasingly recognizing quality sleep as a key component of a healthy lifestyle. Importantly, we believe that sleep consists of more than just the act of sleeping, and instead, includes the entire set of human behaviors that span from bedtime to wake-up and affect sleep quality—this is what we refer to as the Sleep Arc. As consumers become more educated around the serious potential health consequences of poor sleep, they are poised to spend more on sleep products in the same way that they have increased spending in other areas of health and wellness. Unlike other categories of health and wellness, however, historically there were no powerful brands that provided holistic solutions to the Sleep Economy. Instead, the Sleep Economy has traditionally been characterized by a fragmented set of providers across different products, services, and use cases.

Our approach is to offer products and services across the entirety of the Sleep Arc under one brand. Our offerings encompass traditional sleep categories for consumers, such as mattresses, soft goods, and bedroom furniture, and are increasingly focused on non-traditional categories, including products that promote the ideal ambience for sleep, such as lighting, sound, scents, temperature, and humidity; sleep technology, such as tracking devices, medical machines, bedside clocks, and connected devices; sleep supplements, such as sprays, pills, and vitamins; and sleep services, such as digital apps, meditation, sleep programming, and counseling. Beyond the daily sleep needs of adults, we aim to meet a range of use cases with unique product and service needs, such as for travel, children and babies, and pets. We believe we are the first company that understands and serves the Sleep Economy in a holistic way.

## Our Growth Strategy

While we are proud of our accomplishments to date, we believe the most exciting opportunities for Casper's growth story lie ahead and we intend to pursue the following strategies to help us achieve this growth.

- **Increase Brand Awareness and Equity to Acquire New Customers and Build Enduring Brand Love.** Increasing brand awareness and growing favorable brand equity among consumers in both existing and new markets has been, and remains, central to our growth. We drive brand awareness through a combination of sophisticated, multi-layered marketing programs, word-of-mouth referrals, experiential brand events, retail expansion, and ongoing product usage. A core tenet of our brand growth strategy is offering consumers increased ways to engage with our products and services, both online and offline, by building relevant and personalized multi-channel shopping experiences. We remain focused on building favorable brand equity through providing exceptional customer experiences, prioritizing customer research and data in order to develop a deep understanding of our customers' needs, and putting the customer first in all of our decisions in order to deliver a joyful shopping and post-purchase experience.
- **Expand Direct-to-Consumer Presence and Network of Retail Partnerships.** As of December 31, 2020, we operated 67 retail stores, up from 60 stores at the end of 2019. We plan to continue the rollout of new Casper retail stores to strengthen our footprint in existing cities, while selectively entering into new cities in the United States, Canada. We continually focus on broadening the appeal of our digital consumer experience by leveraging data and analytics to optimize product discovery and education, product assortment, and pricing, as well as the delivery and post-delivery experience. In addition, as of December 31, 2020, we worked with over 20 retail partners. We tailor our approach to each retail partner with a variety of options, including unique floor positioning, visual merchandising, inventory availability, flexible packaging options, training, and marketing support while maintaining consistent brand, pricing, and product SKU offerings across our business. The growth of our offline presence through our retail stores and retail partnerships elevates the reach of our digital consumer experience. We believe our multi-channel expansion creates synergies.
- **Continue Leadership as a Sleep Destination.** We plan to continue to offer products and services that span and work together across the entire Sleep Arc. We believe this expansion will attract new customer segments and retail partners, as well as enhance average order value, increase attachment rate opportunities, and deliver higher overall customer lifetime value. Casper Labs sits at the center of our ability to continue bringing innovative and enhanced performance-driven products to market with both speed and excellence. We anticipate that growth of our products and services will span entirely new categories of the Sleep Arc, including new sleep technologies that address the environmental factors of light, sound, touch, and scent; new services and content such as digital apps, meditation, sleep programming and counseling; and new use cases for our products, including options for travel, children and babies, and pets.
- **Drive Continued Operational Excellence.** We are committed to improving productivity and profitability through a number of operational initiatives designed to grow our revenue and expand our margins. To date, we have had significant success improving our gross margins, achieving 51.1% in gross margin for the year ended December 31, 2020, up from 49.0% for the year ended December 31, 2019. We believe there is opportunity for continued improvement in gross margins, marketing efficiencies, and operating leverage through these key initiatives:
  - Optimize pricing;

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- Reduce product returns;
- Optimize supply chain efficiencies and infrastructure;
- Drive marketing efficiencies; and
- Achieve operating leverage.

## **Products**

The sleep experience extends beyond the time we are asleep. Casper believes sleep solutions should do the same. We envision the sleep experience as an arc, from soothing pre-bedtime rituals, to late night dreams, and awakening rituals. We design products to address the full Sleep Arc because we believe it is the best way to truly improve sleep.

Our design philosophy is centered on the idea that sleep is both deeply technical and highly personal. Our approach to design is rooted in this belief, which balances the scientific and the emotional aspects. We call it "Cozy Performance" and we express that in every product and experience we design. All Casper products are thoughtfully designed and rigorously tested to provide sleep solutions grounded in consumer needs, preferences, insights, and feedback. We use high-quality materials that provide quality sleep with an emphasis on look and feel.

We thoughtfully curate our product and service offerings. We offer a limited selection of distinct products in each category at various price points, which target a range of consumer needs and budgets. As we expand our product portfolio, we intend to develop sleep products that address the factors of sight, sound, smell, touch, temperature, humidity, and body position across the full Sleep Arc, which will offer distinct and complementary benefits to our existing offerings. Our product and services portfolio as of December 31, 2020 is comprised of six categories: mattresses, soft goods, furniture, connected sleep, accessories and third-party products, and services.

### **Mattresses**

At the core of the Sleep Arc, the mattress is the base for a good night's sleep. Our thoughtfully-designed mattresses provide comfort, including ergonomic support, thermal comfort, pressure relief, motion isolation, easy position realignment, and long-term durability. We currently offer mattresses at multiple tiers to address the needs of different consumers, such as the Casper Wave Series, Nova Series, Original Series, and Element Mattress. Each of our mattresses has our signature "Just Right" feel and utilizes a highly breathable, bouncy, soft top layer over a pressure relieving memory foam layer, which is designed to support, comfort, and cool the body, leading to better-quality sleep. All of our mattresses are designed and engineered in-house by the research and development team at Casper Labs. Additionally, each of our mattresses sold through our direct-to-consumer channel has a 100-night, risk-free trial and a 10-year limited warranty. All mattresses are compressed, roll-packed, and shipped in our innovative box and delivered to customers through common carrier delivery, in-store pick-up, or in-home set-up.

### **Soft Goods**

Sleep soft goods, such as pillows, sheets, and blankets, offer both emotional and functional benefits for consumers. Soft goods have a measurable impact on sleeping quality through breathability, humidity management, and ergonomic support. Due to the intimate nature and high visibility of these products in the home, consumers' decisions are also affected by a number of elements like brand, materials, softness, colorways, and other aesthetic points. Casper has created a line of soft goods that balances the emotional and functional considerations, offering pillows with innovative design features and multiple fill options, sheets, duvets, weighted blankets, mattress protectors and throw blankets.

### **Furniture**

We created a line of furniture that was rigorously designed and tested to further support a positive sleeping experience for our customers. Our furniture offerings provide a natural attachment to our mattresses and consist of a variety of static and adjustable bed frames, including the Casper Haven Bedframe and Casper Repose Bedframe, our newest bedframes launched in August 2020.

### **Connected Sleep**

Technology does not yet play a meaningful role in helping most people sleep, and in fact, often contributes to chronic lack of sleep. We believe, however, that well-designed sleep technology can significantly improve sleep quality and behaviors. Our Glow Light leverages both science and emotion to enable better sleep throughout the complete Sleep Arc, and is

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complemented by the Casper Glow app (available on both iOS and Android) for setup and customization. There is also opportunity for development of new sleep technologies across the full Sleep Arc as well as across environmental factors like light, sound, touch, and scent. We believe that technology will increasingly play a role in improving sleep quality.

### **Accessories and Third-Party Products**

We design and curate products and services across The Sleep Arc. Our accessories and third-party products address various needs along The Sleep Arc and help promote sleep quality for consumers. Our current accessory products include the Casper Nap Pillow, Mattress Topper and Dog Bed. Casper is frequently approached by other innovative companies seeking to introduce their products to our customers. Likewise, our customers look to us for recommendations on additional products that can help them achieve better sleep. As a result, we occasionally partner with other companies on curating and selling third-party products that we believe enhance the sleep experience and reinforce our position as an authority on sleep.

### **Services**

We offer services that complement and complete the sleep experience. Our service offerings are currently focused on providing a seamless purchase and delivery experience, offering an extended warranty and providing a range of financing and delivery options.

We aim to offer services that provide customers the opportunity to interact in new ways. In early 2019, we launched The Casper Sleep Channel—providing complimentary and engaging social media platform offering meditations, bedtime stories, and sounds to help you fall asleep. The Casper Sleep Channel content is informed by members of our Sleep Advisory Board. With the launch of The Casper Sleep Channel, we are demonstrating our leadership across the Sleep Arc and further owning the hour before bedtime.

### **Consumer-Centric Multi-Channel Strategy**

We meet consumers where they prefer to engage with us through our direct-to-consumer platforms and retail partners. We offer a consistent Casper experience that is centered on sleep across all channels.

Buying sleep products is a very personal decision, and most consumers take time to research and compare options, solicit advice from friends and family, and draw upon previous experiences before making their purchase decision. As consumers move between the online and offline channels to inform their decisions, we work tirelessly to engineer shopping experiences that emphasize both the simplicity of our product portfolio, as well as the consistency in the Casper brand experience and product design across all of our channels. Unlike most other Sleep Economy companies, Casper puts the shopping experience on the consumers' terms, facilitating brand discovery across multiple consumer touchpoints, empowering consumers to seamlessly navigate between traditional offline and online boundaries, and offering a convenient and easy path to purchase with flexible delivery options and a range of financing options. Our go-to-market approach leverages multiple channels to create a differentiated and joyful experience, eliminating friction and boundaries. The Casper experience allows consumers to seamlessly navigate between online and offline channels, eliminating boundaries, and reducing friction associated with traditional purchases.

### **Direct-to-Consumer Channel**

*Casper.com* provides a friendly and educational shopping experience, inviting consumers to enter and explore our brand. The site offers our entire product portfolio and features sleep education, empowering the consumer to design a sleep experience that meets their individual needs. The website delivers differentiated customer service by allowing consumers to communicate with a Sleep Specialist directly through the “talk to a human” portal including phone, chat and email support. Because our website serves as a touchpoint for consumers at various points in their journey, our goal is for *casper.com* and retail locations to feel like one continuous store. As such, we use our website to facilitate discovery of our physical locations through our store directory and sleep trial appointment portal.

Since our founding, consumers began knocking on the door of our first office to try Casper products, and we quickly recognized the importance of physical retail. This prompted us to launch sleep-centered pop-up stores and to experiment with a wide variety of interactive and experiential retail concepts. We have leveraged those experiences and data to design our stores from the ground up.

We launched our first retail concept in Los Angeles in 2015, followed by permanent retail stores in San Francisco and New York in 2017 and 2018, respectively, and, as of December 31, 2020, we had 67 retail store locations across the United States and Canada. Our retail stores are thoughtfully designed to deliver an intimate trial experience and the opportunity to interact with our full portfolio of sleep products in a fun, relaxed manner. The store environment is bright, cheerful, sleep-themed, and

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full of delightful features. The retail stores feature a modular, flexible design to optimize individual store flow, enabling different floor set-ups as we launch new products, reflect seasonal changes, and improve client flow. Each store stocks most of our products in inventory, allowing consumers to take products home immediately if they wish to.

Our retail store culture is built around a “one team” concept with deep expertise from a variety of top retailers and industries. They are data-driven, highly iterative, and obsessively responsive to consumer feedback. We staff our retail stores with trained Sleep Specialists who are able to provide consumers a consultative and personal experience by listening carefully and then recommending the best solutions to address their sleep needs and budget.

We undertake extensive market research and leverage both internal proprietary models and third-party tools to select optimal high foot-traffic and visible locations to open our retail stores. We have developed new store opening procedures, using each new opening as a learning opportunity to refine the process further. This strategy focuses on maximizing the probability of our stores’ success while balancing cost control and speed to open.

### **Retail Partnerships**

Our network of retail partners’ stores and websites improves Casper’s brand awareness, builds credibility and opens up new geographies and demographics to us. We are often approached to work with industry-leading retailers and selectively partner with those that have an image and approach that are consistent with our mission and values. These relationships are mutually beneficial, as the Casper brand and quality of offerings help drive foot and website traffic in key demographics for our retail partners, while also increasing traffic to casper.com and Casper stores in the cities where we have retail partnerships.

As of December 31, 2020, we had over 20 retail partners, including Amazon, Costco, Hudson’s Bay Company, and Target, that sell our products across the United States and Canada. Generally, Casper products sold through retail partners are consistent with respect to the SKUs, pricing, and product features offered in our direct-to-consumer channel to ensure a cohesive customer-centric focus across all channels. We do however tailor product offerings to match each partner’s target consumer positioning and to provide differentiation for our direct-to-consumer channel.

### **Marketing**

From the beginning, our brand voice and aesthetic focus have set us apart in an industry that, in our view, desperately needed a wake-up call. Our brand narrative has expanded to champion the importance and power of sleep, which we see as a key long-term differentiator. Casper’s sophisticated, integrated marketing strategy enables us to maintain consistent messaging across a dynamic array of marketing channels and directly engage consumers wherever they are. We leverage our ability to interact directly with consumers across this diverse yet cohesive network of touchpoints to build meaningful, long-lasting consumer relationships. Casper’s marketing effectiveness has made us a trusted brand name with strong brand awareness among consumers, and helps generate a significant amount of positive press endorsement and credible third-party reviews and accolades.

Our marketing approach reflects our focus on constant, data-driven experimentation and advanced analytics. We have proprietary marketing decision models that inform our absolute spend, relative spend allocation among marketing channels and the daily, and sometimes even hourly, pacing of our spend. Our data, experimentation and analytics sit at the heart of our marketing efforts, helping us to optimize our programs and identify opportunities for testing and expansion. For the year ended December 31, 2020, we invested \$156.8 million in marketing. As sales through our owned retail stores and retail partners increase over time, we expect continued improved in our marketing efficiency (which we define as net revenue as a percentage of total media spend over a specific time period), as increasing sales through these channels requires minimal incremental marketing investment, thus helping drive natural leverage in our marketing efficiency.

### **Our Product Development and Innovation**

From its founding, Casper recognized the importance of bringing reimagined and performance-based sleep products, services, and experiences to market. We believe product, services, and experience innovation is a key differentiator and we invest significant resources into research and development. Our research and data-driven development process is rooted in three types of insight:

- *Consumer Needs and Behaviors.* Physical and emotional needs around sleep, sleep rituals, and consumer shopping behaviors regarding sleep products and services.

- *Sleep Science.* Biology and physics of sleep and how our products and experiences can leverage those disciplines to improve the quality of sleep.
- *Manufacturing.* Study of materials and manufacturing methods that help to perfect sleep science in order to address consumer needs.

These combined insights guide us to new product, service, and experience ideas and new interpretations of existing product solutions.

We look to create products that solve human sleep needs. Instead, we perform regular and detailed qualitative field work and deep quantitative studies to understand consumer sleep patterns, behaviors, and preferences. We review primary scientific literature regarding sleep and work with our Sleep Advisory Board in concept generation and validation. We then enter an iterative process of prototyping and testing to refine and further validate ideas. Once we finalize design, materials selection and supply base, we move into production validation and manufacturing with third-party vendors. We believe this insight-led, iterative approach is unique in our industry.

Our product development and innovation team is part of Casper Labs and is comprised of researchers, scientists, engineers and support staff. Casper Labs is focused on building a better night of sleep through new product and services development and the continuous improvement of existing offerings. Our in-house product development and innovation team controls every aspect of our product offerings, including requirements, design and construction, material performance requirements, manufacturing protocols, supplier selection, packaging specifications and quality plans, among others. We perform simulated and human subject testing on our product offerings and test against a wide range of factors, including pressure, humidity, temperature, firmness, bounce, support, airflow, thermal resistance, compression, durability, sink and ergonomics. Further, we have developed a number of proprietary tools and tests to help measure certain aspects of sleep quality, including spinal alignment, sleep microclimate tracking and sleep state tracking, among others, to continuously improve the way people sleep.

## **Our Supply Chain, Distribution and Inventory Management**

### ***Manufacturing Partners***

We manage a global supply chain of highly qualified, third-party manufacturing and logistics partners to produce and distribute our products. We work with partners who deliver production flexibility and scalability, can support new products, help our growing channel strategies, deliver low costs, and meet other required operational needs. Our global supply chain management team, including personnel in the United States and Asia, manages these relationships and processes. This team researches materials and equipment, qualifies raw material suppliers, and assesses potential manufacturing partners for advanced production and quality assurance processes. They also direct our internal demand and production planning, approve and manage product purchasing plans, and oversee product fulfillment and transportation. We work with our manufacturing partners to ensure product quality and manufacturing process efficiency.

We currently have third-party manufacturing partners located in various locations, including Canada, China, India, Mexico, Portugal, Thailand, Vietnam and the United States, conformance standards through frequent involvement, reporting requirements, contractual standards, and regular product and facility inspections. We create and provide the specifications for our products, own many of the molds and tooling that are critical in production of our products, and work closely with our manufacturing partners to improve their yield and efficiency. As such, our manufacturers are not required to have unique skills, technologies, processes, or intellectual property that factor into our ability to migrate to other manufacturing partners. While we have selected manufacturers for commercial and operational reasons, and our three largest mattress product manufacturers comprised over 70% of our production volume during the year ended December 31, 2020, there are alternative firms that we believe we can qualify and engage to supply products and materials of the same quality, in similar quantities, and on substantially similar terms as our current providers. Further, to facilitate supplier collaboration and enhance order visibility, we have invested in enterprise resource planning technology and improved our advanced internal forecasting capabilities.

The primary raw materials and components of our mattress products include foam, cotton, fabrics and roll goods that consist of fiber, ticking and non-woven materials. Non-mattress products' primary raw materials and components include steel, cotton, linen, wood, plastic, LED lighting materials, fabrics and roll goods, consisting of fiber, ticking and non-woven material (polyurethane foam, polyester fabric, wood, aluminum, steel, plastic, fiber, down, cotton and wool). We believe many of these materials are available from multiple vendors. We stipulate approved suppliers and control the specifications for key raw materials used in our products utilizing product lifecycle management software along with advancements in our qualification and engineering change management processes. We do not directly source significant amounts of these raw materials and components.

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To enforce our stringent product quality standards and exercise additional control over our manufacturing processes, we own product tooling and develop and approve manufacturing processes and quality assurance plans. To ensure consistent product quality, we provide detailed specifications for our products and inspect finished goods both at our manufacturing partners and upon delivery to our third-party logistics partners. As part of our quality assurance program we have developed and implemented comprehensive product inspection and facility oversight processes. These processes are performed by our employees and third-parties, who work closely with our suppliers to assist them in meeting our quality standards, improving their production yield, and throughput. For more information, please refer to "Risk Factors—Risks Related to Our Supply Chain, Distribution and Inventory Management—"We currently rely exclusively on third-party contract manufacturers whose efforts we are unable to fully control" for a discussion of certain risks that may be encountered in connection with our reliance on third-party manufacturers.

### **Distribution and Inventory Management**

Approximately half of our mattresses are shipped directly to our customers from our manufacturers. This inventory strategy allows us to minimize inventory investment while providing an average order-to-delivery period of approximately three days. We also work with multiple third-party logistics and warehouse management providers to warehouse our products and manage shipments to our customers. These providers manage distribution activities including product receipt, warehousing, certain limited product inspection activities, and coordinating outbound shipping. They are strategically located in key markets to provide fast order-to-delivery times. Our warehouse management system at these distribution centers interfaces with our order management and enterprise resource planning systems to ensure inventory visibility and management. We believe our domestic and international providers have sufficient expansion capacity to meet our future needs.

In addition to our warehouse management partners, we also partner with a national provider of in-home set-up and removal for select products for consumers that opt into such services. In connection with the in-home set-up service, our customers can schedule and manage the delivery of their orders for certain products, with, as of the date of this filing, two of our key city markets offering same day scheduling.

We manage inventory by forecasting demand, analyzing product sell-through, and analyzing our supply chain to ensure sufficient availability.

### **Competition**

We operate across the Sleep Economy, including in the mattress, soft goods, bedroom furniture, sleep technology and sleep services industries. We compete primarily on brand awareness, innovation, product quality and breadth, the quality of shopping experience, price, speed of delivery and product performance. The competitive environment of the industries in which we operate causes us to be subject to the risk of loss of market share, loss of significant consumers, reductions in margins and the inability to acquire new consumers.

Within the mattress category, we compete primarily with legacy mattress manufacturers, retailers, and direct-to-consumer companies. Within the soft goods category we compete in a diverse and fragmented market that includes new direct-to-consumer entrants, designer labels, and legacy mattress manufacturers that also sell soft goods. With respect to the bedroom furniture category, which includes bedframes and lighting, we compete mainly with department and furniture stores and primarily online retailers. Finally, in the broader sleep category, which includes sleep technology, supplements and scents, among other things, we compete against a vast variety of fragmented firms across multiple industries.

We understand that the path to purchase typically includes multiple touchpoints across both physical and online sales channels and can span weeks or months of education and deliberation. We have built a company based on this understanding of our consumers' purchasing behavior, with a focus on building long-term relationships where consumers return again and again to shop for more sleep products and services. We believe our trusted brand, continued investment into the consumer experience, innovative products, multi-channel approach, and relentless focus on data have resulted in strong customer relationships with significant lifetime values.

### **Intellectual Property**

We have developed proprietary technologies that we believe provide us with an advantage in the Sleep Economy in which we operate. We seek to protect our intellectual property rights, including our intellectual property rights in these proprietary technologies, through patent, trademark, copyright and trade secret laws, as well as confidentiality agreements and other contractual provisions to restrict access to and disclosure of our intellectual property. Although many of our patents, trademarks, copyrights, and other intellectual property rights are not material to our business individually, we believe that, in

the aggregate, our intellectual property rights have significant value and are important to the marketing of our brand and the favorable perception of our products.

We own approximately four issued U.S. utility patents, six pending U.S. patent applications and 19 pending foreign patent applications. If the U.S. utility patents currently issued to us are maintained until the end of their terms, they will expire between 2035 and 2037. We have also obtained protection for certain of our product designs. We own at least one registered design in each of Europe, Brazil, Canada, China, and Mexico, six in Australia, and own eight U.S. design patents and nine U.S. design patent applications. Assuming they are maintained, the U.S. design patents currently issued to us will expire between 2032 and 2037, and the foreign design registrations will expire between 2025 and 2044. We also own approximately 32 U.S. trademark registrations, 136 foreign trademark registrations, 35 pending U.S. trademark applications and 43 pending foreign trademark applications, including for the marks *Casper, Awaken the Potential of a Well-Rested World* and *We're a Sleep Company, We Can Dream Can't We?*. While trademark registrations in both the United States and foreign countries have terms of limited duration (which may vary from country to country), there is no limit on the number of times that the registrations may be renewed if they remain in use in commerce, and if all required filings and payments are made with the applicable trademark offices. Further, even if a federal registration of a trademark in the United States is not renewed, the owner of the trademark may retain its common law trademark rights thereafter, for as long as the marks remain in use in commerce in the applicable state(s). Additionally, we own two U.S. copyright registrations and three Canadian copyright registrations. We do not view any of these registered copyrights as material to our business. For a discussion of the risks related to our intellectual property, see "Risk Factors—Risks Related to Our Business—Our efforts to protect and maintain our intellectual property may not be successful. Competitors have attempted and will likely continue to attempt to imitate our products and technology. We may not be able to prevent competitors from developing similar products or from marketing in a manner that capitalizes on our intellectual property. If we are unable to protect or preserve our intellectual property, our business may be harmed, and if our products or marketing violate the intellectual property rights of others, we may have liability and may be required to change our products and business practices."

## Technology

Technology is at the core of our strategy, powering our operational capabilities and the sustainable scalability of our platform. We believe that continuous investment in our technology has given us a competitive advantage and enabled fast innovation. Our service-oriented architecture combines custom, developed in-house applications with third-party software and services. Our infrastructure and services architecture provide security and data isolation.

We license technology, content and other intellectual property from technology providers and partners when a commercial license and support are available, which can provide added value and operating efficiencies to our business and integrate through our platform. See "Risk Factors—Risks Related to Our Business, Operations and Growth—We rely significantly on information technology, or IT, and any failure, inadequacy, interruption or security lapse of that technology, or any failure by us or our service providers to adequately protect our or third-party information assets from cyber-based attacks or other incidents could have a material adverse effect on our business, financial condition and results of operations" for a discussion of certain risks that may be encountered in connection with our reliance on information technology.

## Seasonality and Quarterly Comparability

Our revenue includes a seasonal component, with the highest sales activity normally occurring during the second and third quarters of the year due to back-to-school, home moves and other seasonal factors, along with seasonal promotions we offer during these quarters. The timing of on-boarding new retail partnerships, which typically launch with large inventory buy-ins, and the timing of launching new products may also impact comparability between periods. These factors can also impact our working capital and/or inventory balances in a given period. The COVID-19 pandemic as well as certain supply chain disruptions primarily in the third quarter impacted our quarterly comparability in 2020. The full extent to which the COVID-19 pandemic and supply chain disruptions may impact our seasonality and quarterly comparability will depend on numerous evolving factors that we are not able to accurately predict due to the uncertainty related to the COVID-19 pandemic, unusual weather conditions and other economic uncertainties as of the date of this Annual Report on Form 10-K.

## Human Capital

As of December 31, 2020, we employed 442 full-time employees. We also employed 192 part-time employees. We employed 599 people in the United States, 34 people in Canada, and one person in the United Kingdom. None of our employees are represented by a labor union or are party to a collective bargaining agreement, and we have had no labor-related work stoppages.

We believe promoting a diverse, inclusive and equitable culture is critical to the long-term success of our company. As part of our commitment to ensuring a diverse and representative organization, our Talent Acquisition team is committed to recruiting a diverse candidate slate for all open positions and eliminating unconscious bias from recruitment and talent

identification processes. We also strive to ensure diverse representation on all candidate interview panels and have implemented behavioral interview training to provide our employees with the tools to effectively identify talent. In addition, our employee-led Diversity, Equity and Inclusion Council helps inform, shape and define the Company's priorities and strategy for building a more equitable, transparent and inclusive community for all of our stakeholders.

Supporting a high-performance culture through promoting employee development and engagement remains one of our top strategic priorities. We have a dedicated Learning and Development team responsible for working with our corporate and retail teams to identify team and employee-specific training and development needs to help inform our programmatic design. Based on these needs, we have developed and continue to refine a variety of tailored training programs to enrich the development of our teams, ranging from management skills training, retail associate and customer experience training, as well as a company-wide sleep training program created in collaboration with our Sleep Advisory Board focused on the science of sleep, sleep behaviors, and the social dimensions of sleep.

As part of our continual focus on employee engagement, we launched an annual, week-long company-wide offsite in the first quarter of 2021 to drive cross-functional alignment around the Company's mission, vision and strategy, and to build and deepen relationships across the Company. In addition, we hold ourselves accountable on employee engagement and inclusion metrics by conducting two surveys each year to measure employee engagement and sentiment, followed by company-wide and department-specific action planning.

Our compensation and benefits programs are designed to attract, retain and motivate our employees while incentivizing superior performance. We regularly benchmark and review our compensation and benefits programs against market peers to ensure they remain competitive. The structure of our compensation and benefits programs incentivizes both short-term and long-term performance. Specifically, we provide employees with competitive base pay commensurate with employee positions, skill levels, and experience, as well as variable incentive compensation opportunities linked to both Company and individual performance. In addition, a portion of the long-term incentives for our Chief Executive Officer, President, and Chief Financial Officer is based on achieving certain net revenue and Adjusted EBITDA targets in order to reinforce alignment between our executives' compensation and the interests of our shareholders.

Lastly, a key tenet of our benefits program is to enable our employees to embody the Company's mission to awaken the potential of a well-rested world. We do this in part by empowering and incentivizing employees to live healthier lives through IncentFit, a wellness program through which all corporate employees can earn up to \$1,200 each year for completing healthy activities, such as sleep and exercise. In addition, all benefit-eligible employees have access to a fully subsidized "wellness bundle," which includes virtual physical therapy, smoking cessation, mental health and mindfulness, and fertility support services, among others.

#### **Government Regulation**

Our mattress and other sleeping products are subject to various foreign, federal, state, provincial and local laws and regulations relating to flammability, sanitation and other standards. We believe that we are in material compliance with all such laws and regulations. In the United States, the federal Consumer Product Safety Commission has adopted rules relating to fire retardancy standards for the mattress industry. Many foreign jurisdictions also regulate fire retardancy standards. Future changes to these standards may require modifications to our products to comply with such changes. Various federal, state and other regulatory agencies may adopt new laws, rules and regulations and compliance with such new laws, rules and regulations may increase our costs, alter our manufacturing processes and impair the performance of our products.

Moreover, as a direct-to-consumer retailer, we are subject to additional laws and regulations that apply to retailers generally and govern the marketing and sale of our products and the operation of both our retail stores and our e-commerce activities. Advertising and marketing of our products in the United States, for example, are subject to regulation by the FTC under the FTC Act. Among other things, the FTC Act prohibits unfair methods of competition and unfair false or deceptive acts or practices in or affecting commerce. The FTC Act also makes it illegal to disseminate or cause to be disseminated any false advertisement. Similarly, the Canadian Radio-Television and Telecommunications Commission, or CRTC, has enforcement authority under the Canadian Anti-Spam Law, which prohibits the sending of commercial emails without prior consent of the recipient or an existing business relationship and sets forth rules governing the sending of commercial emails. This law allows for a private right of action for the recovery of damages or provides for enforcement by CRTC permitting the recovery of significant civil penalties, costs and attorneys' fees in the event that regulations are violated. Many of the statutory and regulatory requirements which impact our retail and e-commerce operations are consumer-focused and pertain to activities such as the advertising and selling of credit-based promotional offers, truth-in-advertising, privacy, "do not call/mail" requirements, warranty disclosure, delivery timing requirements, accessibility and similar requirements. In addition, the applicability of existing laws to practices conducted over the internet—in particular laws relating to intellectual property ownership and

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infringement—is uncertain and evolving. Regulators are also imposing new rules regarding products offered over the internet, including rules regarding taxation and product quality. Many governmental authorities in the markets in which we operate are also considering alternative legislative and regulatory proposals that would impose regulations on internet advertising. We cannot predict whether new laws, rules, regulations or taxes will apply to our business and whether and how we will be affected. See "Risk Factors—Risks Related to Our Business—Government regulation of the internet and e-commerce is evolving, and unfavorable changes or failure by us to comply with these regulations could substantially harm our business and results of operations" and "Risk Factors—Risks Related to Our Business—We are subject to various advertising and marketing regulations that may result in actions against us."

We process, use and store data we collect from and about consumers to operate our business and market our products. We may also share consumer information with third-party vendors and service providers in order to facilitate the provision of our products and services. In addition, subject to applicable data privacy and consumer protection laws, we may also share consumer information with certain third parties for marketing purposes. These and related practices—which involve the use of consumer data—are subject to data protection laws, consumer protection laws, and laws regarding unfair and deceptive practices in the jurisdictions in which we conduct business. In addition, we are required to comply with the Payment Card Industry Data Security Standards, or PCI DSS, because we collect credit card information. Increased regulation of data protection, privacy and security may restrict our activities and make it more difficult to reach consumers.

The United States, at both the federal and state level, and Canada are increasingly regulating activities on the internet and e-commerce, including the use of consumer information collected through the internet. In particular, these laws and regulations are increasingly concerned with user privacy and information security. For example, California recently passed the California Consumer Privacy Act of 2018, or the CCPA, which went into effect on January 1, 2020. The CCPA gives residents of California many statutory rights to access, control and delete their personal data. See "Risk Factors—Risks Related to Our Business—Failure to comply with federal, state and foreign laws and regulations relating to privacy, data protection and consumer protection, or the expansion of current or the enactment of new laws or regulations relating to privacy, data protection and consumer protection, could adversely affect our business and our financial condition."

We are subject to various other federal, state, local and foreign laws and regulations applicable to our business and have established processes for compliance with these laws and regulations. See "Risk Factors—Risks Related to Our Business—Our business is subject to a wide variety of U.S. and foreign government laws and regulations. These laws and regulations, as well as any new or changed laws or regulations, could disrupt our operations or increase our compliance costs. Failure to comply with such laws and regulations could have a further adverse impact on our business."

## **Corporate Information**

We were incorporated as a Delaware corporation on October 24, 2013 under the name Providence Mattress Company, and subsequently changed our name to Casper Sleep Inc. on January 10, 2014. Our principal executive offices are located at Three World Trade Center, 175 Greenwich Street, Floor 39, New York, New York 10007. Our telephone number is (347) 941-1871. Our principal website address is [casper.com](http://casper.com). The information on, or that can be accessed through, any of our websites is deemed not to be incorporated in this Annual Report on Form 10-K or to be part of this Annual Report on Form 10-K.

## **Available Information**

We file electronically with the SEC our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statements and other information. Our SEC filings are available to the public over the Internet at the SEC's website at <http://www.sec.gov>. We make available on our website at [casper.com](http://casper.com), free of charge, copies of these reports as soon as reasonably practicable after filing or furnishing these reports with the SEC.

**Item 1A. Risk Factors.**

*Investing in our common stock involves a high degree of risk. You should carefully consider the following risk factors and all other information contained in this Annual Report on Form 10-K before purchasing our common stock. If any of the following risks occur, our business, financial condition, and results of operations could be materially and adversely affected. In that case, the trading price of our common stock could decline and you may lose some or all of your investment. Other events that we do not currently anticipate or that we currently deem immaterial may also affect our business, financial condition, and results of operations.*

**Risks Related to Our Business, Operations and Growth**

***We operate in highly competitive industries, and if we are unable to compete successfully it could have a material adverse effect on our business, financial condition, and results of operations.***

Our business is rapidly evolving and intensely competitive, and we have many competitors across what we define as the Sleep Economy, including in the mattress, soft goods, and bedroom furniture industries, as well as in non-traditional sleep categories, such as sleep technology, sleep services, and sleep supplements. Our competition with respect to these offerings includes: department and furniture stores, big-box retailers, specialty retailers, and online, direct-to-consumer mattress, and other home goods retailers and online marketplaces. Our core offerings compete with new and established manufacturers, direct-to-consumer companies, and white label in-house brands offered by some large retail chains, online retailers, and department stores. We believe that our ability to compete successfully depends upon many factors both within and beyond our control, including:

- the size and composition of our customer base;
- the number of products and services we feature on our website, in our retail stores, and through our third-party retail partners (including how our products are positioned in the retail partnership channel);
- our selling and marketing efforts;
- the quality, consumer appeal, price, and reliability of products and services offered by us;
- the convenience and appeal of the shopping experiences that we provide;
- cost-effective access to raw materials and components;
- our ability to find reliable and cost-effective suppliers of our products and services;
- our ability to introduce new products and services;
- our ability to continually improve and iterate on our existing product lines and services;
- our ability to distribute our products and manage our inventory and operations; and
- our reputation and brand strength.

In addition, retailers in the United States and internationally have integrated vertically in certain of the industries in which we operate, particularly as it relates to mattresses, and it is possible that such vertical integration may create circumstances that would negatively impact our net revenue and results of operations. Although we are pursuing a strategy to vertically integrate, we may not be successful in pursuing this strategy, which may make our products less desirable than products produced by our competitors who have complete control over the manufacturing process and the quality of their products. The highly competitive nature of the industries in which we operate means we are continually subject to the risk of loss of market share, loss of key retail partners, reductions in margins, and the inability to acquire new customers.

Also, some of our current competitors have, and potential competitors may have, longer operating histories, greater brand recognition, larger fulfillment infrastructures, greater resources and technical capabilities, faster and less costly shipping, significantly greater financial, marketing and other resources and larger customer bases than we do. These factors may allow our competitors to derive greater net revenue and profits from their existing customer base, capture market share from us, acquire customers at lower costs, or respond more quickly than we can to new or emerging technologies and changes in consumer preferences or habits. These competitors may engage in more extensive research and development efforts, undertake more impactful marketing campaigns, and adopt more aggressive pricing strategies, which may allow them to build larger customer bases or generate net revenue from their customer bases more effectively than we do. For example, we compete with large retailers, such as Amazon and Wal-Mart, who have house brands that offer competing sleep products and who also have significantly greater scale and more sophisticated distribution operations than we do, a longer track record of successfully building trusted brands, greater technical capabilities and significantly more financial resources. Failure to successfully compete in the industries in which we operate could have a material adverse effect on our business, financial condition, and results of operations.

***Our business depends on the strength of our brand, and if we are not able to maintain and enhance our brand, we may be unable to sell our products, which could have a material adverse effect on our business, financial condition, and results of operations.***

Our brand name and image are integral to the growth of our business and to the implementation of our strategies for expanding our business. We believe that our brand image has significantly contributed to the success of our business and is critical to maintaining and expanding our customer base. Maintaining and enhancing our brand may require us to make substantial investments in areas such as research and development, marketing, e-commerce, and customer experience and these investments may not be successful.

We anticipate that, as our business expands into new markets and new product categories, and as the industries in which we operate become increasingly competitive, maintaining and enhancing our brand may become difficult and expensive. For example, consumers in any new international markets into which we expand may not know our brand and/or may not accept our brand, resulting in increased costs to market and attract customers to our brand. Further, as we grow our retail partnerships, it may be difficult for us to maintain control of our brand with our retail partners, which may result in negative perceptions of our brand. Our brand may also be adversely affected if our public image or reputation is tarnished by negative publicity, including negative social media campaigns or poor reviews of our products or customer experiences. In addition, ineffective marketing, product diversion to unauthorized distribution channels, product defects, unfair labor practices, and failure to protect our intellectual property rights are some of the potential threats to the strength of our brand, and those and other factors could rapidly and severely diminish consumer confidence in us. Maintaining and enhancing our brand will depend largely on our ability to continue to be a leader in the industries in which we operate and to continue to offer a range of high-quality products as well as a leading end-to-end experience to our customers, which we may not execute successfully. Failure to maintain the strength of our brand could have a material adverse effect on our business, financial condition, and results of operations.

***If we are unable to successfully implement our growth strategies related to launching new products, it could have a material adverse effect on our business, financial condition, and results of operations.***

Each year we invest significant time and resources in research and development to improve and expand our product offerings, introduce new technologies to customers, support our sales channels, and generate consumer interest and engagement. In 2020, we launched several new products, including our newest generation of Casper mattresses, percale sheeting line, Casper Repose and Casper Haven bed frames, and down alternative duvet. In addition, from time to time, we also update existing product lines. Launching new products can involve a significant investment in advertising and public relations campaigns. There are also certain risks involved in launching new products, including increased costs in the near term associated with the introduction of new product lines and training of our employees in new manufacturing processes and sales techniques, development delays, failure of new products to achieve anticipated levels of market acceptance, the possibility of increased competition with our current products, and unrecovered costs associated with failed product or service introductions. Implementation of these plans may also divert management's attention from other aspects of our business and place a strain on management, operational and financial resources, as well as our information systems. Launching new products or updating existing products may also leave us with obsolete inventory that we may not be able to sell or we may sell at significantly discounted prices and a lower profit margin. For example, in 2020, we engaged in clearance sales and discounting on older models of our products, including through the introduction of a clearance section on our website. Our plans to optimize such obsolete inventory may result in sales at such discounted prices, which may have a negative impact on our financial condition and results of operations. Further, as we expand into new markets, we may not accurately predict consumer preferences in that market, which could result in lower than expected sales.

Additionally, launching new products requires substantial investments in research and development. Investments in research and development are inherently speculative and require substantial capital and other expenditures. Unforeseen obstacles and challenges that we encounter in the research and development process could result in delays or the abandonment of plans to launch new products and may substantially increase development costs.

If we are unable to maintain the high product-quality standards expected by our customers when we launch new products, or if our competitors are able to produce higher quality or more accessible products, our sales may be harmed. Should this occur, we may need to increase our investments in research and development and manufacturing processes, lower our prices or take other measures to address any loss of sales, which could increase our expenses, reduce our margins and/or negatively impact our brand and our ability to execute our overall pricing and promotion strategy.

We may not be successful in executing our growth strategy related to launching new products, and even if we achieve such plan, we may not be able to achieve profitability. Failure to successfully launch new products could have a material adverse effect on our business, financial condition, and results of operations.

***Our growth strategy involves expansion of our retail partnerships, which presents risks and challenges to our business.***

Our retail partnerships have only recently evolved, and we have limited operating experience executing our retail strategy, which we began pursuing in 2015. This strategy has and will continue to require significant investment in cross-functional operations and management focus, along with investment in supporting technologies.

Most of our retail partnership arrangements are by purchase order or are terminable at will with limited or no notice and since we have a limited operating history with our retail partners, we may not be able to accurately forecast their product needs and our resulting revenue. We are also exposed to the seasonality of our retail partners' businesses, which impacts their frequency and volume of product orders. A substantial decrease or interruption in business from our key retail partners could result in a reduction in net revenue, an increase in bad debt expense or the loss of future business, any of which could impair our business, financial condition, or results of operations. Further, if our retail partners seek bankruptcy protection, they could act to terminate all or a portion of their business with us or originate new business with our competitors, which could impair our results of operations. Any loss of revenue from our key retail partners, including as a result of the non-payment or late payment of our invoices, could have an adverse effect on our business, financial condition, and results of operations.

Our retail partners may not have a history of selling mattresses or other sleep products, which may make it more difficult for certain retail partners to market our products effectively. Educating and training our retail partners on our products and brand may consume a significant portion of our management's time and attention, which could delay our ability to launch retail partnerships in an expedient and cost-effective manner. We also have a limited operating history with our retail partnerships, which may make it more difficult for us to onboard new retail partners.

We may not always be able to negotiate arrangements with our retail partners that align with our pricing strategy. Retail partnership arrangements that do not align with our pricing strategy in our other sales channels may result in lower sales in our direct-to-consumer channels, which may be more profitable.

In addition, our retail partners may reduce their number of stores or operations or consolidate, undergo restructurings or reorganizations, realign their affiliations or promote products of our competitors over ours or liquidate. These events may result in a decrease in the number of stores or e-commerce platforms that carry our products, an increase in the ownership concentration in the retail industry and/or our being required to record significant bad debt expense and write-offs. Our retail partners may also decide to carry only a limited number of brands of sleep products, which could affect our ability to sell our products to them on favorable terms, if at all. If any of our key retail partners experience financial difficulty or insolvency, we may experience reduced sales of our products or we could have difficulty recovering amounts owed to us from these retail partners, resulting in lower revenue and gross margins, which could have an adverse effect on our business, financial condition, and results of operations.

***The COVID-19 pandemic has affected, and could continue to adversely affect, our business, financial condition and results of operations.***

The COVID-19 pandemic continues to rapidly evolve. At this time, there continues to be significant volatility and uncertainty relating to the full extent to which the COVID-19 pandemic and the various responses to it will impact our business, operations and financial results. We currently have third-party manufacturing partners in various locations, including China, Mexico, Vietnam and the United States, among others. Certain of our suppliers and the manufacturers of certain of our products have been and may continue to be adversely impacted by the COVID-19 pandemic. As a result, we have faced and may continue to face delays or difficulty sourcing products, which has negatively affected and could continue to negatively affect our business and financial results. Even if we are able to find alternate sources for such products, they may cost more, which could adversely impact our results of operations and financial condition. With respect to consumer demand, we have experienced changing consumer behavior in our direct-to-consumer channel since late February 2020, including a significant reduction in retail foot traffic due to restrictions on retail businesses and shifting consumer preferences in response to the COVID-19 pandemic, which has adversely affected our revenue. While we have been able to open and operate all of our 69 total retail stores in North America as of the date of this filing, the situation surrounding COVID-19 remains fluid, and we may be required to close or limit service offerings in certain of our retail stores in response to guidance from applicable government and public health officials, which we expect will adversely affect our revenue. The COVID-19 pandemic has also caused us to

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cancel planned openings of new retail store locations and certain of our retail partners to temporarily close their stores where our products are sold, both of which has and we expect will further reduce our revenue and adversely affect our results of operations and financial condition.

Due to the impacts of the COVID-19 pandemic on our business, operations and financial condition, during the year ended December 31, 2020, we implemented an employee furlough program initially applicable to almost all of our retail employees, reduced our corporate personnel by approximately 21%, wound down our European operations, and ceased or reduced rent payments to a majority of our retail store landlords during the closure period for each of our retail store locations. While the majority of our negotiations with our landlord regarding rent deferrals and abatements have been resolved as of the date of this filing, there can be no assurances that we will favorably resolve the remainder of our negotiations with our landlords, and all or some of these landlords could claim that our failure to pay rent is a default under the applicable lease. In addition, due to the severity of the outbreak in New York and California, where we have corporate offices, we continue to limit access to our offices and our corporate workforce has and continues to spend a significant amount of time working from home. Any of these actions, as well as the potential for additional employee furlough programs or reductions in force given the uncertainty in the trajectory of the COVID-19 pandemic, may impact our employees' morale and productivity and cause disruptions to our retail and corporate operations.

While the ultimate global economic impact and duration of the COVID-19 pandemic is difficult to assess or predict, the economic downturn caused by the pandemic has caused and could continue to cause certain of our suppliers or retail partners to go out of business or otherwise cause supply chain and distribution constraints, result in increased costs or delays in the manufacturing of our products, or negatively impact consumers' ability or willingness to pay for our products, any of which could have a material adverse effect on our business, financial condition or results of operations. The extent to which the COVID-19 pandemic will impact our business, financial condition and results of operations will depend on future developments, which are highly uncertain and cannot be predicted with confidence, such as the transmission rate of the disease, the duration and extent of the pandemic, travel and social distancing restrictions in North America, the duration and extent of business closures and business disruptions, and the effectiveness of actions taken to contain, treat and prevent the disease.

### ***Our future growth and profitability depend on the effectiveness and efficiency of our marketing programs.***

We are highly dependent on the effectiveness of our marketing programs and the efficiency of our related expenditures in generating consumer awareness and sales of our products. We rely on a combination of paid and non-paid advertising and public relations efforts to market our products.

Our paid advertising efforts consist of online channels, including search engine marketing, display advertising, and paid social media, as well as more traditional forms of advertising, such as direct mail and television advertisements. These efforts are expensive and may not result in the cost-effective acquisition of customers. We cannot assure you that the net profit from new customers we acquire will ultimately exceed the cost of acquiring those customers. We also utilize non-paid advertising. Our non-paid advertising efforts include search engine optimization, non-paid social media and email.

Moreover, we rely in part upon third parties, such as search engines, social media influencers, and product reviewers, for both paid and unpaid services, and we are unable to fully control their efforts. We obtain a significant amount of traffic via search engines and, therefore, rely on search engines such as Google. Search engines frequently update and change the logic that determines the placement and display of results of a user's search, such that the purchased or algorithmic placement of links to our site can be negatively affected. Moreover, a search engine could, for competitive or other purposes, alter its algorithms or results in a manner that negatively affects our paid or non-paid search ranking, and competitive dynamics could impact the effectiveness of search engine marketing or search engine optimization. We also obtain a significant amount of traffic via social networking websites or other channels used by our current and prospective customers. As e-commerce and social networking continue to rapidly evolve, we must continue to establish relationships with these channels and may be unable to develop or maintain these relationships on acceptable terms. If we are unable to cost-effectively drive traffic to our sites, our ability to acquire new customers and our financial condition would suffer.

In addition, the number of third-party providers of consumer product reviews, consumer recommendations, and referrals is growing across industries and may influence consumers. Negative or no reviews from such third parties may receive widespread attention from consumers, which could damage our reputation and brand value and result in lower sales. Influencers with whom we maintain relationships could also engage in behavior or use their platforms to communicate directly with our customers in a manner that reflects poorly on our brand and may be attributed to us or otherwise adversely affect us. It is not possible to prevent such behavior, and the precautions we take to detect this activity may not be effective in all cases. If we are unable to effectively manage relationships with such reviewers to promote accurate reviews of our products, reviewers may

decline to review our products or may post reviews with misleading information, which could damage our reputation and make it more difficult for us to sustain or improve our brand value. Moreover, if any of the third parties on which we rely were to cease operations, temporarily or permanently, face financial distress or other business disruption, we could suffer increased costs and delays in their ability to provide similar services until an equivalent service provider could be found, or until we could develop replacement technology or operations, any of which could also have an adverse impact on our business and financial performance.

We continue to evolve our marketing strategies, adjusting our messages, the amount we spend on advertising and where we spend it with no assurance that we will be successful in developing future effective messages and in achieving efficiency in our marketing and advertising expenditures. Our marketing activities and the marketing activities of any third parties on which we rely are subject to various types of regulations, including laws relating to the protection of personal information, consumer protection and competition. In addition, the regulatory environment surrounding the use of data is increasingly demanding. In recent years, lawmakers and regulators have expressed concern over the use of third-party cookies and similar technologies for online targeted advertising. Moreover, user data protection and communication-based laws may be interpreted and applied inconsistently from jurisdiction to jurisdiction, and these laws continue to develop in ways we cannot predict and that may adversely affect our business. Complying with these varying requirements could cause us to incur substantial costs or require us to change our business practices in a manner with adverse effects on our business, and violations of privacy-related laws can result in significant penalties. These developments, including in the way these laws are interpreted, could impair our ability, or the ability of third parties on which we rely, to collect user information, including personal data and usage information, that helps us provide more targeted advertising to our current and prospective consumers, which could adversely affect our business, particularly given our use of cookies and similar technologies to target our marketing and personalize the consumer experience. See "—Failure to comply with federal, state and foreign laws and regulations relating to privacy, data protection and consumer protection, or the expansion of current or the enactment of new laws or regulations relating to privacy, data protection and consumer protection, could adversely affect our business and our financial condition."

If our marketing programs and related expenditures are ineffective or are inefficient in creating and increasing awareness of our products and brand, in driving consumer traffic to our websites and stores and in motivating customers to purchase our products, it could have a material adverse effect on our business, financial condition, and results of operations.

***We have grown rapidly in recent years. If we are unable to manage our operations at our current size or to manage any future growth effectively, the pace of our growth may slow.***

We have expanded our operations rapidly since our founding in 2014. In 2014, we launched our e-commerce platform in the United States and Canada, followed by the European Union, Switzerland, and the United Kingdom, in 2016. We launched our first retail concept in Los Angeles in 2015, followed by permanent retail stores in San Francisco and New York in 2017 and 2018, respectively, and as of December 31, 2020 we had 67 retail stores across the United States and Canada. Our revenue increased from \$439.3 million in 2019 to \$497.0 million in 2020, an increase of 13.1%.

Although our European operations wound down in 2020, we continue to focus on expanding our operations North America and may plan to expand outside of North America in the future. If our operations are to continue to grow, of which there can be no assurance, we will be required to continue to (i) expand our sales and marketing, digital and technology teams, research and development, customer and commercial strategy, product offerings, supply, and manufacturing and distribution functions, (ii) upgrade our management information systems and other processes, and (iii) obtain more space for our expanding administrative support and other personnel. Our continued growth could increase the strain on our resources, and we could experience operating difficulties, including difficulties in hiring, training, and managing an increasing number of employees, finding manufacturing capacity to produce our products, and delays in production and shipments. These difficulties may result in the erosion of our brand image, divert the attention of management and key employees and impact financial and operational results. In addition, in order to continue to expand our direct-to-consumer presence and retail partnerships, we expect to continue to add selling and general and administrative expenses to our operating profile. If we are unable to drive commensurate growth, these costs, which include lease commitments, headcount and capital assets, could result in decreased margins.

***We have a history of losses and could continue to have operating losses and negative cash flow as we continue to expand our business.***

We have a history of losses. We incurred net losses of \$89.6 million, and \$93.0 million in 2020, and 2019, respectively, and had \$414.8 million in accumulated deficit through December 31, 2020. Because we have a short operating history at scale, particularly in our own and third-party retail sales channels, it is difficult for us to predict our future operating results. As a result, our losses may be larger than anticipated, and we may not achieve profitability when expected, or at all.

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Also, we expect our operating expenses to increase over the next several years as we further increase marketing spend, open additional retail stores, hire more employees, continue to develop new products and services, and expand internationally. These efforts may be more costly than we expect and may not result in increased revenue or growth in our business. Any failure to increase our revenue sufficiently to keep pace with our investments and other expenses could prevent us from achieving or maintaining profitability or positive cash flow on a consistent basis. Furthermore, if our future growth and operating performance fail to meet investor or analyst expectations, or if we have future negative cash flow or losses resulting from our investment in acquiring new customers or expanding our business, our business, financial condition, and operating results may be materially adversely affected.

### ***We have a limited operating history and, as a result, our past results may not be indicative of future operating performance.***

We have a limited operating history with the current scale of our business, which makes it difficult to forecast our future results, particularly with respect to our own and third-party retail channels, which we have only recently developed. You should not rely on our past annual or quarterly results of operations as indicators of future performance. You should consider and evaluate our prospects in light of the risks and uncertainty frequently encountered by companies like ours. See "—We may experience fluctuations in our quarterly results of operations due to seasonality and other factors, which could make sequential quarter to quarter comparison an unreliable indication of our performance."

### ***If we fail to attract new customers, or retain existing customers, or fail to do either in a cost-effective manner, we may not be able to increase sales.***

Our success depends, in part, on our ability to attract new, and retain existing, customers in a cost-effective manner. We have made, and we expect that we will continue to make, significant investments in attracting and retaining customers, including through traditional, digital, and social media and through developing original Casper content. Marketing campaigns can be expensive and may not result in the cost-effective acquisition, or retention, of customers. Further, as our brand becomes more widely known, future marketing campaigns may not attract new or retain customers at the same rate as past campaigns. If we are unable to attract new customers, and retain existing customers, our business will be harmed.

### ***The market for sleep products and services as a retail category is still emerging and if it does not continue to grow, if it grows more slowly than expected or if it does not achieve the growth potential we expect, or if we do not succeed in becoming a leader or maintaining our leadership in this category, our brand, business, financial condition, or results of operations could be adversely affected.***

The market for sleep products and services as a distinct retail category continues to evolve, and it is uncertain whether the demand for our sleep products and services will continue to grow and achieve wide market acceptance. Our success will depend in significant part on the willingness of consumers to continue to invest in sleep products and services as a retail category and to view these products and services as part of a distinct business category that we call the Sleep Economy. If consumers do not continue to accept sleep as a wellness and a retail category or perceive our products to be beneficial, whether as a result of experiences with our product line or otherwise, then the market for sleep products and services may not develop further, may develop more slowly than we expect, or may not achieve the growth potential that we expect, any of which could have a material adverse effect on our brand, business, financial condition, and results of operations. Moreover, even if the market for sleep develops, we may not succeed in our plan to become the category leader.

### ***Our efforts to protect and maintain our intellectual property may not be successful. Competitors have attempted and will likely continue to attempt to imitate our products and technology. We may not be able to prevent competitors from developing similar products or from marketing in a manner that capitalizes on our intellectual property. If we are unable to protect or preserve our intellectual property, our business may be harmed, and if our products or marketing violate the intellectual property rights of others, we may have liability and may be required to change our products and business practices.***

Our intellectual property is important to the design, manufacturing, marketing and distribution of our products and services, and protecting our intellectual property rights and combating the unlicensed copy or use of our intellectual property can be difficult. We attempt to protect our intellectual property rights, both in the United States and abroad, through a combination of patent, trademark, copyright and trade secret laws, as well as nondisclosure and invention assignment agreements with our consultants and employees and seek to control access to, and distribution of, our proprietary information.

Further, we license certain intellectual property from third parties. For example, while most of our product design is developed in-house, certain foam formulations are currently licensed from certain of our contract manufacturers pursuant to our manufacturing agreements with them, some of which include varying degrees of exclusivity. If any of these licenses are terminated, or if they expire and are not renewed, we may not be able to continue to manufacture certain products in their current iterations or may experience disruption to our manufacturing processes. Even if we retain the licenses, the licenses may no longer be exclusive with respect to such designs or technologies, which could aid our competitors and have a negative impact on our business.

To compete effectively with other companies, we must maintain the proprietary nature of our owned and licensed intellectual property and maintain the confidentiality of our trade secrets, know-how and other proprietary materials. We have in the past and may in the future be notified of challenges to our intellectual property rights or receive notices that claim we have misappropriated, violated, or infringed upon third parties' intellectual property rights. Despite our efforts to maintain our intellectual property rights and to avoid violating the intellectual property rights of others, we cannot eliminate the following risks which could have a material adverse effect on our brand, business, financial condition, or results of operations:

- others may circumvent or challenge our intellectual property rights;
- others may infringe, misappropriate or dilute our intellectual property;
- our products, services, and promotional materials, including trademarks, service marks, copyrighted material, product designs or manufacturing technology or processes may now or in the future violate the proprietary or intellectual property rights of others and may need to be changed, may give rise to liability and/or be subject to injunctive relief;
- we may be prevented from using, manufacturing, selling or distributing our products, promotional materials, trademarks, service marks, copyrighted materials, product designs or manufacturing technology or processes, if challenged;
- it may be cost prohibitive to enforce or defend our trademarks, service marks, patents and other intellectual property rights;
- our pending applications regarding trademarks, service marks and patents may not result in such marks being registered or patents being issued, and even if registered or issued, we cannot guarantee that they will be of sufficient scope or strength to provide us with meaningful protection or commercial advantage;
- we may be unable to protect our technological advantages when our patents expire;
- because we rely on third-party manufacturers to produce our products and such manufacturers may produce products for our competitors, we are at a greater risk of intellectual property leakage to our competitors; and
- our trade secrets, know-how and other proprietary materials may be revealed to the public or our competitors or independently developed by our competitors and no longer provide protection for the related intellectual property.

The nature and value of our intellectual property may be affected by a change in law domestically or abroad. Because of differences in foreign laws concerning proprietary rights and in light of the political and economic circumstances in certain foreign jurisdictions, our rights may not be enforced or enforceable in foreign countries or receive the same degree of protection in foreign countries as they would in the United States, even if they are validly issued or registered. Further, while we seek to protect our intellectual property outside the United States, there can be no assurance that our intellectual property will be adequately protected in all countries in which we conduct our business. For example, while we generally apply for patents in those countries where we intend to make, have made, use, or sell patented products, we may not accurately predict all of the countries where patent protection will ultimately be desirable. If we fail to timely file a patent application in any such country, we may be precluded from doing so at a later date.

Our inability to maintain the proprietary nature of our intellectual property, or violations of the rights of others, could have a material adverse effect on our business, financial condition, and results of operations. For example, an action to enforce our intellectual property rights, or an action brought by a third party challenging our intellectual property rights, could impair our financial condition, or results of operations, either as a result of a negative ruling with respect to our use of the intellectual property of others or the validity or enforceability of our intellectual property, or through the time consumed and legal costs involved in bringing or defending such an action (and we cannot guarantee that we will have sufficient resources to adequately bring or defend any such action). Further, if a third party is successful in challenging our intellectual property rights or brings a successful claim of infringement against us, we could be required to pay significant damages, enter into costly license or royalty agreements, rebrand our products, or stop the sale of certain products, any of which could have a negative impact on our

operating profits and harm our future prospects. In addition, any royalty or licensing agreements, if required, may not be available to us on acceptable terms or at all.

As our business continues to expand, our competitors have imitated, and will likely continue to imitate, our product designs and branding, which could harm our business and results of operations. While we rely on trade secret protection and confidentiality agreements with our employees, consultants, suppliers, manufacturers, visitors and others to protect our proprietary rights, the steps we take to protect our proprietary rights may be inadequate, and we may experience difficulty in effectively limiting the unauthorized use of our patents, trademarks, trade dress, trade secrets and other intellectual property and proprietary rights worldwide. It is also possible that others will independently develop technology with the same or similar function to any proprietary technology we rely on to conduct our business and differentiate ourselves from our competitors. Because some of our products are manufactured overseas in countries where counterfeiting is more prevalent, and we intend to increase our sales overseas over the long-term, we may experience increased counterfeiting of our products. Unauthorized use or invalidation of our intellectual property may cause significant damage to our brand and harm our results of operations.

***Our sales growth is dependent upon our ability to implement strategic initiatives and such initiatives may not be effective in generating sales growth.***

Our ability to generate sales growth is dependent upon our ability to successfully implement strategic initiatives which we undertake. For example, one of our key strategic initiatives is to expand our retail partnerships. If we are not able to effectively expand within this channel, this could adversely impact our ability to grow our market share and build our brand strength, which could have a material adverse effect on our business, financial condition, and results of operations.

In addition, we are also pursuing other strategic initiatives, including the following:

- increasing brand awareness and equity to acquire new customers;
- expanding our direct-to-consumer presence and network of retail partnerships;
- improving and diversifying our product offering to span the entire Sleep Arc, including improving our research and development process in connection with such products;
- operational excellence initiatives such as price optimization, product return reductions, supply chain enhancements, and marketing efficiencies, among others; and
- identifying and expanding into new consumer markets, including international markets.

If we fail to execute on any of these strategic initiatives, it could have a material adverse effect on our business, financial condition, and results of operations.

***If we do not successfully implement our retail store strategy, including optimization of existing stores and future retail store expansion, our growth and profitability could be harmed.***

We intend to continue to grow our existing direct-to-consumer channel by optimizing our existing retail store performance and opening additional retail stores. Our ability to successfully implement our retail store strategy depends on a number of factors, many of which are beyond our control, including:

- our ability to manage the financial and operational aspects of our retail growth strategy, including making appropriate investments in our software systems, information technology, and operational infrastructure;
- our ability to identify suitable locations, including our ability to gather and assess demographic and other related data to accurately determine customer demand for our products in the locations we select;
- our ability to negotiate favorable lease agreements;
- our ability to properly assess the potential profitability and payback period of potential new retail store locations;
- our ability to secure required governmental permits and approvals, and our ability to effectively comply with state and local employment and labor laws, rules, and regulations;
- our ability to hire and train skilled store operating personnel, especially management personnel, and our ability to immerse such personnel in our culture;
- the availability of construction materials and labor and the absence of significant construction delays or cost overruns;

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- our ability to accurately understand and assess the demographic profile of, and provide a satisfactory mix of merchandise that is responsive to the needs of, our customers living in the areas where new retail stores are established;
- our ability to establish a supplier and distribution network able to supply new retail stores with inventory in a timely manner;
- our competitors or our retail partners, building or leasing stores near our retail stores or in locations we have identified as targets for a new retail store;
- customer demand for our products;
- our ability to scale our differentiated in-store experience that is unique to our brand, attracts customers, and builds deeper relationships;
- our ability to create a multi-channel experience that meets the expectations of today's customers who are shopping online and offline;
- our ability to create a technology infrastructure that serves our retail, e-commerce, and customer service channels connecting customer data and operational data to deliver a seamless user experience;
- our ability to incorporate a broader ecosystem of sleep products that addresses the entire Sleep Arc to establish Casper as a destination for products across the Sleep Economy;
- regional and local economic factors and conditions that may impact demand at any one or a group of our stores; and
- general economic and business conditions affecting consumer confidence and spending and the overall strength of our business.

In order to pursue our retail store strategy, we will be required to expend significant cash and human capital resources, and with respect to new retail stores, will be required to do so prior to generating any sales in these stores. Delays in new store openings or an inability to generate sufficient sales from these stores to justify such expenses could harm our business and profitability. The substantial management time and resources which any retail store strategy may require could also result in disruption to our existing business operations which may decrease our net revenue and profitability.

***Because a significant portion of our revenue is derived from our mattress products, a decrease in sales of such products could seriously harm our profitability and financial condition.***

While we have expanded and continue to expand our product and services offerings, a significant portion of our business consists primarily of designing and distributing our mattress products. As a result, future shifts in consumer spending away from our mattress products for any reason, including adverse economic conditions, heightened competition and decreased consumer confidence or frequency of mattress replacement, could have a material adverse effect on our results of operations. Retailers with more diversified product offerings may not be similarly at risk. For example, department stores that experience stagnant or declining mattress sales may be better able to absorb the adverse effects given their diversity of product offerings. Our continued success will depend, in part, on our ability to anticipate, identify and respond quickly to shifts in consumer spending, as well as to strengthen our brand, incorporate a broader ecosystem of sleep products that address the entire Sleep Arc, and attract and retain customers who are willing to pay for products and services beyond our mattress offerings.

In the near term, if the number of customers demanding our mattress products does not continue to increase, we may not achieve the level of sales necessary to support new growth platforms across the Sleep Arc, and our ability to grow our business may be severely impaired.

***Our business depends heavily on our ability to provide our customers with a joyful, seamless, and personalized purchasing experience that is different from our competitors.***

Our customer experience is focused on providing our customers with a seamless and personalized consultative experience around sleep. We believe that our customer-first approach has significantly contributed to the popularity of our products and continues to distinguish us in an increasingly competitive industry. Our competitors have in the past and may in the future attempt to replicate features of our customer experience, such as our in-store and 100-night mattress trials and our bed-in-a-box packaging, to attract new customers and/or retain existing ones. Since we may not have proprietary rights to such features of our customer experience, we will need to commit significant resources towards continually enhancing and differentiating our customer experience and anticipating and meeting our customers' evolving preferences and expectations. Our failure to

successfully innovate and continue to deliver a superior customer experience, could cause the demand for our products to decrease, which could have a material adverse effect on our business, financial condition, and results of operations.

***System interruptions that impair customer access to our website or other performance failures in our technology infrastructure could damage our business, reputation and brand and substantially harm our business and results of operations.***

The satisfactory performance, reliability and availability of our website, transaction processing systems and technology infrastructure are critical to our reputation and our ability to acquire and retain customers, as well as maintain adequate customer service levels. Any compromise of our or our third-party partners' security could result in a violation of applicable security, privacy or data protection, consumer and other laws, regulatory or other governmental investigations, enforcement actions, and legal and financial exposure, including potential contractual liability.

We currently utilize Amazon Web Services, or AWS, data center hosting facilities. If our main data center, which is located in the Eastern United States, where substantially all of our computer and communications hardware is located fails, or if we suffer an interruption or degradation of services at our main data center, we could lose customer data and miss order fulfillment deadlines, which could harm our business. We do not have control over the operations of the facilities of AWS that we use. AWS' facilities are vulnerable to damage or interruption from earthquakes, hurricanes, floods, fires, cyber security attacks, terrorist attacks, power losses, telecommunications failures and similar events. In the event that AWS' or any other third-party provider's systems or service abilities are hindered by any of the events discussed above, our ability to operate may be impaired, resulting in missing financial targets for a particular period. A decision to close the facilities without adequate notice, or other unanticipated problems, could adversely impact our operations. All of the aforementioned risks may be augmented if our or the third-party provider's business continuity and disaster recovery plans prove to be inadequate. The facilities also could be subject to break-ins, computer viruses, sabotage, intentional acts of vandalism and other misconduct. We may not be able to easily switch our AWS operations to another cloud or other data center provider if there are disruptions or interference with our use of AWS, and, even if we do switch our operations, other cloud and data center providers are subject to the same risks. Any security breach, including personal data breaches, or incident, including cybersecurity incidents, that we experience could result in unauthorized access to, misuse of or unauthorized acquisition of our or our customers' data, the loss, corruption, or alteration of this data, interruptions in our operations or damage to our computer hardware or systems or those of our customers. Moreover, negative publicity arising from these types of disruptions could damage our reputation. We may not carry sufficient business interruption insurance to compensate us for losses that may occur as a result of any events that cause interruptions in our service.

AWS does not have an obligation to renew its agreements with us on commercially reasonable terms, or at all. If we are unable to renew our agreements on commercially reasonable terms, our agreements are prematurely terminated, or we add additional infrastructure providers, we may experience costs or downtime in connection with the transfer to, or the addition of, new data center providers. We do not currently have a back-up system configured in the event of a failure of our main data center.

We use complex proprietary software in our technology infrastructure, which we seek to continually update and improve. For instance, we are currently planning to transition our enterprise resource planning, or ERP, applications from a third-party host to our AWS account and certain other internally developed software to third-party solutions. Replacing such systems is often time consuming and expensive, and can also be intrusive to daily business operations. Further, we may not always be successful in executing these upgrades and improvements, which may occasionally result in a failure of our systems. In particular, we have in the past and may in the future experience slowdowns or interruptions in our website when we are updating it, and new technologies or infrastructure may not be fully integrated with our existing systems on a timely basis, or at all. Additionally, if we expand our use of third-party services, including cloud-based services, our technology infrastructure may be subject to increased risk of slowdown or interruption as a result of integration with such services and/or failures by such third parties, which are out of our control. Our net revenue is comprised of global sales through our direct-to-consumer channel and our retail partnerships, and net revenue depends on the number of visitors who shop on our website and in our retail stores, the number of orders received from retail partners and the volume of orders we can handle. Unavailability of our website, our payment systems or reduced order fulfillment performance would reduce the volume of goods sold and could also materially adversely affect consumer perception of our brand. We may experience periodic system interruptions from time to time. In addition, continued growth in our transaction volume, as well as surges in online traffic and orders associated with promotional activities or seasonal trends in our business, place additional demands on our technology platform and could cause or exacerbate slowdowns or interruptions. If there is a substantial increase in the volume of traffic on our website or the number of orders placed by customers, we will be required to further expand and upgrade our technology, transaction processing systems and network infrastructure. There can be no assurance that we will be able to accurately project the rate or timing of increases,

if any, in the use of our website or expand and upgrade our systems and infrastructure to accommodate such increases on a timely basis. In order to remain competitive, we must continue to enhance and improve the responsiveness, functionality and features of our website, which is particularly challenging given the rapid rate at which new technologies, customer preferences and expectations and industry standards and practices are evolving in the e-commerce industry. Accordingly, we redesign and enhance various functions on our website on a regular basis, and we may experience instability and performance issues as a result of these changes.

Any slowdown or failure of our website and the underlying technology infrastructure could harm our business, reputation and our ability to acquire, retain and serve our customers, which could materially adversely affect our results of operations. Our disaster recovery plan may be inadequate, and our business interruption insurance may not be sufficient to compensate us for the losses that could occur.

***We will need to improve our financial and operational systems in order to manage our growth effectively and support our increasingly complex business arrangements, and an inability to do so could harm our business and results of operations.***

To manage our growth and our increasingly complex business operations, especially as we move into new markets internationally, we will need to upgrade our operational and financial systems and procedures, improve the coordination between our various corporate functions and expand, train and manage our workforce adequately. Our efforts to manage the expansion of our operations may place a significant strain on our management personnel, systems and resources, particularly given the limited amount of financial resources and skilled employees that may be available at the time. When implementing new or changing existing processes, we may encounter transitional issues and incur substantial additional expenses. We cannot be certain that we will institute, in a timely manner or at all, the improvements to our managerial, operational, and financial systems and procedures necessary to support our anticipated increased levels of operations. Delays or problems associated with any improvement or expansion of our operational and financial systems could adversely affect our relationships with our suppliers, manufacturers, resellers and customers, harm our reputation and result in errors in our financial and other reporting, any of which could harm our business and operating results.

***We may experience fluctuations in our quarterly results of operations due to seasonality and other factors, which could make sequential quarter to quarter comparison an unreliable indication of our performance.***

We have historically experienced and expect to continue to experience seasonal and quarterly fluctuations in sales and operating income. Our second and third quarter sales are typically higher than our other quarters. We attribute this seasonality principally to back-to school, home moves, and other seasonal factors, along with seasonal promotions we offer during these quarters. This seasonality means that a sequential quarter to quarter comparison may not provide a meaningful indication of our performance or how we will perform in the future.

Other factors, many of which are outside of our control, that may cause quarterly results to fluctuate include, but are not limited to:

- general economic and political conditions;
- shifts in consumer tastes and changes in demand for the products that we offer;
- expansion of existing or entry of new competitors into our markets;
- pricing and other actions taken by our competitors;
- changes in promotions, advertising or other actions taken by us or our existing or possible new competitors;
- the timing and level of promotions;
- changes in our operating expenses;
- changes in commodity prices and transportation and distribution costs;
- foreign exchange rates;
- litigation;
- adverse weather conditions in our markets, particularly on weekends, as we grow our retail presence;
- natural or human-made disasters;
- the timing of income tax refunds to our end-customers;
- the timing or elimination of certain state and local tax holidays; and
- the timing of holidays that typically result in higher sales falling in a different fiscal quarter than in a prior year, which may affect the comparability of year-to-year comparisons for the affected quarters.

Any of these events could have a material adverse effect on our business, financial condition, and results of operations for the fiscal quarter in which such event occurs as well as for the entire year. Therefore, sequential period-to-period comparisons of historical quarterly operating results may not be a meaningful indicator of future performance.

***Our plans for continued expansion in North America and potential expansion into markets outside of North America in the future may not be successful.***

Although our current intent is to focus on our operations in North America, including the United States and Canada, we may plan to expand into markets outside of North America in the future. To the extent we undertake such expansion, we may incur significant operating expenses as a result of our potential international expansion, and our international operations may not be successful. For example, during the year ended December 31, 2020, we announced the wind down of our European operations and our intent to focus on our operations in North America.

There are significant costs and risks inherent in selling our products in international markets, including: (i) failure to effectively translate and establish our core brand identity, product and experience proposition; (ii) time and difficulty in building our e-commerce platform and/or a widespread network of retail stores and retail partners; (iii) increased shipping and distribution costs, which could increase our expenses and reduce our margins; (iv) potentially lower margins; (v) longer collection cycles in some regions; (vi) increased competition from local providers of similar products; (vii) compliance with local laws and regulations, including taxes and duties, labor laws, and enhanced privacy laws, rules, and regulations; (viii) establishing and maintaining effective internal controls at foreign locations and the associated increased costs; (ix) increased counterfeiting and the uncertainty of protection for intellectual property rights in some countries and practical difficulties of enforcing rights abroad; (x) compliance with anti-bribery, anti-corruption, economic sanctions, and anti-money laundering laws, such as the FCPA, the Bribery Act, and OFAC regulations, by us, our employees, and our business partners; (xi) currency exchange rate fluctuations and related effects on our results of operations; (xii) economic weakness, including inflation, or political instability in foreign economies and markets; (m) compliance with tax, employment, immigration, and labor laws for employees living or traveling abroad; (xiii) workforce uncertainty in countries where labor unrest is more common than in the United States; (xiv) business interruptions resulting from geopolitical actions, including war and terrorism, or natural disasters, including earthquakes, typhoons, floods, and fires; (xv) the imposition of tariffs on products that we import into international markets that could make such products more expensive compared to those of our competitors; (xvi) that our ability to expand internationally could be impacted by the intellectual property rights of third parties that conflict with or are superior to ours; (xvii) our inability to find suitable mergers and acquisitions targets to help expand our business abroad; (xviii) sharing of data and information across borders; and (xix) other costs and risks of doing business internationally.

These and other factors could harm any potential international operations and, consequently, harm our business, results of operations and financial condition. Further, we may incur significant operating expenses as a result of any potential international expansion, and any plans pursuing such a strategy may not be successful. We have limited experience with regulatory environments and market practices internationally, and we may not be able to penetrate or successfully operate in new markets. We may also encounter difficulty expanding into international markets because of limited brand recognition, leading to delayed or limited acceptance of our products by customers in these markets, and increased marketing and customer acquisition costs to establish our brand. Accordingly, if we are unable to successfully expand internationally or manage the complexity of our global operations, we may not achieve the expected benefits of any potential international expansion and our financial condition, and results of operations could be harmed.

***Our business may be adversely affected if we are unable to provide consumers a cost-effective shopping platform that is able to respond and adapt to rapid changes in technology.***

The number of people who access the internet through devices other than personal computers, including mobile phones, smartphones, handheld computers such as notebooks and tablets, video game consoles, and television set-top devices, has increased dramatically in the past few years. A significant amount of our sales are made through mobile and other handheld devices. The smaller screen size, functionality, and memory associated with some alternative devices may make the use of our sites and purchasing our products more difficult. The versions of our sites developed for these devices may not be compelling to customers. In addition, it is time consuming and costly to keep pace with rapidly changing and continuously evolving technology.

While our website is currently mobile-optimized, as new mobile devices and platforms are released, it is difficult to predict the problems we may encounter in developing applications for alternative devices and platforms, and we may need to devote significant resources to the creation, support and maintenance of such applications. If we are unable to attract customers to our

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website through these devices or are slow to develop a version of our website that is more compatible with alternative devices or a mobile application, we may fail to capture a significant share of customers in the markets in which we operate, which could adversely affect our business.

Further, we continually upgrade existing technologies and business applications, and we may be required to implement new technologies or business applications in the future. The implementation of upgrades and changes requires significant investments. Our results of operations may be affected by the timing, effectiveness and costs associated with the successful implementation of any upgrades or changes to our systems and infrastructure. In the event that it is more difficult for our customers to buy products from us on their mobile devices, or if our customers choose not to buy products from us on their mobile devices or to use mobile products that do not offer access to our websites, our customer growth could be harmed and our business, financial condition, and operating results may be materially adversely affected.

***We rely significantly on information technology, or IT, and any failure, inadequacy, interruption or security lapse of that technology, or any failure by us or our service providers to adequately protect our or third-party information assets from cyber-based attacks or other incidents could have a material adverse effect on our business, financial condition, and results of operations.***

Our ability to effectively manage our business depends significantly on our IT systems. The failure of our current systems, including our main operating system, JD Edwards, or future upgrades, to operate effectively or to integrate with other systems, or a breach in security of these systems could cause reduced efficiency or result in a shutdown of our operations, and remediation of any such failure, problem or breach could have a material adverse effect on our business, financial condition, and results of operations.

We are increasingly dependent on IT, including the internet, for the storage, processing, and transmission of electronic, business-related, information assets of ours, our customers and suppliers. We leverage our internal IT infrastructures, and those of our service providers, to enable, sustain, and support our business interests. In the event that we or our service providers are unable to prevent, detect, and remediate cyber-based attacks, computer viruses, breaches of customer privacy or other security incidents in a timely manner, our operations could be disrupted or we could incur financial, legal or reputational losses arising from misappropriation, misuse, leakage, falsification or intentional or accidental release or loss of information maintained in our information systems and networks, including personal information of our employees and our customers. Furthermore, any compromise of our or our third-party partners' security could result in a violation of applicable security, privacy or data protection, consumer and other laws, regulatory or other governmental investigations, enforcement actions, and legal and financial exposure, including potential contractual liability. In addition, outside parties may attempt to fraudulently induce our employees or employees of our vendors to disclose sensitive information in order to gain access to our data. Like other companies, we have on occasion and will continue to experience, threats to our data and systems such as phishing, malware and distributed denial-of-service attacks and attacks to our e-commerce order technology, although no such attack has had a material impact on our operations. The number and complexity of these threats continue to increase over time. Although we develop and maintain systems and controls designed to prevent these events from occurring, and we have a process to identify and mitigate threats, the development, and maintenance of these systems, controls, and processes require ongoing monitoring and updating as technologies change and efforts to overcome security measures become more sophisticated. Despite our efforts, the possibility of these events occurring cannot be eliminated entirely.

Further, we house many of our systems offsite at a third-party data center in the Eastern United States. Our data center may likewise be subject to cyber-attacks or other technology-related incidents, and also break-ins, sabotage and intentional acts of vandalism that could cause disruptions in our ability to serve our customers and protect data. Some of our systems are not fully redundant, and our disaster recovery planning cannot account for all eventualities. The occurrence of a natural disaster, intentional sabotage or other anticipated problems could result in lengthy interruptions to our service. Any errors or vulnerability in our systems or damage to or failure of our systems, or a third-party data center hosting our data, could result in interruptions in our operations and could have a material adverse effect on our business, financial condition, and results of operations. Security breaches and other security incidents, including any breaches of our security measures or those of parties with whom we have commercial relationships (e.g., third-party data centers) that result in the unauthorized access of our customers' confidential, proprietary or personal data, or the belief that any of these have occurred, could damage our reputation and expose us to a risk of loss or litigation and possible liability.

***An increase in our return rates beyond historical levels could have a material adverse effect on our revenue, cash flows and reputation.***

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Our return rates may not remain within our historical levels. An increase in return rates could significantly impair our liquidity and profitability. We currently offer trial periods of up to 100 nights on our mattresses, bedroom textiles and pillows, which allow customers to return any of these products if they are not satisfied on or prior to the expiration of the 100-night period. In addition, we offer a 30-day trial policy on most other product lines. Although historical costs to us of honoring returns during offered trial periods have been within management's expectations, we have released new products in recent years that are fairly early in their product life cycles, and the return rates for such new products may not align with our expectations. If we have higher than expected return rates, our revenue could be materially adversely impacted.

### ***Our current and future products may experience quality problems from time to time that can result in warranty claims which may decrease our operating margin.***

Our mattresses and other sleep products generally offer a limited manufacturer's warranty against certain types of defects, or Limited Warranty, of 20 years or less, with our mattresses having a Limited Warranty of 10 years and our adjustable bed frames having a Limited Warranty of 20 years. Although we extensively and rigorously test new and enhanced products, there can be no assurance we will be able to detect, prevent, or fix all defects. Because certain of our products have not been in use by our customers for the full warranty period, we have limited information with which to evaluate the likelihood and magnitude of a potential warranty claim. The manufacturers of our mattresses and other sleep products are generally contractually obligated to cover warranty claims we submit to them. If, however, the actual amount of warranty claims we submit to manufacturers exceeds the amount of warranty claims the manufacturers are willing or able to cover, we may have to pay the incremental amount of such claims, which would decrease our operating margin.

### ***We may be limited in our ability to utilize, or may not be able to utilize, net operating loss carryforwards and other tax attributes to reduce our future tax liability.***

As of December 31, 2020, we had U.S. federal NOL carryforwards of approximately \$339.6 million, which may be limited annually due to certain change in ownership provisions of Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, and other limitations in the Code. Our post 2017 federal NOL carryforward of \$247.3 million does not expire. Our federal NOL carryforwards of \$92.3 million incurred prior to 2018 will begin to expire in 2035 and will completely expire in 2037. Please refer to Note 11 to our audited consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K for a further discussion of the carryforward of our NOLs and other tax attributes. As of December 31, 2020, we maintain a full valuation allowance for our deferred tax assets.

Utilization of NOLs generated in tax years beginning after December 31, 2017 is limited to a maximum of 80% of the taxable income for such year determined without regard to the NOL deduction. In addition, "ownership changes" (generally defined as greater than 50-percentage-point cumulative changes in the equity ownership of certain stockholders over a rolling three-year period) under Section 382 of the Code may further limit our ability to utilize our pre-change NOL carryforwards and other tax attributes to reduce our taxable income in periods following the ownership changes. We may experience ownership changes in the future as a result of subsequent shifts in our common stock ownership, and in general, were an ownership change to occur, our ability to utilize federal NOL carryforwards would be limited annually to an amount equal to the aggregate value of our equity at the time of the ownership change multiplied by a specified tax-exempt interest rate, subject to increase by certain built-in gains. The utilization of our state NOL carryforwards may also be limited due to state tax regulations relating to ownership changes.

### **Risks Related to our Supply Chain, Distribution and Inventory Management**

#### ***We currently rely exclusively on third-party contract manufacturers whose efforts we are unable to fully control.***

Our products are produced by third-party contract manufacturers. We face the risk that these third-party contract manufacturers may not produce and deliver our products on a timely basis, or at all. We have experienced, and could again experience, operational difficulties with our manufacturers. These difficulties include reductions in the availability of production capacity, errors in complying with product specifications and customer requirements, insufficient quality control, sharing competitively sensitive information with our competitors, failure to meet production deadlines, failure to achieve our product, and packaging quality standards, inability to access new or quality materials, shipping mistakes, failure to update us on production and shipping status, increases in costs of materials, and manufacturing or other business interruptions. The ability of our manufacturers to effectively satisfy our production requirements could also be impacted by manufacturer financial difficulty or damage to their operations caused by fire, terrorist attack, natural disaster, or other events, such as the COVID-19 pandemic. See "Risks Related to Our Business, Operations, and Growth—The COVID-19 pandemic has affected, and could continue to

adversely affect, our business, financial condition and results of operations.” The failure of any manufacturer to perform to our expectations could result in supply shortages or delays for certain products and harm our business. For example, during the year ended December 31, 2020, certain of our suppliers and logistics providers experienced supply constraints or labor shortages due to the COVID-19 pandemic, which resulted in certain disruptions to our supply chain, including increased delivery times for select products through our e-commerce platform and delayed order fulfillment for certain of our retail partners. If we experience significantly increased demand, or if we need to replace an existing manufacturer due to lack of performance, we may be unable to supplement or replace our manufacturing capacity on a timely basis or on terms that are acceptable to us, which may increase our costs, reduce our margins, and harm our ability to deliver our products on time. For certain of our products, it may take a significant amount of time to identify and qualify a manufacturer that has the capability and resources to produce our products to our specifications in sufficient volume and satisfy our service and quality control standards. Our reliance on third-party manufacturers and inability to fully control any operational difficulties with our third-party manufacturers could have a material adverse effect on our business, financial condition, and results of operations.

*We rely on third-party contract manufacturers and third-party distributors, and if we fail to timely and effectively obtain shipments of products from our manufacturers and deliver products to our retail partners and customers, our business and results of operations could be harmed.*

Our business depends on our ability to source and distribute products in a timely manner, and we rely on third-party manufacturers, distributors, and distribution centers to do so. In part because we utilize third-party distributors, we cannot control all of the factors that might affect the timely and effective procurement of our products from our third-party contract manufacturers and the delivery of our products to our retail stores, retail partners and customers, including (i) lack of day-to-day control over the activities of third-party distributors, (ii) that such distributors may not fulfill their obligations to us or otherwise meet our expectations, and (iii) that third-party distributors may terminate their arrangements with us on limited or no notice or may change the terms of these arrangements in a manner unfavorable to us for reasons outside of our control. In addition, disagreements with such distributors could require or result in costly and time-consuming litigation or arbitration. Failure to timely and effectively obtain our products may result in increased shipping costs; our future revenue and market share may not grow as anticipated; we may be unable to sell, market and distribute our products in line with our long-term growth strategy; and we could be subject to other unexpected costs which could negatively impact our results of operations or otherwise harm our business.

In addition, our third-party contract manufacturers ship a significant portion of our products to our third-party distribution centers in the United States and Canada. We import certain of our products, and thus are also vulnerable to risks associated with products manufactured abroad, including: (i) risks of damage, destruction, or confiscation of products while in transit to our distribution centers; and (ii) transportation and other delays in shipments, including as a result of heightened security screening, port congestion, and inspection processes or other port-of-entry limitations or restrictions in the United States. In order to meet demand for a product, we have chosen in the past, and may choose in the future, to arrange for additional quantities of the product, if available, to be delivered through air freight, which is significantly more expensive than standard shipping by sea and, consequently, could harm our gross margins. Failure to procure our products from our third-party contract manufacturers and deliver merchandise to our retail partners and direct-to-consumer channels in a timely, effective, and economically viable manner could reduce our sales and gross margins, damage our brand, and harm our business.

We also rely on the timely and free flow of goods through open and operational ports from our suppliers and manufacturers. Labor disputes or disruptions at ports, our common carriers, or our suppliers or manufacturers could create significant risks for our business, particularly if these disputes result in work slowdowns, lockouts, strikes, or other disruptions during periods of significant importing or manufacturing, potentially resulting in delayed or cancelled orders by customers, unanticipated inventory accumulation or shortages, and harm to our business, results of operations, and financial condition.

In addition, we rely upon independent land-based and air freight carriers for product shipments from our distribution centers to our retail stores, retail partners and customers who purchase through our direct-to-consumer channel. We may not be able to obtain sufficient freight capacity on a timely basis or at favorable shipping rates and, therefore, may not be able to receive products from suppliers or deliver products to retail partners or customers in a timely and cost-effective manner.

Accordingly, we are subject to a variety of risks, including labor disputes, union organizing activity, inclement weather, and increased transportation costs, associated with our third-party contract manufacturers' and carriers' ability to provide products and services to meet our requirements. In addition, if the cost of fuel rises, the cost to deliver products may rise, and could harm our profitability.

**If we fail to manage our supply chain commensurate with demand and successfully and timely deliver merchandise to our retail partners and customers, our results of operations may be adversely affected.**

Our business depends on our ability to manage our supply chain vendors in order to produce sufficient quantities of products that our customers wish to purchase in a timely manner. We must manage our supply chain and inventory levels, including predicting the appropriate levels and type of product to order from our third-party contract manufacturers, such that we can adequately meet consumer demand and expected delivery times. Our current initiatives to streamline and optimize our demand-planning and inventory management may not be successful, and implementing such initiatives may complicate our efforts to manage our supply chain. From time to time, we have experienced periods in which some of our third-party contract manufacturers were not able to meet customer demand levels for certain products, resulting in significant delivery delays for our products, and, in some instances, the loss of customer sales when orders could not be completed in a timely manner. If we are unable to accurately predict and track demand, particularly as we add new product assortments and new merchandise categories into our business, we may not be able to procure product from our third-party contract manufacturers and deliver merchandise to our retail partnership and direct-to-consumer channels in a timely, effective, and economically viable manner, which could reduce our sales and gross margins, damage our brand, and harm our business.

**Our third-party manufacturers may breach our manufacturing agreements, most of which are not exclusive such that these manufacturers could produce similar products for our competitors.**

We have contracts with a significant amount of our manufacturers and utilize purchase orders with our manufacturers. Manufacturers with whom we have contracts may breach these agreements, and we may not be able to enforce our rights under these agreements or may incur significant costs attempting to do so. As a result, we cannot predict with certainty our ability to obtain products in adequate quantities, of required quality and at acceptable prices from our suppliers and manufacturers in the future. Any one of these risks could harm our ability to deliver our products on time, or at all, damage our reputation and our relationships with our retail partners and customers, and increase our product costs thereby reducing our margins.

In addition, most of our arrangements with our manufacturers are not exclusive. As a result, certain of our manufacturers could produce similar products for our competitors. Further, while certain of our contracts include certain exclusivity arrangements, those manufacturers could choose to breach our agreements and work with our competitors, and we may not become aware of such breaches or have remedies against the manufacturer for such breaches. Our competitors could enter into restrictive or exclusive arrangements with our manufacturers that could impair or eliminate our access to manufacturing capacity. Our manufacturers could also be acquired by our competitors, and may become our direct competitors, thus limiting or eliminating our access to manufacturing capacity.

**Our third-party manufacturers may not be able to obtain new or quality raw materials, which could result in delays and impair our ability to fulfill our orders in a timely manner.**

The capacity of our manufacturers to produce our products is also dependent upon the availability of raw materials. Our manufacturers may not be able to obtain sufficient supply of raw materials, which could result in delays in deliveries of our products by our manufacturers or increased costs. Any shortage of raw materials or inability of a manufacturer to produce or ship our products in a timely manner, or at all, could impair our ability to ship orders of our products in a cost-efficient, timely manner and could cause us to miss the delivery requirements of our customers. As a result, we could experience cancellations of orders, refusals to accept deliveries, or reductions in our prices and margins, any of which could harm our financial performance, reputation, and results of operations.

**We are subject to fluctuations in the cost and availability of raw materials and fuel, which could increase our costs or disrupt our production.**

The key raw materials that are used for production of our mattress products are polyurethane foam, polyethylene foam, cotton, foundation constructions, fabrics and roll goods that consist of fiber, ticking and non-wovens. The key raw materials that are used for production of our non-mattress products, including our bedroom textiles, bedroom furnishings, sleep accessories and sleep technology products, include cotton, linen, steel, wood, plastic, LED lighting materials, fabrics and roll goods that consist of fiber, ticking and non-woven materials. The prices of the raw materials we use for our products vary based on market demand, supply dynamics and constraints in energy costs. Also, the cost of fuel to transport our products to market is subject to market conditions affecting supply and demand. Given the significance of the cost of these materials to our products, volatility in the prices of the underlying commodities and raw materials can significantly affect profitability. To the extent we are unable to absorb higher costs that are passed down to us from our manufacturers, or pass any such higher costs to our customers, it could have a material adverse effect on our business, financial condition and results of operations. In addition, if

these materials are not available on a timely basis or at all, our manufacturers may not be able to produce our products, and our sales may decline.

***Our third-party manufacturers are subject to regulatory requirements, and it is difficult to monitor and control their compliance with such laws, rules and regulations.***

Third-party manufacturers of our products and components must comply with applicable regulatory requirements, which may require significant resources and subject our manufacturers to potential regulatory inspections, stoppages, or enforcement actions. If our manufacturers do not maintain regulatory approval for, or compliance of, their manufacturing operations, it could have a material adverse effect on our business, financial condition, and results of operations.

Additionally, we currently have third-party manufacturing partners located in various locations, including Canada, China, India, Mexico, Portugal, Thailand, Vietnam and the United States, among others. Our ability to identify qualified manufacturers is a significant challenge, especially with respect to goods sourced outside of North America. Global sourcing and foreign trade involve numerous factors and uncertainties beyond our control including increased shipping costs, increased import duties, more restrictive quotas, loss of most favored nation trading status, currency fluctuations, work stoppages and enforcement of foreign labor laws, transportation delays, port of entry issues, economic uncertainties such as inflation, foreign government regulations, political unrest, natural disasters, war, terrorism, trade restrictions, political instability, the financial stability of vendors, quality issues, and tariffs. Moreover, negative press or reports about internationally manufactured products may sway public opinion, and thus consumer preference, away from our products.

While our supplier guidelines promote ethical business practices such as environmental responsibility, fair wage practices, and compliance with child labor laws, among others, and we, along with a third party that we retain for this purpose, monitor compliance with those guidelines, we do not control our third-party manufacturers or their business practices. Accordingly, we cannot guarantee their compliance with our ethical business practice guidelines. A lack of demonstrated compliance with our ethical business practice guidelines could lead us to seek alternative suppliers, which could increase our costs and result in delayed delivery of our products, product shortages or other disruptions of our operations. In addition, a lack of compliance could lead to negative publicity which could damage our brand. As such, our reliance on third-party manufacturers could have a material adverse effect on our business, financial condition and results of operations.

***Our business is subject to the risk of manufacturer and supplier concentrations.***

We depend on a limited number of third-party contract manufacturers for the sourcing of our products. For our mattresses, our three largest manufacturers comprised approximately 70% of our production volume during the year ended December 31, 2020. Further, consolidation among foam suppliers, which is a key component for our mattresses, and mattress fabricators has resulted in a decrease in the number of possible domestic suppliers from which we can source foam and mattress fabrication, as well as an increase in the threat of increased prices and less favorable commercial terms. Our business and operations would be negatively affected if any of our key manufacturers or suppliers were to experience significant disruption affecting the price, quality, availability, or timely delivery of products as a result of these concentrations in our manufacturing and supply chains. The partial or complete loss of any of these manufacturers or suppliers, or a significant adverse change in our relationship with any of these manufacturers or suppliers, could result in lost sales, added costs, and distribution delays that could harm our business and customer relationships. Further, we may incur significant management time and attention to replace and validate new manufacturers and suppliers, which could further harm our business, financial condition, and results of operations.

***Our business could be harmed if we fail to execute our internal plans to transition our supply chain and certain other business processes to a global scale.***

We are in the process of building and re-engineering certain of our supply chain management processes, as well as certain other business processes, to support our expanding scale. This expansion to a global scale requires significant investment of capital and human resources, the re-engineering of many business processes, and the attention of many managers and other employees who would otherwise be focused on other aspects of our business. If our globalization efforts fail to produce planned efficiencies, or the transition is not managed effectively, we may experience excess inventories, inventory shortage, late deliveries, lost sales, or increased costs. We also are pursuing a strategy to vertically integrate. If we are not successful in pursuing this strategy, or if there is any business disruption arising from our globalization efforts, or our failure to effectively execute our internal plans for globalization or vertical integration, our results of operations and our financial condition could be harmed.

## Risks Related to our Relationships with Third Parties

*We depend on our retail partners to display and present our products to customers, and our failure to maintain and further develop our relationships with our retail partners could harm our business.*

A portion of our sales are through our retail partners. Our relationships with these retail partners are important to the authenticity of our brand and the marketing programs we continue to deploy. Our failure to maintain these relationships with our partners or financial difficulties experienced by these partners could harm our business. We have partnerships with Amazon, Costco, Hudson's Bay Company, and Target, among others. If we lose a key partner or a key partner reduces its purchases of our existing or new products or its number of stores or operations or promotes products of our competitors over ours, our sales would be harmed. Because we are a premium brand, our sales depend, in part, on our partners marketing and effectively displaying our products, including providing attractive space and point of purchase displays in their physical retail stores or, with respect to their e-commerce platform, providing attractive digital space to display our products. Our sales also depend on our partners training their sales personnel to sell our products. We may not have control over how they market our product, including the amount of money they spend advertising our products, whether they market our products consistent with our brand philosophy and/or whether they display our products in a manner that appeals to consumers. If our partners reduce or terminate those activities, we may experience reduced sales of our products, resulting in lower gross margins, which would harm our results of operations.

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

We use third-party social media platforms as marketing tools, among other things. For example, we maintain Instagram, Snapchat, Facebook, Twitter and Pinterest accounts, as well as our Casper Sleep Channel on YouTube and Spotify. We also maintain relationships with thousands of social media influencers and engage in sponsorship initiatives. As existing e-commerce and social media platforms continue to rapidly evolve and new platforms develop, we must continue to maintain a presence on these platforms and establish presences on new or emerging popular social media platforms. If we are unable to cost-effectively use social media platforms as marketing tools or if the social media platforms we use do not evolve quickly enough for us to fully optimize such platforms, our ability to acquire new consumers and our financial condition may suffer. Furthermore, as laws and regulations rapidly evolve to govern the use of these platforms and devices, the failure by us, our employees, our network of social media influencers, our sponsors or third parties acting at our direction to abide by applicable laws and regulations in the use of these platforms and devices or otherwise could subject us to regulatory investigations, class action lawsuits, liability, fines or other penalties and have a material adverse effect on our business, financial condition and operating results.

In addition, an increase in the use of social media for marketing may cause an increase in the burden on us to monitor compliance of such materials, and increase the risk that such materials could contain problematic product or marketing claims in violation of applicable regulations. For example, in some cases, the Federal Trade Commission, or the FTC, has sought enforcement action where an endorsement has failed to clearly and conspicuously disclose a material relationship between an influencer and an advertiser. While we ask influencers to comply with the FTC regulations and our guidelines, we do not regularly monitor what our influencers post, and if we were held responsible for the content of their posts, we could be forced to alter our practices, which could have material adverse effect on our business, financial condition, and results of operations.

*Our business relies heavily on email, and any restrictions on the sending of emails or an inability to timely deliver such communications could materially adversely affect our net revenue and business.*

Our business is highly dependent upon email for promoting our website and products. Periodic promotions offered through emails sent by us generate a portion of our net revenue. We provide periodic emails to customers and other visitors informing them of what is available for purchase on our website that day, and we believe these messages are an important part of our customer experience and help generate a portion of our net revenue. If we are unable to successfully deliver emails or other messages to our subscribers, or if subscribers decline to open our emails or other messages, our net revenue and profitability would be materially adversely affected. Changes in how webmail applications organize and prioritize email may reduce the number of subscribers opening our emails. For example, Google's Gmail service has a feature that organizes incoming emails into categories (for example, primary, social and promotions). Such categorization or similar inbox organizational features may result in our emails being delivered in a less prominent location in a subscriber's inbox or viewed as "spam" by our subscribers and may reduce the likelihood of that subscriber opening our emails. Actions by third parties to block, impose restrictions on or charge for the delivery of emails or other messages could also adversely impact our business. From time to time, internet

service providers or other third parties may block bulk email transmissions or otherwise experience technical difficulties that result in our inability to successfully deliver emails or other messages to third parties. Changes in the laws or regulations that limit our ability to send such communications or impose additional requirements upon us in connection with sending such communications. Our use of email and other messaging services to send communications about our sites or other matters may also result in legal claims against us, which may cause us increased expenses, and if successful might result in fines and orders with costly reporting and compliance obligations or might limit or prohibit our ability to send emails or other messages. We also rely on social networking messaging services to send communications and to encourage customers to send communications. Changes to the terms of these social networking services to limit promotional communications, any restrictions that would limit our ability or our customers' ability to send communications through their services, disruptions or downtime experienced by these social networking services or decline in the use of or engagement with social networking services by customers and potential customers could materially adversely affect our business, financial condition, and operating results.

#### Risks Related to Legal and Regulatory Matters

***Some of our products are manufactured by third parties outside of the United States, and our business may be harmed by legal, regulatory, economic, and political risks associated with international trade and those markets.***

Some of our products are manufactured in various locations, including among others, Canada, China, India, Mexico, Portugal, Thailand, Vietnam and the United States. Our reliance on suppliers and manufacturers in foreign markets creates risks inherent in doing business in foreign jurisdictions, including: (i) the burdens of complying with a variety of foreign laws and regulations, including trade and labor restrictions and laws relating to the importation and taxation of goods; (ii) weaker protection for intellectual property and other legal rights than in the United States, and practical difficulties in enforcing intellectual property and other rights outside of the United States; (iii) compliance with U.S. and foreign laws relating to foreign operations, including the U.S. Foreign Corrupt Practices Act, or FCPA, the UK Bribery Act 2010, or the Bribery Act, regulations of the U.S. Office of Foreign Assets Controls, or OFAC, and U.S. anti-money laundering regulations, collectively which, among other things, prohibit U.S. companies from making improper payments to foreign officials for the purpose of obtaining or retaining business, operating in certain countries, as well as engaging in other corrupt and illegal practices; (iv) economic and political instability and acts of terrorism in the countries where our suppliers are located; (v) transportation interruptions or increases in transportation costs; (vi) the imposition of tariffs on components and products that we import into the United States or other markets; and (vii) foreign currency fluctuations. We cannot assure you that our directors, officers, employees, representatives, manufacturers, or suppliers have not engaged and will not engage in illegal or impermissible conduct for which we may be held responsible, nor can we assure you that our manufacturers, suppliers, or other business partners have not engaged and will not engage in conduct that could materially harm their ability to perform their contractual obligations to us or even result in our being held liable for such conduct. Violations of the FCPA, the Bribery Act, OFAC restrictions, or other export control, anti-corruption, anti-money laundering, and anti-terrorism laws or regulations may result in severe criminal or civil sanctions, and we may be subject to other related liabilities, which could harm our business, financial condition, cash flows, and results of operations.

***If tariffs or other restrictions are placed on foreign imports or any related counter-measures are taken by other countries, our business and results of operations could be harmed.***

The Trump Administration put into place certain tariffs and other trade restrictions that raised the cost of our products and negatively impacted our business. In addition, China, the European Union, Canada, and Mexico, among others, have either threatened to or put into place retaliatory tariffs or other trade restrictions of their own. If these tariffs or other restrictions remain in place or new tariffs are placed on foreign imports under the new presidential administration, including on any of our products manufactured overseas for sale in the United States, or any related counter-measures are taken by other countries, our business and results of operations may be materially harmed.

These tariffs, and other potential trade restrictions such as anti-dumping duties, have the potential to significantly raise the cost of our products. In such a case, there can be no assurance that we will be able to shift manufacturing and supply agreements to non-impacted countries, including the United States, to reduce the effects of the tariffs. As a result, we may suffer margin erosion or be required to raise our prices, which may result in the loss of customers, negatively impact our results of operations, or otherwise harm our business. In addition, the imposition of tariffs or other trade restrictions on products that we export to international markets could make such products more expensive compared to those of our competitors if we pass related additional costs on to our customers, which may also result in the loss of customers, negatively impact our results of operations, or otherwise harm our business.

***Our business is subject to a wide variety of U.S. and foreign government laws and regulations. These laws and regulations, as well as any new or changed laws or regulations, could disrupt our operations or increase our compliance costs. Failure to comply with such laws and regulations could have a further adverse impact on our business.***

We are subject to a wide variety of laws and regulations relating to the markets in which we operate or to various aspects of our business. Laws and regulations at the foreign, federal, state and local levels frequently change, and we cannot always reasonably predict the impact from, or the ultimate cost of compliance with, future regulatory or administrative changes. Changes in law, the imposition of new or additional regulations or the enactment of any new or more stringent legislation that impacts employment and labor, trade, advertising and marketing practices, pricing, consumer credit offerings, product testing and safety, transportation and logistics, health care, tax, accounting, privacy and data security, health and safety, financial crimes and sanctions or environmental issues, among others, could require us to change the way we do business and could have a material adverse impact on our sales, profitability, cash flows and financial condition. Moreover, our production, marketing, advertising and other business practices could become the subject of proceedings before regulatory authorities or the subject of claims by other parties that could require us to alter or end those practices or adopt new practices that are not as effective or are more expensive.

In addition, our operations are subject to federal, state, provincial and local laws and regulations relating to pollution, environmental protection, occupational health and safety and labor and employee relations. New or different laws or regulations could increase direct compliance costs for us or may cause our vendors to raise the prices they charge us because of increased compliance costs. Further, the adoption of a multi-layered regulatory approach to any one of the state or federal laws or regulations to which we are currently subject, particularly where the layers are in conflict, could require alteration of our manufacturing processes or operational parameters which may adversely impact our business. We may not be in complete compliance with all such requirements at all times and, even when we believe that we are in complete compliance, a regulatory agency may determine that we are not. Our operations could also be impacted by a number of pending legislative and regulatory proposals in the United States and other countries to address global climate change. These actions could increase costs associated with our operations, including costs for raw materials, pollution control equipment and transportation. Because it is uncertain what laws will be enacted, we cannot predict the potential impact of such laws on our business, financial condition, and results of operations.

Our operations and manufacturers are subject to foreign exchange, tariff, environmental, tax and regulatory compliance risks, among others, which could have a material adverse effect on our business, financial condition, and results of operations. The imposition of tariffs in the jurisdictions in which our operations and manufacturers are located pursuant to trade laws and regulations can have a material adverse impact on our business by placing tariffs and tariff-rate quotas on the import or export of raw materials our facilities require for our production and raising the prices of such raw materials. Our Canadian operations have been subject to tariffs in the past, and continue to be subject to fluctuations in currency exchange rates, anti-dumping duties, and the potential imposition of trade restrictions and other tax increases, any of which may adversely affect our business, financial condition, and results of operations.

***Government regulation of the internet and e-commerce is evolving, and unfavorable changes or failure by us to comply with these regulations could substantially harm our business and results of operations.***

We are subject to general business regulations and laws as well as regulations and laws specifically governing the internet and e-commerce. Existing and future regulations and laws could impede the growth of the internet, e-commerce or mobile commerce. These regulations and laws may involve taxes, tariffs, privacy and data security, anti-spam, content protection, electronic contracts and communications, consumer protection and internet neutrality. It is not clear how existing laws governing issues such as property ownership, sales and other taxes, and consumer privacy apply to the internet as the vast majority of these laws were adopted prior to the advent of the internet and do not contemplate or address the unique issues raised by the internet or e-commerce. It is possible that general business regulations and laws, or those specifically governing the internet or e-commerce, may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. We cannot be sure that our practices have complied, comply or will comply fully with all such laws and regulations. Any failure, or perceived failure, by us to comply with any of these laws or regulations could result in damage to our reputation, a loss in business and proceedings, or actions against us by governmental entities or others. Any such proceeding or action could hurt our reputation, force us to spend significant amounts in defense of these proceedings, distract our management, increase our costs of doing business, decrease the use of our sites by customers and suppliers and may result in the imposition of monetary liability. We may also be contractually liable to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any such laws or regulations. In addition, it is

possible that governments of one or more countries may seek to censor content available on our website or may even attempt to completely block access to our website. Adverse legal or regulatory developments could substantially harm our business. In particular, in the event that we are restricted, in whole or in part, from operating in one or more countries, our ability to retain or increase our customer base may be adversely affected, and we may not be able to maintain or grow our net revenue and expand our business as anticipated.

***Regulatory requirements related to flammability standards for mattresses may increase our product costs and increase the risk of disruption to our business.***

We are subject to a number of regulatory requirements related to flammability standards for mattress in various jurisdictions. For example, in the U.S., the federal Consumer Product Safety Commission sets flammability standards and related regulations for mattresses and mattress and foundation sets. These regulations require manufacturers to implement quality assurance programs and encourage manufacturers to conduct random testing of products. These regulations also require maintenance and retention of compliance documentation. We rely on third parties to track these requirements and retain our compliance documentation and supply chain compliance, and we are unable to control their efforts. If such third parties fail to retain compliance documentation or maintain such compliance programs, such failure could impact our business, reputation, sales, profitability, cash flows and financial condition. Moreover, these quality assurance and documentation requirements are costly to implement and maintain. If any product testing, other evidence, or regulatory inspections yield results indicating that any of our products may not meet the flammability standards, we may be required to temporarily cease production and distribution and/or to recall products from the field, and we may be subject to fines or penalties, any of which outcomes could harm our business, reputation, sales, profitability, cash flows, and financial condition.

***We are subject to various advertising and marketing regulations that may result in actions against us.***

Advertising and marketing of our products are subject to regulation across various jurisdictions. For example, in the United States we are subject to regulation by the FTC under the Federal Trade Commission Act, or FTC Act. Among other things, the FTC Act prohibits unfair methods of competition and unfair false or deceptive acts or practices in or affecting commerce. The FTC Act also makes it illegal to disseminate or cause to be disseminated any false advertisement. The FTC routinely reviews websites to identify questionable advertising claims and practices, and competitors sometimes inform the FTC when they believe other competitors are violating the FTC Act and consumers also notify the FTC of what they believe may be wrongful advertising. The FTC may initiate a non-public investigation that focuses on our advertising claims, which usually involves non-public pre-lawsuit extensive formal discovery. Such an investigation may be very expensive to defend, be lengthy, and result in a publicly disclosed settlement agreement. If no settlement can be reached, the FTC may start an administrative proceeding or a federal court lawsuit against us or our principal officers. The FTC often seeks to recover from the defendants any or all of the following: (i) consumer redress in the form of monetary relief or disgorgement of profits; (ii) significant reporting requirements for several years; and (iii) injunctive relief. In addition, most, if not all, states have statutes prohibiting deceptive and unfair acts and practices, and the requirements under these state statutes are similar to those of the FTC Act.

***Failure to comply with federal, state and foreign laws and regulations relating to privacy, data protection and consumer protection, or the expansion of current or the enactment of new laws or regulations relating to privacy, data protection and consumer protection, could adversely affect our business and our financial condition.***

A variety of federal, state and foreign laws and regulations govern the collection, use, retention, sharing and security of consumer data. Laws and regulations relating to privacy, data protection and consumer protection are evolving and subject to potentially differing interpretations. These requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another or may conflict with other rules or our practices. As a result, our practices may not have complied or may not comply in the future with all such laws, regulations, requirements and obligations. Any failure, or perceived failure, by us to comply with any federal, state or foreign privacy or consumer protection-related laws, regulations, industry self-regulatory principles, industry standards or codes of conduct, regulatory guidance, orders to which we may be subject or other legal obligations relating to privacy or consumer protection could adversely affect our reputation, brand and business, and may result in claims, investigations, proceedings or actions against us by governmental entities or others or other liabilities or require us to change our operations and/or cease using certain data sets.

We collect, store, process, and use personal information and other customer data, and we rely on third parties that are not directly under our control to manage certain of these operations and to collect, store, process and use payment information. Our customers' personal information may include names, addresses, phone numbers, email addresses, payment card data, and payment account information, as well as other information. Due to the volume and sensitivity of the personal information and

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data we and these third parties manage, the security features of our information systems are critical. If our security measures, some of which are managed by third parties, are breached or fail, unauthorized persons may be able to access sensitive customer data, including payment card data. If we or our independent service providers or business partners experience a breach of systems that collect, store or process our customers' sensitive data, our brand could be harmed, sales of our products could decrease, and we could be exposed to claims, losses, administrative fines, litigation or regulatory and governmental investigations and proceedings. Any such claim, investigation, proceeding or action could hurt our reputation, brand and business, force us to incur significant expenses in defense of such proceedings, distract our management, increase our costs of doing business, result in a loss of customers and suppliers and may result in the imposition of monetary penalties and administrative fines. Depending on the nature of the information compromised, we may also have obligations to notify users, law enforcement, or payment companies about the incident and may need to provide some form of remedy, such as refunds, for the individuals affected by the incident.

Federal, state and foreign governmental authorities continue to evaluate the privacy implications inherent in the use of third-party "cookies" and other methods of online tracking for behavioral advertising and other purposes. U.S. and foreign governments have enacted, have considered or are considering legislation or regulations that could significantly restrict the ability of companies and individuals to engage in these activities, such as by regulating the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools or the use of data gathered with such tools. Additionally, some providers of consumer devices and web browsers have implemented, or announced plans to implement, means to make it easier for internet users to prevent the placement of cookies or to block other tracking technologies, which could if widely adopted result in the use of third-party cookies and other methods of online tracking becoming significantly less effective. The regulation of the use of these cookies and other current online tracking and advertising practices or a loss in our ability to make effective use of services that employ such technologies could increase our costs of operations and limit our ability to acquire new customers on cost-effective terms and consequently, materially adversely affect our business, financial condition, and operating results.

Privacy laws, rules, and regulations are constantly evolving in the United States and abroad and may be inconsistent from one jurisdiction to another. Cultural norms around privacy or data protection also vary country to country and can drive a need to localize or customize our product in order to address varied privacy or data protection concerns, which can add cost and time to our development. We expect that new industry standards, laws and regulations will continue to be proposed regarding privacy, data protection and information security in many jurisdictions, including the California Consumer Privacy Act, which went into effect on January 1, 2020. We cannot yet determine the impact such future laws, regulations and standards may have on our business. Complying with these evolving obligations is costly. For instance, expanding definitions and interpretations of what constitutes "personal data" (or the equivalent) within the United States and elsewhere may increase our compliance costs. Any failure to comply could give rise to unwanted media attention and other negative publicity, damage our customer and consumer relationships and reputation, and result in lost sales, claims, administrative fines, lawsuits or regulatory and governmental investigations and proceedings and may harm our business and results of operations.

Outside of the United States, there are many countries with data protection laws, and new countries are adopting data protection legislation with increasing frequency. Many of these laws may require consent from customers for the use of data for various purposes, including marketing, which may reduce our ability to market our products. There is no harmonized approach to these laws and regulations globally. Consequently, we increase our risk of non-compliance with applicable foreign data protection laws and regulations if we expand internationally. We may need to change and limit the way we use personal information in operating our business and may have difficulty maintaining a single operating model that is compliant. Compliance with such laws and regulations will result in additional costs and may necessitate changes to our business practices and divergent operating models, limit the effectiveness of our marketing activities, adversely affect our business and financial condition, and subject us to additional liabilities.

In addition, various federal, state and foreign legislative and regulatory bodies, or self-regulatory organizations, may expand current laws or regulations, enact new laws or regulations or issue revised rules or guidance regarding privacy, data protection and consumer protection. Further regulation and interpretation of existing regulation of cookies and similar technologies may lead to broader restrictions on our marketing and personalization activities and may negatively impact our efforts to understand users' internet usage, as well as the effectiveness of our marketing and our business generally. Such regulations may have a negative effect on businesses, including ours, that collect and use online usage information for consumer acquisition and marketing, it may increase the cost of operating a business that collects or uses such information and undertakes online marketing, it may also increase regulatory scrutiny and increase potential civil liability under data protection or consumer protection laws. Any such changes may force us to incur substantial costs or require us to change our business practices. This could compromise our ability to pursue our growth strategy effectively and may adversely affect our ability to acquire customers or otherwise harm our business, financial condition, and operating results.

***We are subject to risks related to online payment methods.***

We accept payments using a variety of methods, including credit card and debit card. As we offer new payment options to customers, we may be subject to additional regulations, compliance requirements and fraud. For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time and raise our operating costs and lower profitability. We are also subject to payment card association operating rules and certification requirements, including the Payment Card Industry Data Security Standard and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. As our business changes, we may also be subject to different rules under existing standards, which may require new assessments that involve costs above what we currently pay for compliance. If we fail to comply with the rules or requirements of any provider of a payment method we accept, if the volume of fraud in our transactions limits or terminates our rights to use payment methods we currently accept, or if a data breach occurs relating to our payment systems, we may, among other things, be subject to fines or higher transaction fees and may lose, or face restrictions placed upon, our ability to accept credit card and debit card payments from customers or facilitate other types of online payments. If any of these events were to occur, our business, financial condition, and operating results could be materially adversely affected. We occasionally receive orders placed with fraudulent credit card data. We may suffer losses as a result of orders placed with fraudulent credit card data even if the associated financial institution approved payment of the orders. Under current credit card practices, we may be liable for fraudulent credit card transactions. If we are unable to detect or control credit card fraud, our liability for these transactions could harm our business, financial condition, and results of operations.

***We may face exposure to product liability claims and recalls, which could reduce our liquidity and profitability and reduce consumer confidence in our products and have a material adverse effect on our business, financial condition, and results of operations.***

We face an inherent business risk of exposure to product liability claims if the use of any of our products results in personal injury or property damage. In the event that any of our products prove to be defective or if they are determined not to meet state or federal legal requirements or the legal requirements of other jurisdictions in which we operate, particularly in Canada, we may be required to recall or redesign those products, which could be costly and impact our profitability. Further, because we do not manufacture our products, we are partially dependent on our manufacturers to maintain our high standards of quality. The insurance we maintain against product liability claims may not continue to be available on terms acceptable to us and such coverage may not be adequate to cover the types of liabilities actually incurred. A successful claim brought against us, if not fully covered by available insurance coverage or any claim or product recall that results in significant adverse publicity against us and damage our reputation, could result in customers purchasing fewer of our products and could have a material adverse effect on our business, financial condition, and results of operations.

***We are currently, and may in the future, become involved in legal or regulatory proceedings and/or audits, including intellectual property rights claims, which, if resolved adversely, could harm our business, financial condition, and results of operations.***

Our business requires compliance with many laws and regulations, including intellectual property, securities, labor and employment, sales and other taxes, customs, and consumer protection laws, rules, and ordinances that regulate retailers generally and/or govern the production, importation, promotion, and sale of merchandise, and the operation of stores and warehouse facilities. Failure to comply with these laws and regulations could subject us to lawsuits and other proceedings. The costs of supporting litigation and dispute resolution proceedings are considerable, and there can be no assurances that a favorable outcome will be obtained. We may need to settle litigation and disputes on terms that are unfavorable to us, or we may be subject to an unfavorable judgment that may not be reversible upon appeal. The terms of any settlement or judgment may require us to cease some or all of our operations or pay substantial amounts to the other party. Even if we were to prevail in such a litigation or dispute, it could be costly and time consuming and divert the attention of our management and key personnel from our business operations. During the course of any litigation or dispute, we may make announcements regarding the results of hearings and motions and other interim developments. If securities analysts and investors regard these announcements as negative, the market price of our common stock may decline. We may become involved in a number of legal proceedings and audits, including government and agency investigations, and consumer, employment, tort, securities, and other litigation. For example, several putative class actions have been filed by certain of our shareholders against us, our directors, certain of our officers, and certain of the underwriters of our initial public offering alleging certain violations of the federal securities laws in connection with our initial public offering. While we believe these lawsuits are

without merit and intend to vigorously defend against them, the outcome of some of these legal proceedings, audits, and other contingencies could require us to take, or refrain from taking, actions that could harm our operations or require us to pay substantial amounts of money, harming our financial condition, and results of operations.

From time to time, we are subject to claims, complaints or litigation based on allegations of infringement, misappropriation or other violations of intellectual property or similar rights. As we face increasing competition and gain an increasingly high profile, the possibility of intellectual property claims and other assertions against us grows. With respect to any intellectual property rights claim, we may have to seek a license to continue to sell products found to be in violation of third-party rights, which may not be available on reasonable terms and may significantly increase our operating expenses. A license to continue selling certain products may not be available to us at all, and we may be required to develop alternative non-infringing technology or discontinue product lines. The development of alternative, non-infringing technology could require significant effort and expense. Additionally, defending against these lawsuits and proceedings may be necessary, which could result in substantial costs and diversion of management's attention and resources, harming our business, financial condition, and results of operations.

As a result, any pending or future legal or regulatory proceedings and/or audits could harm our business, financial condition, and results of operations.

#### **Risks Related to Employee Matters and Organizational Structure**

*We may not be able to attract and retain qualified key personnel. If we lose the services of these individuals or are unable to attract new talent, it could impair our ability to execute our business strategy and have a material adverse effect on our business, results of operations and financial condition.*

Our success depends, in significant part, on the continued services of our executive leadership team and on our ability to attract, motivate, develop and retain a sufficient number of qualified key employees, including management, manufacturing and quality assurance, engineering, design, finance, marketing, sales and support personnel. Our executive leadership team has extensive experience in the consumer products industry, and we believe that the depth of our executive leadership team is instrumental to our continued success. The loss of any one or more members of our executive leadership team, for any reason, including resignation or retirement, could impair our ability to execute our business strategy and have a material adverse impact on our business, financial condition, and results of operations.

Competition for qualified key personnel can be strong, and we can provide no assurance that we will be successful in attracting or retaining such personnel now or in the future. Our inability to recruit, develop and retain qualified employees may result in high employee turnover and may force us to pay significantly higher wages, which may harm our profitability. Further, we do not carry key man insurance for any of our management executives, and the loss of any key employee or our inability to recruit, develop and retain these individuals as needed, could have a material adverse effect on our business, results of operations, and financial condition.

*Increases in labor costs related to changes in employment laws and regulations could adversely impact our business.*

We are subject to a wide range of employment laws and regulations imposed by federal, state, provincial and local authorities in the countries in which we operate, especially with regard to our growing retail store operations. Our retail store operations are subject to federal, state, provincial and local laws governing such matters as minimum wages, working conditions, work scheduling, healthcare reform, paid time off, overtime pay and workers' compensation. Any legislative or regulatory changes that impact our relationship with our workforce, such as changes to minimum wage requirements or health insurance or other employee benefits mandates, could increase our expenses and adversely affect our operations. While it is our policy and practice to comply with legal and regulatory requirements and our procedures and internal controls are designed to promote such compliance, we cannot assure that all of our operations will comply with all such legal and regulatory requirements. Further, laws and regulations change over time and we may be required to incur significant expenses and/or to modify our operations in order to ensure compliance. Complying with new legislation or regulations could be time consuming and expensive, and if we are unable to offset increased labor costs related to our growing retail store operations by increased sales or improved gross margins, then this could harm our profitability or financial condition. Moreover, if we are found to be in violation of any laws or regulations, we could become subject to fines, penalties, damages or other sanctions as well as potential adverse publicity or litigation exposure. This could adversely impact our business, reputation, sales, profitability, cash flows or financial condition.

## Risks Related to our Indebtedness

*We have certain indebtedness and this level of indebtedness could have a material adverse effect on our ability to generate sufficient cash to fulfill our obligations under such indebtedness, to react to changes in our business and to incur additional indebtedness to fund future needs.*

As of December 31, 2020, we had \$16.0 million outstanding under the Revolving Credit Facility (as defined herein), \$50.0 million outstanding under the Amended Subordinated Facility (as defined herein), and \$7.8 million of letters of credit issued pursuant to the Revolving Credit Facility. We had an additional \$2.9 million in letters of credit issued pursuant to the Prior Credit Facility (as defined herein) outstanding as of December 31, 2020. Our net interest expense (excluding interest expense attributable to taxes and interest income) was \$8.3 million for the year ended December 31, 2020.

Our certain indebtedness, combined with our other financial obligations and contractual commitments, could have important consequences for our business. For example, it could:

- make it more difficult for us to satisfy our obligations with respect to our indebtedness, and any failure to comply with the obligations under any of our debt instruments, including restrictive covenants, could result in an event of default under the agreements governing such indebtedness;
- require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing funds available for working capital, capital expenditures, acquisitions, business development and other purposes;
- increase our vulnerability to adverse general economic and industry conditions, which could place us at a competitive disadvantage compared to our competitors, many of which have relatively less indebtedness;
- limit our flexibility in planning for, or reacting to, changes in our business and the industries in which we operate;
- limit our ability to borrow additional funds, or to dispose of assets to raise funds, if needed, for working capital, capital expenditures, acquisitions and other corporate purposes; and
- limit our ability to redeem, repurchase, defease, acquire or retire for value any subordinated indebtedness we may incur.

If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay investments and capital expenditures, or to sell assets, seek additional capital or restructure or refinance our indebtedness. Our ability to restructure or refinance our debt will depend on the condition of the capital markets and our financial condition at such time. Any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations. The terms of existing or future debt instruments may restrict us from adopting some of these alternatives. Any failure to make payments of interest and principal on our outstanding indebtedness on a timely basis would result in a default under our debt instruments and would allow the lenders under our Revolving Credit Facility and Amended Subordinated Facility to terminate their commitments to lend additional money or foreclose against the assets, if any, securing their borrowings, and we could be forced into bankruptcy or liquidation. In addition, any failure to make payments on our outstanding indebtedness would likely result in a reduction of our credit rating, which could harm our ability to incur additional indebtedness. In the absence of such results of operations and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. Our Revolving Credit Facility and Amended Subordinated Facility restrict our ability to dispose of assets and use the proceeds from the disposition. We may not be able to consummate any such dispositions or to obtain the proceeds that we could realize from them and these proceeds may not be adequate to meet any debt service obligations then due. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations.

In addition, indebtedness under our Amended Subordinated Facility and Revolving Credit Facility bears interest at variable rates. Because we have variable rate debt, fluctuations in interest rates may affect our business, results of operations, financial condition, and cash flows. We may attempt to minimize interest rate risk and lower our overall borrowing costs through the utilization of derivative financial instruments, primarily interest rate swaps.

***Restrictions imposed by our debt instruments may limit the ability of our subsidiaries to operate their business and to finance our future operations or capital needs or to engage in other business activities.***

The terms of our debt instruments restrict certain of our subsidiaries from engaging in specified types of transactions. These covenants restrict our ability and the ability of the borrowers and subsidiaries, among other things, to: incur additional

indebtedness, pay dividends, make investments, make capital expenditures in excess of a certain amount, sell or otherwise dispose of all or any part of our business or property, engage in affiliate transactions, create liens, or consolidate or merge. Our ability to comply with these restrictions can be affected by events beyond our control, and we may not be able to maintain compliance with them. A breach of any of these covenants would be an event of default.

Although the terms of our Amended Subordinated Facility and Revolving Credit Facility contain restrictions on the incurrence of additional indebtedness by us or our subsidiaries, as applicable, these restrictions are subject to a number of important exceptions, and indebtedness incurred in compliance with these restrictions could be substantial. If we and our subsidiaries incur significant additional indebtedness, the related risks to our financial condition could increase.

In the event of a default under any of our current or future debt instruments, the lenders could elect to declare all amounts outstanding under such debt instruments, to be immediately due and payable or in the case of our Amended Subordinated Facility, may terminate their commitments to lend additional money. If the indebtedness under any of our debt instruments were to be accelerated, our assets may not be sufficient to repay such indebtedness in full.

#### **Risks Related to the Ownership of Our Common Stock**

*We do not intend to pay dividends on our common stock for the foreseeable future.*

We currently intend to retain all available funds and any future earnings to fund the development and growth of our business and to repay indebtedness. As a result, we do not anticipate declaring or paying any cash dividends on our common stock in the foreseeable future. Any decision to declare and pay dividends in the future will be made at the discretion of our board of directors and will depend on, among other things, our business prospects, results of operations, financial condition, cash requirements and availability, certain restrictions related to our indebtedness, industry trends and other factors that our board of directors may deem relevant. Any such decision will also be subject to compliance with contractual restrictions and covenants in the agreements governing our current and future indebtedness. In addition, we may incur additional indebtedness, the terms of which may further restrict or prevent us from paying dividends on our common stock. As a result, you may have to sell some or all of your common stock after price appreciation in order to generate cash flow from your investment, which you may not be able to do. Our inability or decision not to pay dividends, particularly when others in our industry have elected to do so, could also adversely affect the market price of our common stock.

*We are an emerging growth company, and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our common stock less attractive to investors.*

We are an "emerging growth company" as defined in the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised financial accounting standards until such time as those standards apply to private companies. We intend to take advantage of the extended transition period for adopting new or revised financial statements under the JOBS Act as an emerging growth company.

We will remain an emerging growth company until the earliest of (i) the end of the fiscal year in which the market value of our common stock that is held by non-affiliates is at least \$700 million as of the last business day of our most recently completed second fiscal quarter, (ii) the end of the fiscal year in which we have total annual gross revenue of \$1.07 billion or more during such fiscal year, (iii) the date on which we issue more than \$1 billion in non-convertible debt in a three-year period, or (iv) the last day of the fiscal year in which the fifth anniversary of the closing of the initial public offering of our common stock occurs.

For as long as we continue to be an emerging growth company, we may also take advantage of other exemptions from certain reporting requirements that are applicable to other public companies, including not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, exemption from any rules that may be adopted by the PCAOB requiring mandatory audit firm rotations or a supplement to the auditor's report on financial statements, extended transition periods for complying with new accounting standards, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and any golden parachute arrangements, and reduced financial reporting requirements. Investors may find our common stock less attractive because we will rely on these exemptions, which could result in a less active trading market for our common stock, increased price fluctuation, and a decrease in the trading price of our common stock.

***The obligations associated with being a public company involve significant expenses and require significant resources and management attention, which may divert from our business operations.***

We are subject to the reporting requirements of the Exchange Act and the Sarbanes-Oxley Act. The Exchange Act requires that we file annual, quarterly and current reports with respect to our business and financial condition. The Sarbanes-Oxley Act requires, among other things, that we establish and maintain effective internal control over financial reporting. As a result, we incur significant legal, accounting and other expenses that we did not previously incur as a private company. Additionally, most of our management team, including our Chief Executive Officer, had never managed a publicly traded company prior to our initial public offering, and as a result, do not have prior experience in complying with the increasingly complex and changing legal and regulatory landscape in which public companies operate. Our entire management team and many of our other employees have devoted, and will need to continue to devote, substantial time to compliance.

In addition, we have made, and will continue to make, changes to our internal control over financial reporting, including IT controls, and procedures for financial reporting and accounting systems to meet our reporting obligations as a public company. However, the measures we take may not be sufficient to satisfy our obligations as a public company. If we do not continue to develop and implement the right processes and tools to manage our changing enterprise and maintain our culture, our ability to compete successfully and achieve our business objectives could be impaired, which could negatively impact our business, financial condition and results of operations. In addition, we cannot predict or estimate the amount of additional costs we may incur to comply with these requirements. We anticipate that these costs will materially increase our general and administrative expenses.

These rules and regulations result in our incurring legal and financial compliance costs and will make some activities more time-consuming and costly. For example, these rules and regulations may make it more difficult, and have made it and may continue to make it more expensive, for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified people to serve on our board of directors, our board committees or as executive officers.

***As a public reporting company, we are subject to rules and regulations established from time to time by the SEC regarding our internal control over financial reporting. If we fail to establish and maintain effective internal control over financial reporting and disclosure controls and procedures, we may not be able to accurately report our financial results, or report them in a timely manner.***

We are a public reporting company subject to the rules and regulations established from time to time by the SEC and the New York Stock Exchange, or the NYSE. These rules and regulations require, among other things, that we establish and periodically evaluate procedures with respect to our internal control over financial reporting. Reporting obligations as a public company are likely to place a considerable strain on our financial and management systems, processes and controls, as well as on our personnel.

In addition, as a public company, we are required to document and test our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act so that our management can certify as to the effectiveness of our internal control over financial reporting. Section 404(a) of the Sarbanes-Oxley Act, or Section 404(a), requires that beginning with this annual report for the year ended December 31, 2020, management assess and report annually on the effectiveness of our internal control over financial reporting and identify any material weaknesses in our internal control over financial reporting. Although Section 404(b) of the Sarbanes-Oxley Act, or Section 404(b), requires our independent registered public accounting firm to issue an annual report that addresses the effectiveness of our internal control over financial reporting, we have opted to rely on the exemptions provided in the JOBS Act, and consequently will not be required to comply with SEC rules that implement Section 404(b) until such time as we are no longer an "emerging growth company." In order to comply with these rules, we expect to incur additional expenses and devote increased management effort. To maintain and improve the effectiveness of our disclosure controls and procedures, we have committed, and will need to continue to commit, significant resources, hire additional staff and provide additional management oversight.

In connection with the audit of our consolidated financial statements as of December 31, 2018, we concluded that a material weakness in our internal control over financial reporting existed. This material weakness has since been remediated, but additional material weaknesses or significant deficiencies may be discovered in the future. If our senior management is unable to conclude that we have effective internal control over financial reporting, or to certify the effectiveness of such controls, or if our independent registered public accounting firm cannot render an unqualified opinion on management's assessment and the effectiveness of our internal control over financial reporting at such time as it is required to do so, or if material weaknesses in our internal control over financial reporting are identified, we could be subject to regulatory scrutiny, a loss of public and investor confidence, and to litigation from investors and stockholders, which could have a material adverse

effect on our business and our stock price. In addition, if we do not maintain adequate financial and management personnel, processes and controls, we may not be able to manage our business effectively or accurately report our financial performance on a timely basis, which could cause a decline in our common stock price and adversely affect our results of operations and financial condition. Failure to comply with the Sarbanes-Oxley Act could potentially subject us to sanctions or investigations by the SEC, the NYSE or other regulatory authorities, which would require additional financial and management resources.

***Anti-takeover provisions in our governing documents and under Delaware law could make an acquisition of our company more difficult, limit attempts by our stockholders to replace or remove our current management, and limit the market price of our common stock.***

Our amended and restated certificate of incorporation, or our Amended Charter, our amended and restated bylaws, or our Amended Bylaws, and Delaware law contain provisions that could have the effect of rendering more difficult, delaying, or preventing an acquisition deemed undesirable by our board of directors. Among other things, our Amended Charter and/or Amended Bylaws include the following provisions:

- a staggered board, which means that our board of directors is classified into three classes of directors with staggered three-year terms and directors are only able to be removed from office for cause;
- limitations on convening special stockholder meetings, which could make it difficult for our stockholders to adopt desired governance changes;
- a prohibition on stockholder action by written consent, which means that our stockholders will only be able to take action at a meeting of stockholders and will not be able to take action by written consent for any matter;
- a forum selection clause, which means certain litigation against us can only be brought in Delaware;
- the authorization of undesignated preferred stock, the terms of which may be established and shares of which may be issued without further action by our stockholders; and
- advance notice procedures, which apply for stockholders to nominate candidates for election as directors or to bring matters before an annual meeting of stockholders.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management. As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation Law, or the DGCL, which prevents interested stockholders, such as certain stockholders holding more than 15% of our outstanding common stock, from engaging in certain business combinations unless (i) prior to the time such stockholder became an interested stockholder, the board approved the transaction that resulted in such stockholder becoming an interested stockholder, (ii) upon consummation of the transaction that resulted in such stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the common stock, or (iii) following board approval, the business combination receives the approval of the holders of at least two-thirds of our outstanding common stock not held by such interested stockholder at an annual or special meeting of stockholders.

Any provision of our Amended Charter, Amended Bylaws or Delaware law that has the effect of delaying, preventing or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock and could also affect the price that some investors are willing to pay for our common stock.

***Our Amended Charter provides that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees.***

Our Amended Charter provides that, unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware is the sole and exclusive forum for: (i) any derivative action or proceeding brought on our behalf; (ii) any action asserting a claim of breach of fiduciary duty owed by any of our directors, officers, or other employees or stockholders to us or to our stockholders; (iii) any action asserting a claim arising pursuant to the DGCL, the Amended Charter or the Amended Bylaws or as to which the DGCL confers exclusive jurisdiction on the Court of Chancery of the State of Delaware; or (iv) any action asserting a claim governed by the internal affairs doctrine; provided that the exclusive forum provisions will not apply to suits brought to enforce any liability or duty created by the Securities Act or the Exchange Act, or to any claim for which the federal courts have exclusive jurisdiction. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage such lawsuits against us and our directors, officers, and other employees. Alternatively, if a court were to find the choice of forum provision contained in our Amended Charter to be inapplicable or unenforceable in an action, we may incur additional

costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations, and financial condition.

***Our Amended Charter provides that the doctrine of "corporate opportunity" does not apply with respect to any officer, director or stockholder who is not employed by us or our subsidiaries.***

Our Amended Charter provides that the doctrine of "corporate opportunity" does not apply with respect to any officer, director or stockholder (or their respective affiliates) who is not employed by us or our subsidiaries. The doctrine of corporate opportunity generally provides that a corporate fiduciary may not develop an opportunity using corporate resources or information obtained in their corporate capacity for their personal advantage, acquire an interest adverse to that of the corporation or acquire property that is reasonably incident to the present or prospective business of the corporation or in which the corporation has a present or expectancy interest, unless that opportunity is first presented to the corporation and the corporation chooses not to pursue that opportunity. The doctrine of corporate opportunity is intended to preclude officers, directors or other fiduciaries from personally benefiting from opportunities that belong to the corporation. To the extent permitted by Delaware law, our Amended Charter renounces any interest or expectancy that we have in, or right to be offered an opportunity to participate in, specified business opportunities that are from time to time presented to our officers, directors or stockholders or their respective affiliates (other than those who are employees of the Company or its subsidiaries). Any officers, directors or stockholders or their respective affiliates, other than those officers, directors, stockholders or affiliates who are employees of the Company or its subsidiaries, therefore have no duty to communicate or present corporate opportunities to us, and have the right to either hold any corporate opportunity for their (and their affiliates') own account and benefit or to recommend, assign or otherwise transfer such corporate opportunity to persons other than us, including to any officers, directors or stockholders or their respective affiliates (other than those who are employees of the Company or its subsidiaries). Notwithstanding the foregoing, our Amended Charter does not renounce our interest in any business opportunity that is expressly offered to an officer, director, stockholder or affiliate solely in their capacity as an officer, director or stockholder (or affiliate thereof).

As a result, certain of our officers, directors or stockholders or their respective affiliates are not prohibited from operating or investing in competing businesses. We therefore may find ourselves in competition with certain of our officers, directors or stockholders or their respective affiliates, and we may not have knowledge of, or be able to pursue, transactions that could potentially be beneficial to us. Accordingly, we may lose a corporate opportunity or suffer competitive harm, which could negatively impact our business or prospects.

**General Risk Factors**

***Natural disasters, whether or not caused by climate change, unusual weather conditions, epidemic outbreaks, terrorist acts and political events could disrupt business and result in lower sales and otherwise have a material adverse effect on our business, financial performance and results of operations.***

The occurrence of one or more natural disasters, such as tornadoes, hurricanes, fires, floods and earthquakes, unusual weather conditions, epidemic outbreaks such as Ebola, Zika, novel coronavirus or measles, terrorist attacks or disruptive political events in certain regions where our retail stores, distribution centers and other facilities are located, or where our manufacturers', suppliers' and retail partners' facilities and, in certain cases, their respective suppliers, are located, could adversely affect our business and result in lower sales. Severe weather, such as heavy snowfall or extreme temperatures, may discourage or restrict customers in a particular region from traveling to our retail stores, thereby reducing our sales and profitability. Natural disasters, including tornados, hurricanes, floods, earthquakes, and unusual weather conditions have in the past caused disruptions to the supply chains and facilities of our suppliers and manufacturers, and these events may in the future damage our facilities or those of our suppliers or retailers or our other operations, which could have a material adverse effect on our business, financial condition, and results of operations. To the extent these events also impact one or more of our manufacturers, suppliers, retail partners or retailers or result in the closure of the facilities of any of their facilities or our facilities, we may be unable to maintain inventory balances, maintain delivery schedules or provide other support functions to our stores. In addition, the disaster recovery and business continuity plans we have in place currently are limited and are unlikely to prove adequate in the event of a serious disaster or similar event. We may incur substantial expenses as a result of the limited nature of our disaster recovery and business continuity plans, which could have a material adverse effect on our business, financial condition, and results of operations.

***Any acquisitions, partnerships or joint ventures that we enter into could disrupt our operations, and have a material adverse effect on our business, financial condition, and results of operations.***

From time to time, we may evaluate potential strategic acquisitions of businesses, including partnerships or joint ventures with third parties. We may not be successful in identifying acquisition, partnership and joint venture candidates. In addition, we

may not be able to continue the operational success of such businesses or successfully finance or integrate any businesses that we acquire or with which we form a partnership or joint venture. We may have potential write-offs of acquired assets and/or an impairment of any goodwill recorded as a result of acquisitions. Furthermore, the integration of any acquisition may divert management's time and resources from our core business and disrupt our operations or may result in conflicts with our business. Any acquisition, partnership or joint venture may not be successful, may reduce our cash reserves, may negatively affect our earnings and financial performance and, to the extent financed with the proceeds of debt, may increase our indebtedness. We cannot ensure that any acquisition, partnership or joint venture we make will not have a material adverse effect on our business, financial condition, and results of operations.

***Our ability to raise capital in the future may be limited, and our failure to raise capital when needed could prevent us from growing.***

In the future, we could be required to raise capital through public or private financing or other arrangements. Such financing may not be available on acceptable terms, or at all, and our failure to raise capital when needed could harm our business. We may sell common stock, convertible securities and other equity securities or debt securities in one or more transactions at prices and in a manner as we may determine from time to time. If we sell any such securities in subsequent transactions, investors may be materially diluted.

New investors in such subsequent transactions could gain rights, preferences and privileges senior to those of holders of our common stock. Debt financing, if available, may involve restrictive covenants and could reduce our operational flexibility or profitability. If we cannot raise funds on acceptable terms, we may not be able to grow our business or respond to competitive pressures.

***Our corporate tax rate may increase, we may incur additional income tax liabilities and we may incur costs in complying with changing tax laws in the United States and abroad, including as a result of the 2020 United States presidential and congressional elections, which could adversely impact our cash flow, financial condition, and results of operations.***

We are subject to taxation in various jurisdictions. In preparing our financial statements, we calculate our effective income tax rate based on current tax laws and regulations and the estimated taxable income within each of these jurisdictions. Our effective income tax rate, however, may be higher due to numerous factors, including changes in tax laws or regulations, changes in our tax filing positions or the taxing authority and judicial ruling against tax positions we have claimed. In particular, the recent presidential and congressional elections in the United States could result in significant changes in, and uncertainty with respect to, tax legislation, regulation and government policy directly affecting our business or indirectly affecting us because of impacts on our customers and suppliers. For example, the United States government may enact significant changes to the taxation of business entities, including, among others, a permanent increase in the corporate income tax rate, an increase in the tax rate applicable to the global intangible low-taxed income and elimination of certain exemptions, and the imposition of minimum taxes or surtaxes on certain types of income. No specific legislation has been proposed at this time and the likelihood of these changes being enacted or implemented is unclear. We are currently unable to predict whether such changes will occur and, if so, the ultimate impact on our business. To the extent that such changes have a negative impact on us, our suppliers or our customers, including as a result of related uncertainty, these changes may materially and adversely impact our business, financial condition, results of operations and cash flows.

Additionally, tax authorities at the foreign, federal, state and local levels are currently reviewing the appropriate treatment of companies engaged in e-commerce. New or revised foreign, federal, state or local tax regulations or court decisions may subject us or our customers to additional sales, income and other taxes. For example, on June 21, 2018, the U.S. Supreme Court rendered a 5-4 majority decision in *South Dakota v. Wayfair Inc.*, 17-494 where the Court held, among other things, that a state may require an out-of-state seller with no physical presence in the state to collect and remit sales taxes on goods the seller ships to customers in the state, overturning existing court precedent. While we do not expect the Court's decision to have a significant impact on our business, other new or revised taxes and, in particular, sales taxes, VAT and similar taxes could increase the cost of doing business online and decrease the attractiveness of selling products over the internet. New taxes and rulings could also create significant increases in internal costs necessary to capture data and collect and remit taxes.

Also, officials in non-U.S. jurisdictions in which we do business have proposed, or announced that they are reviewing tax increases, and other revenue raising laws and regulations. Any resulting changes in tax laws or regulations could impose new restrictions, costs or prohibitions on our current practices and reduce our net income and adversely affect our cash flows. Generally, future changes in applicable tax laws and regulations, or their interpretation and application could have an adverse effect on our business, financial conditions, and results of operations.

***Valuation allowances against our deferred tax assets could adversely affect our results of operations and financial condition.***

Deferred tax liabilities and assets are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates expected to be in effect during the years in which the basis differences reverse. We are required to evaluate the recoverability of our deferred tax assets regularly and establish a valuation allowance, if necessary, to reduce our deferred tax assets to an amount that is more-likely-than-not to be realizable. In determining the need for a valuation allowance, we consider many factors, including future reversals of existing taxable temporary differences, future taxable income exclusive of reversing temporary differences and carryforwards, taxable income in prior carryback years and implementation of any feasible and prudent tax planning strategies management would employ to realize the tax benefit.

Inherent in the provision for income taxes are estimates regarding the deductibility of certain items, the timing of income and expense recognition and the current or future realization of operating losses, capital losses, certain tax credits and future enacted changes in applicable tax rates as well as the tax base. In the event these estimates differ from our prior estimates due to the receipt of new information, we may be required to significantly change the provision for income taxes recorded in the consolidated financial statements. Any such change could significantly affect the amounts reported in the consolidated financial statements in the year these estimates change. A further significant decline in value of assets incorporated into our tax planning strategies could lead to an increase of our valuation allowance on deferred tax assets having an adverse effect on current and future results.

***We may need to recognize impairment charges related to identified intangible assets and fixed assets.***

We are required to test any intangible asset with an indefinite life for possible impairment on the same date each year and on an interim basis if there are indicators of a possible impairment. There is significant judgment required in the analysis of a potential impairment of identified intangible assets and fixed assets. If, as a result of a general economic slowdown or deterioration in one or more of the markets in which we operate or in our financial performance or future outlook, or if the estimated fair value of our long-lived assets decreases, we may determine that one or more of our long-lived assets is impaired. An impairment charge would be determined based on the estimated fair value of the assets and any such impairment charge could have a material adverse effect on our financial condition, and results of operations.

***We are subject to many hazards and operational risks that can disrupt our business, some of which may not be insured or fully covered by insurance.***

Our operations are subject to many hazards and operational risks inherent to our business, including: (i) general business risks; (ii) product liability; (iii) product recall; and (iv) damage to third parties, our infrastructure, or properties caused by fires, floods and other natural disasters, power losses, telecommunications failures, terrorist attacks, human errors, and similar events.

Our insurance coverage may be inadequate to cover our liabilities related to such hazards or operational risks. In addition, we may not be able to maintain adequate insurance in the future at rates we consider reasonable and commercially justifiable, and insurance may not continue to be available on terms as favorable as our current arrangements. The occurrence of a significant uninsured claim, or a claim in excess of the insurance coverage limits maintained by us could harm our business, results of operations, and financial condition.

***Terrorist attacks in the United States or against U.S. targets, actual or threatened acts of war or the escalation of current hostilities involving the United States or its allies could have a material adverse effect on our business, financial condition, and results of operations.***

Terrorist attacks in the United States or against U.S. targets, actual or threatened acts of war (declared or undeclared) or the escalation of current hostilities involving the United States or its allies, or any other military or trade disruptions impacting our domestic or foreign suppliers of components of our products, may impact our operations by, among other things, causing supply chain disruptions. These events could also cause an increase in oil or other commodity prices, which could adversely affect our raw materials or transportation costs. These events also could cause or act to prolong an economic recession in the United States or abroad. More generally, any of these events could cause consumer confidence and spending to decrease, which could adversely impact our product sales. Any of these occurrences could have a material adverse effect on our business, financial condition, and results of operations.

***Our common stock price may be volatile or may decline regardless of our operating performance and you may not be able to resell your shares at or above the price for which they were purchased.***

It is possible that an active trading market will not continue or that any market will be sustained, which could make it difficult for you to sell your shares of common stock at an attractive price or at all. Consequently, you may not be able to sell your shares of common stock at prices equal to or greater than the price you paid for them.

Many factors, which are outside our control, may cause the market price for shares of our common stock to fluctuate significantly, including those described elsewhere in this "Risk Factors" section and this Annual Report on Form 10-K, as well as the following:

- our operating and financial performance and prospects;
- our quarterly or annual earnings or those of other companies in our industry compared to market expectations;
- conditions that impact demand for our products;
- future announcements concerning our business, our clients' businesses or our competitors' businesses;
- the public's reaction to our press releases, other public announcements and filings with the Securities and Exchange Commission, or the SEC;
- the market's reaction to our reduced disclosure and other requirements as a result of being an "emerging growth company" under the Jumpstart Our Business Startups Act of 2012, or the JOBS Act;
- the size of our public float;
- coverage by or changes in financial estimates by securities analysts or failure to meet their expectations;
- market and industry perception of our success, or lack thereof, in pursuing our growth strategy;
- strategic actions by us or our competitors, such as acquisitions or restructurings;
- changes in laws or regulations which adversely affect our industry or us;
- changes in accounting standards, policies, guidance, interpretations or principles;
- changes in senior management or key personnel;
- issuances, exchanges or sales, or expected issuances, exchanges or sales of our capital stock;
- changes in our dividend policy;
- adverse resolution of new or pending litigation against us; and
- changes in general market, economic and political conditions in the United States and global economies or financial markets, including those resulting from natural disasters, terrorist attacks, acts of war and responses to such events.

These broad market and industry factors may materially reduce the market price of our common stock, regardless of our operating performance. In addition, price volatility may be greater if the public float and trading volume of our common stock is low. As a result, you may suffer a loss on your investment.

***Future sales, or the perception of future sales, by us or stockholders in the public market could cause the market price for our common stock to decline. In addition, the issuance by us of additional shares of common stock or convertible securities could make it difficult for another company to acquire us, may dilute your ownership of us and could adversely affect our stock price.***

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The sale of substantial amounts of shares of our common stock in the public market, or the perception that such sales could occur, could harm the prevailing market price of shares of our common stock. The 8,350,000 shares sold or issued in our initial public offering are freely tradable without restriction or further registration under the Securities Act, except that any shares held by our affiliates may be sold only in compliance with certain limitations under Rule 144 of the Securities Act. In addition, subsequent to and in connection with our initial public offering, we filed a registration statement with the SEC on Form S-8 providing for the registration of shares of our common stock issued or reserved for issuance under our long-term incentive plan. Subject to the satisfaction of vesting conditions, shares registered under the registration statement on Form S-8 are available for resale immediately in the public market without restriction. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

From time to time in the future, we may also issue additional shares of our common stock or securities convertible into common stock pursuant to a variety of transactions, including acquisitions. The issuance by us of additional shares of our common stock or securities convertible into our common stock would dilute your ownership of us and the sale of a significant amount of such shares in the public market could adversely affect prevailing market prices of our common stock.

In the future, we expect to obtain financing or to further increase our capital resources by issuing additional shares of our capital stock or offering debt or other equity securities, including senior or subordinated notes, debt securities convertible into equity, or shares of preferred stock. Issuing additional shares of our capital stock, other equity securities, or securities convertible into equity may dilute the economic and voting rights of our existing stockholders, reduce the market price of our common stock, or both. Debt securities convertible into equity could be subject to adjustments in the conversion ratio pursuant to which certain events may increase the number of equity securities issuable upon conversion. Preferred stock, if issued, could have a preference with respect to liquidating distributions or a preference with respect to dividend payments that could limit our ability to pay dividends to the holders of our common stock. Our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, which may adversely affect the amount, timing, or nature of our future offerings. As a result, holders of our common stock bear the risk that our future offerings may reduce the market price of our common stock and dilute their percentage ownership.

### ***An active trading market for our common stock may not be sustained.***

An active trading market for our common stock may not be sustained. Accordingly, if an active trading market for our common stock does not maintained, the liquidity of our common stock, your ability to sell your shares of our common stock when desired and the prices that you may obtain for your shares of common stock will be adversely affected.

### ***If securities analysts do not publish research or reports about our Company, or if they issue unfavorable commentary about us or our industry or downgrade our common stock, the price of our common stock could decline.***

The trading market for our common stock will depend in part on the research and reports that third-party securities analysts publish about our Company and the industries in which we operate. We may be unable or slow to attract research coverage and if one or more analysts cease coverage of our company, the price and trading volume of our securities would likely be negatively impacted. If any of the analysts that may cover us change their recommendation regarding our securities adversely, or provide more favorable relative recommendations about our competitors, the price of our securities would likely decline. If any analyst that may cover us ceases covering us or fails to regularly publish reports on us, we could lose visibility in the financial markets, which could cause the price or trading volume of our securities to decline. Moreover, if one or more of the analysts who cover us downgrades our common stock, or if our reporting results do not meet their expectations, the market price of our common stock could decline.

### ***If our operating and financial performance in any given period does not meet the guidance that we provide to the public, the market price of our common stock may decline.***

We may, but are not obligated to, provide public guidance on our expected operating and financial results for future periods. Any such guidance will be comprised of forward-looking statements subject to the risks and uncertainties described in this Annual Report on Form 10-K and in our other public filings and public statements. Our actual results may not always be in line with or exceed any guidance we have provided, especially in times of economic uncertainty. If, in the future, our operating or financial results for a particular period do not meet any guidance we provide or the expectations of investment analysts, or if we reduce our guidance for future periods, the market price of our common stock may decline. Even if we do issue public guidance, there can be no assurance that we will continue to do so in the future.

### **Item 1B. Unresolved Staff Comments.**

None.

**Item 2. Properties.**

Our corporate headquarters are located in New York, New York, where we occupy approximately 69,000 square feet of office space pursuant to a lease that expires in December 2034, with an option to renew thereafter. We currently lease or license additional office space in San Francisco, California.

As of December 31, 2020, we operated 61 retail stores across the United States and six retail stores in Canada. All of our retail properties are leased or licensed from third parties under agreements expiring at various dates from 2020 to 2029, and the average size of our stores is approximately 3,000 square feet. The following table summarizes our domestic store locations by state, as of December 31, 2020:

<b>State</b>	<b>Store Count</b>	<b>State</b>	<b>Store Count</b>
California	11	New York	6
Florida	5	Massachusetts	5
Illinois	4	Texas	4
New Jersey	3	Connecticut	2
Georgia	2	Missouri	2
North Carolina	2	Pennsylvania	2
Virginia	2	Arizona	1
Colorado	1	Delaware	1
Michigan	1	Minnesota	1
Nevada	1	Ohio	1
Oregon	1	Tennessee	1
Utah	1	Washington	1

Our retail leases generally have a term of five to 10 years, with the majority of such leases including the right for us to terminate based on certain sales and co-tenancy thresholds. We also have the option to terminate certain leases prior to expiration, subject to certain penalties. A portion of our leases also have five-year renewal options. Most leases for our retail stores provide for a minimum rent, typically with escalating rent increases and generally require us to pay insurance, utilities, real estate taxes and repair and maintenance expenses.

We believe that our facilities are adequate for our current needs and that, if necessary, suitable additional or alternative space will be available to accommodate our operations.

**Item 3. Legal Proceedings.**

We are from time to time subject to various claims, lawsuits and other legal proceedings, including intellectual property claims. Some of these claims, lawsuits and other legal proceedings involve highly complex issues, and often these issues are subject to substantial uncertainties. Accordingly, our potential liability with respect to a large portion of such claims, lawsuits and other legal proceedings cannot be estimated with certainty. Management, with the assistance of legal counsel, periodically reviews the status of each significant matter and assesses potential financial exposure. We recognize provisions for claims or pending litigation when we determine that an unfavorable outcome is probable and the amount of loss can be reasonably estimated. Due to the inherent uncertain nature of litigation, the ultimate outcome or actual cost of settlement may materially vary from estimates. If management's estimates prove incorrect, we could incur a charge to earnings which could have a material adverse effect on our results of operations, financial condition, and cash flows. Beginning in June 2020, several putative class actions have been filed in the U.S. District Court for the Eastern District of New York and the New York State Supreme Court (New York County) by certain of our shareholders against us, our directors, certain of our officers, and certain of the underwriters of our initial public offering alleging violations of the Securities Exchange Act of 1934 and/or the Securities Act of 1933 in connection with the initial public offering. The cases are in preliminary stages. The Company has moved to dismiss the lawsuit filed in New York State Supreme Court, and briefing on that motion is ongoing. The Company has also moved to stay the proceedings in the Eastern District of New York pending disposition of the state court motion to dismiss, and that stay motion is pending. We believe these lawsuits are without merit and intend to vigorously defend against them.

**Item 4. Mine Safety Disclosures.**

Not Applicable.

## PART II

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

#### **Market Information**

On February 6, 2020, our common stock began trading on the NYSE under the symbol "CSPR." Prior to that time, there was no public market for our common stock.

#### **Holders**

As of February 26, 2021, there were approximately 40,548,574 shares of our common stock outstanding held by approximately 124 holders of record.

#### **Dividend Policy**

We currently intend to retain all available funds and any future earnings to fund the development and growth of our business, and therefore we do not anticipate declaring or paying any cash dividends on our common stock in the foreseeable future. Any future determination as to the declaration and payment of dividends, if any, will be at the discretion of our board of directors, subject to compliance with contractual restrictions and covenants in the agreements governing our current and future indebtedness. Any such determination will also depend upon our business prospects, results of operations, financial condition, cash requirements and availability and other factors that our board of directors may deem relevant.

#### **Recent Sales of Unregistered Securities; Purchases of Equity Securities by the Issuer or Affiliated Purchaser**

None.

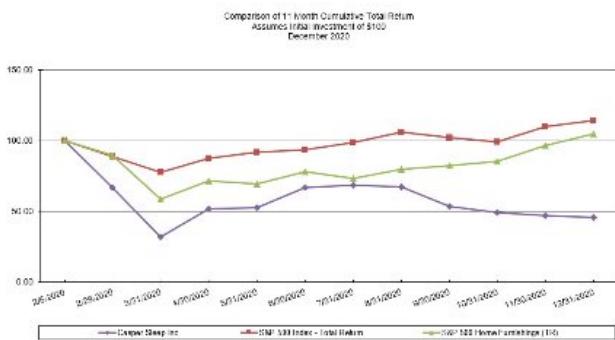
#### **Use of Proceeds**

In connection with our initial public offering, we issued and sold 8,350,000 shares of our common stock at a price to the public of \$12.00 per share resulting in net proceeds to us of approximately \$88.0 million, after deducting the underwriting discount of approximately \$6.5 million and offering expenses of approximately \$5.7 million. All shares issued and sold were registered pursuant to a registration statement on Form S-1 (File No. 333-235874), as amended, or the Registration Statement, declared effective by the SEC on February 5, 2020.

The net proceeds of approximately \$88.0 million from our initial public offering were invested in money market funds until the time at which they were utilized for general company operations. There has been no material change in the expected use of the net proceeds from our initial public offering as described in our final prospectus, filed with the SEC on February 7, 2020 pursuant to Rule 424(b)(4) relating to our Registration Statement, or our Final Prospectus.

#### **Performance Graph**

The following graph illustrates the cumulative total return from February 6, 2020 through December 31, 2020, for (i) our Common Stock, (ii) the S&P 500 Index, and (iii) the S&P 500 Home Furnishings Index. The graph assumes that \$100 was invested on February 6, 2020 in each of our common stock, the S&P 500 Index, and the S&P 500 Home Furnishings Index, and that any dividends were reinvested. The comparisons reflected in the graph are not intended to forecast the future performance of our stock and may not be indicative of our future performance.



#### **Item 6. [Reserved].**

Reserved.

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

You should read the following discussion and analysis of our financial condition and results of operations together with "Selected Consolidated Financial and Other Data" and our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements based upon current plans, expectations and beliefs involving risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under "Risk Factors" and in other parts of this Annual Report on Form 10-K. A discussion of the year ended December 31, 2019 compared to the year ended December 31, 2018 has been reported previously in our Annual Report on Form 10-K for the year ended December 31, 2019, under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations."

##### **Overview**

As a pioneer of the evolving business of sleep, or what we call the Sleep Economy, we bring the benefits of cutting-edge sleep technology, data, and insights directly to consumers. We focus on building direct relationships, providing a human experience, and making shopping for sleep joyful. We meet consumers wherever they are, online and in person, providing a fun and engaging experience, while reducing the hassles associated with traditional purchases.

Our products seek to address real life sleep challenges by optimizing for a variety of factors that impact sleep, like: the microclimate under the covers by regulating humidity and temperature; comfort and support, through the use of high-quality materials and ergonomic designs; and the ambience and sleep environment, through smart devices that provide sleep-conducive lighting. We also work to address "the little things" in our products, offering innovative features to make the sleep experience better and less stressful. Casper Labs, home to our fabrication and test space, features state-of-the-art capabilities to test against a wide range of factors affecting sleep quality, driving our innovation throughout the Sleep Economy. Casper Labs controls every aspect of our product offerings, including design and construction, material performance requirements, manufacturing protocols, supplier selection, packaging specifications, and quality assurance. We believe that no other company in the category has our level of product development talent, resources, or expertise.

We distribute our products through a flexible, multi-channel approach combining our direct-to-consumer channel, including our e-commerce platform and retail stores, with our retail partnerships. Our multi-channel approach enables us to meet consumers where they want to shop, servicing them throughout their entire purchase journey. We believe our channels are complementary and creates a synergistic "network effect" that increases sales as a whole. As of December 31, 2020, we distributed our products directly to our customers in North America through our e-commerce platform, our 67 Casper stores, and over 20 retail partners, including with Amazon, Costco, Hudson's Bay Company, and Target.

Through our high-quality and innovative product portfolio, synergistic multi-channel go-to-market strategy and unwavering focus on our consumers, we have experienced significant growth across channels:

- For the years 2020 and 2019, our net revenue was \$497.0 million, and \$439.3 million, respectively, representing an increase of 13.1%.
- Our direct-to-consumer revenue was \$363.1 million in 2020, up 3.6% from 2019. Our revenue from retail partnerships was \$133.9 million in 2020, up 50.9% from 2019.
- In the past five years, we have grown from being a strictly e-commerce business to developing into a multi-channel business, operating 67 retail stores and working with over 20 retail partners as of December 31, 2020.
- We have invested significantly in our sophisticated, integrated marketing strategy, with \$156.8 million in marketing expenditure in 2020.

#### **Factors Affecting our Financial Condition and Results of Operations**

Our financial condition and results of operations have been, and will continue to be, affected by a number of important factors, including the following:

**Ability to Grow Our Brand Awareness.** Our brand name and image are integral to the growth of our business and to the implementation of our strategies for expanding our business. We believe our brand sets us apart from our competitors, and is essential to our ability to engage and to stay connected with prospective and existing customers as they discover, evaluate, and purchase our suite of products and services. This continued customer engagement helps to inform and accelerate our culture of innovation and improves how we execute our vision of becoming the world's most loved and largest sleep company. In these ways, our brand directly contributes to and drives our growth. We believe that as brand awareness grows and deepens, we will continue to strengthen our ability to create and capture value across the Sleep Economy, enhancing our competitive advantages in a category that we believe no other single company understands better. We believe the consistency and quality of our messaging has helped us build our brand into a household name and create a large and highly engaged consumer following. We believe our brand strength will enable us to continue to expand across both markets and products, allowing us to access a global market.

**Ability to Grow Our Direct-to-Consumer Presence and Network of Retail Partnerships.** We distribute our products through a flexible multi-channel approach combining our direct-to-consumer channel, including our e-commerce platform and retail stores, with retail partnerships. But whether consumers engage us through our website, at our stores, or through a retail partner—and whether they're looking for information, content, or to purchase—we believe those who interact with Casper have an experience that is genuine, trustworthy and approachable, as well as fun and playful across every channel.

We intend to continue leveraging our marketing strategy to drive increased consumer traffic to both *casper.com* and to our physical retail locations. As of December 31, 2020, we operated 67 retail store locations in key cities in the United States and Canada. Additionally, as of December 31, 2020, we had over 20 retail partners, including Amazon, Costco, Hudson's Bay Company, and Target, among others. Our research indicates that these partnerships not only expand our consumer base but also provide access to future consumers that have yet to engage with the Casper brand. We believe our retail channel improves our consumer experience, attracting and educating more consumers about Casper, which in turn attracts more partners to our brand thereby further enhancing our ability to generate revenue. We continue to evaluate partnerships with a wide variety of retailers, including online retailers, big-box retailers, department stores and specialty retailers.

**Investments in Research and Development and Ability to Improve Existing Products and Introduce New Products Based on Superior Innovation.** Casper is constantly investing in and improving existing products and introducing new products and services with proprietary technologies to address the full Sleep Arc. For example, we recently expanded our existing mattress product offering by designing new hybrid mattresses that combine our proprietary foam technology with resilient springs. Through Casper Labs we develop, rapidly prototype and test multiple design iterations. We thoughtfully curate our product and services offerings utilizing high-quality materials and advanced manufacturing processes to create a differentiated experience. The improvement of existing products and the introduction of new products have been, and we expect will continue to be, integral to our growth. We believe our rigorous approach to creating and improving our products has helped redefine and grow the addressable market that we call the Sleep Economy. This in turn offers consumers more opportunities to interact with us and purchase from us, which drives new consumer as well as repeat consumer business.

**Cost-Effective Acquisition of New Consumers and Retention of Existing Customers.** To continue to grow our business, we must acquire new consumers as well as retain existing customers in a cost-effective manner. We continually evolve our marketing strategies, and adjust our messages, the amount we spend on advertising and the channels in which we spend. We have made, and we expect that we will continue to make, significant investments in attracting new consumers, including through traditional, digital, social media and original Casper content. It is critical for us to maintain reasonable costs for these

marketing efforts relative to sales derived from new consumers. We believe our multi-channel expansion creates synergies and that these channels, to date, have proven to be complementary, not cannibalistic. Moreover, we expect our marketing efficiency (which we define as net revenue as a percentage of total media spend over a specific time period) to improve over time as sales through our owned retail stores and retail partners increase. Because increasing sales through these channels requires minimal incremental marketing investment, we believe we will be able to drive natural leverage in our marketing efficiency.

As we continue to launch new products and improve existing products, we expect customers generating repeat revenue to grow due to our efforts to create a differentiated and joyful experience, eliminating friction and boundaries.

**Competitive Industry Dynamics.** We operate in the highly competitive mattress, soft goods, bedroom furniture, sleep technology and services industries, among others industries. The competitive environment of the industries in which we operate continually subjects us to the risk of loss of market share, loss of significant customers, reductions in margins, discounting by competitors, and to the challenge of acquiring new customers. While the mattress industry is highly consolidated and is dominated by a few long-standing players, the soft goods, bedroom furniture, sleep technology and services industries are highly fragmented, which presents opportunities for growth in each of those markets. We combine our offerings with a differentiated in-store experience and high-quality consumer experience, which has enabled us to continue to grow our market share and drive revenue.

**Disciplined Approach to Operations.** As we scale our business, we intend to continue to drive continued operational improvement so that we can provide quality products and services to ensure the best possible consumer experiences while improving our revenue and controlling our costs. In particular, we plan to drive operational efficiencies through a focus on reducing product return rates, price optimization, investing in our supply chain, improving the efficiency and enhancing performance of our marketing investments, and realizing economies of scale.

#### **Impact of COVID-19 Pandemic**

Casper continues to closely monitor how the spread of the COVID-19 pandemic caused by the novel coronavirus is affecting its employees, customers and business operations. We have developed and implemented preparedness plans to help protect the safety of our employees and customers, while safely continuing business operations.

In order to protect the health and safety of our employees, particularly given the severity of the pandemic in New York and California, we have continued to limit access to our corporate offices and our corporate workforce has spent and continues to spend a significant amount of time working from home during this period. Access to our offices will remain limited until we are able to safely and responsibly re-open them on a broader basis in accordance with governmental and public health guidance, as well as internal health and safety policies tailored to our operations.

Since the temporary closure of all our retail stores in North America in mid-March 2020, we have been able to open and operate all of our 69 stores, as of the date of this Annual Report on Form 10-K, across the United States and Canada, with each providing a range of service offerings to accommodate evolving consumer preferences and local public health guidance in response to changing COVID-19 conditions. The health and safety of our customers and employees remain our top priority, and we continuously monitor developments related to COVID-19 in locations where we have retail operations, and have developed procedures to enable us to responsibly and efficiently open or close our stores and adjust our service offerings as needed in response to changing COVID-19 conditions and applicable guidance from government and public health officials. For the year ended December 31, 2020, sales were adversely impacted in our retail stores due to temporary closures, limitations in service offerings and significant reductions in retail foot traffic as a result of restrictions on retail businesses and shifting consumer preferences in response to the pandemic. In addition, we reduced the number of planned new store openings in 2020 due to the impacts of COVID-19.

Since the onset of the COVID-19 outbreak, certain of our suppliers and logistics providers have experienced supply constraints or labor shortages due to the pandemic. These impacts, coupled with the lean levels of safety stock inventory we generally maintain as part of our flexible manufacturing model, resulted in disruptions to our product and delivery supply chain, including increased delivery times for certain of our products through our e-commerce platform and order fulfillment delays for certain of our retail partners, which negatively impacted sales in our e-commerce and retail partnership channels in the third quarter of 2020. In response, we have on-boarded and continue to actively qualify and on-board new suppliers, as well as enhance internal inventory planning and monitoring capabilities. We expect these actions to mitigate inventory and other supply chain disruptions in future quarters, although there remains significant uncertainty relating to the trajectory of the COVID-19 pandemic, including the potential persistence or resurgence of the pandemic, and its impacts on our supply chain.

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In addition, while the stores of certain of our retail partners temporarily closed due to the COVID-19 pandemic in the second quarter of 2020, our largest partners remained open for business both in-store and online, and all of our partners resumed in-store operations by the third quarter of 2020. Accordingly, we have not experienced any material issues to date with respect to our accounts receivables from our retail partners or needed to materially increase our allowances for accounts receivable balances. We are, however, continuing to work closely with our retail partners to monitor the situation.

The COVID-19 pandemic has impacted, and we expect will continue to impact, our revenue, results of operations and financial condition. In response, we have taken proactive measures focused on optimizing our business model and cash management. As part of these measures, during the year ended December 31, 2020, we implemented an employee furlough program initially applicable to almost all of our retail employees, reduced our corporate personnel by approximately 21%, wound down our European operations, and ceased or reduced rent payments to a majority of our retail store landlords during the closure period for each store. We have been actively negotiating with our landlords on rent deferrals and abatements related to each store's closure period since the second quarter of 2020 and have resolved the majority of such negotiations as of the date of this Annual Report on Form 10-K.

At this time, however, there is significant uncertainty relating to the trajectory of the COVID-19 pandemic and impact of related responses. We will continue to closely monitor the impact of COVID-19 on our business, including how it is impacting our customers, employees, supply chain, and retail partners. The future impact that COVID-19 will have on our financial position and operating results, however, may be affected by numerous uncertainties, including the duration of the outbreak, governmental and public health actions, impacts on our supply chain, the effect on customer demand, and changes to our operations. See "Risk Factors—The COVID-19 pandemic has affected, and could continue to adversely affect, our business, financial condition and results of operations."

### **Components of our Results of Operations**

#### ***Revenue***

Revenue is comprised of global sales through our direct-to-consumer channels and our retail partnerships. Revenue reflects the impact of product returns as well as discounts for certain sales programs and promotions.

Revenue comprises the consideration received or receivable for the sale of goods and services in the ordinary course of our activities net of estimates of variable consideration, including product returns, customer discounts and allowances.

Promotions are occasionally offered, primarily in the form of discounts, and are recorded as a reduction of gross revenue at the date of revenue recognition. We typically accept sales returns during a 30- or 100-night trial period, depending on the product, with our mattresses having a 100-night trial period. A sales return accrual is estimated based on historical return rates and is then adjusted for any current trends as appropriate. Returns are netted against the sales allowance reserve for the period. Sales are recognized as deferred revenue at the point of sale and are recognized as revenue upon the delivery to the consumer. Revenue through our direct-to-consumer channels is recognized upon in-store or home delivery to the consumer, as applicable, and retail partnership revenue is recognized upon the transfer of control, on a per contract basis.

#### ***Cost of Goods Sold***

Cost of goods sold consists of costs of purchased merchandise, including freight, duty, and non-refundable taxes incurred in delivering goods to our consumers and distribution centers, packaging and component costs, warehousing and fulfillment costs, damages, and excess and obsolete inventory write-downs.

#### ***Gross Profit and Gross Margin***

We calculate gross profit as revenue less cost of goods sold. We calculate gross margin as gross profit divided by net revenue for a specific period of time. Gross margin in our direct-to-consumer channel, including company-owned retail stores and e-commerce sales, is generally higher than that on sales to our retail partnerships.

Our gross margin may in the future fluctuate from period to period based on a number of factors, including cost of purchased merchandise and components, the mix of products and services we sell and the mix of channels through which we sell our products. We have historically experienced that gross margin, by product, tends to increase over time as we realize cost efficiencies as a result of economies of scale, sourcing strategies and product re-engineering programs. In addition, our ability to continue to reduce the cost of our products is critical to increasing our gross margin over the long-term.

#### ***Operating Expenses***

Operating expenses consist of sales and marketing, and general and administrative expenses, including research and development.

**Sales and Marketing.** Sales and marketing expenses represent the largest component of our operating expenses and consist primarily of advertising and marketing promotions of our products and services as well as consulting and contractor expenses. We expect our sales and marketing expenses to increase in absolute dollars as we continue to promote our offerings. At the same time, we also anticipate that these expenses will decrease as a percentage of our sales revenue over time, as we improve marketing efficiencies and grow channels that require lower sales and marketing support.

**General and Administrative.** General and administrative expenses consist of personnel-related costs for our retail operations, finance, legal, human resources, and IT functions, as well as litigation expenses, credit card fees, professional services, rent and operating costs associated with our retail stores, depreciation and amortization, and other administrative expenses. General and administrative expenses also include research and development expenses consisting primarily of personnel related expenses, consulting and contractor expenses, tooling, test equipment and prototype materials. We expect our general and administrative expenses to increase in absolute dollars due to the growth of our business and related infrastructure as well as legal, accounting, insurance, investor relations and other compliance costs associated with becoming a public company. However, we expect our general and administrative expenses to decrease as a percentage of our sales revenue over time, as we scale our business.

**Restructuring.** Restructuring expenses relate to costs associated with strategic shifts in our business structure including exiting certain lines of business and geographies. Such costs include severance and other employee separation costs, contract termination expenses and asset impairment.

#### **Income Tax Expense**

We account for income taxes in accordance with *ASC Topic 740, Income Taxes*—Under this method, deferred tax assets and liabilities are determined based on the temporary differences between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. We classify all deferred income tax assets and liabilities as noncurrent on our balance sheet. The effect of a change in tax rates on deferred tax assets and liabilities is recognized within the provision for (benefit from) income taxes on the consolidated statement of operations and comprehensive loss in the period that includes the enactment date.

We reduce deferred tax assets, if necessary, by a valuation allowance if it is more likely than not that we will not realize some or all of the deferred tax assets. In making such a determination, we consider all available positive and negative evidence, including taxable income in prior carryback years (if carryback is permitted under the relevant tax law), the timing of the reversal of existing taxable temporary differences, tax-planning strategies and projected future taxable income. Please refer to Note 11 to our audited consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K for additional information on the composition of these valuation allowances and for information on the impact of U.S. tax reform legislation. We recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position.

We recognize interest and penalties related to uncertain tax positions within the provision for (benefit from) income taxes on our consolidated statement of operations and comprehensive loss.

#### **Seasonality and Quarterly Comparability**

Our revenue includes a seasonal component, with the highest sales activity normally occurring during the second and third quarters of the year due to back-to-school, home moves and other seasonal factors, along with seasonal promotions we offer during these quarters. The timing of on-boarding new retail partnerships, which typically launch with large inventory buy-ins, and the timing of launching new products may also impact comparability between periods. These factors can also impact our working capital and/or inventory balances in a given period. The COVID-19 pandemic as well as certain supply chain disruptions primarily in the third quarter impacted our quarterly comparability in 2020. The full extent to which the COVID-19 pandemic and supply chain disruptions may impact our seasonality and quarterly comparability will depend on numerous evolving factors that we are not able to accurately predict due to the uncertainty related to the pandemic, unusual weather conditions and other economic uncertainties as of the date of this Annual Report on Form 10-K.

#### **Results of Operations**

##### **Year Ended December 31, 2020 Compared to Year Ended December 31, 2019**

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The following table sets forth information comparing the components of operations and comprehensive loss for the periods indicated.

	Year ended December 31		Period over Period Change		Year ended December 31	
	2020	2019	Dollar	Percentage	2020	2019
	(in thousands, except percentages)				(as a % of sales revenue net)	
Revenue	\$ 497,000	439,258	57,742	13.1 %	100.0 %	100.0 %
Cost of goods sold	243,115	223,847	19,268	8.6 %	48.9 %	51.0 %
Gross profit	253,885	215,411	38,474	17.9 %	51.1 %	49.0 %
Operating expenses						
Sales and marketing	156,806	154,589	2,217	1.4 %	31.6 %	35.2 %
General and administrative	172,071	148,345	23,726	16.0 %	34.6 %	33.8 %
Restructuring	7,736	1,223	6,513	532.5 %	1.6 %	0.3 %
Total operating expenses	336,613	304,157	32,456	10.7 %	67.7 %	69.2 %
Loss from operations	(82,728)	(88,746)	6,018	(6.8)%	(16.6)%	(20.2)%
Other (income) expense						
Interest expense, net	8,376	3,188	5,188	162.7 %	1.7 %	0.7 %
Other (income) expense, net	(1,601)	1,019	(2,620)	(257.1)%	(0.3)%	0.2 %
Total other expense	6,775	4,207	2,568	60.9 %	1.4 %	1.0 %
Loss before income taxes	(89,503)	(92,953)	3,450	(3.7)%	(18.0)%	(21.2)%
Income tax (benefit) expense	52	87	(35)	(39.6)%	0.0 %	0.0 %
Net loss	(89,555)	(93,040)	3,485	(3.7)%	(18.0)%	(21.2)%
Other comprehensive income (loss)						
Currency translation adjustment	(35)	488	(523)	(107.6)%	— %	0.1 %
Total comprehensive loss	\$ (89,590)	(92,552)	2,961	(3.2)%	(18.0)%	(21.1)%

#### Revenue

Revenue was \$497.0 million for the year ended December 31, 2020, an increase of \$57.7, or 13.1%, compared to \$439.3 million for the year ended December 31, 2019. Revenue increased as a result of higher sales through our direct-to-consumer and retail partnership channels and the introduction of new products, offset by the closure of our European operations at the end of the second quarter of 2020. North America sales were up \$72.0 million or 17.4% for the year ended December 31, 2020 compared to the same period in the prior year. Sales from our European operations, which we closed at the end of the second quarter of 2020, were down \$14.3 million or 54.4% for the year ended December 31, 2020. Direct-to-consumer revenue increased \$12.6 million, or 3.6% compared to the year ended December 31, 2019 due primarily to strength in our North American e-commerce channel, partially offset both by the closure of our European operations and reduced sales in our retail stores due to store closures and depressed retail foot traffic related to the COVID-19 pandemic. Although all 67 stores were open and operating as of the end of the fourth quarter, operations were limited due to public health and government pandemic orders. North America direct-to-consumer revenue was \$351.5 million for the year ended December 31, 2020 an increase of \$24.4 million or 7.5%, compared to the year ended December 31, 2019. Sales to retail partners increased by \$45.2 million, or 50.9% compared to the year ended December 31, 2019. This increase was driven by revenue growth with our existing retail partners, the introduction of new retail partners compared to the same period in the prior year to end the quarter with over 20 partners, and the expansion of our product offerings. North America retail partnership revenue was \$133.6 million, an increase of \$47.6 million or 55.4%, compared to the year ended December 31, 2019.

#### Gross Profit and Cost of Goods Sold

Gross profit was \$253.9 million for the year ended December 31, 2020, an increase of \$38.5 million, or 17.9%, compared to \$215.4 million for the year ended December 31, 2019. Cost of goods sold was \$243.1 million for the year ended December 31, 2020, an increase of \$19.3 million, or 8.6%, compared to \$223.8 million for the year ended December 31, 2019. Gross margin for the year ended December 31, 2020 was 51.1% compared to 49.0% for the year ended December 31, 2019. The increase in gross margin was driven by the positive impact of supply chain initiatives designed to reduce product unit costs, favorable product mix related to our new mattress line launched in March 2020 and lower logistics costs compared to the prior

year. This was partially offset by a shift in channel mix to lower margin retail partnerships in the year ended December 31, 2020 compared to the prior year.

#### **Sales and Marketing**

Sales and marketing expenses were \$156.8 million for the year ended December 31, 2020, an increase of \$2.2 million or 1.4%, compared to \$154.6 million for the year ended December 31, 2019. Sales and marketing expenses remained relatively flat as we continued to invest in driving traffic to our e-commerce website, market our products to consumers and build our brand. Sales and marketing expenses as a percentage of revenue was 31.6% for the year ended December 31, 2020, compared to 35.2% for the year ended December 31, 2019, due to improved marketing efficiencies driven in part by lower online and offline media costs.

#### **General and Administrative**

General and administrative expenses were \$172.1 million for the year ended December 31, 2020, an increase of \$23.7 million, or 16.0%, compared to \$148.3 million for the year ended December 31, 2019. General and administrative expenses increased primarily due to the operating costs related to our expanded retail presence of 7 new stores compared to the fourth quarter of 2019, as well as expenses related to being a public company. General and administrative expenses as a percentage of revenue increased from 33.8% for the year ended December 31, 2019 to 34.6% for the year ended December 31, 2020 reflecting our increased investment in retail store operations and expenses related to being a public company.

#### **Restructuring**

Restructuring expenses were \$7.7 million for the year ended December 31, 2020 compared to \$1.2 million for the year ended December 31, 2019. Restructuring expenses for the year ended December 31, 2020 relate to costs associated with strategic shifts in our business structure including exiting certain lines of business and geographies. Such costs include severance and other employee separation costs, contract termination expenses and asset impairment. Restructuring expenses for the year ended December 31, 2019 related to severance charges in connection with a reduction in force in North America.

#### **Total Other Expense, net**

Other expense, net was \$6.8 million for the year ended December 31, 2020, an increase of \$2.6 million compared to expense of \$4.2 million for the year ended December 31, 2019. The increase in other expense, net was primarily due to interest incurred on our Amended Subordinated Facility and Revolving Credit Facility, offset by an indirect tax benefit of approximately \$0.8 million.

#### **Key Operating Metrics and Non-GAAP Financial Measures**

We prepare and analyze operating and financial data to assess the performance of our business and allocate our resources. The key operating performance and financial metrics and indicators we use are set forth below. The following table sets forth our key performance indicators for the year ended December 31, 2020 and 2019.

(in thousands, except percentages)	Year Ended December 31,	
	2020	2019
Gross margin	51.1%	49.0 %
Adjusted EBITDA	(45,274)	(70,684)

**Gross Margin.** Gross margin is defined as gross profit divided by revenue.

**Adjusted EBITDA.** Adjusted EBITDA is a supplemental measure of our performance that is not required by, or presented in accordance with, GAAP. Adjusted EBITDA is not a measurement of our financial performance under GAAP and should not be considered as an alternative to net income or any other performance measure derived in accordance with GAAP.

We define Adjusted EBITDA as net loss before interest (income) expense, income tax expense and depreciation and amortization as further adjusted to exclude the impact of stock-based compensation expense, restructuring costs, costs associated with legal settlements, and transaction costs incurred in connection with our initial public offering. We caution investors that amounts presented in accordance with our definition of Adjusted EBITDA may not be comparable to similar measures disclosed by our competitors, because not all companies and analysts calculate Adjusted EBITDA in the same

manner. We present Adjusted EBITDA because we consider it to be an important supplemental measure of our performance and believe it is frequently used by securities analysts, investors, and other interested parties in the evaluation of companies in our industry. Management believes that investors' understanding of our performance is enhanced by including this non-GAAP financial measure as a reasonable basis for comparing our ongoing results of operations.

Management uses Adjusted EBITDA:

- as a measurement of operating performance because it assists us in comparing the operating performance of our business on a consistent basis, as it removes the impact of items not directly resulting from our core operations;
- for planning purposes, including the preparation of our internal annual operating budget and financial projections;
- to evaluate the performance and effectiveness of our operational strategies; and
- to evaluate our capacity to expand our business.

By providing this non-GAAP financial measure, together with the reconciliation, we believe we are enhancing investors' understanding of our business and our results of operations, as well as assisting investors in evaluating how well we are executing our strategic initiatives. Adjusted EBITDA has limitations as an analytical tool, and should not be considered in isolation, or as an alternative to, or a substitute for net income or other financial statement data presented in our consolidated financial statements as indicators of financial performance. Some of the limitations are:

- such measure does not reflect our cash expenditures;
- such measure does not reflect changes in, or cash requirements for, our working capital needs;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future and such measures do not reflect any cash requirements for such replacements; and
- other companies in our industry may calculate such measures differently than we do, limiting their usefulness as comparative measures.

Due to these limitations, Adjusted EBITDA should not be considered as a measure of discretionary cash available to us to invest in the growth of our business. We compensate for these limitations by relying primarily on our GAAP results and using this non-GAAP measure only supplementally. As noted in the table below, Adjusted EBITDA includes adjustments to exclude the impact of stock-based compensation expense and material infrequent items, including but not limited to the costs of our initial public offering, restructuring and costs associated with legal settlements, among other items. It is reasonable to expect that these items will occur in future periods. However, we believe these adjustments are appropriate because the amounts recognized can vary significantly from period to period, do not directly relate to the ongoing operations of our business and may complicate comparisons of our internal operating results and operating results of other companies over time. In addition, Adjusted EBITDA includes adjustments for other items that we do not expect to regularly record following our initial public offering. Each of the normal recurring adjustments and other adjustments described in this paragraph and in the reconciliation table below help management with a measure of our core operating performance over time by removing items that are not related to day-to-day operations.

The following table reconciles Adjusted EBITDA to the most directly comparable GAAP financial performance measure, which is net loss:

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	Year Ended December 31,	
	2020	2019
(in thousands)		
Net loss	(89,555)	\$ (93,040)
Depreciation and amortization	13,516	7,753
Stock-based compensation(a)	13,314	7,933
Interest (income) expense	8,376	3,188
Restructuring(b)	7,736	1,223
Transaction costs(d)	787	1,346
Legal settlements(c)	500	826
Income tax expense	52	87
<b>Adjusted EBITDA</b>	<b>(45,274)</b>	<b>\$ (70,684)</b>

(a) Represents non-cash stock-based compensation expense.

(b) Represents costs associated with strategic shifts in our business structure including exiting certain lines of business and geographies. Associated costs include severance and other employee separation costs, contract termination expenses and asset impairment.

(c) Amounts related to litigation settlements.

(d) Represents expenses incurred for professional, consulting, legal, and accounting services performed in connection with our initial public offering, which are not indicative of our ongoing costs and which were discontinued following the completion of our initial public offering.

## Liquidity and Capital Resources

### Sources of Funds

Our principal sources of liquidity are our cash, cash equivalents and restricted cash, our Revolving Credit Facility (as defined herein), our Amended Subordinated Facility (as defined herein), and former equity offerings. Cash, cash equivalents and restricted cash consist primarily of cash on deposit with banks and investments in money market funds. As of December 31, 2020, we had \$92.1 million of cash, cash equivalents and restricted cash.

### Funding Requirements

Our primary requirements for liquidity and capital are to fund operating losses as we continue to scale our business, for increased working capital requirements and inventory management to meet increased consumer demand, for increased capital expenditures to grow our retail store presence, as well as for general corporate needs. Historically, these cash requirements have been met through funds raised by the sale of common equity, utilization of our Revolving Credit Facility, our Amended Subordinated Facility and cash on hand.

We believe that our sources of liquidity and capital will be sufficient to finance our growth strategy and resulting operations, planned capital expenditures and the additional expenses we expect to incur for at least the next 12 months. However, we cannot assure you that cash provided by operating activities or cash, cash equivalents and restricted cash will be sufficient to meet our future needs. If we are unable to generate sufficient cash flows from operations in the future, we may have to obtain additional financing. If we obtain additional capital by issuing equity, the interests of our existing stockholders will be diluted. If we incur additional indebtedness, that indebtedness may contain significant financial and other covenants and higher interest rates that may significantly restrict our operations. We cannot assure you that we could obtain refinancing or additional financing on favorable terms or at all. See "Risk Factors—Risks Related to Our Business—Our ability to raise capital in the future may be limited, and our failure to raise capital when needed could prevent us from growing."

Our capital expenditures consist primarily of retail infrastructure, leasehold improvements, product development and computers and hardware. In December 2018, we signed a new agreement for a headquarters in New York for a period of 15 years with a five-year renewal option. Rent payments began on the new headquarters in January 2020.

### Historical Cash Flows

The following table shows summary cash flow information for the years ended December 31, 2020 and 2019:

(in thousands)	Year Ended December 31,	
	2020	2019
Net cash used in operating activities	\$ (47,568)	(44,328)
Net cash used in investing activities	(15,935)	(50,813)
Net cash provided by financing activities	88,044	133,876
Effect of exchange rate changes	(35)	488
<b>Net change in cash, cash equivalents and restricted cash</b>	<b>24,506</b>	<b>39,223</b>

*Operating Activities.* Net cash used in operating activities consists of net loss adjusted for certain non-cash items, including share-based compensation, property and equipment depreciation, long-term deferred rent and deferred income taxes, as well as the effect of changes in inventory and other working capital amounts.

For the year ended December 31, 2020, net cash used in operating activities was \$47.6 million and was comprised primarily of net loss of \$89.6 million, decreased by \$31.9 million related to non-cash adjustments, primarily related to deferred rent, depreciation and amortization, and share based compensation. Changes in working capital decreased cash used in operating activities by \$10.1 million, primarily due to an increase in accounts payable of \$16.6 million, and decreases in prepaid and other assets of \$12.9 million, \$3.4 million in accounts receivable, net and \$3.2 million in inventory, offset by a decrease in accrued expenses of \$18.4 million and a decrease in other liabilities of \$6.1 million.

For the year ended December 31, 2019, net cash used in operating activities was \$44.3 million and was comprised of net loss of \$93.0 million, decreased by \$21.6 million related to non-cash adjustments, primarily related to depreciation and amortization, and share-based compensation. Changes in working capital decreased cash used in operating activities by \$27.1 million, primarily due to an increase in accrued expenses of \$35.8 million, and an increase in other liabilities of \$19.6 million, partially offset by an increase prepaid expenses and other assets of \$16.5 million and an increase in accounts receivable, net of \$8.0 million.

*Investing Activities.* Our net cash used in investing activities primarily consists of purchases of property and equipment and issuances of notes receivables.

For the year ended December 31, 2020, net cash used in investing activities was \$15.9 million, comprised of entirely of purchases of property and equipment.

For the year ended December 31, 2019, net cash used in investing activities was \$50.8 million and was primarily comprised of \$54.8 million in purchases of property and equipment, partially offset by a \$4.0 million increase in notes receivable.

*Financing Activities.* For the year ended December 31, 2020, net cash provided by financing activities was \$88.0 million, primarily consisting of \$88.9 million from the issuance of equity in our initial public offering and the exercise of stock options. The Revolving Credit Facility of \$16.0 million replaced the Prior Credit Facility of \$15.9 million resulting in \$0.1 million of additional cash flow from financing activities.

For the year ended December 31, 2019, net cash provided by financing activities was \$133.9 million and primarily consisted of net proceeds of \$1.3 million from our Prior Credit Facility, net proceeds of \$50.0 million from our Subordinated Facility and \$82.6 million from the issuance of equity and exercise of stock options.

#### **Senior Secured Facility**

On April 27, 2016, Casper Sleep Inc. and Casper Science LLC entered into a loan and security agreement with Pacific Western Bank (as amended, the “Senior Secured Facility” or “Prior Credit Facility”). Please refer to Note 7 to our audited consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K for a further discussion of the material terms of the Senior Secured Facility.

#### **Revolving Credit Facility**

On November 10, 2020, we refinanced the Prior Credit Facility by entering into a credit agreement (the “Credit Agreement”) by and among the Company, Casper Science LLC and Casper Sleep Retail LLC (collectively, the “Loan Parties”), and Wells Fargo Bank, National Association (“Wells Fargo”), providing for a senior secured asset-based revolving credit facility of up to \$30.0 million, with an uncommitted accordion of an additional \$15.0 million (the “Revolving Credit Facility”).

The Credit Agreement provides that up to \$10.0 million of the Revolving Credit Facility is available for issuances of letters of credit, and up to \$5.0 million is available for swingline loans.

The Company has the option to increase the total commitment under the Revolving Credit Facility from \$30.0 million to \$45.0 million, subject to certain conditions, including obtaining commitments from one or more lenders. The Company intends to use the proceeds of the Revolving Credit Facility (a) to finance the acquisition of working capital assets of the Company, including the purchase of inventory and equipment, in each case in the ordinary course of business, (b) to finance capital expenditures of the Company, (c) for general corporate purposes of the Loan Parties, (d) to pay fees and expenses in connection with the transactions contemplated by the Credit Agreement, (e) the repayment in full of amounts outstanding under the Prior Credit Facility and (e) for other lawful corporate purposes. The Prior Credit Facility was terminated upon repayment in full of the amounts outstanding thereunder.

The Revolving Credit Facility matures on the earlier of November 10, 2023 and 91 days prior to the earliest maturity date of any borrowing under the Amended Subordinated Facility (as defined below).

Borrowings under the Revolving Credit Facility will be subject to an applicable margin of (i) when Average Daily Availability (as defined in the Credit Agreement) is greater than or equal to 50% of the Loan Cap (as defined in the Credit Agreement), 2.50% for LIBOR loans or 1.50% for base rate loans, as well as a letter of credit fee of 2.50%, and (ii) when Average Daily Availability is less than 50% of the Loan Cap, 2.75% for LIBOR loans or 1.75% for base rate loans, as well as a letter of credit fee of 2.75%, in each case subject to adjustments on the first day of each fiscal quarter commencing on January 1, 2021.

The Revolving Credit Facility is secured by substantially all assets of the Loan Parties, including intellectual property, subject to customary exceptions.

The Revolving Credit Facility contains customary covenants that limit, absent lender approval, the ability of the Company to, among other things, pay cash dividends, incur debt, create liens and encumbrances, redeem or repurchase stock, enter into certain transactions repay certain indebtedness, make investments or dispose of assets. The financial covenant requires that the Loan Cap minus the Total Outstanding (each as defined in the Credit Agreement) be no less than the greater of (i) 10.0% of the Loan Cap and (ii) \$3,000,000. The Revolving Credit Facility also includes customary cash dominion terms, pursuant to which a Cash Dominion Event (as defined in the Credit Agreement) could become effective if the applicable triggers as set forth in the Credit Agreement were to occur.

The Credit Agreement contains customary events of default including, among other things, failure to pay obligations when due, initiation of bankruptcy or insolvency proceedings, defaults on certain other indebtedness, change of control, incurrence of certain material judgments that are not stayed, satisfied, bonded or discharged within 45 days, certain events related to the Employee Retirement Income Security Act of 1974, invalidity of the credit documents, and violation of affirmative and negative covenants or breach of representations and warranties set forth in the Credit Agreement. Upon an event of default, the lenders may, subject to various customary cure rights and grace periods, require the immediate payment of all amounts outstanding and foreclose on collateral.

As of December 31, 2020, we had \$16.0 million outstanding and \$7.8 million of letters of credit issued pursuant to the Revolving Credit Facility with \$6.2 million remaining available for borrowing and were in compliance with all covenants under the Revolving Credit Facility. An additional \$2.9 million in letters of credit issued pursuant to the Prior Credit Facility remained outstanding as of December 31, 2020.

#### ***Amended Subordinated Facility***

In connection with the secured growth capital loan facility agreement ("the Subordinated Facility") with TriplePoint Venture Growth BDC Corp., as lender and collateral agent, and TriplePoint Capital LLC, as lender (or, together with TriplePoint Venture Growth BDC Corp., TriplePoint"), on March 1, 2019, we entered into two warrant agreements with TriplePoint Venture Growth BDC Corp. and TriplePoint Capital LLC for 19,201 shares of Series D preferred stock and 12,801 shares of Series D preferred stock, respectively, at an exercise price per share of \$31.24715. TriplePoint's right under the warrant agreements to purchase the Series D preferred stock will be available for seven years from March 1, 2019, subject to certain exercise conditions. In the event these warrant agreements are exercised, TriplePoint will have the right to purchase under the warrant agreements the common stock into which each share of the Series D preferred stock is convertible at the time of such exercise.

Borrowings under the Subordinated Facility accrued interest at the prime rate (which, as defined in the Subordinated Facility, shall be as published in the Wall Street Journal with a floor of 5.25%) plus an applicable margin set forth in the table of terms. The table of terms sets forth 18 options that range on term, amortization, interest rate and other features that can range

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from an annual interest rate of the prime rate plus 0.0% margin for a three-month interest-only term and up to a prime plus 7.25% margin for a 48-month interest-only term. End of term payments ranged from 0.25% of each advance for a three-month term up to 8.25% for each advance with a 48-month repayment option. The Subordinated Facility also had a 1.25% one-time facility fee for the committed amount, which is initially \$50.0 million. There was a 1.5% prepayment penalty in the event that the loan is prepaid within the first 18 months with no prepayment penalty thereafter.

The Subordinated Facility contained certain affirmative and negative covenants, including, among others, restrictions on liens, indebtedness, mergers or acquisitions, investments, dividends or distributions, fundamental changes and affiliate transactions.

On November 10, 2020, the Company, Casper Science LLC and Casper Sleep Retail LLC entered into an amendment to the agreement governing the Subordinated Facility with TriplePoint Venture Growth BDC Corp., as lender and collateral agent, and TriplePoint Capital LLC, as lender (the “Amended Subordinated Facility”), to, among other things, permit the incurrence of the Revolving Credit Facility.

As of December 31, 2020, we had \$50 million outstanding under the Amended Subordinated Facility and we were in compliance with all covenants under the Amended Subordinated Facility.

### ***Initial Public Offering***

On February 10, 2020, in connection with our initial public offering, we issued and sold 8,350,000 shares of our common stock at a price to the public of \$12.00 per share, resulting in net proceeds to us of approximately \$88.0 million, after deducting the underwriting discount of approximately \$6.5 million and offering expenses of approximately \$5.7 million.

### **Contractual Obligations**

The following table sets forth our contractual obligations as of December 31, 2020:

(in thousands)	Total	Less than 1 year	1 - 3 years	3 - 5 years	Thereafter
Operating Leases	\$ 167,305	\$ 20,940	\$ 60,464	\$ 37,526	\$ 48,375
Long-term Debt <sup>(1)</sup>	69,438	—	69,438	—	—
Purchase Obligations	27,442	27,442	—	—	—
Interest on indebtedness	19,705	8,520	11,185	—	—
<b>Total</b>	<b>\$ 283,890</b>	<b>\$ 56,902</b>	<b>\$ 141,087</b>	<b>\$ 37,526</b>	<b>\$ 48,375</b>

(1) Represents the amount outstanding as of December 31, 2020 under our Revolving Credit Facility Amended Senior Secured Facility and our Amended Subordinated Facility.

### **Off-Balance Sheet Arrangements**

As of December 31, 2020, we did not have any off-balance sheet arrangements other than leases. See Note 10 to our audited consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K for further information on our Leases.

### **Recent Accounting Pronouncements**

See Note 15 to our audited consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K for further information on certain accounting standards that have been adopted during 2019 and 2020 or that have not yet been required to be implemented and may be applicable to our future operations.

### **Critical Accounting Policies and Estimates**

#### ***Revenue Recognition***

Revenue comprises the consideration received or receivable for the sale of goods in the ordinary course of our activities. Revenue is presented net of estimated returns, sales allowances and discounts.

Shipping and other transportation costs are recorded in cost of goods sold.

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Promotions are offered to consumers primarily in the form of discounts and recorded as a reduction of gross sales at the date of the corresponding transaction.

We accept sales returns during a 30 or 100-night trial period, depending on the product. A sales return accrual is estimated based on historical return rates and is adjusted for any current trends, as appropriate. Returns are netted against the sales allowance reserve for the period.

Sales are recognized as deferred revenue at the point of sale, and are converted to revenue upon delivery to the consumer. The sales deferral period and subsequent revenue recognition date is the estimated delivery date based on the date of shipment.

E-commerce and retail revenue are recognized upon delivery to the customer, and retail partnership revenue is recognized upon the transfer of control on a per contract basis.

On January 1, 2019, we adopted Topic 606 "Revenue from Contracts with Customers," which did not have a material impact on our results of operations. See Note 15 to our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K for additional information on assessment of recently issued accounting pronouncements.

### ***Accounts Receivable, net***

Accounts receivable, net is composed primarily of amounts due from retail partners and from financial institutions related to credit card sales. Accounts receivable, net is recorded net of an allowance for uncollectible balances related to chargebacks or disputes raised by retail partners. The allowance is recognized in an amount equal to anticipated future uncollectible receivables. Management estimates the allowance for doubtful accounts based on delinquencies, trends and historical experience.

### ***Inventory***

Inventory primarily consist of merchandise purchased for resale, as well as costs to deliver merchandise to our warehouse. The Company's inventory is stated at cost. The Company reviews its inventory on a regular basis for excess and obsolete inventory and makes appropriate adjustments when necessary. Once established, the original cost of the inventory less the related inventory allowance represents the new cost basis of such products. Additionally, we had purchase obligations in the amount of \$27.4 million as of December 31, 2020, that will continue into 2021. There are no purchase obligations beyond 2021.

Storage costs, indirect administrative overhead and certain selling costs related to inventories are expensed in the period incurred.

Raw materials consist of boxes, replacements parts and components used in the creation of products such as foam, pillows and springs. Finished goods are comprised of completed goods, including mattresses, pillows, sheets, furniture and dog beds. Additionally, other inventory consists of deferred cost of goods sold and purchase order clearing.

The Company writes down inventory as a result of excess and obsolete inventories, or when it believes that the net realizable value of inventories is less than the carrying value.

### ***Property and Equipment***

Property and equipment are stated at cost less accumulated depreciation.

Depreciation on property and equipment is calculated on the straight-line method over the estimated useful lives of the assets. The estimated useful lives of furniture, fixtures, computers, technology hardware, and vehicles range from 3 to 5 years. Our purchased software is amortized over 7 years. Leasehold improvements are depreciated over the shorter of their useful life or the related lease term (without consideration of option renewal terms).

Long-lived assets, such as property, and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If circumstances require a long-lived asset or asset group be tested for possible impairment, we first compare undiscounted cash flows expected to be generated by that asset or asset group to its carrying amount. If the carrying amount of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying amount exceeds its fair value. Fair value is determined using various valuation techniques including discounted cash flow models, quoted market values, and third-party independent appraisals, as considered necessary.

### ***Income Taxes***

We account for income taxes in accordance with ASC Topic 740, "Income Taxes." Under this method, deferred tax assets and liabilities are determined based on the temporary differences between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. We classify all deferred income tax assets and liabilities as noncurrent on our balance sheet. The effect of a change in tax rates on deferred tax assets and liabilities is recognized within the provision for (benefit from) income taxes on the consolidated statement of operations and comprehensive loss in the period that includes the enactment date.

We reduce deferred tax assets, if necessary, by a valuation allowance if it is more likely than not that we will not realize some or all of the deferred tax assets. In making such a determination, we consider all available positive and negative evidence, including taxable income in prior carryback years (if carryback is permitted under the relevant tax law), the timing of the reversal of existing taxable temporary differences, tax-planning strategies, and projected future taxable income. Please refer to Note 11 to our audited consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K for additional information on the composition of these valuation allowances and for information on the impact of U.S. tax reform legislation. We recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position.

We recognize interest and penalties related to uncertain tax positions within the provision for (benefit from) income taxes on our consolidated statement of operations and comprehensive loss.

#### **Stock-Based Compensation**

Compensation cost for all stock-based awards, including options to purchase stock, is measured at fair value on the date of grant and recognized over the service period. The fair value of stock options is estimated on the date of grant using a Black-Scholes model. Stock-based compensation cost is recognized over the requisite service periods of awards, which is typically four years. The actual forfeiture rate applied is based on historical forfeitures. The estimated number of stock awards that will ultimately vest requires judgment, and to the extent actual results, or updated estimates, differ from our current estimates, such amounts will be recorded as a cumulative adjustment in the period estimates are revised.

See Note 8 to our audited consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K for a complete description of the accounting for stock-based awards. We also issue stock-based compensation to some of our non-employee consultants. We account for equity awards to non-employees in accordance with FASB ASC Topic 505-50, Equity-Based Payments to Non-Employees, which requires the fair value of an award to non-employees be remeasured at fair value as the award vests. Upon completion of the underlying performance obligation, or the vesting period, these cease to be revalued.

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

##### **Quantitative and Qualitative Disclosures of Market Risk**

We are exposed to market risk from changes in interest rates, foreign currency and inflation. All these market risks arise in the normal course of business, as we do not engage in speculative trading activities. The following analysis provides quantitative information regarding these risks.

###### **Interest Rate Risk**

Our operating results are subject to risk from interest rate fluctuations on our Revolving Credit Facility and Amended Subordinated Facility, which carry variable interest rates. Interest rate risk is the exposure to loss resulting from changes in the level of interest rates and the spread between different interest rates. Our Revolving Credit Facility and Amended Subordinated Facility bear interest at variable rates, which exposes us to market risks relating to changes in interest rates. Interest rate risk is highly sensitive due to many factors, including U.S. monetary and tax policies, U.S. and international economic factors and other factors beyond our control. As of December 31, 2020, we had \$16.0 million of variable rate debt outstanding under our Revolving Credit Facility and \$50.0 million of variable rate debt outstanding under our Amended Subordinated Facility. Based on December 31, 2020 debt levels, an increase or decrease of 100 basis points in the effective interest rate on the Revolving Credit Facility and our Amended Subordinated Facility would cause an increase in interest expense of approximately \$160 thousand and a decrease of approximately \$160 thousand over the next 12 months. We do not use derivative financial instruments for speculative or trading purposes, but this does not preclude our adoption of specific hedging strategies in the future.

###### **Foreign Currency Risk**

All our domestic product sales, inventory purchases, and operating expenses have been denominated in U.S. dollars. We therefore have not had any foreign currency risk associated with these activities. The functional currency of all our entities is

the U.S. dollar, other than Casper Sleep (UK) Limited which is the British pound, and Casper Sleep GmbH and Casper Sleep SAS, which are the euro. Product sales and inventory purchases for these entities are primarily in their functional currency (e.g. British pounds and euros). Additionally, we incur a portion of operating expenses in Canadian dollars, British pounds and euros. Our results of operations and cash flows are, therefore, subject to fluctuations due to changes in foreign currency exchange rates, covering principally the British Pound, the European Union euro, Canadian dollar, and Chinese RMB. However, we believe functional currency revenue and expenses mostly provide a natural hedge and that the exposure to foreign currency fluctuation from product sales and operating expenses is immaterial currently as the related product sales and costs do not constitute a significant portion of our sales revenue and expenses. As we grow our operations, our exposure to foreign currency risk could become more significant. To date, we have not entered into any foreign currency exchange contracts and currently do not expect to enter into foreign currency exchange contracts for trading or speculative purposes.

**Impact of Inflation**

Our results of operations and financial condition are presented based on historical cost. While it is difficult to accurately measure the impact of inflation due to the imprecise nature of the estimates required, we believe the effects of inflation, if any, on our historical results of operations and financial condition have been immaterial. We cannot assure you, however, that our results of operations and financial condition will not be materially impacted by inflation in the future.

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

The financial statements required to be filed pursuant to this Item 8 are appended to this report. An index of those financial statements is found in Item 15 of Part IV of this Annual Report on Form 10-K.

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

None.

**Item 9A. Controls and Procedures.**

**Limitations on effectiveness of controls and procedures**

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

**Evaluation of disclosure controls and procedures**

Our management, with the participation of our principal executive officer and principal financial officer, evaluated, as of the end of the period covered by this Annual Report on Form 10-K, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on that evaluation, our principal executive officer and principal financial officer concluded that, as of December 31, 2020, our disclosure controls and procedures were effective at the reasonable assurance level.

**Management's annual report on internal control over financial reporting**

Our management is responsible for establishing and maintaining adequate internal control over our financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act. Our management conducted an assessment of the effectiveness of our internal control over financial reporting based on the criteria set forth in "Internal Control - Integrated Framework (2013)" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, our management concluded that, as of December 31, 2020, our internal control over financial reporting was effective.

**Attestation report of the registered public accounting firm**

Our independent registered accounting firm will not be required to opine on the effectiveness of our internal control over financial reporting pursuant to Section 404 until we are no longer an "emerging growth company" as defined in the JOBS Act.

**Changes in internal control over financial reporting**

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There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended December 31, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information.**

None.

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

The following table provides information regarding our executive officers and members of our board of directors (ages as of the date of this Annual Report on Form 10-K):

Name	Age	Position(s)
Philip Krim	37	Chairman of the Board and Chief Executive Officer
Emilie Arel	43	Chief Commercial Officer and President
Michael Monahan	48	Chief Financial Officer
Jonathan Truppman	35	General Counsel, Secretary
Anthony Florence	52	Director
Diana Irvine	62	Director
Karen Katz	64	Lead Independent Director
Jack Lazar	55	Director
Benjamin Lerer	39	Director
Neil Parikh	31	Director
Dani Reiss	47	Director

**Executive Officers**

**Philip Krim** has served as Casper Sleep Inc.'s Chief Executive Officer and as a member of our board of directors since October 2013. Mr. Krim was Chief Executive Officer of Vocalize Mobile, a mobile search advertising platform for small businesses, from January 2010 until July 2013 and Chief Executive Officer of The Merrick Group from January 2003 until December 2009. Mr. Krim has served on the board of directors of Tailwind Acquisition Corporation since September 2020. Since 2016, Mr. Krim has served on the Emerging Leadership Council of the 92nd Street Y. He received a B.B.A. in Marketing from Red McCombs School of Business at the University of Texas at Austin. We believe Mr. Krim's knowledge of the sleep industry and many years of experience as Chief Executive Officer of various companies, including ours, make him well-qualified to serve as a member of our board of directors.

**Emilie Arel** has served as Casper Sleep Inc.'s Chief Commercial Officer and President since July 2019. Previously, Ms. Arel served as the Chief Executive Officer of FULLBEAUTY Brands, a portfolio of brands in the plus-size apparel space, from November 2017 until June 2019 leading its turn-around out of bankruptcy, as well as the Chief Executive Officer of Quidsi Inc., a subsidiary of Amazon LLC, from April 2015 to September 2017. Prior to that, she served as the Senior Vice President of Retail at Quidsi Inc. from May 2014 to April 2015. Between February 2007 and March 2014, Ms. Arel held a variety of executive and leadership roles at Gap Inc., including Vice President of Stores at Old Navy. Before joining Gap, Inc., Ms. Arel served in various positions at Target Corporation from January 2001 to January 2007. Ms. Arel received a dual M.B.A. from the Columbia School of Business in New York, New York and the Haas School of Business in Berkeley, California, as well as a B.A. in Marketing from the University of St. Thomas in St. Paul, Minnesota.

**Michael Monahan** has served as Casper Sleep Inc.'s Chief Financial Officer since August 2020. Previously, Mr. Monahan served as the Chief Financial Officer of Nutrisystem, Inc., a weight-loss company, from 2013 to 2019 where he oversaw the growth of the company's market capitalization and subsequently, the successful sale of the business. Mr. Monahan has also served as the Chief Financial Officer of both Hexo Corp. and PetroChoice Holdings, Inc. Earlier in his career, he served in financial roles at Exelon Corp., Accenture and Arthur Andersen. Mr. Monahan received an M.B.A. from The University of Chicago's Booth School of Business and a B.A. from Villanova University.

**Jonathan Truppman** has served as Casper Sleep Inc.'s General Counsel and Secretary since February 2017. Previously, Mr. Truppman served as our VP Business Development & Legal since February 2015. Between October 2013 and February 2015 and September 2010 and August 2012, he was an associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, an international law firm, and he served as a law clerk for the Honorable Victor Marrero of the United States District Court for the Southern District of New York from September 2012 through September 2013. Mr. Truppman received a J.D., cum laude, from Harvard Law School and a B.A., magna cum laude, from Columbia University.

**Directors**

**Anthony Florence** has served on the board of directors of Casper Sleep Inc. since July 2014. Mr. Florence is a General Partner and head of the technology investing practice at New Enterprise Associates, Inc., or NEA, a venture capital firm he joined in 2008. Prior to joining NEA, Mr. Florence was a Managing Director at Morgan Stanley & Co. LLC, where he served as Head of East Coast Technology Banking in New York and as a member of the North American Management Committee for Investment Banking. From October 2010 until November 2017, Mr. Florence served on the board of directors of Care.com, the largest online marketplace for finding and managing family care. He also served on the board of directors of Cvent, Inc., a meetings, events and hospitality technology provider, from July 2011 until November 2016 and currently serves as a director of several private companies. Mr. Florence received an M.B.A. from the Tuck School of Business at Dartmouth and an A.B. in Economics from Dartmouth College. We believe Mr. Florence's extensive brand-building and broad technology investment experience make him well-qualified to serve on our board of directors.

**Diane Irvine** has served on the board of directors of Casper Sleep Inc. since July 2019. Ms. Irvine previously served as Chief Executive Officer of Blue Nile, Inc., an online retailer of diamonds and fine jewelry, from February 2008 until November 2011, as President from February 2007 until November 2011, and as Chief Financial Officer from December 1999 until September 2007. From February 1994 until May 1999, Ms. Irvine served as Vice President and Chief Financial Officer of Plum Creek Timber Company, Inc., and from September 1981 until February 1994, she worked at accounting firm Coopers & Lybrand LLP in various capacities, most recently as partner. Ms. Irvine has served on the boards of directors of Yelp Inc., a crowd-sourced local business review and social networking site, since September 2011, Funko, Inc., a pop culture consumer products company, since August 2017, D.A. Davidson Companies, a financial services firm, since January 2018, and Farfetch Limited, a global platform for the luxury fashion industry, since August 2020. She previously served on the boards of directors of XO Group Inc. from November 2014 until December 2018, and Rightside Group Ltd. from August 2014 until July 2017. Ms. Irvine received an M.S. in Taxation and a Doctor of Humane Letters from Golden Gate University, and a B.S. in Accounting from Illinois State University. We believe Ms. Irvine's extensive leadership experience, her financial expertise and her broad public board experience make her well-qualified to serve on our board of directors.

**Karen Katz** has served on the board of directors of Casper Sleep Inc. since April 2019 and as the Lead Independent Director of the board of directors since March 2020. Ms. Katz served as President and Chief Executive Officer of Neiman Marcus Group LTD LLC, an international multi-brand omni-channel retailer, from October 2010 until her retirement in February 2018. Over her 33-year tenure with the Neiman Marcus Group, Ms. Katz served in a variety of executive and leadership roles in the company's merchant, stores and e-commerce organizations, including as Executive Vice President—Stores, a member of the Office of the Chairman of Neiman Marcus Group, President, Neiman Marcus Online, and President and Chief Executive Officer, Neiman Marcus Stores. Ms. Katz served on the board of directors of The Neiman Marcus Group, LLC from October 2010 to January 2020. In addition, Ms. Katz has served on the boards of directors of Under Armour, Inc., a performance footwear, apparel and equipment company since October 2014 and Humana, Inc., a health and well-being company, since October 2019. Ms. Katz is an advisor to a number of consumer companies, helping their chief executive officers think about strategy, leadership opportunities, as well as engagement with consumers. Ms. Katz is currently the Vice-Chair of the Board of the Perot Museum of Science and Nature in Dallas, Texas, where she lives. From 2017 to 2019, she served as the Chairman of the National Retail Foundation, a non-profit arm of the National Retail Federation, as well as sat on the boards of directors of the National Retail Federation, the pre-eminent retail trade association. Ms. Katz received an M.B.A. from the University of Houston and a B.A. in Political Science from the University of Texas. We believe Ms. Katz's extensive experience at the helm of a leading omni-channel retailer and deep understanding of customer experience and engagement make her well-qualified to serve on our board of directors.

**Jack Lazar** has served on the board of directors of Casper Sleep Inc. since April 2019. Since March 2016, Mr. Lazar has been an independent business consultant. From January 2014 until March 2016, Mr. Lazar served as the Chief Financial Officer at GoPro, Inc., a provider of wearable and mountable capture devices. From January 2013 until January 2014, he was an independent business consultant. From May 2011 until January 2013, Mr. Lazar was employed by Qualcomm and served as Senior Vice President, Corporate Development and General Manager of Qualcomm Atheros, Inc., a developer of communications semiconductor solutions. From September 2003 until it was acquired by Qualcomm in May 2011, Mr. Lazar served in various positions at Atheros Communications, Inc., a provider of communications semiconductor solutions, most recently as Senior Vice President of Corporate Development, Chief Financial Officer and Secretary. Mr. Lazar has served on the boards of directors of Silicon Laboratories, an analog and mixed signal semiconductor company, since April 2013, Resideo Technologies, Inc., a provider of comfort and security solutions, since October 2018, and Box, Inc., a cloud content management company, since March 2020. Mr. Lazar has previously served on a variety of public company boards, including TubeMogul, Inc., an enterprise software company for digital branding from October 2013 to December 2016, Quantenna Communications, Inc., a wireless semiconductor company, from July 2016 to June 2019, and Mellanox Technologies, Ltd., a communications semiconductor company from June 2018 to April 2020. Mr. Lazar is a certified public accountant (inactive) and holds a B.S. in Commerce with an emphasis in Accounting from Santa Clara University. We believe Mr. Lazar's past experience as an executive officer and director, including at companies in the technology industry, makes him well-qualified to serve on our board of directors.

**Benjamin Lerer** has served on the board of directors of Casper Sleep Inc. since July 2014. Mr. Lerer is the Chief Executive Officer of Group Nine Media, which he joined in December 2016. He is also a Co-Founder of Thrillist Media Group, Inc., where he served as Chief Executive Officer from October 2005 to December 2016, and a Managing Partner at Lerer Hippeau Ventures, an early stage venture capital fund he co-founded in 2010. Mr. Lerer has served on the board of directors of Group Nine Acquisition Corp. since December 2020. He also serves as Chairman of East River Development Alliance Federal Credit Union and as a Director of certain funds managed by Lerer Hippeau Ventures. He received a B.S. in Political Science from the University of Pennsylvania. We believe Mr. Lerer's extensive brand-building, organizational leadership and media and marketing industry experience make him well-qualified to serve on our board of directors.

**Neil Parikh** has served on the board of directors of Casper Sleep Inc. since October 2013. Mr. Parikh was the Chief Strategy Officer of Casper Sleep Inc. from November 2018 to January 2021 and the Chief Operating Officer from October 2013 to November 2018. Mr. Parikh received a B.A. in Commerce, Organizations, and Entrepreneurship from Brown University. We believe Mr. Parikh's knowledge of the sleep industry and many years of experience as our Chief Strategy Officer and Chief Operating Officer make him well-qualified to serve as a member of our board of directors.

**Dani Reiss** has served on the board of directors of Casper Sleep Inc. since March 2019. Mr. Reiss has been the President and Chief Executive Officer of Canada Goose Holdings Inc. (and its predecessors), a global outerwear company, since 2001 and currently serves as Chairman of its board of directors. Mr. Reiss has served on the board of directors of Polar Bears International (Canada) Inc., a wildlife conservation organization, since September 2014. He has also served on the board of directors of Mount Sinai Hospital Foundation of Toronto since June 2014. Mr. Reiss received a B.A. in English Literature and Philosophy from the University of Toronto. We believe Mr. Reiss' extensive leadership and operational experience makes him well-qualified to serve on our board of directors.

#### Family Relationships

There are no family relationships among any of our executive officers or directors.

#### Code of Business Conduct and Ethics

We have a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A copy of the code is posted on our investor relations website, [ir.casper.com](http://ir.casper.com). In addition, we intend to post on our website all disclosures that are required by law or the NYSE listing standards concerning any amendments to, or waivers from, any provision of the code. The information on any of our websites is deemed not to be incorporated in this Annual Report on Form 10-K or to be part of this Annual Report on Form 10-K.

The remainder of the response to this Item 10 will be included in our definitive Proxy Statement for the 2021 Annual Meeting of Stockholders and is incorporated herein by reference.

#### Item 11. Executive Compensation.

The information required by this Item 11 will be included in our definitive Proxy Statement for the 2021 Annual Meeting of Stockholders and is incorporated herein by reference.

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

##### Equity Compensation Plan Information

The following table provides information on our equity compensation plans as of December 31, 2020.

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans(4)
Equity compensation plans approved by security holders(1)	6,003,047 (2)	13.91 (3)	1,404,115
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>6,003,047</b>	<b>\$ 13.91</b>	<b>1,404,115</b>

- (1) Consists of the 2014 Plan, the 2015 Plan, and the 2020 Plan, which was adopted in 2020 in connection with our initial public offering. The 2020 Plan provides for an annual increase, to be added on the first day of each calendar year, beginning with the calendar year ending January 1, 2021 and ending on and including January 1, 2029, equal to the lesser of (a) 5% of the outstanding shares of common stock on December 31 immediately preceding such date and (b) a lesser amount determined by the Company's board of directors.
- (2) Includes 186,850 outstanding options to purchase stock under the 2014 Plan, 3,248,353 outstanding options to purchase stock under the 2015 Plan, 324,505 outstanding options to purchase stock under the 2020 Plan, and 2,243,339 rights to acquire common stock under the 2020 Plan. Following the effectiveness of the 2015 Plan, no further grants were permitted to be made under the 2014 Plan, though existing awards remain outstanding.
- (3) As of December 31, 2020, the weighted-average exercise price of outstanding options under the 2014 Plan was \$0.23 and the weighted-average exercise price of outstanding options under the 2015 Plan was \$15.38.
- (4) Includes 1,404,115 shares available for future issuance under the 2020 Plan.

The remaining information required by this Item 12 will be included in our definitive Proxy Statement for the 2021 Annual Meeting of Stockholders and is incorporated herein by reference.

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

The information required by this Item 13 will be included in our definitive Proxy Statement for the 2021 Annual Meeting of Stockholders and is incorporated herein by reference.

**Item 14. Principal Accountant Fees and Services.**

The information required by this Item 14 will be included in our definitive Proxy Statement for the 2021 Annual Meeting of Stockholders and is incorporated herein by reference.

**PART IV****Item 15. Exhibits and Financial Statement Schedules**

## (a)(1) Financial Statements.

The following documents are included on pages F-1 through F-29 attached hereto and are filed as part of this Annual Report on Form 10-K.

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## (a)(2) Financial Statement Schedules.

All financial statement schedules have been omitted because they are not applicable, not required or the information required is shown in the financial statements or the notes thereto.

## (a)(3) Exhibits.

The following is a list of exhibits filed as part of this Annual Report on Form 10-K.

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed/ Furnished Herewith
		Form	File No.	Exhibit	Filing Date	
3.1	<a href="#">Amended and Restated Certificate of Incorporation</a>	S-8	333-236377	4.1	2/11/20	*
3.2	<a href="#">Amended and Restated Bylaws</a>					
4.1	<a href="#">Specimen Stock Certificate evidencing the shares of common stock.</a>	S-1/A	333-235874	4.1	1/27/20	
4.2	<a href="#">Amended and Restated Investors' Rights Agreement, dated as of February 4, 2019, by and among Casper Sleep Inc. and certain holders of its capital stock</a>	S-1	333-235874	4.2	1/10/20	
4.3	<a href="#">Description of Capital Stock</a>	10-K	001-39214	4.3	3/19/20	
10.1	<a href="#">Credit Agreement, dated as of Dated as of November 10, 2020, among Casper Sleep Inc. as the Lead Borrower, the Borrowers named therein, the Guarantors named therein, Wells Fargo Bank, National Association as Agent, L/C Issuer and Swing Line Lender, the other Lenders party thereto, and Wells Fargo Bank, National Association as Sole Lead Arranger and Sole Bookrunner</a>	10-Q	001-39214	10.1	11/12/20	
10.2	<a href="#">Plain English Growth Capital Loan and Security Agreement, dated as of March 1, 2019, by and among TriplePoint Venture Growth BDC Corp., TriplePoint Capital LLC, Casper Sleep Inc., Casper Sleep Retail LLC and Casper Science LLC</a>	S-1	333-235874	10.7	1/10/20	

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10.3 <a href="#">First Amendment to the Plain English Growth Capital Loan and Security Agreement, dated as of November 10, 2020, by and among TriplePoint Venture Growth BDC Corp., TriplePoint Capital LLC, Casper Sleep Inc., Casper Sleep Retail LLC and Casper Science LLC</a>	10-Q	001-39214	10.2	11/12/20
10.4† <a href="#">Casper Sleep Inc. 2014 Equity Incentive Plan and form of option agreement</a>	S-1	333-235874	10.8	1/10/20
10.5† <a href="#">Casper Sleep Inc. 2015 Equity Incentive Plan and form of option agreement</a>	S-1	333-235874	10.9	1/10/20
10.6† <a href="#">Casper Sleep Inc. 2020 Equity Incentive Plan</a>	S-8	333-236377	4.3	2/11/20
10.7† <a href="#">Casper Sleep Inc. 2020 Employee Stock Purchase Plan</a>	S-8	333-236377	4.4	2/11/20
10.8† <a href="#">2019 Annual Bonus Plan</a>	S-1	333-235874	10.12	1/10/20
10.9† <a href="#">Offer Letter between Casper Sleep Inc. and Emilie Arel, dated June 4, 2019</a>	S-1	333-235874	10.13	1/10/20
10.10† <a href="#">Form of Executive Severance and Change in Control Agreement</a>	S-1	333-235874	10.14	1/10/20
10.11† <a href="#">Casper Sleep Inc. Non-Employee Director Compensation Policy</a>				*

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10.12†	<a href="#">Form of Indemnification Agreement between Casper Sleep Inc. and its directors and officers</a>	S-1	333-235874	10.16	1/10/20	*
10.13†	<a href="#">Employment Agreement between Casper Sleep Inc. and Philip Krim</a>	S-1/A	333-235874	10.17	1/27/20	*
10.14†	<a href="#">Offer Letter, dated August 25, 2020, between the Company and Michael Monahan</a>	8-K	001-39214	10.1	8/26/20	*
10.15†	<a href="#">Transition and Release of Claims Agreement, dated January 15, 2021 between the Company and Neil Parikh</a>	8-K	001-39214	10.1	1/15/21	*
10.16†	<a href="#">Form of 2020 Stock Option Agreement</a>	10-K	001-39214	10.18	3/19/20	*
10.17†	<a href="#">Form of 2020 RSU Agreement</a>					*
10.18†	<a href="#">Form of 2020 PSU Agreement</a>					*
21.1	<a href="#">List of Subsidiaries of Casper Sleep Inc.</a>	S-1	333-235874	21.10	1/10/20	*
23.1	<a href="#">Consent of KPMG LLP, Independent Registered Public Accounting Firm</a>					*
31.1	<a href="#">Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer</a>					*
31.2	<a href="#">Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer</a>					*
32.1	<a href="#">Section 1350 Certification of Chief Executive Officer</a>					**
32.2	<a href="#">Section 1350 Certification of Chief Financial Officer</a>					**
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.					*
101.SCH	Inline XBRL Taxonomy Extension Schema Document					*
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					*
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					*
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					*
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					*
104	Inline Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)					*

\* Filed herewith.

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\*\* Furnished herewith.

† Indicates management contract or compensatory plan.

**Item 16. Form 10-K Summary.**

None.

**SIGNATURES**

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

Date: February 26, 2021

CASPER SLEEP INC.

By:

/s/ PHILIP KRIM

Philip Krim  
*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 in the capacities and on the dates indicated.

Name	Title	Date
/s/ PHILIP KRIM Philip Krim	Chairman of the Board and Chief Executive Officer ( <i>principal executive officer</i> )	February 26, 2021
/s/ MICHAEL MONAHAN Michael Monahan	Chief Financial Officer ( <i>principal financial and accounting officer</i> )	February 26, 2021
/s/ NEIL PARIKH Neil Parikh	Director	February 26, 2021
/s/ ANTHONY FLORENCE Anthony Florence	Director	February 26, 2021
/s/ DIANE IRVINE Diane Irvine	Director	February 26, 2021
/s/ KAREN KATZ Karen Katz	Director	February 26, 2021
/s/ JACK LAZAR Jack Lazar	Director	February 26, 2021
/s/ BENJAMIN LERER Benjamin Lerer	Director	February 26, 2021
/s/ DANI REISS Dani Reiss	Director	February 26, 2021

# C

**Casper Sleep Inc. and Subsidiaries**

**Consolidated Financial Statements**

**as of and for the years ended December 31, 2020, 2019 and 2018**

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**Casper Sleep Inc. and Subsidiaries**

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**Report of Independent Registered Public Accounting Firm**

**To the Stockholders and Board of Directors  
Casper Sleep Inc.:**

*Opinion on the Consolidated Financial Statements*

We have audited the accompanying consolidated balance sheets of Casper Sleep Inc. and subsidiaries (the Company) as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive loss, changes in convertible preferred stock and stockholders' equity / (deficit), and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2020, in conformity with U.S. generally accepted accounting principles.

*Basis for Opinion*

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated 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 consolidated 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 consolidated 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 consolidated 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 consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 2016.

New York, New York  
February 26, 2021

**Casper Sleep Inc. and Subsidiaries**

**Consolidated Balance Sheets**

(In thousands, except per share amounts)

<b>Assets</b>	<b>As of December 31,</b>	
	<b>2020</b>	<b>2019</b>
Current assets:		
Cash and cash equivalents	\$ 88,922	\$ 67,407
Restricted cash	3,162	171
Accounts receivable, net	27,663	31,059
Prepaid expenses and other current assets	11,026	23,924
Inventory, net	35,531	39,358
Total current assets	<u>166,304</u>	<u>161,919</u>
Property and equipment, net	66,529	66,262
Other assets	1,368	2,137
Total assets	<u>\$ 234,201</u>	<u>\$ 230,318</u>
<b>Liabilities, Convertible Preferred Stock and Stockholders' Equity / (Deficit)</b>		
Current liabilities:		
Accounts payable	47,612	30,734
Accrued expenses	54,741	73,130
Deferred revenue	7,430	9,673
Other current liabilities	9,498	34,422
Total current liabilities	<u>119,281</u>	<u>147,959</u>
Long-term Debt	65,546	49,173
Other liabilities	23,907	20,319
Total liabilities	<u>208,734</u>	<u>217,451</u>
Convertible preferred stock, \$0.000001 par value - zero and 19,213 shares authorized; zero and 19,181 issued and outstanding as of December 31, 2020 and December 31, 2019, respectively	—	319,961
Stockholders' equity / (deficit):		
Common stock, \$0.000001 par value - 170,000 and zero shares authorized; 40,539 and zero issued and outstanding as of December 31, 2020 and December 31, 2019, respectively	—	—
Convertible Class A Common stock, \$0.000001 par value - zero and 19,044 shares authorized; zero and 9,191 issued and outstanding as of December 31, 2020 and December 31, 2019, respectively	—	—
Class B Common stock, \$0.000001 par value zero and 37,000 shares authorized; zero and 1,466 issued and outstanding as of December 31, 2020 and December 31, 2019, respectively	—	—
Additional paid-in capital	440,248	18,097
Accumulated other comprehensive income	34	69
Accumulated deficit	(414,815)	(325,260)
Total stockholders' equity / (deficit)	<u>25,467</u>	<u>(307,094)</u>
Total liabilities, convertible preferred stock and stockholders' equity / (deficit)	<u>\$ 234,201</u>	<u>\$ 230,318</u>

See accompanying notes to consolidated financial statements.

**Casper Sleep Inc. and Subsidiaries**  
**Consolidated Statements of Operations and Comprehensive Loss**  
(In thousands, except per share amounts)

	Year Ended December 31,		
	2020	2019	2018
Revenue	\$ 497,000	\$ 439,258	\$ 357,891
Cost of goods sold	243,115	223,847	200,139
Gross profit	253,885	215,411	157,752
Operating expenses			
Sales and marketing	156,806	154,589	126,189
General and administrative	172,071	148,345	123,523
Restructuring	7,736	1,223	—
Total operating expenses	336,613	304,157	249,712
Loss from operations	(82,728)	(88,746)	(91,960)
Other (income) expense			
Interest expense (income), net	8,376	3,188	(248)
Other (income) expense, net	(1,601)	1,019	341
Total other expense	6,775	4,207	93
Loss before income taxes	(89,503)	(92,953)	(92,053)
Income tax expense	52	87	39
Net loss	(89,555)	(93,040)	(92,092)
Other comprehensive income (loss)			
Currency translation adjustment	(35)	488	(1,077)
Total comprehensive loss	\$ (89,590)	\$ (92,552)	\$ (93,169)
Net loss per share attributable to common stockholders, basic and diluted	(2.42)	(8.86)	(8.91)
Weighted-average number of shares used in computing net loss per share attributable to common stockholders, basic and diluted	37,076	10,501	10,336

See accompanying notes to consolidated financial statements.

Casper Sleep Inc. and Subsidiaries

Consolidated Statements of Changes in Convertible Preferred Stock and Stockholders' Equity / (Deficit)

(In thousands, except share and per share amounts)

	Convertible Preferred Stock										Casper Sleep Inc. Stockholders								Total stockholders' equity / (deficit)		
	Series seed preferred stock		Series A preferred stock		Series B preferred stock		Series C preferred stock		Series D preferred stock		Common Stock		Class A common stock		Class B common stock		Additional paid-in capital	Accumulated other comprehensive (loss) income	Accumulated deficit		
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	\$	\$			
Balance at January 1, 2018	3,951,636	\$ 1,826	4,753,421	\$12,983	2,378,594	\$54,895	5,440,496	\$169,098	—	\$ —	—	—	8,989,298	\$ —	1,262,529	\$ —	2,759	\$ 658	\$ (140,128)	\$ (136,711)	
Exercise of vested employee stock options	—	—	—	—	—	—	—	—	—	—	—	—	121,061	—	25,183	—	275	—	—	275	
Stock based compensation expense	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	5,716	—	—	5,716	
Other comprehensive income	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(1,077)	—	(1,077)	(1,077)	
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(92,092)	(92,092)	(92,092)	
Balance at December 31, 2018	3,951,636	\$ 1,826	4,753,421	\$12,983	2,378,594	\$54,895	5,440,496	\$169,098	—	\$ —	—	—	9,110,359	\$ —	1,287,712	\$ —	\$ 8,750	\$ (419)	\$ (232,220)	\$ (223,889)	
Exercise of vested employee stock options	—	—	—	—	—	—	—	—	—	—	—	—	80,499	—	178,366	—	1,414	—	—	1,414	
Common Stock Transfer	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Stock based compensation expense	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	7,933	—	—	7,933	
Other comprehensive (loss)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	488	—	—	488	
Series D funding	—	—	—	—	—	—	—	—	—	2,688,765	81,159	—	—	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(93,040)	(93,040)	(93,040)	
Balance at December 31, 2019	3,951,636	\$ 1,826	4,753,421	\$12,983	2,378,594	\$54,895	5,440,496	\$169,098	2,688,765	\$81,159	—	—	9,190,858	\$ —	1,466,078	\$ —	\$ 18,097	\$ 69	\$ (325,260)	\$ (307,094)	
Initial public offering, net of issuance costs of \$11.8 million	—	—	—	—	—	—	—	—	—	—	—	—	8,350,000	—	—	—	87,999	—	—	87,999	
Conversion of redeemable convertible preferred stock to common stock	(3,951,636)	(1,826)	(4,753,421)	(12,983)	(2,378,594)	(54,895)	(5,440,496)	(169,098)	(2,688,765)	(81,159)	—	—	20,485,054	—	—	—	—	319,961	—	—	319,961
Common stock conversion	—	—	—	—	—	—	—	—	—	—	—	—	10,656,936	—	(9,190,858)	—	(1,466,078)	—	—	—	
Exercise of vested employee stock options	—	—	—	—	—	—	—	—	—	—	—	—	858,417	—	—	—	—	874	—	—	874
Exercise of stock warrants	—	—	—	—	—	—	—	—	—	—	—	—	181,133	—	—	—	—	3	—	—	3
Stock based compensation expense	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	13,314	—	—	13,314	
Issuance of Common Stock pursuant to the 2020 Equity Plan	—	—	—	—	—	—	—	—	—	—	—	—	7,104	—	—	—	—	—	—	—	
Other comprehensive income	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(35)	—	(35)	
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(89,555)	(89,555)	(89,555)	
Balance at December 31, 2020	—	\$ —	—	\$ —	—	\$ —	—	\$ —	—	\$ —	—	—	40,538,644	\$ —	—	\$ —	\$ 440,248	\$ 34	\$ (414,815)	\$ 25,467	

See accompanying notes to consolidated financial statements.

**Casper Sleep Inc. and Subsidiaries**  
**Consolidated Statement of Cash Flows**  
(In thousands, except per share amounts)

	Year ended December 31,		
	2020	2019	2018
<b>Cash flows used in operating activities:</b>			
Net loss	\$ (89,555)	\$ (93,040)	\$ (92,092)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization <sup>(1)</sup>	15,979	7,753	3,426
Stock based compensation expense	13,314	7,933	5,716
Other	2,615	5,938	(118)
<b>Changes in assets and liabilities:</b>			
Accounts receivable, net	3,396	(7,953)	(10,450)
Prepaid expenses and other current assets	12,898	(16,185)	880
Inventory, net	3,222	(6,655)	(8,688)
Other assets	763	(314)	1,860
Accounts payable	16,567	2,842	10,205
Accrued expenses	(18,389)	35,772	8,378
Deferred revenue	(2,242)	851	6,438
Other liabilities	(6,136)	18,730	2,190
Net cash used in operating activities	(47,568)	(44,328)	(72,255)
<b>Cash flows used in investing activities:</b>			
Purchases of property and equipment <sup>(2)</sup>	(15,935)	(54,813)	(13,035)
Note receivable	—	4,000	1,000
Net cash used in investing activities	(15,935)	(50,813)	(12,035)
<b>Cash flows from financing activities:</b>			
Exercise of stock options	877	1,414	275
Proceeds from Fundraising	87,999	81,159	—
Proceeds from borrowings	16,000	54,225	15,000
Repayment on borrowings	(15,869)	(2,922)	(435)
Payment of deferred financing costs	(963)	—	—
Net cash provided by financing activities	88,044	133,876	14,840
<b>Effect of exchange rate changes</b>			
Net change in cash, cash equivalents and restricted cash	(35)	488	(1,077)
Cash, cash equivalents and restricted cash at beginning of period	24,506	39,223	(70,527)
Cash, cash equivalents and restricted cash at end of the period	<u>\$ 92,084</u>	<u>\$ 67,578</u>	<u>\$ 28,355</u>
Supplemental reconciliation of cash, cash equivalents and restricted cash reported within the consolidated balance sheets.			
Cash and cash equivalents	88,922	67,407	26,880
Restricted cash	3,162	171	1,475

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Total cash, cash equivalents and restricted cash	\$ 92,084	\$ 67,578	\$ 28,355
Supplemental disclosure of cash paid for:			
Interest paid	(6,608)	(2,578)	(182)
Supplemental schedule of noncash financing activity:			
Series Seed preferred units converted to common stock	\$ 1,826	\$ —	\$ —
Series A preferred units converted to common stock	\$ 12,983	\$ —	\$ —
Series B preferred units converted to common stock	\$ 54,895	\$ —	\$ —
Series C preferred units converted to common stock	\$ 169,098	\$ —	\$ —
Series D preferred units converted to common stock	\$ 81,159	\$ —	\$ —
Reclassification of deferred financing costs to additional paid in capital	\$ 5,688	\$ —	\$ —

(1) Depreciation and amortization for the year ended December 31, 2020 consists of \$14,499 recorded in general and administrative expenses and \$1,480 of impairment recorded in restructuring expenses on the Consolidated Statements of Operations and Comprehensive Loss.  
(2) Purchases of property and equipment is net of fixed assets purchases that are included in accounts payable amounting to \$786, \$475 and 287 at December 31, 2020, December 31, 2019 and December 31, 2018, respectively.

See accompanying notes to consolidated financial statements.

**CASPER SLEEP INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
(In thousands, except share and per share amounts)

**(1) Description of Business**

Casper Sleep Inc. and its subsidiaries (the "Company" or "Casper") design and sell premium sleep products including mattresses, pillows, sheets, and other sleep-centric products. The Company's head office is located at 175 Greenwich Street, 3 World Trade Center, New York, NY, and the Company has additional office locations in San Francisco, CA, as well as retail locations and pop-up stores throughout the United States ("U.S.") and Canada.

The Company comprises Casper Sleep Inc. and its wholly-owned subsidiaries, Casper Science LLC, Casper Sleep Retail LLC, and Casper Sleep Limited ("Casper UK Holdco"). Casper UK Holdco wholly-owns Casper Sleep GmbH, Casper Sleep (UK) Limited, and Casper Sleep SAS.

**(2) Initial Public Offering**

On February 10, 2020, the Company completed the initial public offering (the "IPO") of its common stock pursuant to a Registration Statement on Form S-1. In the IPO, the Company sold an aggregate of 8,350,000 shares of common stock at a public offering price of \$12.00 per share. Upon consummation of the offering on February 10, 2020, the Company received net proceeds of approximately \$88,000, after deducting underwriting discounts and commissions of \$6,500 and offering expenses of \$5,700. Upon the completion of the IPO, all outstanding shares of the Company's convertible preferred stock and Class A and Class B common stock were converted into common stock.

**(3) Basis of Presentation**

The Company presents its financial statements on a consolidated basis of all its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated. All figures expressed, except share and per share amounts, are represented in U.S. dollars in thousands.

Certain amounts in the prior period consolidated financial statements have been reclassified to conform to the presentation of the current period consolidated financial statements.

**(4) Use of Estimates**

The preparation of financial statements in conformity with U.S. Generally Accepted Accounting Principles ("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 revenue and expenses during the reporting period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include the useful lives of fixed assets; the valuation of deferred income tax assets, deferred revenue, the valuation of stock-based compensation and warrants, the product returns reserve, the inventory obsolescence reserve and accounts receivable allowance for doubtful accounts.

**(5) Summary of Significant Accounting Policies**

*(a) Cash and Cash Equivalents*

The Company considers all highly liquid investments with a maturity of less than three months when purchased to be cash equivalents.

*(b) Restricted Cash*

Restricted cash represents cash balances held in segregated accounts used for collateralizing letters of credit with its bank.

*(c) Accounts Receivable, net*

At December 31, 2020 and 2019, accounts receivable, net was composed primarily of amounts due from retail partners, from financial institutions related to credit card sales and other receivables. Accounts receivable is recorded net of an allowance for

## CASPER SLEEP INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(In thousands, except share and per share amounts)

**(5) Summary of Significant Accounting Policies (Continued)**

uncollectible balances related to chargebacks or disputes raised by retail partners. The allowance is recognized in an amount equal to anticipated future uncollectible receivables. Management estimates the allowance for doubtful accounts based on delinquencies, trends and historical experience.

**(d) Inventory, net**

Inventory primarily consist of merchandise purchased for sale, as well as costs to deliver merchandise to Casper's logistics providers and retail stores. The Company's inventory is stated at cost using standard costing. The Company performs an analysis to determine whether it is appropriate or not to maintain a reserve for excess and obsolete inventory. The reserve is based on historical experience related to the disposal of identified inventory, specifically through sales to retail partners, clearance sales and ultimately, the expected recoverable value. The value of older inventory can be impacted by new products launches, which can make certain older items obsolete. A lower of cost or market assessment is performed on inventory and reserves established when the net realizable value exceeds the historic cost. Most of Casper's inventory is just-in-time and most products have been recently introduced and in existence for less than two years. The Company performs a review of all on hand inventory to determine if any items are deemed obsolete based on specific facts and circumstances.

Storage costs, indirect administrative overhead and certain selling costs related to inventories are expensed in the period incurred.

Inventory consists of the following:

	December 31, 2020	December 31, 2019
Raw materials	\$ 386	\$ 680
Finished goods	31,575	32,945
Inventory in transit	3,570	5,733
<b>Total inventory</b>	<b>\$ 35,531</b>	<b>\$ 39,358</b>

Raw materials consist of replacement parts and components used in the creation of products. Finished goods is comprised of completed goods including mattresses, pillows, sheets, dog beds, Glow lights, and furniture.

Inventory in transit is either purchased inventory coming from outside the United States or inventory being transferred between warehouses or from warehouse to retail location.

The Company writes down inventory as a result of excess and obsolete inventories, or when it believes that the net realizable value of inventories is less than the carrying value.

**(e) Revenue Recognition**

Revenue transactions associated with the sale of goods and services comprise a single performance obligation, which consists of the sale of products to customers either to the Company's retail partners or through its direct-to-consumer ("DTC") channel. Revenue is recognized when performance obligations are satisfied through the transfer of control of promised goods to the customers, based on the terms of sale. The transfer of control typically occurs at a point in time based on consideration of when the customer has an obligation to pay for the goods, and physical possession of, legal title to, and the risks and rewards of ownership of the goods has been transferred, and the customer has accepted the goods. Revenue from retail partnership transactions is generally recognized at the time products are shipped based on contractual terms with the customer. Revenue from our DTC channel is generally recognized at the point of sale in our retail stores and at the time of delivery for e-commerce transactions.

Revenue is recognized net of estimates of variable consideration, including product returns, customer discounts and allowances. Casper determines these estimates based on contract terms, evaluations of historical experience, anticipated trends, and other factors. The actual amount of customer returns and customer allowances, which is inherently uncertain, may differ from our

## CASPER SLEEP INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(In thousands, except share and per share amounts)

**(5) Summary of Significant Accounting Policies (Continued)**

estimates.

The duration of contractual arrangements with our customers is typically less than one year. Payment terms with retail partners vary depending on creditworthiness and other considerations, with the most common being net 30 days. Payment is due at the time of sale for DTC transactions.

We have elected to account for shipping and handling as fulfillment activities, and not as separate performance obligations. Shipping and handling fees billed to customers are included in net sales. All shipping and handling activity costs are recognized as costs of goods sold at the time the related revenue is recognized. Sales taxes collected from customers and remitted directly to government authorities are excluded from net sales and cost of goods sold.

Revenue is comprised of global sales through our DTC channels and our retail partnerships, and reflects the impact of product returns as well as discounts for certain sales programs and promotions.

Promotions are occasionally offered, primarily in the form of discounts, and are recorded as a reduction of gross revenue at the date of revenue recognition. We typically accept sales returns during a 30 or 100-night trial period, depending on the product, with our mattresses having a 100-night trial period. A sales return accrual is estimated based on historical return rates and is then adjusted for any current trends as appropriate. Returns are netted against the sales allowance reserve for the period. Sales are recognized as deferred revenue at the point of sale and are recognized as revenue upon the delivery to the consumer. Revenue through our DTC channels is recognized upon in-store or home delivery to the consumer, as applicable, and retail partnership revenue is recognized upon the transfer of control, on a per contract basis.

***Disaggregated Revenue Data***

The following table disaggregates our net sales by geography and channel for the periods indicated:

	Year ended December 31,		
	2020	2019	2018
North America Region	\$485,028	\$ 413,022	\$ 326,842
EU Regions	11,972	26,236	31,049
<b>Total</b>	<b>\$497,000</b>	<b>\$ 439,258</b>	<b>\$ 357,891</b>
Direct to Consumer	\$363,074	\$ 350,507	\$ 310,167
Retail Partnerships	133,926	88,751	47,724
<b>Total</b>	<b>\$497,000</b>	<b>\$ 439,258</b>	<b>\$ 357,891</b>

***(f) Cost of Goods Sold***

Cost of goods sold consists of costs of purchased merchandise, including freight, duty, vendor rebates, and nonrefundable taxes incurred in delivering goods and services to customers and distribution centers, packaging and component costs, warehousing and fulfillment costs, damages, and excess and obsolete inventory write-downs.

***(g) Sales and Marketing expenses***

Sales and marketing expenses consist primarily of advertising and marketing promotions of the Company's products as well as sponsorship costs, consulting and contractor expenses. Advertising and other promotional costs are expensed as incurred. Sales and marketing expenses amounted to \$156,806, \$154,589 and \$126,189 for the years ended December 31, 2020, 2019 and 2018 respectively, of which \$145,530, \$142,572 and \$116,801 are advertising expenses for the years ended December 31, 2020, 2019 and 2018, respectively.

***(h) General and Administrative expenses***

**CASPER SLEEP INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(In thousands, except share and per share amounts)

**(5) Summary of Significant Accounting Policies (Continued)**

General and administrative expenses consist of personnel-related costs for our retail stores, retail operations, finance, legal, human resources and IT functions, as well as litigation expenses, credit card fees, professional services, rent and operating costs associated with our retail stores, depreciation and amortization, and other administrative expenses. Research and development expenses are included within general and administrative and consist primarily of personnel-related expenses, consulting and contractor expenses, tooling, test equipment, and prototype materials.

**(i) Restructuring expenses**

During the year ended December 31, 2020, in response to the COVID-19 pandemic, the Company announced a number of restructuring actions focused on cost savings and renewed focus on commercial operations in North America. Restructuring expenses for the year ended December 31, 2020 relate to costs associated with strategic shifts in our business structure including exiting certain lines of business and geographies. Such costs include severance and other employee separation costs, contract termination expenses and asset impairment. Costs associated with these actions amounted to \$7,736, \$1,223 and \$0 for the years ended December 31, 2020, 2019 and 2018, respectively. Prior to 2020 restructuring expenses were previously presented in general and administrative expenses. During the year ended December 31, 2019, restructuring actions were related to staff reductions and these actions were completed in 2019.

A summary of the charges recorded in connection with these actions during the periods presented, as well as the cumulative charges recorded since its inception, is as follows:

	Year Ended December 31, 2020			Year Ended December 31, 2019			Year Ended December 31, 2018		
	EU Closure	US	Total	EU Closure	US	Total	EU Closure	US	Total
Severance and benefits	\$ 450	\$ 1,515	\$ 1,965	\$ —	\$ 1,223	\$ 1,223	\$ —	\$ —	\$ —
Contract termination	1,238	350	1,588	—	—	—	—	—	—
Asset write-offs	1,851	—	1,851	—	—	—	—	—	—
Asset impairments	180	1,300	1,480	—	—	—	—	—	—
Other expenses	740	112	852	—	—	—	—	—	—
<b>Total</b>	<b>\$ 4,459</b>	<b>\$ 3,277</b>	<b>\$ 7,736</b>	<b>\$ —</b>	<b>\$ 1,223</b>	<b>\$ 1,223</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>

The Company's accrued liabilities for the restructuring expenses at December 31, 2020 was \$1,644, which is presented in accrued expenses in the consolidated balance sheets.

Accrued restructuring balance as at December 31, 2019	\$ —
Charges accrued during the year ended December 31, 2019	1,223
Payments made during the year ended December 31, 2019	(1,223)
Accrued restructuring balance as at December 31, 2019	—
Charges to accruals during the year ended December 31, 2020	4,405
Payments made during the year ended December 31, 2020	(2,761)
<b>Accrued restructuring balance as at December 31, 2020</b>	<b>\$ 1,644</b>

**(j) Prepaid Expenses and Other Current Assets**

Prepaid expenses and other current assets consist primarily of prepaid media placement for media campaigns that have not yet run, prepaid rent and office related expenses, and other prepaid expenses. In addition, the Company had tenant allowance receivable of \$5,120 and \$8,081 as of December 31, 2020 and 2019, respectively.

**(k) Stock Based Compensation**

Compensation cost for all stock-based awards, including options to purchase stock and restricted stock units ("RSUs") is measured at fair value on the date of grant and recognized over the service period. The fair value of stock options is estimated on the date of grant using a Black-Scholes model.

## CASPER SLEEP INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(In thousands, except share and per share amounts)

**(5) Summary of Significant Accounting Policies (Continued)**

The fair value of RSUs awarded is estimated on the date of grant based on the fair value of our common stock. Compensation cost is recognized on a straight-line basis over the requisite service period. The Company accounts for forfeitures as they occur, rather than estimating expected forfeitures.

Stock based compensation cost for the years ended December 31, 2020, 2019 and 2018 amounted \$13,314, \$7,933 and \$5,716, respectively. See Note 8 for a complete description of the accounting for stock-based awards.

**(l) Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation.

Depreciation expense on property and equipment is calculated using the straight-line method over the estimated useful lives of the assets. The estimated useful lives of furniture, fixtures, computers, technology hardware, and vehicles range from 3 to 5 years. The Company's purchased software is amortized over 7 years. Leasehold improvements are depreciated over the shorter of their useful life or the related lease term (without consideration of option renewal terms).

Property and equipment consist of the following:

	December 31, 2020	December 31, 2019
Leasehold improvements	\$ 53,404	\$ 46,370
Furniture and fixtures	24,294	21,063
Construction in progress	6,021	4,658
Computer Equipment	4,984	3,590
Computer software	2,405	1,733
Machinery and Equipment	853	2,185
Property and equipment	\$ 91,961	\$ 79,599
Less: accumulated depreciation	(25,432)	(13,337)
<b>Property and equipment, net</b>	<b>\$ 66,529</b>	<b>\$ 66,262</b>

Depreciation expense related to property and equipment for the years ended December 31, 2020, 2019 and 2018 was \$14,499, \$7,550 and \$3,426, respectively.

Long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying amount. If the carrying amount of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying amount exceeds its fair value. Fair value is determined using various valuation techniques including discounted cash flow models, quoted market values, and third-party independent appraisals, as considered necessary.

As described in footnote 5(i), Restructuring expenses, above, the Company recorded an impairment charge related to restructuring actions of \$1,480 for year ended December 31, 2020 as a result of permanently closing three outlet stores, abandoning selected product development activities resulting in impairment of related production assets, exiting our European operations, targeted severance-related actions and consolidation of San Francisco operations. This expense is presented within restructuring expenses on the consolidated statement of operations and comprehensive loss. No impairment losses were recognized in 2019 or 2018.

**(m) Income Taxes**

## CASPER SLEEP INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(In thousands, except share and per share amounts)

**(5) Summary of Significant Accounting Policies (Continued)**

The Company accounts for income taxes in accordance with ASC Topic 740, "Income Taxes". Under this method, deferred tax assets and liabilities are determined based on the temporary differences 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 reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized within the provision for (benefit from) income taxes on the consolidated statement of operations and comprehensive loss in the period that includes the enactment date.

The Company reduces deferred tax assets, by a valuation allowance if it is more likely than not that the Company will not realize some or all of the deferred tax assets. In making such a determination, the Company considers all available positive and negative evidence, including taxable income in prior carryback years (if carryback is permitted under the relevant tax law), the timing of the reversal of existing taxable temporary differences, tax planning strategies, and projected future taxable income. The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position.

The Company recognizes interest and penalties related to uncertain tax positions within the provision for (benefit from) income taxes in the consolidated statement of operations and comprehensive loss.

**(n) Deferred Rent**

Rental payments under operating leases are expensed on a straight-line basis after consideration of rent holidays, tenant allowances, step rent provisions and escalation clauses. Differences between rental expense (recognized from the date of possession) and actual rental payments are recorded as deferred rent. Deferred rent was \$8,737 and \$6,734 at December 31, 2020 and 2019, respectively. Deferred rent is presented in other liabilities.

**(o) Intangibles**

The Company's intangible assets consist of patents and domain names stated at cost. The stated value of the domain names was \$567 as of December 31, 2020 and 2019, respectively. Casper is charged for regular maintenance and upkeep of the domain names which are expensed as incurred. The Company has the option of renewing its rights to its domain names on an annual basis. The Company holds multiple patents which are valued at \$306 and \$370 for December 31, 2020 and 2019, respectively. For intangible assets whose lives are determined to be indefinite, Casper qualitatively evaluates these for impairment, and no matters have come to the Company's attention that would indicate a significant decrease in the market price of these indefinite-lived intangible assets. Intangibles are presented in other assets in the consolidated balance sheet.

**(p) Other Current Liabilities**

Other current liabilities consist of the following:

	December 31, 2020	December 31, 2019
Short term debt	\$ —	\$ 15,868
Product return reserve	7,112	10,610
Value Added Tax	1,501	4,042
Other	885	3,902
<b>Total Other Current Liabilities</b>	<b>9,498</b>	<b>34,422</b>

## CASPER SLEEP INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(In thousands, except share and per share amounts)

## (5) Summary of Significant Accounting Policies (Continued)

## (q) Other Liabilities

Other liabilities consist of the following:

	December 31, 2020	December 31, 2019
Tenant allowance	\$ 13,006	\$ 12,881
Deferred rent	8,737	6,734
Contract Liability	2,125	—
Deferred tax	39	38
Warrants on debt	—	666
<b>Total Other Liabilities</b>	<b>\$ 23,907</b>	<b>\$ 20,319</b>

See Note 7 for additional discussion on Debt.

## (r) Basic and Diluted Loss per Common Share

The Company accounts for net income (loss) per common share using the treasury stock method. Basic net income (loss) per common share is computed by dividing net income (loss) for the period by the weighted-average number of common shares outstanding at the end of the period. Diluted net income (loss) per common share reflects the weighted-average number of common shares outstanding during the period used in the basic net income (loss) computation plus dilutive common stock equivalents. The computation of diluted net income (loss) per common share does not assume conversion, exercise, or contingent issuance of securities that would have an anti-dilutive effect on net income (loss) per common share.

Prior to the IPO, the Company used the two-class method to compute net loss per common share because the Company previously issued securities, other than common stock, that contractually entitled the holders to participate in dividends and earnings of the Company. These participating securities included shares of each series of the Company's convertible preferred stock, which had non-forfeitable rights to participate in any dividends declared on the Company's common stock. The two-class method required earnings for the period to be allocated between common stock and participating securities based upon their respective rights to receive distributed and undistributed earnings.

Under the two-class method, for periods with net income, basic net income per common share was computed by dividing the net income attributable to common stockholders by the weighted average number of shares of common stock outstanding during the period. Net income attributable to common stockholders was computed by subtracting from net income the portion of current year earnings that the participating securities would have been entitled to receive pursuant to their dividend rights had all of the year's earnings been distributed. No such adjustment to earnings was made during periods with a net loss, as the holders of the participating securities had no obligation to fund losses.

Diluted net income per common share was computed under the two-class method by using the weighted average number of shares of common stock outstanding, plus, for periods with net income attributable to common stockholders, the potential dilutive effects of stock options and warrants. In addition, the Company analyzed the potential dilutive effect of the outstanding participating securities under the "if-converted" method when calculating diluted earnings per share, in which it is assumed that the outstanding participating securities convert into common stock at the beginning of the period or date of issuance, if later. The Company reported the more dilutive of the approaches (two-class or "if-converted") as its diluted net income per share during the period.

## (s) Foreign Currency

The functional currency of the Company's international operating subsidiaries is the local currency. The Company translates the financial statements of these subsidiaries to U.S. dollars using month-end rates of exchange for assets and liabilities, and average rates for the annual period are derived from month-end spot rates for revenue, costs and expenses. The

**CASPER SLEEP INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(In thousands, except share and per share amounts)

**(5) Summary of Significant Accounting Policies (Continued)**

Company records translation gains and losses in accumulated other comprehensive loss as a component of stockholders' equity/(deficit). Foreign currency transaction gains and losses are included in net loss for the period.

**(t) Convertible Preferred Stock**

On February 10, 2020, upon the closing of the Company's IPO, all outstanding shares of convertible preferred stock were automatically converted into an aggregate of 20,485,054 shares of common stock.

**(u) Segment Information**

During the year ended December 31, 2020, the Company operated in one operating segment within the United States, Canada and Europe, providing sleep products to consumers through various sales channels. Operating segments are defined as components of an enterprise for which separate financial information is evaluated regularly by the chief operating decision maker ("CODM"). The Company's CODM is its Chief Executive Officer. The role of the CODM is to make decisions about allocating resources and assessing performance. The Company's business operates in one operating segment as all of the Company's sales channels are complimentary and are analyzed in an identical way, with the CODM evaluating the Company's financial information, resources and performance of these resources on a consolidated basis. Since the Company operates in one operating segment, all required financial segment information can be found in the consolidated financial statements.

**(6) Fair Value of Financial Instruments**

The Company applies the following fair value hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

- Level 1 inputs are based on quoted prices in active markets for identical assets or liabilities.
- Level 2 inputs are based on observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in markets with insufficient volume or infrequent transactions (less active markets); or model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3 inputs are based on unobservable inputs to the valuation methodology that are significant to the measurement of fair value of assets or liabilities, and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability.

The Company considers all highly liquid investments purchased with a remaining maturity of three months or less to be cash equivalents. The fair value of the Company's investments in certain money market funds is their face value. Such instruments are classified as Level 1 and are included in cash, cash equivalents and restricted cash on the consolidated balance sheets.

At December 31, 2020, the Company's valuation of outstanding warrants was measured using a Black-Scholes option pricing model and considered Level 2 inputs. See Note 14, Warrants for further discussion of the Company's outstanding warrants and assumptions utilized.

**CASPER SLEEP INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(In thousands, except share and per share amounts)

**(6) Fair Value of Financial Instruments (Continued)**

The following summarizes assets and liabilities that are measured at fair value on a recurring basis, by level, within the fair value hierarchy as of December 31, 2020 and 2019:

	Fair Value		Cash, Cash Equivalents and Restricted cash	
	as of December 31, 2020	as of December 31, 2019	as of December 31, 2020	as of December 31, 2019
<b>Assets</b>				
Level 1:				
Money market funds	18,071	45,127	18,071	45,127
<b>Liabilities</b>				
Level 2:				
Preferred stock warrant liabilities	—	(666)	—	—

As of December 31, 2020 and 2019, the Company had money market accounts of \$18,071 and \$45,127, respectively. The money market accounts are presented at fair market value based on quoted market prices and are classified within Level 1.

**(7) Debt****Senior Secured Facility**

On April 27, 2016, Casper Sleep Inc. and Casper Science LLC entered into a loan and security agreement with Pacific Western Bank (as amended, the "Senior Secured Facility" or "Prior Credit Facility") for a \$15,000 revolving credit line. The line was ultimately amended to a borrowing base of \$25,000 and an extended the maturity date of 90 days from September 1, 2020. As of December 31, 2020, the line was refinanced by entering into the Revolving Credit Facility, as defined and described herein.

**Revolving Credit Facility**

On November 10, 2020, Company refinanced its secured revolving facility with Pacific Western Bank by entering into a credit agreement (the "Credit Agreement") by and among the Company, Casper Science LLC and Casper Sleep Retail LLC (collectively, the "Loan Parties"), and Wells Fargo Bank, National Association ("Wells Fargo") providing for a senior secured asset-based revolving credit facility of up to \$30,000 (the "Loan Cap"), with an uncommitted accordion of an additional \$15,000 (the "Revolving Credit Facility"). The Credit Agreement provides that up to \$10,000 of the Revolving Credit Facility is available for issuances of letters of credit, and up to \$5,000 is available for swingline loans.

The Company has the option to increase the total commitment under the Revolving Credit Facility from \$30,000 to \$45,000, subject to certain conditions, including obtaining commitments from one or more lenders. The Company intends to use the proceeds of the Revolving Credit Facility (a) to finance the acquisition of working capital assets of the Company, including the purchase of inventory and equipment, in each case in the ordinary course of business, (b) to finance capital expenditures of the Company, (c) for general corporate purposes of the Loan Parties, (d) to pay fees and expenses in connection with the transactions contemplated by the Credit Agreement, (e) the repayment in full of amounts outstanding under the Prior Credit Facility and (e) for other lawful corporate purposes. The Prior Credit Facility was terminated upon repayment in full of the amounts outstanding thereunder.

The Revolving Credit Facility matures on the earlier of November 10, 2023 and 91 days prior to the earliest maturity date of any borrowing under the Amended Subordinated Facility (as defined below).

Borrowings under the Revolving Credit Facility will be subject to an applicable margin of (i) when average daily availability is greater than or equal to 50% of the Loan Cap, 2.50% for LIBOR loans or 1.50% for base rate loans, as well as a letter of credit fee of 2.50%, and (ii) when Average Daily Availability is less than 50% of the Loan Cap, 2.75% for LIBOR

**CASPER SLEEP INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(In thousands, except share and per share amounts)

**(7) Debt (Continued)**

loans or 1.75% for base rate loans, as well as a letter of credit fee of 2.75%, in each case subject to adjustments on the first day of each fiscal quarter commencing on January 1, 2021.

The Revolving Credit Facility is secured by substantially all assets of the Loan Parties, including intellectual property, subject to customary exceptions.

The Revolving Credit Facility contains customary covenants that limit, absent lender approval, the ability of the Company to, among other things, pay cash dividends, incur debt, create liens and encumbrances, redeem or repurchase stock, enter into certain transactions, repay certain indebtedness, make investments or dispose of assets. The financial covenant requires that the Loan Cap minus the total outstanding be no less than the greater of (i) 10.0% of the Loan Cap and (ii) \$3,000.

The Credit Agreement contains customary events of default including, among other things, failure to pay obligations when due, initiation of bankruptcy or insolvency proceedings, defaults on certain other indebtedness, change of control, incurrence of certain material judgments that are not stayed, satisfied, bonded or discharged within 45 days, certain events related to the Employee Retirement Income Security Act of 1974, invalidity of the credit documents, and violation of affirmative and negative covenants or breach of representations and warranties set forth in the Credit Agreement. Upon an event of default, the lenders may, subject to various customary cure rights and grace periods, require the immediate payment of all amounts outstanding and foreclose on collateral. Casper was in compliance with all terms and covenants in the Revolving Credit Facility as of December 31, 2020.

The Company drew down \$16,000 of the Revolving Credit Facility on November 10, 2020. The outstanding balance of the Revolving Line was \$16,000 as of December 31, 2020 at an interest rate of 2.75%. During the year December 31, 2020, interest expense incurred on the Revolving Line and the Prior Credit Facility that it replaced was \$711, of which \$71 is unpaid and included in accrued expenses on the consolidated balance sheets.

***Amended Subordinated Facility***

In connection with the secured growth capital loan facility agreement (the "Subordinated Facility") with TriplePoint Venture Growth BDC Corp., as lender and collateral agent, and TriplePoint Capital LLC, as lender (or, together with TriplePoint Venture Growth BDC Corp., "TriplePoint"), on March 1, 2019, we entered into two warrant agreements with TriplePoint Venture Growth BDC Corp. and TriplePoint Capital LLC for 19,201 shares of Series D preferred stock and 12,801 shares of Series D preferred stock, respectively, at an exercise price per share of \$31.24715. TriplePoint's right under the warrant agreements to purchase the Series D preferred stock will be available for seven years from March 1, 2019, subject to certain exercise conditions. In the event these warrant agreements are exercised, TriplePoint will have the right to purchase under the warrant agreements the common stock into which each share of the Series D preferred stock is convertible at the time of such exercise.

Borrowings under the Subordinated Facility accrued interest at the prime rate (which, as defined in the Subordinated Facility, shall be as published in the Wall Street Journal with a floor of 5.25%) plus an applicable margin set forth in the table of terms. The table of terms sets forth 18 options that range on term, amortization, interest rate and other features that can range from an annual interest rate of the prime rate plus 0.0% margin for a three month interest only term and up to a prime plus 7.25% margin for a 48 month interest only term. End of term payments ranged from 0.25% of each advance for a three-month term up to 8.25% for each advance with a 48 month repayment option. The Subordinated Facility also had a 1.25% one-time facility fee for the committed amount, which is initially \$50,000. There was a 1.5% prepayment penalty in the event that the loan is prepaid within the first 18 months with no prepayment penalty thereafter.

The Subordinated Facility contained certain affirmative and negative covenants, including, among others, restrictions on liens, indebtedness, mergers or acquisitions, investments, dividends or distributions, fundamental changes and affiliate transactions. On November 10, 2020, the Company, Casper Science LLC and Casper Sleep Retail LLC entered into an amendment to the agreement governing the Subordinated Facility with TriplePoint Venture Growth BDC Corp., as lender and collateral agent, and TriplePoint Capital LLC, as lender (the "Amended Subordinated Facility"), to, among other things, permit the incurrence of the Revolving Credit Facility.

**CASPER SLEEP INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(In thousands, except share and per share amounts)**

**(7) Debt (Continued)**

On August 9, 2019, Casper drew down a \$25,000 forty-eight month interest only loan with an interest rate of prime plus 7.25%. The end of term payment is 7.50% of the drawn down amount. As of December 31, 2020, the loan was \$25,000. During the year ended December 31, 2020, interest expense incurred on the loan was \$3,799.

On November 1, 2019, Casper drew down a \$25,000 thirty-six month interest only loan with an interest rate of prime plus 6.0%. The end of term payment is 6.25% of the drawn down amount. As of December 31, 2020, the outstanding balance under the loan was \$25,000 and interest expense incurred on the loan was \$3,573.

As of December 31, 2020, the Company was in compliance with all covenants under the Amended Subordinated Facility.

See Note 14 for additional information on warrants issued in conjunction with the Subordinated Facility.

**(8) Stock Based Compensation**

**2014 Equity Incentive Plan**

The Company's 2014 Equity Incentive Plan (the "2014 Plan"), as amended on July 31, 2014, allowed for the issuance of up to 2,194,449 shares of common stock. Awards granted under the 2014 Plan may be incentive stock options ("ISOs"), nonqualified stock options ("NSOs"), restricted stock or RSUs. The 2014 Plan was administered by the Board of Directors, which determines the terms of the awards granted, the exercise price, the number of shares subject to the award and the award vesting period. No ISO or NSO is exercisable after 10 years from the date of grant, and option awards typically vest over a four year period.

**2015 Equity Incentive Plan**

The Company's 2015 Equity Incentive Plan (the "2015 Plan"), allows for the issuance of up to 1,535,984 shares of common stock. Awards granted under the 2015 Plan may be ISOs, NSOs, restricted stock or RSUs. The 2015 Plan is administered by the Board of Directors, which determines the terms of the awards granted, the exercise price, the number of shares subject to awards and the award vesting period. No ISO or NSO is exercisable after 10 years from the date of grant, and option awards typically vest over a four year period.

The 2014 Plan was terminated in connection with the adoption of the 2015 Plan in November 2015, and the Company will not grant any additional awards under the 2014 Plan. However, the 2014 Plan will continue to govern the terms and conditions of the outstanding awards previously granted thereunder.

**2020 Equity Incentive Plan**

In connection with our initial public offering, the Company adopted the 2020 Equity Incentive Plan (the "2020 Plan"), which allows for a maximum aggregate number of shares of common stock issued of 3,132,291, plus (i) an annual increase on the first day of each calendar year beginning on January 1, 2021 and ending on and including January 1, 2029, equal to the lesser of (a) five percent (5%) of the number of outstanding shares of all classes of the Company's common stock on the last day of the immediately preceding fiscal year and (b) such smaller number of Shares as determined by the Board, and (ii) a number of shares equal to the number of shares subject to stock options or similar awards granted under the Prior Plans that, after the Effective Date, expire or otherwise terminate without having been exercised in full; provided that, no more than 4,698,436 Shares may be issued upon the exercise of ISOs.

Awards granted under the 2020 Plan may be ISOs, NSOs, restricted stock or RSUs. The 2020 Plan is administered by the Board of Directors, which determines the terms of the awards granted, the exercise price, the number of shares subject to awards and the award vesting period. No ISO or NSO is exercisable after 10 years from the date of grant, and option awards typically vest over a four year period.

**CASPER SLEEP INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(In thousands, except share and per share amounts)

**(8) Stock Based Compensation (Continued)**

The 2015 Plan was terminated in connection with the adoption of the 2020 Plan in February 2020, and the Company will not grant any additional awards under the 2015 Plan. However, the 2015 Plan will continue to govern the terms and conditions of the outstanding awards previously granted thereunder.

**Determination of Fair Value**

The Company estimated the fair value of each employee option award on the date of grant using the Black-Scholes option pricing model. The Company's assumptions about stock price volatility were based on the average of the historical volatility for a sample of comparable companies with a look back period equal to the expected term of the option granted. Due to the limitations on the sale of the Company's common stock, there has not been a significant number of options exercised to date. Therefore, the Company estimated the expected term based upon the simplified method, which is the midpoint between the vesting date and the end of the contractual term for each option. The risk-free interest rate was based on the U.S. Treasury yield curve in effect at the time of grant for the expected term of each option. The Company's Board of Directors used independent valuations and other available information when estimating the value of the stock underlying the granted options prior to our IPO. The weighted-average estimated fair value of options granted during the years ended December 31, 2020, 2019 and 2018 was \$7.63, \$8.94 and \$7.60 per share option respectively.

The fair values of stock options granted for the years ended December 31, 2020, 2019 and 2018 were estimated using the Black-Scholes option-pricing model with the following assumptions:

Fair Value Assumptions	2020	2019	2018
Expected volatility	49.5%	43.7% - 49.2%	55%
Expected dividend yield	0%	0%	0%
Expected life (term in years)	5.50 - 7.00	5.00 - 7.00	4.44 - 6.25
Risk-free interest rate	1.2%	1.5% - 2.5%	2.3% - 3.0%
Discount for post-vesting restrictions	N/A	N/A	N/A

Option activity is as follows:

Stock Option Activity	Shares Subject to Outstanding Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at December 31, 2019	5,875,119	13.26	7.90	21,272
Granted	324,505	7.63		
Exercised	(858,417)	0.99		6,325
Forfeited	(720,213)	16.16		
Expired	(861,286)	13.56		
Outstanding at December 31, 2020	3,759,708	15.00	7.63	1,106
Vested and expected to vest, December 31, 2020	3,759,708	15.00	7.63	1,106
Exercisable, December 31, 2020	1,928,722	13.91	6.86	1,106

The total intrinsic value of the options exercised during the years ended December 31, 2020, 2019 and 2018 was \$6,325, \$3,236 and \$1,901, respectively. The intrinsic value is the difference between the current market value of the stock and the exercise price of the stock options.

**CASPER SLEEP INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(In thousands, except share and per share amounts)

**(8) Stock Based Compensation (Continued)**

The total fair value of shares vested during the years ended December 31, 2020, 2019 and 2018 was \$9,365, \$8,681 and \$2,042, respectively. Total stock-based compensation was \$13,314, \$7,933 and \$5,716 for the years ended December 31, 2020, 2019 and 2018, respectively.

As of December 31, 2020, the total unrecognized stock-based compensation expense related to stock options was \$23,094. The Company expects to recognize this expense over the remaining weighted-average period of approximately 2.31 years.

***Restricted Stock Units and Performance Stock Units***

In February 2020 and in connection with the IPO, the Company's Board of Directors adopted the Company's 2020 Equity Incentive Plan, which became effective upon the filing of the associated Form S-8 on February 11, 2020.

During the year ended December 31, 2020, the Company granted 2,492,333 RSUs, and 259,616 performance stock units ("PSUs"), of which 508,610 units were forfeited. The fair value of the units granted was equal to the average stock price on the grant date.

Total stock-based compensation expense related to RSUs and PSUs of \$5,391 and \$773, respectively, was recognized for the year ended December 31, 2020, and is included within general and administrative expense. Total stock-based compensation expense, related to RSUs and PSUs of \$0 was recognized for years ended December 31, 2019 and 2018. The Company expects to recognize the expense over the remaining vesting period of four years for new hire grants, and three years for all other employee and director grants. The PSUs earned will vest within one year from the grant date based on the Company's performance.

The following table summarizes the activity related to the Company's RSUs and PSUs:

<b>Restricted Stock Units and Performance Stock Units</b>	<b>Outstanding shares</b>	<b>Weighted Average Grant Date Fair Value</b>
Outstanding as of January 1, 2020	0 \$	—
Granted	2,751,949 \$	8.26
Vested	(7,104) \$	8.77
Forfeited or canceled	(508,610) \$	8.70
<b>Outstanding as of December 31, 2020</b>	<b>2,236,235 \$</b>	<b>8.16</b>

**(9) Significant Risks and Uncertainties Including Business and Credit Concentrations***Risks and Uncertainties*

In December 2019, the COVID-19 disease caused by the novel coronavirus was reported in the media, and in January 2020, the World Health Organization ("WHO") declared it a Public Health Emergency of International Concern. On March 11, 2020, the WHO characterized COVID-19 as a pandemic. The broader implications of the COVID-19 pandemic on the Company's results of operations and overall financial performance remain uncertain. The Company has experienced and may continue to experience constrained supply or slowed customer demand that could materially adversely impact the Company's business, results of operations and overall financial performance in future periods. As there remains a high degree of uncertainty around the impacts of the COVID-19 pandemic, the Company addresses and evaluates the impacts frequently. As the situation surrounding the COVID-19 pandemic remains fluid, we have been and may be required in the future to close or limit service offerings in certain of our retail stores in response to guidance from applicable government and public health officials, which we expect will adversely affect our revenue.

## CASPER SLEEP INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(In thousands, except share and per share amounts)

**(9) Significant Risks and Uncertainties Including Business and Credit Concentrations (Continued)**

At this stage of the Company's development, the ability to generate positive operating cash flows is a risk. The Company has incurred a net loss from operations and net operating cash outflows for the years 2020, 2019 and 2018 and since inception and has an accumulated deficit. As a result, the Company continues to rely upon investors who contributed cash to cover the Company's current operating expenses and obligations and has the ability to draw down on the line of credit. The Company's success will depend in part on its ability to continue to attract new customers, retain existing customers, and curate and market its products. There can be no assurance that the Company will be able to achieve any or all of these success factors. The Company estimates that it will have adequate liquidity to fund operations through February 27, 2022. In the future, if the Company is unable to attain positive cash flow from operations it will need to raise adequate financing or issue additional debt to maintain its current level of operations and growth.

Financial instruments that potentially expose the Company to concentration of credit risk consist primarily of cash, cash equivalents and restricted cash and accounts receivable, net. The Company places its cash investments with high-credit quality financial institutions. A significant portion of the Company's accounts receivable, net is with its credit card processors and retail partnerships. The Company believes no significant credit risk exists with respect to these financial instruments.

*Concentrations*

As of December 31, 2020, two customers comprised 73% of the Company's accounts receivable, net balance. For the year ended December 31, 2019 one customer comprised 49% of the Company's accounts receivable, net balance. For the year ended December 31, 2018 two customers made up 20% and 13% of the Company's accounts receivable, net balance.

Revenue within North America and Europe was approximately \$485,028 and 11,972, respectively, for the year ended December 31, 2020. Revenue within North America and Europe was approximately \$413,022, and \$26,236, respectively, for the year ended December 31, 2019. Revenue within North America and Europe was approximately \$326,842 and \$31,049, respectively, for the year ended December 31, 2018.

One customer accounted for 15% of the Company's revenue in the year ended December 31, 2020. One customer accounted for 11% of the Company's revenue in the year ended December 31, 2019. No customer accounted for more than 10% of the Company's revenue in the year ended December 31, 2018.

**(10) Leases**

Rent payments under operating leases are recognized on a straight-line basis over the term of the lease including any periods of free rent. Rental expense for operating leases for the years ended December 31, 2020, 2019 and 2018, was \$21,806, \$17,700 and \$10,142, respectively.

As of December 31, 2020, future minimum lease payments under non-cancelable operating leases consisted of the following:

2021	20,940
2022	21,459
2023	21,367
2024	17,638
2025	14,259
Thereafter	71,642
<b>Total minimum lease payments</b>	<b>\$ 167,305</b>

The Company maintains leases for its office spaces and retail locations in each location as described in Note 1.

**(11) Income Taxes**

The domestic and international components of the Company's loss from operations before income taxes are as follows:

**CASPER SLEEP INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(In thousands, except share and per share amounts)

**(11) Income Taxes (Continued)**

	December 31, 2020	December 31, 2019	December 31, 2018
Domestic	\$ (82,891)	\$ (81,754)	\$ (75,034)
Foreign	(6,612)	(11,199)	(17,019)
<b>Total</b>	<b>\$ (89,503)</b>	<b>\$ (92,953)</b>	<b>\$ (92,053)</b>

The Company's provision for (benefit from) income taxes is comprised of the following:

	December 31, 2020	December 31, 2019	December 31, 2018
Federal			
Current	\$ —	\$ —	\$ —
Deferred	—	2	2
Foreign			
Current	—	—	—
Deferred	—	—	—
State and local			
Current	52	81	35
Deferred	—	4	2
<b>Total</b>	<b>\$ 52</b>	<b>\$ 87</b>	<b>\$ 39</b>

**Effective Tax Rate**

A reconciliation of the significant differences between the U.S. statutory tax rate and the effective income tax rate on pretax income from continuing operations is as follows:

	December 31, 2020	December 31, 2019	December 31, 2018
Total Pre-Tax Loss	\$ (89,503)	\$ (92,953)	\$ (92,053)
US statutory rate	\$ (18,796)	\$ (19,534)	\$ (19,327)
State taxes	(5,602)	(3,682)	(3,297)
Foreign rate differential	(370)	(498)	(736)
Permanent items	598	942	649
Change in valuation allowance	34,334	24,517	24,125
Effect of U.S. tax law changes	—	—	16
Branch loss / benefit	602	(870)	(907)
Worthless stock deduction	(10,775)	—	—
Stock Based Compensation	(1,162)	(163)	—
Executive Compensation	1,061	—	—
Other	162	(625)	(484)
<b>Total</b>	<b>\$ 52</b>	<b>\$ 87</b>	<b>\$ 39</b>

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law in the United States. The CARES Act provides relief to U.S. Corporations through financial assistance programs and modifications to certain income tax provisions including temporary five-year net operating loss carryback provisions and a modification of

CASPER SLEEP INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(In thousands, except share and per share amounts)

**(11) Income Taxes (Continued)**

interest deduction limitations. The Company has considered the impact of the provisions in the CARES Act and determined that there is no material impact to the Company's accounting for income taxes.

Significant components of the Company's net deferred taxes are as follows:

<b>Deferred tax assets</b>	<b>December 31, 2020</b>	<b>December 31, 2019</b>	<b>December 31, 2018</b>
Losses and tax credit carryforwards	\$ 103,204	\$ 71,724	\$ 51,501
Share-based compensation	3,989	2,428	1,084
Returns reserve	2,740	2,776	1,968
Deferred rent	2,262	1,721	261
Accrued expenses	3,518	3,607	3,438
Fixed and intangible assets	1,126	909	502
Inventory, net	711	635	494
163(j) interest limitation	2,556	586	—
Other	466	278	778
Total deferred tax assets	120,572	84,664	60,026
Valuation allowances	(119,697)	(84,149)	(59,726)
Total deferred tax assets, net of valuation allowance	875	515	300
Deferred tax liabilities:			
Construction allowance	765	333	—
Prepaid expenses	2	85	166
Indefinite lived intangible	85	135	166
Inventory, net	62	—	—
Total deferred tax liabilities	914	553	332
<b>Net deferred tax (liabilities)</b>	<b>\$ (39)</b>	<b>\$ (38)</b>	<b>\$ (32)</b>

At December 31, 2020, for U.S. federal income tax purposes, the Company had net operating loss carryforwards of approximately \$336,010. Post 2017 net operating loss carryforwards of \$243,759 do not expire. Net operating losses of \$92,250 incurred prior to 2018 expire in 2035 through 2037. For New York and California income tax purposes, the Company had net operating loss carryforwards of approximately \$34,180 and \$51,915 respectively, which both expire in 2035 through 2038. For other state income tax purposes, the Company had net operating loss carryforwards of approximately \$159,000, which expire beginning 2023 through 2038. The Company had approximately \$65,781 of foreign net operating loss carryforwards, which do not expire. Utilization of the Company's net operating loss carryforwards may be subject to substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state and foreign provisions. Such an annual limitation could result in the expiration of the net operating loss carryforwards before utilization.

In the fourth quarter of 2020, as part of the wind down of the Company's European operations, the Company recognized a worthless stock and bad debt deduction of \$41,197 and \$10,111, respectively. These amounts are included in the deferred tax asset associated with gross losses and tax credit carryforwards at December 31, 2020 and which are fully offset by a valuation allowance.

The Company regularly assesses the realizability of its deferred tax assets and establishes a valuation allowance if it is more-likely-than-not that some or all of its deferred tax assets will not be realized. The Company evaluates and weighs all available positive and negative evidence such as historic results, future reversals of existing deferred tax liabilities, projected future taxable income, as well as prudent and feasible tax-planning strategies. The Company will continue to assess the realizability of the deferred tax assets in each of the applicable jurisdictions going forward. The Company may release all or a portion of its valuation allowance if there is sufficient positive evidence that outweighs the negative evidence. Given the

**CASPER SLEEP INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(In thousands, except share and per share amounts)

**(11) Income Taxes (Continued)**

Company's history of losses, the Company does not believe it is more likely than not that it will be able to realize its deferred tax assets and as a result, has recorded a full valuation allowance.

***Unrecognized Tax Benefits and Other Considerations***

The Company records liabilities related to its uncertain tax positions. Tax positions for the Company and its subsidiaries are subject to income tax audits by multiple tax jurisdictions throughout the world. The Company recognizes the tax benefit of an uncertain tax position only if it is more likely than not that the position is sustainable upon examination by the taxing authority, based on the technical merits. The tax benefit recognized is measured as the largest amount of benefit which is greater than 50 percent likely to be realized upon settlement with the taxing authority.

The Company has operations and taxable presence in the U.S., Canada and Europe. Tax positions for the Company are subject to income tax audits by multiple tax jurisdictions. The Company currently considers the U.S. Federal, State and local to be major tax jurisdictions. The Company's U.S. federal and state tax returns since 2014, which was the Company's first year of operation, remain open to examination.

***Future Changes in Unrecognized Tax Benefits***

The total amount of unrecognized tax benefits relating to the Company's tax positions is subject to change based on future events including, but not limited to, settlements of ongoing tax audits and assessments and the expiration of applicable statutes of limitations. Although the outcomes and timing of such events are highly uncertain, the Company does not anticipate that the balance of gross unrecognized tax benefits, excluding interest and penalties, will change significantly during the next year. However, changes in the occurrence, expected outcomes, and timing of such events could cause the Company's current estimate to change materially in the future.

**(12) Accrued Expense**

Accrued expenses consist of the following:

	December 31, 2020	December 31, 2019
Tax fees	\$ 13,723	\$ 14,033
General trade	10,592	30,568
Marketing	17,479	19,444
Other	12,947	9,085
<b>Total Accrued Expenses</b>	<b>\$ 54,741</b>	<b>\$ 73,130</b>

**CASPER SLEEP INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(In thousands, except share and per share amounts)

**(13) Convertible Preferred Stock, Common Stock, and Stockholders' Equity/(Deficit)**

**(a) Common Stock**

On February 10, 2020, in connection with our IPO, all Class A common stock and Class B common stock were converted into common stock with a par value of \$0.000001, per share and we issued and sold 8,350,000 shares of our common stock at a price to the public of \$12.00 per share resulting in net proceeds to us of approximately \$88,000 after deducting the underwriting discount of approximately \$6,500 and offering expenses of approximately \$5,700.

As of December 31, 2020, the company had 170,000,000 shares of authorized common stock. Each holder of the Company's common stock is entitled to one vote per share on all matters to be voted upon by the stockholders. There are no cumulative rights. Subject to any preferential rights of any outstanding preferred stock, holders of the Company's common stock are entitled to receive ratably the dividends, if any, as may be declared from time to time by the Company's board of Directors out of legally available funds. If there is a liquidation, dissolution, or winding up of the Company, holders of the Company's common stock would be entitled to share in the Company's assets remaining after the payment of liabilities and any preferential rights of any outstanding preferred stock.

Holders of the Company's common stock have no preemptive or conversion rights or other subscription rights and there are no redemption or sinking funds provisions applicable to common stock. All outstanding shares of the Company's common stock will be fully paid and non-assessable. The rights, preferences and privileges of the holders of the Company's common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock which the Company may designate and issue in the future.

**(b) Convertible Preferred Stock**

On February 10, 2020, upon the closing of the Company's IPO, all outstanding shares of convertible preferred stock were automatically converted into an aggregate of 20,485,054 shares of common stock.

	<b>Series seed preferred stock</b>	<b>Series A preferred stock</b>	<b>Series B preferred stock</b>	<b>Series C preferred stock</b>	<b>Series D preferred stock</b>					
Balance at December 31, 2019	3,951,636	\$ 1,826	4,753,421	\$ 12,983	2,378,594	\$ 54,895	5,440,496	\$ 169,098	2,688,765	\$ 81,159
Conversion of redeemable convertible preferred stock to common stock	(3,951,636)	(1,826)	(4,753,421)	(12,983)	(2,378,594)	(54,895)	(5,440,496)	(169,098)	(2,688,765)	(81,159)
Balance at December 31, 2020	—	\$ —	—	\$ —	—	\$ —	—	\$ —	—	\$ —

**(14) Warrants**

In connection with the Subordinated Facility, as described in Note 7, on March 1, 2019, Casper entered into two warrant agreements with TriplePoint Venture Growth BDC Corp. and TriplePoint Capital LLC for 19,201 shares of Series D preferred stock and 12,801 shares of Series D preferred stock, respectively, at an exercise price per share of \$31.24715, (the "TPC Warrants"). TriplePoint's right under the warrant agreements to purchase the Series D preferred stock will be available for seven years from March 1, 2019, subject to certain exercise conditions. In the event these warrant agreements are exercised, TriplePoint will have the right to purchase under the warrant agreements the common stock into which each share of the Series D preferred stock is convertible at the time of such exercise. As of December 31, 2020, TriplePoint's right under these warrant agreements to purchase 32,002 shares of common stock were still outstanding and will be available for seven years from March 1, 2019, subject to certain exercise conditions.

**CASPER SLEEP INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(In thousands, except share and per share amounts)**

**(14) Warrants (Continued)**

The TPC Warrants may be separated and transferred from the debt and may be separately exercisable. Therefore, they are deemed to be freestanding financial instruments. The TPC Warrants are redeemable for preferred stock upon a deemed liquidation event and are considered redeemable under the SEC ASR 268. Therefore, they are an obligation that require or may require repurchase of shares by transferring assets upon a deemed liquidation event.

In accordance with ASC 470-20-25-2, the proceeds of each debt issuance are allocated between the debt and the respective warrant based on their relative fair values. Each TPC Warrant is recorded as a liability upon initial recognition, with a corresponding debit to record a debt discount. Each reporting period, the TPC Warrants are marked to market with changes in fair value recorded as an increase/decrease in the liability with a corresponding fair value adjustment in other income (expense). The debt discount is initially recorded with each TPC Warrant and is amortized to interest expense over the term of the associated debt using the effective interest method. The TPC Warrants were issued before a liability for the debt was recognized and, as a result, the associated debt discount was classified as a deferred asset, consistent with the treatment of the fees paid to lenders.

**(15) Recently Issued Accounting Pronouncements**

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"). Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

***Recently Adopted Accounting Pronouncement***

In the first quarter of 2019, Casper adopted Accounting Standards Codification ("ASC") Topic 606, Revenue from Contracts with Customers ("ASC 606"), using the modified retrospective transition method and applying this approach to contracts not completed as of the date of adoption. ASC 606 establishes a single comprehensive model for entities to use in accounting for revenue under GAAP and requires companies to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. ASC 606 also requires certain disclosures regarding qualitative and quantitative information with respect to the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. Comparative prior period information has not been restated and continues to be reported in accordance with accounting standards in effect for those periods. Please see Note 5 for additional revenue disclosures.

There was no material effect of adoption of ASC 606 on our consolidated financial statements other than the impact on disclosures.

***New Accounting Pronouncements, Not Yet Adopted***

Accounting pronouncements not listed below were assessed and determined to be not applicable or are expected to have minimal impact on the consolidated financial statements.

***Measurement of Credit Losses***

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-13, "Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments" ("ASU 2016-13"), which was further updated and clarified by the FASB through issuance of additional related ASUs. This guidance replaces the existing incurred loss impairment guidance and establishes a single allowance framework for financial assets carried at amortized cost based on expected credit losses. The estimate of expected credit losses requires the incorporation of historical information, current conditions, and reasonable and supportable forecasts. The standard is effective for our interim and annual financial periods beginning January 1, 2023. This standard is to be applied utilizing a

## CASPER SLEEP INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(In thousands, except share and per share amounts)

**(15) Recently Issued Accounting Pronouncements (Continued)**

modified retrospective approach. We are currently evaluating the impact of this standard on our accounts receivable, cash, cash equivalents and restricted cash, and any other financial assets measured at amortized cost and do not expect that adoption will have a material impact on our consolidated financial statements or related disclosures.

*Lease Guidance*

In February 2016, the FASB issued ASU 2016-02, Leases ("ASU 2016-02"), which supersedes the existing lease guidance under current U.S. GAAP. ASU 2016-02 is based on the principle that entities should recognize assets and liabilities arising from leases. The new standard does not significantly change the lessees' recognition, measurement and presentation of expenses and cash flows from the previous accounting standard and leases continue to be classified as finance or operating. ASU 2016-02's primary change is the requirement for entities to recognize a lease liability for payments and a right-of-use ("ROU") asset representing the right to use the leased asset during the term of an operating lease arrangement. Lessees are permitted to make an accounting policy election not to recognize the asset and liability for leases with a term of 12 months or less. In addition, ASU 2016-02 expands the disclosure requirements of lease arrangements. Upon adoption, lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. In July 2018, the FASB issued ASU 2018-11, "Targeted Improvements", which allows for a new, optional transition method that provides the option to use the effective date as the date of initial application on transition. Under this option, the comparative periods would continue to apply the legacy guidance in Accounting Standard Codification ("ASC") 840, including the disclosure requirements, and a cumulative effect adjustment would be recognized in the period of adoption rather than the earliest period presented. Under this transition option, comparative reporting would not be required, and the provisions of the standard would be applied prospectively to leases in effect at the date of adoption. The Company is currently working to complete the design of new processes and internal controls, which include the implementation of a software solution and finalizing the evaluation of Casper's population of leased assets to assess the effect of the new guidance on the financial statements. On April 8, 2020 the FASB extended the implementation deadline of ASC 842 for companies following the private company adoption calendar. As such, the Company plans to adopt the new guidance effective January 1, 2022, but has not determined which transition method will be utilized. The new standard provides a number of optional practical expedients in transition. The Company expects to elect the "package of practical expedients" which permits us not to reassess under the new standard its prior conclusions about lease identification, lease classification and initial direct costs. The Company does not expect to elect the use-of-hindsight or the practical expedient pertaining to land easements (the latter is not applicable to us). Casper expects the adoption of the new standard to have a material effect on the Consolidated Financial Statements upon adoption. While the Company continues to assess all of the effects of the adoption, it currently believes the most significant effects relate to the recognition of new ROU assets and lease liabilities on the Consolidated Balance Sheets for operating leases, as well as providing significant new disclosures about leasing activities.

In August 2018, the FASB issued ASU No. 2018-13, Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement. The update removes, modifies and adds disclosure requirements related to Topic 820. The amendments in this Update are effective for all entities for years, and interim periods within those years, beginning after December 15, 2019. An entity is permitted to early adopt any removed or modified disclosures upon issuance of this update and delay adoption of the additional disclosures until their effective date. The Company has assessed the impact of this amendment and concluded that the impact on its consolidated financial statements is immaterial.

**CASPER SLEEP INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(In thousands, except share and per share amounts)**

**(16) Net Loss Per Share Attributable to Common Stockholders**

The following table sets forth the computation of the basic and diluted net loss per share attributable to common stockholders (in thousands, except share and per share amounts):

	<b>December 31, 2020</b>	<b>December 31, 2019</b>	<b>December 31, 2018</b>
<b>Numerator</b>			
Historical net loss	\$ (89,555)	\$ (93,040)	\$ (92,092)
<b>Numerator for basic and diluted loss per share</b>	<b>\$ (89,555)</b>	<b>\$ (93,040)</b>	<b>\$ (92,092)</b>
<b>Denominator</b>			
Historical denominator for basic and diluted net loss per share—weighted average shares	37,076,455	10,501,230	10,336,000
Denominator for basic and diluted net loss per share	<b>37,076,455</b>	<b>10,501,230</b>	<b>10,336,000</b>
<b>Basic and diluted loss per share</b>	<b>(2.42)</b>	<b>(8.86)</b>	<b>(8.91)</b>

Basic net loss per share is computed by dividing the net loss attributable to common stockholders by the weighted average number of common shares outstanding during the period. Diluted net loss per share is computed by dividing the net loss attributable to common stockholders by the weighted average number of common shares plus common equivalent shares for the period, including any dilutive effect from such shares. Common equivalent shares are convertible preferred stock, convertible preferred stock warrants, shares issuable upon the exercise of stock options and unvested shares of RSUs.

Since the Company was in a loss position for all periods presented, basic net loss per share attributable to common stockholders is the same as diluted net loss per share attributable to common stockholders as the inclusion of all potential common shares outstanding would have been anti-dilutive.

The following securities have been excluded from the calculation of weighted average common shares outstanding because the effect is anti-dilutive for the year ended December 31, 2020, 2019 and 2018:

	<b>December 31, 2020</b>	<b>December 31, 2019</b>	<b>December 31, 2018</b>
Warrants to purchase common stock	32,002	214,444	182,442
Stock options and RSUs	5,995,943	5,827,696	4,534,819

**(17) Subsequent Events**

The Company has assessed subsequent events through the date of this report and has concluded the following required disclosure in the consolidated financial statements.

As of December 31, 2020, we had \$2.9 million in letters of credit issued pursuant to the Prior Credit Facility outstanding as of December 31, 2020, that have been transferred to the Revolving Credit Facility as of the date of this Annual Report on Form 10-K. As of the date of this Annual Report on Form 10-K, \$2.1 million in letters of credit remained outstanding under the Prior Credit Facility.

AMENDED AND RESTATED

BYLAWS OF

CASPER SLEEP INC.  
(a Delaware corporation)

Adopted February 6, 2020



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AMENDED AND RESTATED BYLAWS  
OF  
CASPER SLEEP INC.  
(A DELAWARE CORPORATION)

**ARTICLE I — OFFICES**

1.1 Registered Office. The registered office of Casper Sleep Inc. (the “Company”) in the State of Delaware shall be as set forth in the Company’s Certificate of Incorporation (as amended and/or restated, the **“Certificate of Incorporation”**).

1.2 Other Offices. The Company shall also have and maintain an office or principal place of business at such place as may be fixed by the Company’s board of directors (the “Board”), and may also have offices at such other places, both within and without the State of Delaware as the Board may from time to time determine or the business of the Company may require.

**ARTICLE II — MEETINGS OF STOCKHOLDERS**

2.1 Place of Meetings. Meetings of stockholders of the Company shall be held at any place, within or outside the State of Delaware, as may be determined from time to time by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “DGCL”). In the absence of any such designation or determination, stockholders’ meetings shall be held at the Company’s principal executive office.

2.2 Annual Meeting.

(a) The annual meeting of stockholders of the Company, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by resolution of the Board. Any other proper business may be transacted at the annual meeting. Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders of the Company may be made at an annual meeting of stockholders: (i) pursuant to the Company’s notice of meeting of stockholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board or a duly authorized committee thereof; or (iii) by any stockholder of the Company who was a stockholder of record at the time of giving the stockholder’s notice provided for in Section 2.2(b) below, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 2.2. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the Company’s notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the “Exchange Act”)) before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders of the Company, only such business (other than the nominations of persons for election to the Board) shall be conducted as is a proper matter



for stockholder action under the DGCL and only such nominations or other business shall be conducted as shall have been properly brought before the meeting in accordance with the procedures below.

(i) For nominations for the election to the Board to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 2.2(a) of these bylaws of the Company (these “Bylaws”), the stockholder must deliver written notice to the Secretary at the principal executive offices of the Company on a timely basis as set forth in Section 2.2(b)(iii) and must update and supplement such written notice on a timely basis as set forth in Section 2.2(c). Such stockholder’s notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee; (2) the principal occupation or employment of such nominee; (3) the class or series and number of shares of capital stock of the Company that are owned of record and beneficially by such nominee; (4) the date or dates on which such shares were acquired and the investment intent of such acquisition; and (5) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the Exchange Act (including such person’s written consent to being named as a nominee in any applicable proxy statement and to serving as a director if elected); and (B) the information required by Section 2.2(b)(iv). The Company may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the Company or that could be material to a reasonable stockholder’s understanding of the independence, or lack thereof, of such proposed nominee.

(ii) Other than proposals sought to be included in the Company’s proxy materials pursuant to Rule 14a-8 under the Exchange Act, for business other than nominations for the election to the Board to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 2.2(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the Company on a timely basis as set forth in Section 2.2(b)(iii), and must update and supplement such written notice on a timely basis as set forth in Section 2.2(c). Such stockholder’s notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Company, the language of the proposed amendment), the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the Company’s capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 2.2(b)(iv).

(iii) To be timely, the written notice required by Section 2.2(b)(i) or Section 2.2(b)(ii) must be received by the Secretary at the principal executive offices of the Company not later than the close of business on the 90<sup>th</sup> day nor earlier than the close of business on the 120<sup>th</sup> day prior to the first anniversary of the preceding year’s annual meeting which anniversary date shall for the purposes of the Company’s first annual meeting of stockholders after its shares of



Common Stock are first publicly traded be deemed to be June 4, 2020; provided, however, that, subject to the last sentence of this Section 2.2(b)(iii), if the date of the annual meeting is more than 30 days before or more than 70 days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the 90<sup>th</sup> day prior to such annual meeting or, if later, the 10<sup>th</sup> day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, “Timely Notice”). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

(iv) The written notice required by Section 2.2(b)(i) or Section 2.2(b)(ii) shall also set forth, as of the date of the notice and as to each stockholder giving the notice and each beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a “Proponent” and collectively, the “Proponents”): (A) the name and address of each stockholder giving the notice, as each appears on the Company’s books, and the name and address of each beneficial owner, if any, on whose behalf the nomination or proposal is made; (B) the class, series and number of shares of the capital stock of the Company that are owned beneficially and of record by each Proponent; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the Company entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 2.2(b)(i)) or to propose the business that is specified in the notice (with respect to a notice under Section 2.2(b)(ii)); (E) a representation as to whether the Proponents intend or are part of a group that intends to deliver a proxy statement and form of proxy to holders of a sufficient number of holders of the Company’s voting shares to elect such nominee or nominees (with respect to a notice under Section 2.2(b)(i)) or to carry such proposal (with respect to a notice under Section 2.2(b)(ii)) or otherwise solicit proxies or votes from stockholders in support of such nomination or proposal; (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder’s notice; (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous 12-month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions and (H) any other information relating to such Proponents required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and for the election of directors in an election contest pursuant to and in accordance with the Exchange Act, as applicable.

(c) A stockholder providing written notice required by Section 2.2(b)(i) or Section 2.2(b)(ii) shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five business days prior to the meeting and, in the event of any adjournment or postponement thereof, five business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 2.2(c), such update and supplement shall be received by the Secretary at the principal executive offices of the Company not later than five business days after the record date for the



meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 2.2(c), such update and supplement shall be received by the Secretary at the principal executive offices of the Company not later than two business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two business days prior to such adjourned or postponed meeting.

(d) Notwithstanding anything in Section 2.2(b)(iii) to the contrary, in the event that the number of directors in an Expiring Class (as defined below) is increased and there is no public announcement of the appointment of a director to such class, or, if no appointment was made, of the vacancy in such class, by the Company at least ten days before the last day a stockholder may deliver a notice of nomination in accordance with Section 2.2(b)(iii), a stockholder's notice required by this Section 2.2 and that complies with the requirements in Section 2.2(b)(i) and Section 2.2(b)(iv), shall also be considered timely, but only with respect to nominees for any new positions in such Expiring Class created by such increase, if it shall be received by the Secretary at the principal executive offices of the Company not later than the close of business on the fifth day following the day on which such public announcement is first made by the Company. The stockholder shall also update and supplement such information as required under Section 2.2(c). For purposes of this section, an "Expiring Class" shall mean a class of directors whose term shall expire at the next annual meeting of stockholders.

(e) Except as otherwise provided in the Exchange Act or in the Certificate of Incorporation, a person shall not be eligible for election or re-election as a director unless the person is nominated either in accordance with clause (ii) of Section 2.2(a), or in accordance with clause (iii) of Section 2.2(a) and only such business shall be conducted at a meeting of stockholders of the Company as shall have been brought before the meeting in accordance with clauses (i) – (iii) of Section 2.2(a). Except as otherwise required by law, the Chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 2.2(b)(iv)(D) and 2.2(b)(iv)(E), to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

(f) Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Company's notice of meeting by or at the direction of the Board or the Chairperson of the Board pursuant to Section 2.3 has determined that directors shall be elected at such meeting, by any stockholder of the Company who is a stockholder of record at the time of giving notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers written notice to the Secretary of the Company setting forth the information required by Sections 2.2(b)(i) and 2.2(b)(iv). The stockholder shall also update and supplement such information as required under Section 2.2(c). In the event the Company calls a special meeting of stockholders in accordance with Section 2.3 for the purpose of electing one (1) or more directors to the Board, any such stockholder of record may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Company's notice of meeting, if written notice setting forth the information required by Sections



2.2(b)(i) and 2.2(b)(iv) of these Bylaws shall be received by the Secretary at the principal executive offices of the Company not earlier than the close of business on the 60<sup>th</sup> day prior to such special meeting and not later than the close of business on the later of the 10th day prior to such meeting or the tenth day following the day on which the Company first makes a public announcement of the date of the special meeting at which directors are to be elected. The stockholder shall also update and supplement such information as required under Section 2.2(c). In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(g) Notwithstanding the foregoing provisions of this Section 2.2, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the Exchange Act. Nothing in these Bylaws shall be deemed to affect any rights of holders of any series of preferred stock to elect directors pursuant to any applicable provision of the Certificate of Incorporation or any rights of stockholders to request inclusion of proposals in the Company's proxy statement pursuant to Rule 14a-8 under the Exchange Act; provided, however, that any references in these Bylaws to the Exchange Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 2.2(a)(iii) of these Bylaws.

(h) For purposes of Sections 2.2:

(i) "affiliates" and "associates" shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the "Securities Act").

(i) "Derivative Transaction" means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial: (A) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the Company; (B) that otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the Company; (C) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes; or (D) that provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the Company, which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the Company held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member.

(ii) "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Company with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act or by such other means reasonably designed to



inform the public or security holders in general of such information including, without limitation, posting on the Company's investor relations website.

(iii) Notwithstanding the foregoing provisions of this Section 2.2, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Company to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Company. For purposes of this Section 2.2, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

**2.3 Special Meeting.** A special meeting of the stockholders of the Company may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (a) the Board pursuant to a resolution adopted by a majority of the total number of authorized directors, (b) the Chairperson of the Board, (c) the Chief Executive Officer of the Company or (d) President of the Company. Such special meetings may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

**2.4 Notice of Stockholders' Meetings.** Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the Certificate of Incorporation or these Bylaws, the written notice of any meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

**2.5 Quorum.**

(a) Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of a majority in voting power of all outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. Where a separate vote by a class or series or classes or series is required, the presence in person or by proxy of the holders of a majority in voting power of the outstanding shares of such class or series or classes or series shall be necessary and sufficient to constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the Certificate of Incorporation or these Bylaws.



(b) If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) a majority in voting power of the stockholders entitled to vote at the meeting, present in person, or by remote communication, if applicable, or represented by proxy, shall have power to adjourn the meeting from time to time in the manner provided in Section 2.6, until a quorum is present or represented.

2.6 Adjourning Meeting; Notice. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

2.7 Conduct of Business. Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in the absence of the foregoing persons by the Chief Executive Officer, or in the absence of the foregoing persons by the President, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairperson of the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairperson of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to determine the order of business, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting.

2.8 Voting.

(a) Except as may be otherwise provided in the Certificate of Incorporation, or the DGCL, each stockholder shall be entitled to one (1) vote for each share of capital stock held by such stockholder.

(b) Except as otherwise provided by the Certificate of Incorporation, at all duly called or convened meetings of stockholders at which a quorum is present, for the election of directors, a plurality of the votes cast shall be sufficient to elect a director. Except as otherwise provided by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange



applicable to the Company, or applicable law or pursuant to any regulation applicable to the Company or its securities, each other matter presented to the stockholders at a duly called or convened meeting at which a quorum is present shall be decided by the affirmative vote of the holders of a majority of the votes cast (excluding abstentions and broker non-votes) on such matter.

2.9 Stockholder Action. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Company may be taken without a meeting, without prior notice and without a vote only to the extent permitted by and in the manner provided in the Certificate of Incorporation and in accordance with applicable law.

(a) In order that the Company may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.10 at the adjourned meeting.

(b) Unless otherwise restricted by the Certificate of Incorporation, in order that the Company may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company in accordance with applicable law. If no record date has been fixed by the Board and prior action by the Board is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

(c) In order that the Company may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede



the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

2.10 Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states on its face that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power and shall be governed by the provisions of Section 212 of the DGCL. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Company a revocation of the proxy or a new proxy bearing a later date.

2.11 List of Stockholders Entitled to Vote. The Company shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10<sup>th</sup>) day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Company shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Company's principal place of business. In the event that the Company determines to make the list available on an electronic network, the Company may take reasonable steps to ensure that such information is available only to stockholders of the Company. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.11 or to vote in person or by proxy at any meeting of stockholders.

### **ARTICLE III — DIRECTORS**

3.1 Powers. The business and affairs of the Company shall be managed by or under the direction of the Board, except as may be otherwise provided in the DGCL or the Certificate of Incorporation.



**3.2 Number of Directors.** Subject to the Certificate of Incorporation, the total number of directors constituting the Board shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

**3.3 Election and Qualification of Directors.** Directors need not be stockholders unless so required by the Certificate of Incorporation or these Bylaws. The Certificate of Incorporation or these Bylaws may prescribe other qualifications for directors. Each director shall hold office until such director's successor is duly elected and qualified or until such director's earlier death, resignation, retirement, disqualification or removal. If, for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

**3.4 Resignation and Vacancies.**

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Company. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable.

(b) Unless otherwise provided in the Certificate of Incorporation or these Bylaws, and subject to the rights granted to the holders of any one (1) or more series of Preferred Stock then outstanding, any newly-created directorship on the Board of Directors that results from an increase in the number of directors and any vacancy occurring in the Board of Directors (whether by death, resignation, retirement, disqualification, removal or other cause) shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director (other than directors elected by the holders of any series of Preferred Stock, by voting separately as a series or together with one (1) or more series, as the case may be) (and not by the stockholders). Any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board shall be deemed to exist in the case of the death, removal or resignation of any director.

**3.5 Meetings by Telephone.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

**3.6 Conduct of Business.** Meetings of the Board shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the vice Chairperson of the Board, if any, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the



absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

3.7 Regular Meetings. Regular meetings of the Board may be held within or outside the State of Delaware and at such time and at such place as which has been designated by the Board and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board.

3.8 Special Meetings; Notice.

(a) Special meetings of the Board for any purpose or purposes may be held at any time or place within or without the State of Delaware whenever called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, the Secretary or any two (2) directors.

Notice of the time and place of special meetings shall be:

- (b) delivered personally by hand, by courier or by telephone;
- (c) sent by United States first-class mail, postage prepaid;
- (d) sent by facsimile or electronic mail; or
- (e) sent by other means of electronic transmission,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Company's records.

(f) If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the Company's principal executive office) nor the purpose of the meeting.

3.9 Quorum; Voting.

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Article VI for which a quorum shall be a majority of the disinterested directors, at all meetings of the Board, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board, then the majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.



(b) The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these Bylaws.

(c) If the Certificate of Incorporation provides that one (1) or more directors shall have more or less than one (1) vote per director on any matter, every reference in these Bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

**3.10 Board Action by Written Consent Without a Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After the action is taken, the writing or writings or electronic transmission or transmissions shall be filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**3.11 Rules and Regulations.** The Board of Directors may adopt such rules and regulations for the conduct of its meetings and the management of the affairs of the Company as it may deem proper, and as are not inconsistent with the DGCL, the Certificate of Incorporation or these Bylaws.

**3.12 Fees and Compensation of Directors.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have the authority to fix the compensation of directors.

**3.13 Duties of Chairperson of the Board of Directors.** The Chairperson of the Board, if appointed and when present, shall preside at all meetings of the stockholders and the Board. The Chairperson of the Board shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board shall designate from time to time.

## **ARTICLE IV — COMMITTEES**

**4.1 Committees of Directors.** The Board may designate one (1) or more committees, each committee to consist of one (1) or more of the directors of the Company. The Board may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board or in these Bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers that may require it; but no such



committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, (ii) adopt, amend or repeal any Bylaw of the Company.

4.2 Committee Minutes. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

4.3 Meetings and Actions of Committees. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (a) Section 3.5 (Meetings by Telephone);
- (b) Section 3.6 (Conduct of Business);
- (c) Section 3.7 (Regular Meetings);
- (d) Section 3.8 (Special Meetings; Notice);
- (e) Section 3.9 (Quorum; Voting);
- (f) Section 3.10 (Board Action by Written Consent Without a Meeting); and
- (g) Section 8.5 (Waiver of Notice),

with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board and its members. However:

- (i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;
- (ii) special meetings of committees may also be called by resolution of the Board;
- (iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee; and
- (iv) the Board may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

Any provision in the Certificate of Incorporation providing that one (1) or more directors shall have more or less than one (1) vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the Certificate of Incorporation or these Bylaws.

4.4 Subcommittees. Unless otherwise provided in the Certificate of Incorporation, these Bylaws or the resolutions of the Board designating the committee, a committee may create one (1) or more subcommittees, each subcommittee to consist of one (1) or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.



## **ARTICLE V — OFFICERS**

**5.1 Officers.** The officers of the Company shall be a Chief Executive Officer, a President and a Secretary. The Company may also have, at the discretion of the Board, a Chairperson of the Board, a Vice Chairperson of the Board, a Chief Financial Officer, a Treasurer, one (1) or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these Bylaws. Any number of offices may be held by the same person. Each officer of the Company shall hold office for such term as may be prescribed by the Board and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No officer need be a stockholder or director of the Company.

**5.2 Appointment of Officers.** The Board shall appoint the officers of the Company, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these Bylaws.

**5.3 Subordinate Officers.** The Board may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers and agents as the business of the Company may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

**5.4 Removal and Resignation of Officers.** Any officer may be removed, either with or without cause, by an affirmative vote of the Board at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving notice in writing or by electronic transmission to the Company. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. If a resignation is made effective at a later date and the Company accepts the future effective date, the Board may fill the pending vacancy before the effective date if the Board provides that the successor shall not take office until the effective date. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

**5.5 Vacancies in Offices.** Any vacancy occurring in any office of the Company shall be filled by the Board or as provided in Section 5.3.

**5.6 Chief Executive Officer.** Subject to such supervisory powers, if any, as may be given by the Board to the Chairperson, if any, the Chief Executive Officer (the “CEO”) (if such an officer is appointed) shall, subject to the control of the Board, have general supervision, direction, and control of the business and the officers of the Company. He or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a Chairperson, at all meetings of the Board at which he or she is present and shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.



**5.7 President.** The Board of Directors may, but is not obligated to, appoint a President. Subject to such supervisory powers, if any, as may be given by the Board to the Chairperson (if any) or the CEO, the President, if appointed, shall have general supervision, direction, and control of the business and other officers of the Company. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

**5.8 Secretary.**

The Secretary shall keep or cause to be kept, at the principal executive office of the Company or such other place as the Board may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal executive office of the Company or at the office of the Company's transfer agent or registrar, as determined by resolution of the Board, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation

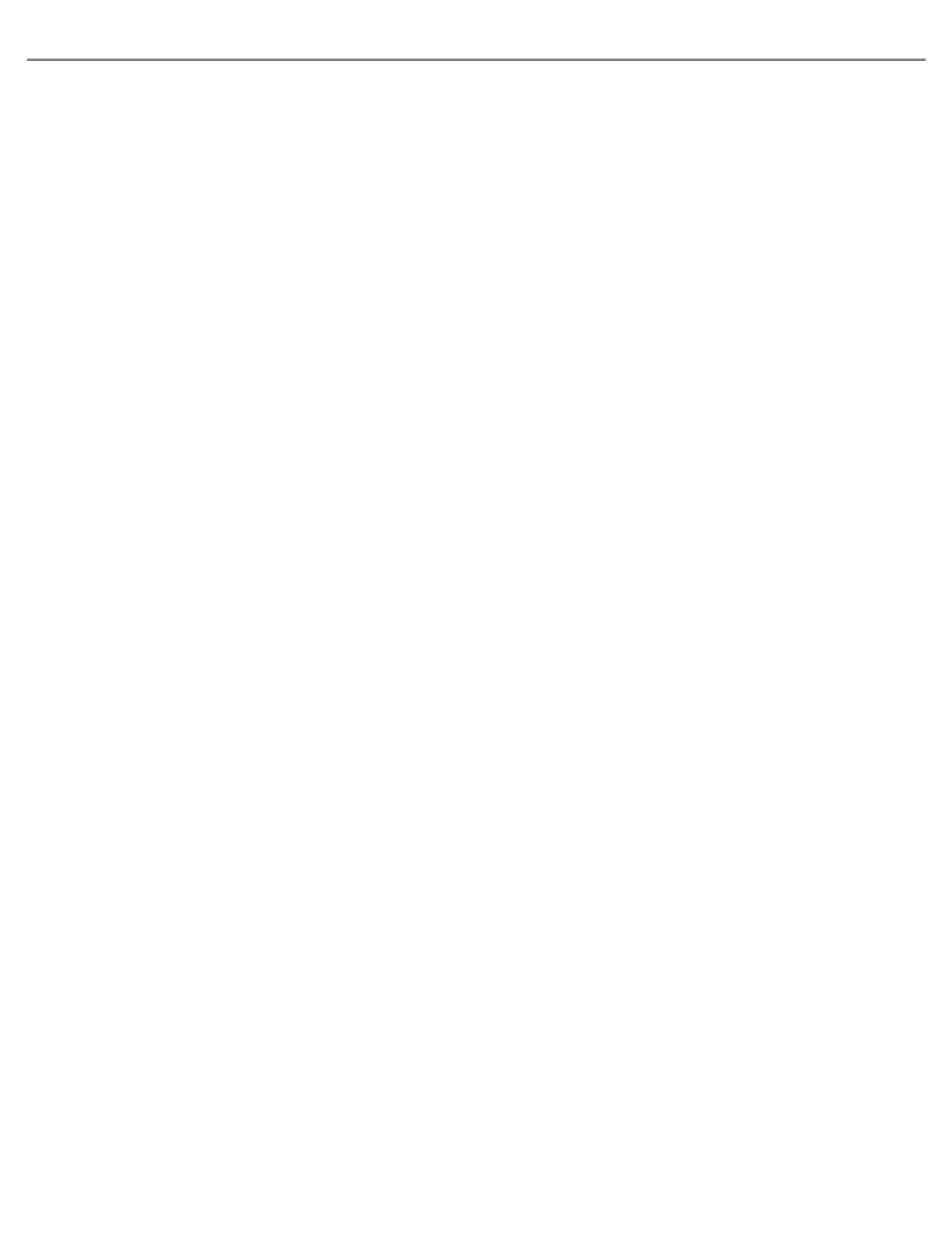
The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board required to be given by law or by these Bylaws. He or she shall keep the seal of the Company, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board or by these Bylaws.

**5.9 Chief Financial Officer.**

The Chief Financial Officer (the "CFO") shall be the treasurer and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The CFO shall deposit all moneys and other valuables in the name and to the credit of the Company with such depositories as may be designated by the Board. He or she shall disburse the funds of the Company as may be ordered by the Board, shall render to the President, if any is appointed, the CEO, or the directors, upon request, an account of all his or her transactions as CFO and of the financial condition of the Company, and shall have other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

**5.10 Representation of Shares of Other Entities.** Unless otherwise directed by the Board, the President or any other person authorized by the Board or the President is authorized to vote, represent and exercise on behalf of the Company all rights incident to any and all shares, securities or interests of any other corporation or entity standing in the name of the Company. The authority granted herein may be exercised either by such person directly or by any other person



authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.11 Authority and Duties of Officers. All officers of the Company shall respectively have such powers and authority and shall perform such duties in the management of the business of the Company as may be provided herein or designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

5.12 Compensation. The compensation of the officers of the Company for their services as such shall be fixed from time to time by or at the direction of the Board. An officer of the Company shall not be prevented from receiving compensation by reason of the fact that he or she is also a director of the Company.

## **ARTICLE VI—INDEMNIFICATION**

6.1 Indemnification of Directors and Officers in Third Party Proceedings. Subject to the other provisions of this Article VI, the Company shall indemnify and hold harmless, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “Proceeding”) (other than an action by or in the right of the Company) by reason of the fact that such person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, employee, agent or trustee of another corporation, partnership, joint venture, trust or other enterprise, against all liability and all loss suffered and expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful. . A vice president or senior vice president need not be an officer of the Company and shall not be deemed an officer of the Company unless elected by the Board. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person’s conduct was unlawful.

6.2 Indemnification of Directors and Officers in Actions by or in the Right of the Company. Subject to the other provisions of this Article VI, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, partner, employee, agent or trustee of another corporation, partnership, joint venture, trust or other enterprise against all liability and all loss suffered and expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such



person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

**6.3 Successful Defense.** To the extent that a present or former director or officer of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 6.1 or Section 6.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against all liability and all loss suffered and expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

**6.4 Indemnification of Others.** Subject to the other provisions of this Article VI, the Company shall have power to indemnify its employees and agents to the extent not prohibited by the DGCL or other applicable law. The Board shall have the power to delegate to such person or persons the determination of whether employees or agents shall be indemnified.

**6.5 Advanced Payment of Expenses.**

(a) Expenses (including attorneys' fees) incurred by an officer or director of the Company in defending any Proceeding shall, to the fullest extent permitted by law, be paid by the Company in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article VI or the DGCL. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the Company or by persons serving at the request of the Company as directors, officers, employees, agents or trustees of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Company deems appropriate. The right to advancement of expenses shall not apply to any Proceeding for which indemnity is excluded pursuant to these Bylaws, but shall apply to any Proceeding referenced in Section 6.6(b) or 6.6(c) prior to a determination that the person is not entitled to be indemnified by the Company.

**6.6 Limitation on Indemnification.** Subject to the requirements in Section 6.3 and the DGCL, the Company shall not be obligated to indemnify any person pursuant to this Article VI in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local



statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(c) for any reimbursement of the Company by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), or the payment to the Company of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

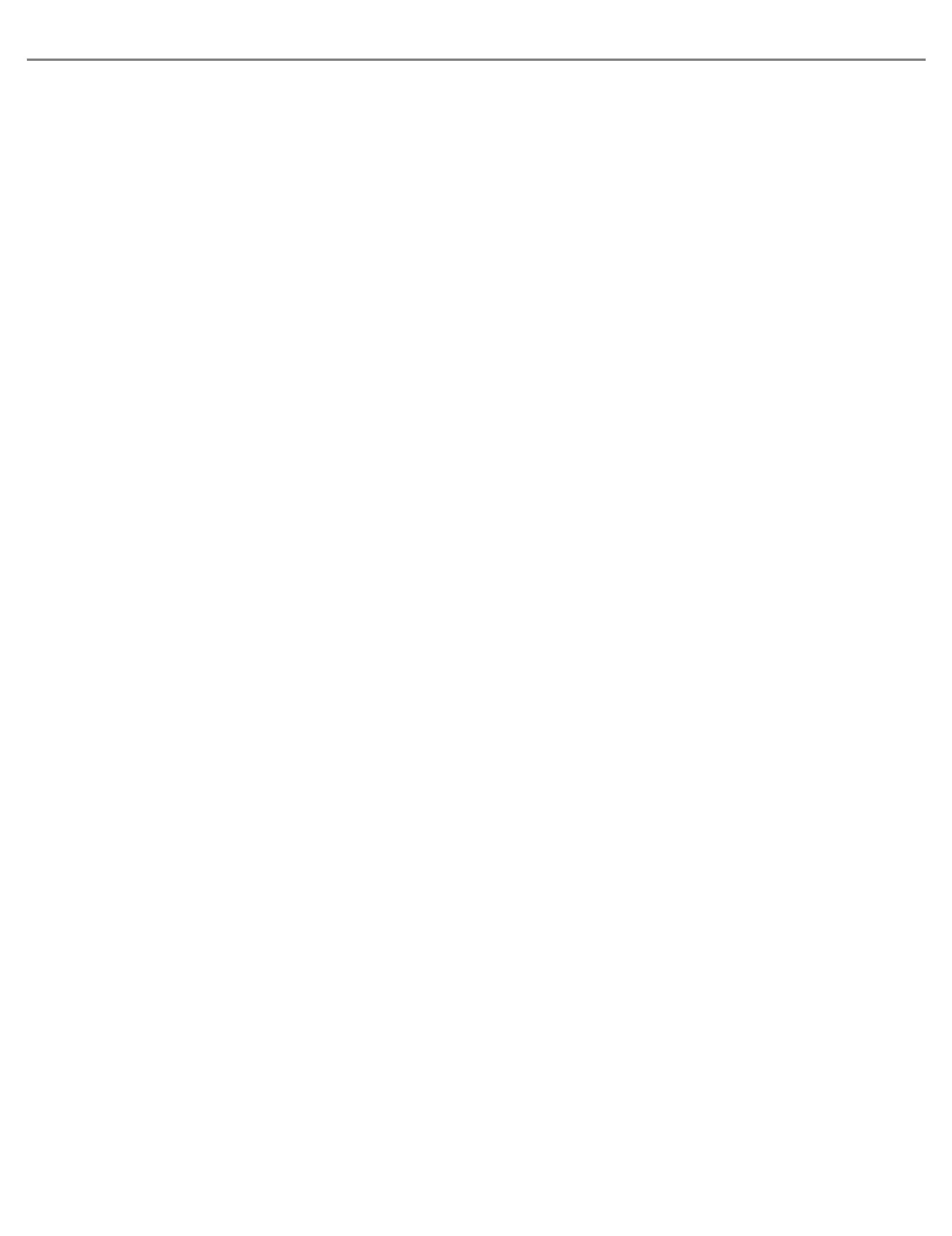
(d) initiated by such person, including any Proceeding (or any part of any Proceeding) initiated by such person against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Board authorized the Proceeding (or the relevant part of the Proceeding), (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise required to be made under Section 6.7 or (iv) otherwise required by applicable law; or

(e) if prohibited by applicable law.

6.7 Determination; Claim. If a claim for indemnification (following the final disposition of such Proceeding) or advancement of expenses under this Article VI is not paid by the Company or on its behalf within ninety (90) days after receipt by the Company of a written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. To the extent not prohibited by law, the Company shall indemnify such person against all expenses actually and reasonably incurred by such person in connection with any action for indemnification or advancement of expenses from the Company under this Article VI, to the extent such person is successful in such action, and, if requested by such person, shall advance such expenses to such person, subject to the provisions of Section 6.5. In any such suit, the Company shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

6.8 Non-Exclusivity of Rights. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation or any statute, provision of these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office. The Company is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

6.9 Insurance. The Company may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee, agent or trustee of another



corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of the DGCL.

6.10 **Severability.** If any provision or provisions of this Article VI shall be held to be invalid, illegal, or unenforceable for any reason whatsoever: (1) the validity, legality, and enforceability of the remaining provisions of this Article VI (including, without limitation, each portion of any paragraph or clause containing any such provision held to be invalid, illegal, or unenforceable, that is not itself held to be invalid, illegal, or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Article VI (including, without limitation, each such portion of any paragraph or clause containing any such provision held to be invalid, illegal, or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal, or unenforceable.

6.11 **Survival.** The rights to indemnification and advancement of expenses conferred by this Article VI shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

6.12 **Effect of Repeal or Modification.** A right to indemnification or to advancement of expenses arising under a provision of the Certificate of Incorporation or these Bylaw shall not be eliminated or impaired by an amendment to the Certificate of Incorporation or these Bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

6.13 **Certain Definitions.** For purposes of this Article VI, references to the "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VI, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Article VI.



## ARTICLE VII — STOCK

### 7.1 Stock Certificates; Partly Paid Shares.

(a) The shares of the Company shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Company by any two authorized officers of the Company which shall include, without limitation, the Chairperson of the Board, the Vice-Chairperson of the Board, the President, the Treasurer, and the Secretary of the Company, representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Company shall not have power to issue a certificate in bearer form.

(b) The Company may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Company in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Company shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

7.2 Special Designation on Certificates. If the Company is authorized to issue more than one (1) class of stock or more than one (1) series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Company shall issue to represent such class or series of stock; provided that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Company shall issue to represent such class or series of stock, a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Company shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section 7.2 or the DGCL or with respect to this Section 7.2 a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated



stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

7.3 Lost Certificates. Except as provided in this Section 7.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Company and cancelled at the same time. The Company may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Company may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.4 Dividends.

(a) The Board, subject to any restrictions contained in the Certificate of Incorporation or DGCL, may declare and pay dividends upon the shares of the Company's capital stock. Dividends may be paid in cash, in property, or in shares of the Company's capital stock, subject to the provisions of the Certificate of Incorporation.

(b) The Board may set apart out of any of the funds of the Company available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

7.5 Stock Transfer Agreements. The Company shall have power to enter into and perform any agreement with any number of stockholders of any one (1) or more classes of stock of the Company to restrict the transfer of shares of stock of the Company of any one (1) or more classes owned by such stockholders in any manner not prohibited by the DGCL.

7.6 Registered Stockholders. The Company:

(a) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner; and

(b) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

7.7 Transfers.

(a) Shares of the Company shall be transferable in the manner prescribed by the Certificate of Incorporation, applicable law and in these Bylaws. Shares of stock of the Company shall be transferred on the books of the Company only by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Company of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or by delivery of duly executed instructions with respect to uncertificated shares), with such evidence of the authenticity of such endorsement or execution, transfer, authorization and other matters as the Company may reasonably require, and accompanied by all necessary stock transfer stamps. No transfer of stock shall be valid as against the Company for any purpose until it shall have been



entered in the stock records of the Company by an entry showing the names of the persons from and to whom it was transferred.

(b) The Company shall have power to enter into and perform any agreement with any number of stockholders of any one (1) or more classes or series of stock of the Company to restrict the transfer of shares of stock of the Company of any one (1) or more classes owned by such stockholders in any manner not prohibited by the DGCL.

## **ARTICLE VIII — MANNER OF GIVING NOTICE AND WAIVER**

8.1 Notice of Stockholder Meetings. Except as otherwise required by applicable law or as provided in these Bylaws or the Certificate of Incorporation, notice of any meeting of stockholders shall be given (i) if mailed, when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the Company's records or (ii) if delivered by courier service, the earlier of when the notice is received or left at the stockholder's address as it appears on the Company's records. An affidavit of the Secretary of the Company or of the transfer agent or other agent of the Company that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

8.2 Notice by Electronic Transmission. Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the Certificate of Incorporation or these Bylaws, any notice to stockholders given by the Company under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission in compliance with applicable law. Notwithstanding the foregoing, a notice may not be given by electronic transmission from and after the time that:

(a) the Company is unable to deliver by electronic transmission two consecutive notices given by the Company; and

(b) such inability becomes known to the Secretary of the Company or to the transfer agent, or other person responsible for the giving of notice;

provided, however, that the inadvertent failure to treat such inability shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by electronic mail, when directed to an electronic mail address unless the stockholder has notified the Company in writing or by electronic transmission of an objection to receive notice by electronic mail;



(iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iv) if by any other form of electronic transmission, when directed to the stockholder.

An “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one (1) or more electronic networks or databases (including one (1) or more distributed electronic networks or databases), that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

**8.3 Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within sixty (60) days of having been given written notice by the Company of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

**8.4 Notice to Person with Whom Communication is Unlawful.** Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

**8.5 Waiver of Notice.** Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special



meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

## **ARTICLE IX — GENERAL MATTERS**

9.1 **Execution of Corporate Instruments.** Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the Board may authorize any officer or officers, or agent or agents, to enter into any contract or execute any document or instrument in the name of and on behalf of the Company; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Company by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

9.2 **Fiscal Year.** The fiscal year of the Company shall be fixed by resolution of the Board and may be changed by the Board.

9.3 **Seal.** The Company may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

9.4 **Construction; Definitions.** Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both a corporation and a natural person.

## **ARTICLE X — AMENDMENTS**

Subject to the limitations set forth in Section 6.12 of these Bylaws or the provisions of the Certificate of Incorporation, the Board is expressly empowered to adopt, amend or repeal the Bylaws of the Company. Any adoption, amendment or repeal of the Bylaws of the Company by the Board shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the Company; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class.





**CASPER SLEEP INC.**  
**NON-EMPLOYEE DIRECTOR COMPENSATION POLICY**

(as amended effective February 11, 2021)

Non-employee members of the board of directors (the “**Board**”) of Casper Sleep Inc. (the “**Company**”) shall be eligible to receive cash and equity compensation as set forth in this Non-Employee Director Compensation Policy (this “**Policy**”), which was adopted effective as of February 5, 2020, and is hereby amended effective as of February 11, 2021. The cash and equity compensation described in this Policy shall be paid or be made, as applicable, automatically and without further action of the Board, to each member of the Board who is not an employee of the Company or any parent or subsidiary of the Company (each, a “**Non-Employee Director**”) who may be eligible to receive such cash or equity compensation, unless such Non-Employee Director declines the receipt of such cash or equity compensation by written notice to the Company. This Policy shall remain in effect until it is revised or rescinded by further action of the Board. This Policy may be amended, modified or terminated by the Board at any time in its sole discretion. The terms and conditions of this Policy shall supersede any prior cash and/or equity compensation arrangements for service as a member of the Board between the Company and any of its Non-Employee Directors and between any subsidiary of the Company and any of its non-employee directors.

1. Cash Compensation.

(a) Annual Retainers. Each Non-Employee Director shall receive an annual retainer of \$50,000 for service on the Board.

(b) Additional Annual Retainers. In addition, a Non-Employee Director shall receive the following annual retainers:

(i) Audit Committee. A Non-Employee Director serving as Chairperson of the Audit Committee shall receive an additional annual retainer of \$20,000 for such service. A Non-Employee Director serving as a member of the Audit Committee (other than the Chairperson) shall receive an additional annual retainer of \$10,000 for such service.

(ii) Compensation Committee. A Non-Employee Director serving as Chairperson of the Compensation Committee shall receive an additional annual retainer of \$20,000 for such service. A Non-Employee Director serving as a member of the Compensation Committee (other than the Chairperson) shall receive an additional annual retainer of \$10,000 for such service.

(iii) Nominating and Corporate Governance Committee. A Non-Employee Director serving as Chairperson of the Nominating and Corporate Governance Committee shall receive an additional annual retainer of \$10,000 for such service. A Non-Employee Director serving as a member of the Nominating and Corporate Governance Committee (other than the Chairperson) shall receive an additional annual retainer of \$5,000 for such service.

(c) Payment of Retainers. The annual retainers described in Sections 1(a) and 1(b) shall be earned on a quarterly basis based on a calendar quarter and shall be paid by the Company in arrears not later than the fifteenth day following the end of each calendar quarter. In



the event a Non-Employee Director does not serve as a Non-Employee Director, or in the applicable positions described in Section 1(b), for an entire calendar quarter, such Non-Employee Director shall receive a prorated portion of the retainer(s) otherwise payable to such Non-Employee Director for such calendar quarter pursuant to Sections 1(a) and 1(b), with such prorated portion determined by multiplying such otherwise payable retainer(s) by a fraction, the numerator of which is the number of days during which the Non-Employee Director serves as a Non-Employee Director or in the applicable positions described in Section 1(b) during the applicable calendar quarter and the denominator of which is the number of days in the applicable calendar quarter.

2. **Equity Compensation.** Non-Employee Directors shall be granted the equity awards described below. The awards described below shall be granted under and shall be subject to the terms and provisions of the Company's 2020 Equity Incentive Plan or any other applicable Company equity incentive plan then-maintained by the Company (such plan, as may be amended from time to time, the "**Equity Plan**") and shall be granted subject to the execution and delivery of award agreements, including attached exhibits, in substantially the forms previously approved by the Board. All applicable terms of the Equity Plan apply to this Policy as if fully set forth herein, and all equity grants hereunder are subject in all respects to the terms of the Equity Plan.

(a) **Annual Awards.** Each Non-Employee Director who (i) serves on the Board as of the date of any annual meeting of the Company's stockholders (an "**Annual Meeting**") and (ii) will continue to serve as a Non-Employee Director immediately following such Annual Meeting shall be automatically granted, on the date of such Annual Meeting, an award of restricted stock units that have an aggregate fair value on the date of such Annual Meeting of \$155,000 (as determined in accordance with ASC 718 and with the number of shares of common stock underlying such award subject to adjustment as provided in the Equity Plan). The awards described in this Section 2(a) shall be referred to as the "**Annual Awards**." For the avoidance of doubt, a Non-Employee Director elected for the first time to the Board at an Annual Meeting shall receive only an Annual Award in connection with such election, and shall not receive any Initial Award on the date of such Annual Meeting as well.

(b) **Initial Awards.** Except as otherwise determined by the Board, each Non-Employee Director who is initially elected or appointed to the Board after the first Annual Meeting following the effectiveness of this Policy on any date other than the date of an Annual Meeting shall be automatically granted, on the date of such Non-Employee Director's initial election or appointment (such Non-Employee Director's "**Start Date**"), an award of restricted stock units that have an aggregate fair value on such Non-Employee Director's Start Date equal to the product of (i) \$155,000 (as determined in accordance with ASC 718) and (ii) a fraction, the numerator of which is (x) 365 minus (y) the number of days in the period beginning on the date of the Annual Meeting immediately preceding such Non-Employee Director's Start Date and ending on such Non-Employee Director's Start Date and the denominator of which is 365 (with the number of shares of common stock underlying each such award subject to adjustment as provided in the Equity Plan). The awards described in this Section 2(b) shall be referred to as "**Initial Awards**." For the avoidance of doubt, no Non-Employee Director shall be granted more than one Initial Award.



(c) Termination of Employment of Employee Directors. Members of the Board who are employees of the Company or any parent or subsidiary of the Company who subsequently terminate their employment with the Company and any parent or subsidiary of the Company and remain on the Board will not receive an Initial Award pursuant to Section 2(b) above, but to the extent that they are otherwise eligible, will be eligible to receive, after termination from employment with the Company and any parent or subsidiary of the Company, Annual Awards as described in Section 2(a) above.

(d) Vesting of Awards Granted to Non-Employee Directors. Each Annual Award and Initial Award shall vest and become exercisable on the earlier of (i) the day immediately preceding the date of the first Annual Meeting following the date of grant and (ii) the first anniversary of the date of grant, subject to the Non-Employee Director continuing in service on the Board through the applicable vesting date. No portion of an Annual Award or Initial Award that is unvested or unexercisable at the time of a Non-Employee Director's termination of service on the Board shall become vested and exercisable thereafter. All of a Non-Employee Director's Annual Awards and Initial Awards shall vest in full immediately prior to the occurrence of a Change in Control (as defined in the Equity Plan), to the extent outstanding at such time.

### 3. Expenses

The Company will reimburse each Non-Employee Director for ordinary, necessary and reasonable out-of-pocket travel expenses to cover in-person attendance at and participation in Board meetings and meetings of any committee of the Board; *provided*, that the Non-Employee Director timely submit to the Company appropriate documentation substantiating such expenses in accordance with the Company's travel and expense policy applicable to directors, as in effect from time to time. To the extent that any taxable reimbursements are provided to any Non-Employee Director, they will be provided in accordance with Section 409A of the Internal Revenue Code of 1986, as amended, including, but not limited to, the following provisions: (i) the amount of any such expenses eligible for reimbursement during such individual's taxable year may not affect the expenses eligible for reimbursement in any other taxable year; (ii) the reimbursement of an eligible expense must be made no later than the last day of such individual's taxable year that immediately follows the taxable year in which the expense was incurred; and (iii) the right to any reimbursement may not be subject to liquidation or exchange for another benefit.

\* \* \* \* \*





**CASPER SLEEP INC.  
2020 EQUITY INCENTIVE PLAN**

**NOTICE OF RESTRICTED STOCK UNIT AGREEMENT**

**Name of Participant:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Date of Grant:** \_\_\_\_\_

**Total Number of Restricted Stock Units:** \_\_\_\_\_

**Type of Shares Issuable on Vesting:** Common Stock

**Vesting Schedule:** The RSUs shall vest according to the following vesting schedule: [Insert vesting schedule here]

**Withholding Tax Election:** By accepting this Award electronically through the Plan service provider's online grant acceptance policy, the Participant understands and agrees that as a condition of the grant of the RSUs hereunder, the Participant is required to, and hereby affirmatively elects to (the "Sell to Cover Election"), (1) sell that number of Shares determined in accordance with Article 1(E)(1) of the Agreement as may be necessary to satisfy all applicable withholding obligations with respect to any taxable event arising in connection with the RSUs and similarly sell such number of Shares as may be necessary to satisfy all applicable withholding obligations with respect to any other awards of restricted stock units granted to the Participant under the Plan or any other equity incentive plans of the Company or its predecessor, and (2) to allow the Agent (as defined in the Agreement) to remit the cash proceeds of such sale(s) to the Company. Furthermore, the Participant directs the Company to make a cash payment equal to the required tax withholding from the cash proceeds of such sale(s) directly to the appropriate taxing authorities. **The Participant has carefully reviewed Article 1(E)(1) of the Agreement and the Participant hereby represents and warrants that on the date hereof he or she is not aware of any material, nonpublic information with respect to the Company or any securities of the Company, is not subject to any legal, regulatory or contractual restriction that would prevent the Agent from conducting sales, does not have, and will not attempt to exercise, authority, influence or control over any sales of Shares effected by the Agent pursuant to the Agreement, and is entering into the Agreement and this election to "sell to cover" in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b5-1 (regarding trading of the Company's securities on the basis of material nonpublic information) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). It is the Participant's intent that this election to "sell to cover" comply with the requirements of Rule 10b5-1(c)(1)(B) under the Exchange Act and be interpreted to comply with the requirements of Rule 10b5-1(c) under the Exchange Act.**



The Company and the Participant acknowledge receipt of this Notice of Restricted Stock Unit Grant and agree to the terms and conditions of the Restricted Stock Unit Agreement attached hereto and incorporated by reference herein, the Company's 2020 Equity Incentive Plan and the terms of this Notice of Restricted Stock Unit Grant as set forth above.

**CASPER SLEEP INC.**

**PARTICIPANT**

By: \_\_\_\_\_  
Name: [ ]  
Title: [ ]

By: \_\_\_\_\_  
Name: [ ]



**CASPER SLEEP INC.**

**RESTRICTED STOCK UNIT AGREEMENT - INCORPORATED TERMS AND CONDITIONS**

**ARTICLE I.**

**A. Award of RSUs.**

(1) Casper Sleep Inc. (the “**Company**”) hereby grants to the Participant (“**Participant**”) named in the Notice of Restricted Stock Unit Agreement (the “**Notice of RSU Grant**”), in consideration of Participant’s past and/or continued employment with or service to the Company or a Subsidiary and for other good and valuable consideration, effective as of the date of grant (the “**Date of Grant**”) set forth in the Notice of RSU Grant the number of Restricted Stock Units (“**RSUs**”) set forth in the Notice of RSU Grant, upon the terms and conditions set forth in the Company’s 2020 Equity Incentive Plan (the “**Plan**”), which is incorporated herein by reference, and this Agreement, subject to adjustment as provided in Section 14 of the Plan. Each RSU represents the right to receive one Share, at the times and subject to the conditions set forth herein. However, unless and until the RSUs have vested, Participant will have no right to the issuance of any Shares subject thereto. Prior to the actual delivery of any Shares, the RSUs will represent an unsecured obligation of the Company, payable only from the general assets of the Company. Unless otherwise defined herein or in the Notice of RSU Grant, the terms defined in the Plan shall have the same defined meanings in this Restricted Stock Unit Agreement (the “**Agreement**”).

**B. Vesting of RSUs.** Subject to Participant’s continued employment with or service to the Company or a Subsidiary on each applicable vesting date set forth in the Notice of RSU Grant and subject to the terms of this Agreement, the RSUs shall vest in such amounts and at such times as are set forth in the Notice of RSU Grant. In the event Participant incurs a Termination of Service, except as may be otherwise provided by the Administrator or as set forth in a written agreement between Participant and the Company, Participant shall immediately forfeit any and all RSUs granted under this Agreement that have not vested or do not vest on or prior to the date on which such Termination of Service occurs, and Participant’s rights in any such RSUs that are not so vested shall lapse and expire.

**C. Distribution or Payment of RSUs.**

(1) Participant’s RSUs shall be distributed in Shares (either in book-entry form or otherwise) as soon as administratively practicable following the vesting of the applicable RSU pursuant to this Agreement and, in any event, within sixty (60) days following such vesting (for the avoidance of doubt, this deadline is intended to comply with the “short-term deferral” exemption from Section 409A). Notwithstanding the foregoing, the Company may delay a distribution or payment in settlement of RSUs if it reasonably determines that such payment or distribution will violate Federal securities laws or any other Applicable Law, *provided* that such distribution or payment shall be made at the earliest date at which the Company reasonably determines that the making of such distribution or payment will not cause such violation, as required by Treasury Regulation Section 1.409A-2(b)(7)(ii), and *provided further* that no payment or distribution shall be delayed under this Article I(C)(1) if such delay will result in a violation of Section 409A.

(2) All distributions made in Shares shall be made by the Company in the form of whole Shares.



**D. Conditions to Issuance of Stock.** The Company shall not be required to issue or deliver any certificate or certificates for any Shares or to cause any Shares to be held in book-entry form prior to the fulfillment of all of the following conditions: (a) the admission of the Shares to listing on all stock exchanges on which such Shares are then listed, (b) the completion of any registration or other qualification of the Shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or other governmental regulatory body, which the Administrator shall, in its absolute discretion, deem necessary or advisable, (c) the obtaining of any approval or other clearance from any state or federal governmental agency that the Administrator shall, in its absolute discretion, determine to be necessary or advisable and (d) the receipt by the Company of any tax obligations due on issuance of such Shares, which may be in one or more of the forms of consideration permitted under Article I(E)(1).

**E. *Tax Obligations.***

(1) As set forth in Section 15 of the Plan, the Company shall have the authority and the right to deduct or withhold, or to require the Participant to remit to the Company, an amount sufficient to satisfy all applicable federal, state and local taxes required by law to be withheld with respect to any taxable event arising in connection with the RSUs. In satisfaction of such tax withholding obligations and in accordance with the Sell to Cover Election included in the Notice of Restricted Stock Unit Agreement, the Participant has irrevocably elected to sell the portion of the Shares to be delivered under the RSUs necessary so as to satisfy the tax withholding obligations and shall execute any letter of instruction or agreement required by the Company's transfer agent (together with any other party the Company determines necessary to execute the Sell to Cover Election, the "Agent") to cause the Agent to irrevocably commit to forward the proceeds necessary to satisfy the tax withholding obligations directly to the Company and/or its affiliates. Notwithstanding any other provision of this Agreement, the Company shall not be obligated to deliver any new certificate representing Shares to the Participant or the Participant's legal representative or enter such Shares in book entry form unless and until the Participant or the Participant's legal representative shall have paid or otherwise satisfied in full the amount of all federal, state and local taxes applicable to the taxable income of the Participant resulting from the grant or vesting of the RSUs or the issuance of Shares. In accordance with Participant's Sell to Cover Election pursuant to the Grant Notice, the Participant hereby acknowledges and agrees:

(i) The Participant hereby appoints the Agent as the Participant's agent and authorizes the Agent to (1) sell on the open market at the then prevailing market price(s), on the Participant's behalf, as soon as practicable on or after the Shares are issued upon the vesting of the RSUs, that number (rounded up to the next whole number) of the Shares so issued necessary to generate proceeds to cover (x) any tax withholding obligations incurred with respect to such vesting or issuance and (y) all applicable fees and commissions due to, or required to be collected by, the Agent with respect thereto and (2) apply any remaining funds to the Participant's federal tax withholding.

(ii) The Participant hereby authorizes the Company and the Agent to cooperate and communicate with one another to determine the number of Shares that must be sold pursuant to subsection (i) above.

(iii) The Participant understands that the Agent may effect sales as provided in subsection (i) above in one or more sales and that the average price for executions resulting from bunched orders will be assigned to the Participant's account. In addition, the Participant acknowledges that it may not be possible to sell



Shares as provided by subsection (i) above due to (1) a legal or contractual restriction applicable to the Participant or the Agent, (2) a market disruption, or (3) rules governing order execution priority on the national exchange where the Shares may be traded. The Participant further agrees and acknowledges that in the event the sale of Shares would result in material adverse harm to the Company, as determined by the Company in its sole discretion, the Company may instruct the Agent not to sell Shares as provided by subsection (i) above. In the event of the Agent's inability to sell Shares, the Participant will continue to be responsible for the timely payment to the Company and/or its affiliates of all federal, state, local and foreign taxes that are required by applicable laws and regulations to be withheld, including but not limited to those amounts specified in subsection (i) above.

(iv) The Participant acknowledges that regardless of any other term or condition of this Article 1(E)(1), the Agent will not be liable to the Participant for (1) special, indirect, punitive, exemplary, or consequential damages, or incidental losses or damages of any kind, or (2) any failure to perform or for any delay in performance that results from a cause or circumstance that is beyond its reasonable control.

(v) The Participant hereby agrees to execute and deliver to the Agent any other agreements or documents as the Agent reasonably deems necessary or appropriate to carry out the purposes and intent of this Article 1(E)(1). The Agent is a third-party beneficiary of this Article 1(E)(1).

(vi) This Article 1(E)(1) shall terminate not later than the date on which all tax withholding obligations arising in connection with the vesting of the Award have been satisfied.

Participant acknowledges and agrees that the Company may refuse to deliver the Shares issuable with respect to the RSUs to, or cause any such Shares to be held in book-entry form by, Participant or his or her legal representative if such withholding amounts are not timely delivered in full pursuant to this Article 1(E)(1).

(2) Code Section 409A. This Award is not intended to constitute "nonqualified deferred compensation" within the meaning of Code Section 409A. However, notwithstanding any other provision of the Plan or this Agreement, if at any time the Administrator determines that this Award (or any portion thereof) may be subject to Code Section 409A, the Administrator shall have the right in its sole discretion (without any obligation to do so or to indemnify Participant or any other Person for failure to do so) to adopt such amendments to the Plan or this Agreement, or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Administrator determines are necessary or appropriate for this Award either to be exempt from the application of Code Section 409A or to comply with the requirements of Code Section 409A.

(3) Liability. Participant is ultimately liable and responsible for all taxes owed in connection with the RSUs, regardless of any action the Company or any of its Parents or Subsidiaries takes with respect to any tax withholding obligations that arise in connection with the RSUs. Neither the Company nor any of its Parents or Subsidiaries makes any representation or undertaking regarding the treatment of any tax withholding in connection with the awarding, vesting or payment of the RSUs or the



subsequent sale of Shares. The Company and its Parents and Subsidiaries do not commit and are under no obligation to structure the RSUs to reduce or eliminate Participant's tax liability.

F. **Rights as Stockholder.** Neither Participant nor any Person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares (which may be in book-entry form) will have been issued and recorded on the records of the Company or its transfer agents or registrars and delivered to Participant (including through electronic delivery to a brokerage account). Except as otherwise provided herein, after such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to such Shares, including, without limitation, the right to receipt of dividends and distributions on such Shares.

G. **RSUs Not Transferable.** The RSUs may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the RSUs have been issued, and all restrictions applicable to such Shares have lapsed. No RSUs or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence. Notwithstanding the foregoing, with the consent of the Administrator, the RSUs may be transferred to Permitted Transferees, pursuant to any such conditions and procedures the Administrator may require.

H. **Entire Agreement; Governing Law.** The Plan is incorporated herein by reference. The Plan and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof, and may not be modified adversely to the Participant's interest except by means of a writing signed by the Company and Participant or as is otherwise permitted under the Plan. This Agreement is governed by the internal substantive laws but not the choice of law rules of Delaware.

I. **No Guarantee of Continued Service.** PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF RSUS PURSUANT TO THE VESTING SCHEDULE HEREOF AND ISSUANCE OF SHARES PURSUANT THERETO IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS AWARD OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

J. **Administration.** The Administrator shall have the power to interpret the Plan and this Agreement, and to adopt such rules for the administration, interpretation and application of the Plan and this Agreement, as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator will be final and binding upon Participant, the Company and all other interested Persons. To the extent allowable pursuant to Applicable



Law, no member of the Committee or the Board will be personally liable for any action, determination or interpretation made with respect to the Plan or this Agreement.

**K. *Adjustments.*** The Administrator may accelerate the vesting of all or a portion of the RSUs in such circumstances as it, in its sole discretion, may determine. Participant acknowledges that the RSUs are subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Section 14 of the Plan.

**L. *Notices.*** Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to Participant shall be addressed to Participant at Participant's address set forth below. By a notice given pursuant to this Article 1(L), either party may hereafter designate a different address for notices to be given to that party. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service. Subject to the limitations set forth in Section 232(e) of the General Corporation Law of the State of Delaware (the "DGCL"), Participant consents to the delivery of any notice to Participant given by the Company under the DGCL or the Company's certificate of incorporation or bylaws by (i) facsimile telecommunication to the facsimile number for Participant in the Company's records, (ii) electronic mail to the electronic mail address for Participant in the Company's records, (iii) posting on an electronic network together with separate notice to Participant of such specific posting or (iv) any other form of electronic transmission (as defined in the DGCL) directed to Participant. This consent may be revoked by Participant by written notice to the Company and may be deemed revoked in the circumstances specified in Section 232 of the DGCL.

**M. *Conformity to Securities Laws.*** Participant acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act and any and all Applicable Law and regulations and rules promulgated by the Securities and Exchange Commission thereunder, and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the RSUs are granted, only in such a manner as to conform to such Applicable Law.

**N. *Limitations Applicable to Section 16 Persons.*** Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the RSUs and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

**O. *Successors and Assigns.*** The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in Article 1(G) and the Plan, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

**P. *Limitation on Participant's Rights.*** Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant shall have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the RSUs.



Q. ***Lock-up Period.*** Participant shall not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Shares (or other securities) of the Company or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Shares (or other securities) of the Company held by Participant (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company not to exceed 180 days following the effective date of any registration statement of the Company filed under the Securities Act (or such other period as may be requested by the Company or the underwriters to accommodate regulatory restrictions).





**CASPER SLEEP INC.  
2020 EQUITY INCENTIVE PLAN**

**NOTICE OF PERFORMANCE STOCK UNIT AGREEMENT**

Name of Participant: \_\_\_\_\_

Address: \_\_\_\_\_

Date of Grant: \_\_\_\_\_

Total Number of Performance Stock Units: \_\_\_\_\_

Type of Shares Issuable on Vesting: Common Stock

Vesting Schedule: The PSUs shall vest according to the vesting schedule set forth on Exhibit A

The Company and the Participant acknowledge receipt of this Notice of Performance Stock Unit Grant and agree to the terms and conditions of the Performance Stock Unit Agreement attached hereto and incorporated by reference herein, the Company's 2020 Equity Incentive Plan and the terms of this Notice of Performance Stock Unit Grant as set forth above.

CASPER SLEEP INC.

PARTICIPANT

By: \_\_\_\_\_  
Name: [ ]  
Title: [ ]

By: \_\_\_\_\_  
Name: [ ]



CASPER SLEEP INC.

PERFORMANCE STOCK UNIT AGREEMENT - INCORPORATED TERMS AND CONDITIONS

ARTICLE I.

A. Award of PSUs [and Dividend Equivalents].

(1) Casper Sleep Inc. (the "Company") hereby grants to the Participant ("Participant") named in the Notice of Performance Stock Unit Agreement (the "Notice of PSU Grant"), in consideration of Participant's past and/or continued employment with or service to the Company or a Subsidiary and for other good and valuable consideration, effective as of the date of grant (the "Date of Grant") set forth in the Notice of PSU Grant the number of Performance Stock Units ("PSUs") set forth in the Notice of PSU Grant, upon the terms and conditions set forth in the Company's 2020 Equity Incentive Plan (the "Plan"), which is incorporated herein by reference, and this Agreement, subject to adjustment as provided in Section 14 of the Plan. Each PSU represents the right to receive one Share, at the times and subject to the conditions set forth herein. However, unless and until the PSUs have vested, Participant will have no right to the issuance of any Shares subject thereto. Prior to the actual delivery of any Shares, the PSUs will represent an unsecured obligation of the Company, payable only from the general assets of the Company. Unless otherwise defined herein or in the Notice of PSU Grant, the terms defined in the Plan shall have the same defined meanings in this Performance Stock Unit Agreement (the "Agreement").

(2) [The Company hereby grants to Participant an Award of Dividend Equivalents with respect to each PSU granted pursuant to the Notice of PSU Grant for all ordinary cash dividends that are paid to all or substantially all holders of the outstanding Shares between the Date of Grant and the date when the applicable PSU is distributed or paid to Participant or is forfeited or expires. The Dividend Equivalents for each PSU shall be equal to the amount of cash that is paid as a dividend on one Share. All such Dividend Equivalents shall be credited to Participant and be deemed to be reinvested in additional PSUs as of the date of payment of any such dividend based on the Fair Market Value of a Share on such date. Each additional PSU that results from such deemed reinvestment of Dividend Equivalents granted hereunder shall be subject to the same vesting, distribution or payment, adjustment and other provisions that apply to the underlying PSU to which such additional PSU relates.]

B. Vesting of PSUs [and Dividend Equivalents]. Subject to Participant's continued employment with or service to the Company or a Subsidiary on each applicable vesting date set forth in the Notice of PSU Grant and subject to the terms of this Agreement, the PSUs shall vest in such amounts and at such times as are set forth in the Notice of PSU Grant. [Each additional PSU that results from deemed reinvestments of Dividend Equivalents pursuant to Article I(A)(2) above shall vest if and only if the underlying PSU to which such additional PSU relates vests, at the time such underlying PSU vests.] In the event Participant incurs a Termination of Service, except as may be otherwise provided by the Administrator or as set forth in a written agreement between Participant and the Company, Participant shall immediately forfeit any and all PSUs [and Dividend Equivalents] granted under this Agreement that have not vested or do not vest on or prior to the date on which such Termination of Service occurs, and Participant's rights in any such PSUs [and Dividend Equivalents] that are not so vested shall lapse and expire.

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C. Distribution or Payment of PSUs.

(1) Participant's PSUs shall be distributed in Shares (either in book-entry form or otherwise) as soon as administratively practicable following the vesting of the applicable PSU pursuant to this Agreement and, in any event, within thirty (30) days following such vesting (for the avoidance of doubt, this deadline is intended to comply with the "short-term deferral" exemption from Section 409A). Notwithstanding the foregoing, the Company may delay a distribution or payment in settlement of PSUs if it reasonably determines that such payment or distribution will violate Federal securities laws or any other Applicable Law, provided that such distribution or payment shall be made at the earliest date at which the Company reasonably determines that the making of such distribution or payment will not cause such violation, as required by Treasury Regulation Section 1.409A-2(b)(7)(ii), and provided further that no payment or distribution shall be delayed under this Article I(C)(1) if such delay will result in a violation of Section 409A.

(2) All distributions made in Shares shall be made by the Company in the form of whole Shares.

D. Conditions to Issuance of Stock. The Company shall not be required to issue or deliver any certificate or certificates for any Shares or to cause any Shares to be held in book-entry form prior to the fulfillment of all of the following conditions: (a) the admission of the Shares to listing on all stock exchanges on which such Shares are then listed, (b) the completion of any registration or other qualification of the Shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or other governmental regulatory body, which the Administrator shall, in its absolute discretion, deem necessary or advisable, (c) the obtaining of any approval or other clearance from any state or federal governmental agency that the Administrator shall, in its absolute discretion, determine to be necessary or advisable and (d) the receipt by the Company of any tax obligations due on issuance of such Shares, which may be in one or more of the forms of consideration permitted under Article I(E)(1).

E. Tax Obligations.

(1) The Company (or the Parent or Subsidiary employing or retaining Participant) has the authority to deduct or withhold, or require Participant to remit to the applicable employing entity, an amount sufficient to satisfy any applicable Federal, state, local and foreign income and employment tax withholding requirements (including the employee portion of any FICA obligation) applicable to the issuance of Shares pursuant to the PSUs or with respect to any taxable event arising pursuant to this Agreement. The Company (or its Parent or Subsidiary, as applicable) may withhold or Participant may make such payment in one or more of the following forms:

(i) by cash or check;

(ii) with the consent of the Administrator, by electing to have withheld the net number of Shares otherwise issuable pursuant to the PSUs having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company (or its Parent or Subsidiary, as applicable) based on the maximum statutory withholding rates in Participant's applicable jurisdictions for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such taxable income;

(iii) with the consent of the Administrator, by tendering to the Company



vested Shares held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences and having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company (or its Parent or Subsidiary, as applicable) based on the maximum statutory withholding rates in Participant's applicable jurisdictions for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such taxable income; or

(iv) with the consent of the Administrator, by selling a sufficient number of Shares otherwise deliverable to Participant through such means as the Administrator may determine in its sole discretion (whether through a broker or otherwise) equal to the amount required to satisfy such withholding taxes.

Participant acknowledges and agrees that the Company may refuse to deliver the Shares issuable with respect to the PSUs to, or cause any such Shares to be held in book-entry form by, Participant or his or her legal representative if such withholding amounts are not timely delivered in full pursuant to this Article 1(E)(1).

(2) Code Section 409A. This Award is not intended to constitute "nonqualified deferred compensation" within the meaning of Code Section 409A. However, notwithstanding any other provision of the Plan or this Agreement, if at any time the Administrator determines that this Award (or any portion thereof) may be subject to Code Section 409A, the Administrator shall have the right in its sole discretion (without any obligation to do so or to indemnify Participant or any other Person for failure to do so) to adopt such amendments to the Plan or this Agreement, or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Administrator determines are necessary or appropriate for this Award either to be exempt from the application of Code Section 409A or to comply with the requirements of Code Section 409A.

(3) Liability. Participant is ultimately liable and responsible for all taxes owed in connection with the PSUs, regardless of any action the Company or any of its Parents or Subsidiaries takes with respect to any tax withholding obligations that arise in connection with the PSUs. Neither the Company nor any of its Parents or Subsidiaries makes any representation or undertaking regarding the treatment of any tax withholding in connection with the awarding, vesting or payment of the PSUs or the subsequent sale of Shares. The Company and its Parents and Subsidiaries do not commit and are under no obligation to structure the PSUs to reduce or eliminate Participant's tax liability.

F. Rights as Stockholder. Neither Participant nor any Person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares (which may be in book-entry form) will have been issued and recorded on the records of the Company or its transfer agents or registrars and delivered to Participant (including through electronic delivery to a brokerage account). Except as otherwise provided herein, after such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to such Shares, including, without limitation, the right to receipt of dividends and distributions on such Shares.

G. PSUs Not Transferable. The PSUs may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the PSUs have been issued, and all restrictions applicable to such Shares have lapsed. No PSUs or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation,



pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence. Notwithstanding the foregoing, with the consent of the Administrator, the PSUs may be transferred to Permitted Transferees, pursuant to any such conditions and procedures the Administrator may require.

H. Entire Agreement; Governing Law. The Plan is incorporated herein by reference. The Plan and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof, and may not be modified adversely to the Participant's interest except by means of a writing signed by the Company and Participant or as is otherwise permitted under the Plan. This Agreement is governed by the internal substantive laws but not the choice of law rules of Delaware.

I. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF PSUS PURSUANT TO THE VESTING SCHEDULE HEREOF AND ISSUANCE OF SHARES PURSUANT THERETO IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS AWARD OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

J. Administration. The Administrator shall have the power to interpret the Plan and this Agreement, and to adopt such rules for the administration, interpretation and application of the Plan and this Agreement, as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator will be final and binding upon Participant, the Company and all other interested Persons. To the extent allowable pursuant to Applicable Law, no member of the Committee or the Board will be personally liable for any action, determination or interpretation made with respect to the Plan or this Agreement.

K. Adjustments. The Administrator may accelerate the vesting of all or a portion of the PSUs in such circumstances as it, in its sole discretion, may determine. Participant acknowledges that the PSUs are subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Section 14 of the Plan.

L. Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to Participant shall be addressed to Participant at Participant's address set forth below. By a notice given pursuant to this Article 1(L), either party may hereafter designate a different address for notices to be given to that party. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service. Subject to the limitations set forth in Section 232(e) of the General Corporation Law of the State of Delaware (the "DGCL"), Participant consents to the delivery of any notice to Participant given by the Company under the DGCL or the



Company's certificate of incorporation or bylaws by (i) facsimile telecommunication to the facsimile number for Participant in the Company's records, (ii) electronic mail to the electronic mail address for Participant in the Company's records, (iii) posting on an electronic network together with separate notice to Participant of such specific posting or (iv) any other form of electronic transmission (as defined in the DGCL) directed to Participant. This consent may be revoked by Participant by written notice to the Company and may be deemed revoked in the circumstances specified in Section 232 of the DGCL.

M. Conformity to Securities Laws. Participant acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act and any and all Applicable Law and regulations and rules promulgated by the Securities and Exchange Commission thereunder, and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the PSUs are granted, only in such a manner as to conform to such Applicable Law.

N. Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the PSUs [(including PSUs that result from the deemed reinvestment of Dividend Equivalents), the Dividend Equivalents] and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

O. Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in Article 1(G) and the Plan, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

P. ***Limitation on Participant's Rights.*** Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant shall have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the PSUs [and Dividend Equivalents].

Q. Lock-up Period. Participant shall not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Shares (or other securities) of the Company or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Shares (or other securities) of the Company held by Participant (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company not to exceed 180 days following the effective date of any registration statement of the Company filed under the Securities Act (or such other period as may be requested by the Company or the underwriters to accommodate regulatory restrictions).



## Exhibit A

Unless otherwise defined in this Exhibit A, capitalized terms shall have the meaning set forth in the Agreement.

**Performance Period:** The “Performance Period” shall be the period beginning on [REDACTED] and ending on [REDACTED].

**Performance Measure:** There are two performance measures, which together provide Participant with an opportunity for up to 100% of the Number of Performance Stock Units set forth on the Notice of PSU Grant to vest, with Participant’s PSUs divided equally between the two performance measures. The first performance measure is Net Revenue and the second performance measure is Adjusted EBITDA (each as defined below).

“Net Revenue” means the amount of the Company’s total global sales (whether through direct-to-consumer channels, retail partnerships or otherwise) after deduction of amounts allowed or credited due to (a) product returns and (b) discounts for certain sales, programs and promotions.

“Adjusted EBITDA” means the Company’s net income or loss before interest expense, income tax expense, depreciation and amortization as further adjusted to exclude the impact of stock-based compensation expense, restructuring costs, costs associated with legal settlements, and expenses incurred in connection with the Company’s initial public offering.

### Net Revenue

Fifty percent (50%) of the total Number of Performance Stock Units set forth in the Notice of PSU Grant (the “Net Revenue PSUs”) shall be eligible to vest based on the Company’s Net Revenue during the Performance Period. Unless otherwise determined by the Administrator, no Net Revenue PSUs shall become vested unless Net Revenue during the Performance Period is equal to or greater than \$ [REDACTED] (the “Net Revenue Threshold Level”).

Subject to any forfeiture under Article I(B) and the Company’s attainment of the Net Revenue Threshold Level, the number of Net Revenue PSUs that will become vested hereunder shall be as set forth in the table below:

	Threshold	Target
Net Revenue Achievement (\$)	[REDACTED]	[REDACTED]
Total Number of Net Revenue PSUs Vesting	[REDACTED] %	[REDACTED] %

The level of Net Revenue shall be determined by the Board within sixty (60) days following the end of the Performance Period (the “Net Revenue Determination Date”). On the Net Revenue Determination Date, a number of then-outstanding Net Revenue PSUs will vest equal to the “Total Number of Net Revenue PSUs Vesting” set forth in the table directly above.

In the event that the Net Revenue during the Performance Period falls between the Threshold and Target levels, the number of Net Revenue PSUs that will become vested will be calculated based on linear interpolation between Threshold and Target levels (rounded to the nearest whole PSU).



In the event that Net Revenue during the Performance Period equals or exceeds Target level, the Net Revenue PSUs that will become vested with respect to 100% of the Net Revenue PSUs.

Adjusted EBITDA

Fifty percent (50%) of the Total Number of Performance Stock Units set forth in the Notice of PSU Grant (the “Adjusted EBITDA PSUs”) shall be eligible to vest, based on the Company’s Adjusted EBITDA during the Performance Period. Unless otherwise determined by the Administrator, no Adjusted EBITDA PSUs shall become vested unless the Adjusted EBITDA during the Performance Period is equal to or greater than [REDACTED] \$ [REDACTED] (the “Adjusted EBITDA Threshold Level”).

Subject to any forfeiture under Article I(B) and the Company’s attainment of the Adjusted EBITDA Threshold Level, the number of Adjusted EBITDA PSUs that will become vested hereunder shall be as set forth in the table below:

	Threshold	Target
Adjusted EBITDA Achievement (\$)	[REDACTED]	[REDACTED]
Total Number of Adjusted EBITDA PSUs Vesting	[REDACTED] %	[REDACTED] %

The level of Adjusted EBITDA shall be determined by the Board within sixty (60) days following the end of the Performance Period (the “Adjusted EBITDA Determination Date”). On the Adjusted EBITDA Determination Date, a number of then-outstanding Adjusted EBITDA PSUs will vest equal to the “Total Number of Adjusted EBITDA PSUs Vesting” set forth in the table directly above.

In the event that the Adjusted EBITDA during the Performance Period falls between the Threshold and Target levels, the number of Adjusted EBITDA PSUs that will become vested will be calculated based on linear interpolation between Threshold and Target levels (rounded to the nearest whole PSU).

In the event that Adjusted EBITDA during the Performance Period equals or exceeds Target level, the Adjusted EBITDA PSUs that will become vested with respect to 100% of the Adjusted EBITDA PSUs.



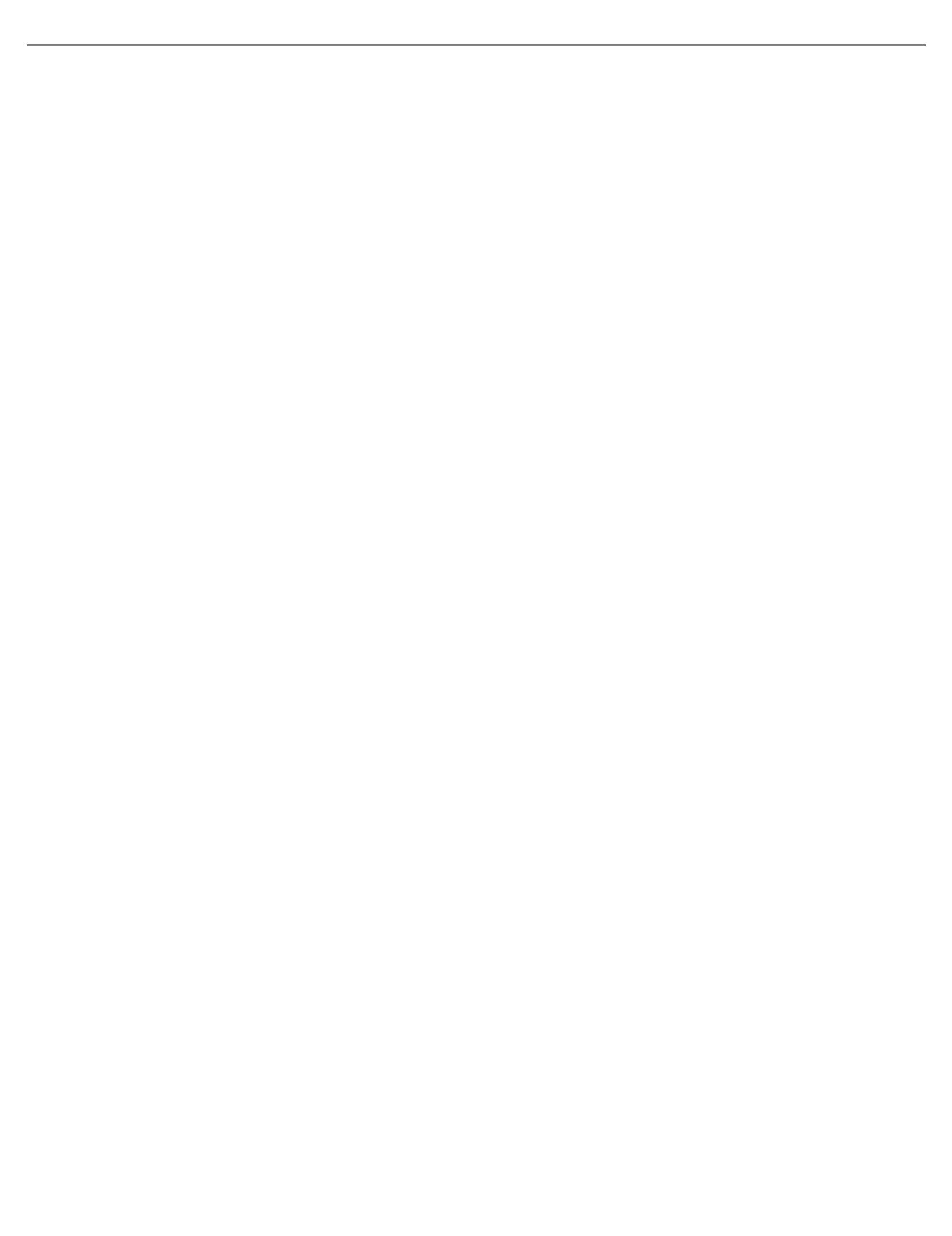


**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Casper Sleep Inc.:

We consent to the incorporation by reference in the registration statement (No. 333-236377) on Form S-8 of Casper Sleep Inc. of our report dated February 26, 2021, with respect to the consolidated balance sheets of Casper Sleep Inc. as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive loss, changes in convertible preferred stock and stockholders' equity/(deficit), and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes, which report appears in the December 31, 2020 annual report on Form 10-K of Casper Sleep Inc.

/s/KPMG LLP  
New York, New York  
February 26, 2021





**CERTIFICATION**

I, Philip Krim, certify that:

1. I have reviewed this Annual Report on Form 10-K of Casper Sleep Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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: February 26, 2021

By: \_\_\_\_\_ /s/ Philip Krim  
Philip Krim  
Chief Executive Officer  
*(principal executive officer)*





**CERTIFICATION**

I, Michael Monahan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Casper Sleep Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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: February 26, 2021

By: \_\_\_\_\_ /s/ Michael Monahan  
Michael Monahan  
Chief Financial Officer (*principal 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 Casper Sleep Inc. (the “Company”) for the period ended December 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 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 results of operations of the Company.

Date: February 26, 2021

By: \_\_\_\_\_ /s/ Philip Krim  
Philip Krim  
Chief Executive Officer  
*(principal executive 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 Casper Sleep Inc. (the “Company”) for the period ended December 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 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 results of operations of the Company.

Date: February 26, 2021

By:

/s/ Michael Monahan  
Michael Monahan  
Chief Financial Officer (*principal financial officer*)



