

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

FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended July 31, 2024

OR

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

For the transition period from _____ to _____

Commission file number 000-56016

KAIVAL BRANDS INNOVATIONS GROUP, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

83-3492907

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

**4460 Old Dixie Highway
Grant-Valkaria, Florida 32949**

(Address of principal executive offices, including zip code)

(833) 452-4825

(Registrant's telephone number, including area code)

N/A

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	KAVL	The Nasdaq Stock Market, LLC

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 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, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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

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

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

As of September 20, 2024, there were 6,783,958 shares of common stock, \$0.001 par value, outstanding.

KAIVAL BRANDS INNOVATIONS GROUP, INC.

FORM 10-Q

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CAUTIONARY NOTE CONCERNING FORWARD-LOOKING STATEMENTS

Certain statements and information included in this Quarterly Report on Form 10-Q for the quarter ended July 31, 2024 (this “Report”) contain or may contain “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), Section 21 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the Private Securities Litigation Reform Act of 1995. We generally use the words “may,” “should,” “believe,” “expect,” “intend,” “plan,” “anticipate,” “likely,” “estimate,” “potential,” “continue,” “will,” and similar expressions to identify forward-looking statements. Forward-looking statements are not statements of historical facts, but rather reflect our current expectations concerning future events and results, including, without limitation, statements related to:

- our substantial reliance on, and efforts to diversify our business from, the business of our affiliate Bidi Vapor, LLC (“Bidi”);
- our ability to raise required funding in the form of debt or equity both in the near and longer term;
- our ability to obtain from, and pay for, Bidi products we distribute;
- our ability to integrate and ultimately enter into licenses for or create products relating to the intellectual property assets we acquired from GoFire, Inc. on May 30, 2023;
- the impact of the August 2022 11th Circuit Court of Appeals decision overturning the U.S. Food and Drug Administration’s (“FDA”) previous denial of Bidi’s Premarket Tobacco Product Application (“PMTA”) for its non-tobacco flavored BIDI® Stick electronic nicotine delivery system (“ENDS”), which we are permitted to distribute in the U.S. subject to FDA enforcement and maintenance of all state licenses and permits, and the outcome of the FDA’s pending review of such PMTA, the denial of which could have a substantial adverse impact on our company;
- the impact of the FDA’s marketing denial order (“MDO”) in January 2024 regarding the Classic BIDI® Stick tobacco-flavored ENDS product, which has the potential to have a substantial adverse impact on our company;
- the outcome of Bidi Vapor’s petition with the 11th Circuit Court of Appeals regarding the January 2024 MDO related to Classic BIDI® Stick;
- our relationship with, and the results of marketing and sales activity by, Phillip Morris International, to whom we have licensed international rights to distribute Bidi products and from whom we are entitled to receive royalty payments;
- our relationships with, and reliance on, third party distributors and brokers to arrange for sales of our products;
- the market perception of Bidi products we distribute and related impacts on our reputation;

- the impact of black-market goods on our business;
- the demand for Bidi products we distribute;
- anticipated product performance, and our market and industry expectations;
- our ability or plans to diversify our product offerings;
- the impact of government regulation, laws or consumer preferences generally, or changes thereto, that could affect our business; and circumstances or developments that may make us unable to implement or realize the anticipated benefits, or that may increase the costs of, our current and planned business initiatives, including matters over which we have little or no control.

Forward-looking statements, including those concerning our expectations, involve significant risks, uncertainties and other factors, some of which are beyond our control, which may cause our actual results, performance, or achievements, or industry results to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. See the “Management’s Discussion and Analysis of Financial Condition and Results of Operation” section contained in this Report and the section “Risk Factors” in our Annual Report on Form 10-K for the year ended October 31, 2023, for a listing of some of the factors that could cause the results anticipated by our forward-looking statements to differ from actual future results. Except as required by applicable law, including the securities laws of the United States, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise. You are cautioned not to unduly rely on such forward-looking statements when evaluating the information presented in this Report.

Potential investors should not place undue reliance on any forward-looking statements. Except as expressly required by the federal securities laws, there is no undertaking to publicly update or revise any forward-looking statements, whether as a result of new information, future events, changed circumstances or any other reason.

The forward-looking statements in this Quarterly Report on Form 10-Q represent our views as of the date of this Quarterly Report on Form 10-Q. Such statements are presented only as a guide about future possibilities and do not represent assured events, and we anticipate that subsequent events and developments will cause our views to change. You should, therefore, not rely on these forward-looking statements as representing our views as of any date after the date of this Quarterly Report on Form 10-Q.

This Quarterly Report on Form 10-Q also contains estimates and other statistical data prepared by independent parties and by us relating to market size and growth and other data about our industry. These estimates and data involve a number of assumptions and limitations, and potential investors are cautioned not to give undue weight to these estimates and data. We have not independently verified the statistical and other industry data generated by independent parties and contained in this Quarterly Report on Form 10-Q. In addition, projections, assumptions and estimates of our future performance and the future performance of the industries in which we operate are necessarily subject to a high degree of uncertainty and risk.

Potential investors should not make an investment decision based solely on our projections, estimates or expectations.

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements.

Kaival Brands Innovations Group, Inc. Consolidated Balance Sheets (Unaudited)

	July 31, 2024	October 31, 2023
ASSETS		
CURRENT ASSETS		
Cash	\$ 4,524,989	\$ 533,659
Accounts receivable, net	522,183	1,869,276
Inventories, net	200,364	4,071,824
Prepaid expenses	551,819	430,668
Total current assets	5,799,355	6,905,427
Fixed assets, net	2,321	2,842
Intangible assets, net	10,878,511	11,468,309
Right of use asset - operating lease	860,416	1,008,428
TOTAL ASSETS	\$ 17,540,603	\$ 19,385,006
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable	\$ 73,334	\$ 374,332
Accounts payable - related party	1,483,000	2,474,817
Loans payable, net	371,566	799,471
Accrued expenses	701,329	736,194
Customer refund due	461,718	392,406
Operating lease obligation - short term	199,012	184,568
Total current liabilities	3,289,959	4,961,788
LONG TERM LIABILITIES		
Operating lease obligation, net of current portion	715,749	866,207
TOTAL LIABILITIES	4,005,708	5,827,995
Commitments and Contingencies (Note 9)		
STOCKHOLDERS' EQUITY		
Preferred stock; 5,000,000 shares authorized		
Series A Convertible Preferred stock (\$0.001 par value, 3,000,000 shares authorized, none issued and outstanding as of July 31, 2024 and October 31, 2023)	—	—
Series B Convertible Preferred stock (\$0.001 par value, 900,000 shares authorized, 900,000 issued and outstanding as of July 31, 2024 and October 31, 2023)	900	900
Common stock (\$0.001 par value, 1,000,000,000 shares authorized, 6,783,958 and 2,793,386 shares issued and outstanding as of July 31, 2024 and October 31, 2023, respectively)	6,784	2,793
Additional paid-in capital	49,503,884	44,317,266
Accumulated deficit	(35,976,673)	(30,763,948)
TOTAL STOCKHOLDERS' EQUITY	13,534,895	13,557,011
TOTAL LIABILITIES & STOCKHOLDERS' EQUITY	\$ 17,540,603	\$ 19,385,006

The accompanying notes are an integral part of these unaudited consolidated financial statements.

Kaival Brands Innovations Group, Inc.
Consolidated Statements of Operations
(Unaudited)

	For the Three Months Ended July 31,		For the Nine Months Ended July 31,	
	2024	2023	2024	2023
Revenues				
Revenues, net	\$ 274,615	\$ 3,228,099	\$ 5,257,333	\$ 8,710,591
Revenues - related party	2,250	1,165	5,950	7,878
Royalty revenue	440,734	385,685	931,059	491,257
Excise tax on products	(3,785)	(31,356)	(42,641)	(79,913)
Total revenues, net	713,814	3,583,593	6,151,701	9,129,813
Cost of revenues				
Cost of revenue - related party	344,998	2,282,601	4,085,091	7,414,053
Total cost of revenue	344,998	2,282,601	4,085,091	7,414,053
Gross profit	368,816	1,300,992	2,066,610	1,715,760
Operating expenses				
Advertising and promotion	30,000	577,991	686,292	1,827,033
General and administrative expenses	1,756,594	2,376,057	5,768,430	8,510,792
Total operating expenses	1,786,594	2,954,048	6,454,722	10,337,825
Other expense				
Loss on extinguishment of Debt	—	—	(98,432)	—
Interest expense, net	(154,083)	(147,087)	(725,466)	(135,135)
Total other expense	(154,083)	(147,087)	(823,898)	(135,135)
Loss before income taxes provision	(1,571,861)	(1,800,143)	(5,212,010)	(8,757,200)
Provision for income taxes	—	—	(715)	—
Net loss	\$ (1,571,861)	\$ (1,800,143)	\$ (5,212,725)	\$ (8,757,200)
Preferred stock dividend	(180,000)	(45,000)	(315,000)	(45,000)
Net loss attributable to common shareholder	\$ (1,751,861)	\$ (1,845,143)	\$ (5,527,725)	\$ (8,802,200)
Net loss per common share - basic and diluted	\$ (0.39)	\$ (0.67)	\$ (1.62)	\$ (3.26)
Weighted average number of common shares outstanding - basic and diluted	4,482,527	2,741,853	3,404,047	2,697,426

The accompanying notes are an integral part of these unaudited consolidated financial statements.

Kaival Brands Innovations Group, Inc.
Consolidated Statements of Changes in Stockholders' Equity
For the Nine Months Ended July 31, 2024
(Unaudited)

	Convertible Preferred Shares (Series B)	Par Value Convertible Preferred Shares (Series B)	Common Shares	Par Value Common Shares	Additional Paid-in Capital	Accumulated Deficit	Total
Balances, October 31, 2023	900,000	\$ 900	2,793,386	\$ 2,793	\$44,317,266	\$(30,763,948)	\$13,557,011
Rounding from reverse split	—	—	52,949	53	(53)	—	—
Common shares issued for services	—	—	16,667	17	61,983	—	62,000
Preferred stock dividend	—	—	—	—	(67,500)	—	(67,500)
Stock option expense	—	—	—	—	309,958	—	309,958
Net loss	—	—	—	—	—	(2,113,686)	(2,113,686)
Balances, January 31, 2024	900,000	\$ 900	2,863,002	\$ 2,863	\$44,621,654	\$(32,877,634)	\$11,747,783
Preferred stock dividend	—	—	—	—	(67,500)	—	(67,500)
Stock option expense, net of forfeitures	—	—	—	—	(289,088)	—	(289,088)
Net loss	—	—	—	—	—	(1,527,178)	(1,527,178)
Balances, April 30, 2024	900,000	\$ 900	2,863,002	\$ 2,863	\$44,265,066	\$(34,404,812)	\$ 9,864,017
Issuance of common stock, warrants, and pre-funded warrants, net of issuance costs	—	—	1,746,500	1,747	5,250,980	—	5,252,727
Exercises of pre-funded warrants	—	—	2,174,456	2,174	(724)	—	1,450
Preferred stock dividend	—	—	—	—	(67,500)	—	(67,500)
Stock option expense	—	—	—	—	56,062	—	56,062
Net loss	—	—	—	—	—	(1,571,861)	(1,571,861)
Balances, July 31, 2024	900,000	\$ 900	6,783,958	\$ 6,784	\$49,503,884	\$(35,976,673)	13,534,895

The accompanying notes are an integral part of these unaudited consolidated financial statements.

Kaival Brands Innovations Group, Inc.
Consolidated Statements of Changes in Stockholders' Equity
For the Nine Months Ended July 31, 2023
(Unaudited)

	Convertible Preferred Shares (Series B)	Par Value Convertible Preferred Shares (Series B)	Common Shares	Par Value Common Shares	Additional Paid-in Capital	Accumulated Deficit	Total
Balances, October 31, 2022	—	\$ —	2,674,718	\$ 2,675	\$29,429,281	\$(19,631,176)	\$ 9,800,780
Stock option expense	—	—	—	—	1,435,787	—	1,435,787
Net loss	—	—	—	—	—	(2,994,909)	(2,994,909)
Balances, January 31, 2023	—	\$ —	2,674,718	\$ 2,675	\$30,865,068	\$(22,626,085)	\$ 8,241,658
Stock option expense	—	—	—	—	1,352,938	—	1,352,938
Net loss	—	—	—	—	—	(3,962,148)	(3,962,148)
Balances, April 30, 2023	—	\$ —	2,674,718	\$ 2,675	\$32,218,006	\$(26,588,233)	\$ 5,632,448
Common shares issued for acquisition of intangible assets	—	—	95,239	95	1,119,705	—	1,119,800
Series B preferred shares issued for acquisition of intangible assets	900,000	900	—	—	9,047,080	—	9,047,980
Stock warrants issued for acquisition of intangible assets	—	—	—	—	1,264,396	—	1,264,396
Common shares issued for services	—	—	4,381	4	51,506	—	51,510
Stock option expense	—	—	—	—	597,221	—	597,221
Stock warrant expense	—	—	—	—	141,816	—	141,816
Preferred stock dividend	—	—	—	—	(45,000)	—	(45,000)
Net loss	—	—	—	—	—	(1,800,143)	(1,800,143)
Balances, July 31, 2023	<u>900,000</u>	<u>\$ 900</u>	<u>2,774,338</u>	<u>\$ 2,774</u>	<u>\$44,394,730</u>	<u>\$(28,388,376)</u>	<u>\$16,010,028</u>

The accompanying notes are an integral part of these unaudited consolidated financial statements.

Kaival Brands Innovations Group, Inc.
Consolidated Statements of Cash Flows
(Unaudited)

	For the Nine Months Ended July 31, 2024	For the Nine Months Ended July 31, 2023
<u>CASH FLOWS FROM OPERATING ACTIVITIES</u>		
Net loss	\$ (5,212,725)	\$ (8,757,200)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Stock based compensation	62,000	—
Depreciation and amortization	590,319	131,530
Amortization of debt discount	163,064	—
Loss on extinguishment of debt	98,432	—
Stock options expense	76,932	3,385,946
Stock warrant expense	—	141,816
Bad debt expense	1,925	4,622
Reserve for credit losses	203,382	—
ROU operating lease expense	148,012	142,202
Write-off of inventory	57,643	105,057
Changes in current assets and liabilities:		
Accounts receivable	1,141,786	(140,624)
Other receivable - related party	—	727,205
Prepaid expenses	354,330	253,806
Inventory	3,813,817	(2,457,323)
Income tax receivable	—	1,607,302
Accounts payable	(300,998)	84,988
Accounts payable - related party	(991,817)	2,308,373
Accrued expenses	(18,579)	(603,641)
Deferred revenue	—	(235,274)
Customer deposits	—	(44,973)
Customer refunds due	69,312	618,403
Operating lease obligations	(136,014)	(122,205)
Net cash provided by (used in) operating activities	<u>120,821</u>	<u>(2,849,990)</u>
<u>CASH FLOWS FROM INVESTING ACTIVITIES</u>		
Cash paid for equipment	—	(3,480)
Transaction acquisition costs	—	(312,289)
Net cash used in investing activities	<u>—</u>	<u>(315,769)</u>
<u>CASH FLOWS FROM FINANCING ACTIVITIES</u>		
Proceeds from loans payable	1,106,732	751,030
Payments on loans payable	(2,271,613)	(267,952)
Payments on loans payable – related party	(218,787)	—
Proceeds from the issuance of common stock, warrants, and pre-funded warrants	5,997,720	—
Payments for issuance costs	(744,993)	—
Proceeds from exercises of pre-funded warrants	1,450	—
Net cash provided by financing activities	<u>3,870,509</u>	<u>483,078</u>
Net change in cash	3,991,330	(2,682,681)
Beginning cash balance	533,659	3,685,893
Ending cash balance	<u>\$ 4,524,989</u>	<u>\$ 1,003,212</u>
<u>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</u>		
Interest paid	\$ 562,402	\$ 135,135
Income taxes paid	\$ —	\$ —
<u>NON-CASH TRANSACTIONS</u>		
Preferred stock dividend	\$ 202,500	\$ 45,000
Cashless exercise of pre-funded warrants	\$ 724	\$ —
Insurance financed by third party	\$ 475,481	\$ —
Franchise fees paid by related party	\$ 218,787	\$ —

Common shares issued for acquisition intangible assets	\$ —	\$ 1,119,800
Common shares issued for services-transaction cost	\$ —	\$ 51,510
Series B preferred stock shares issued for acquisition intangible assets	\$ —	\$ 9,047,980
Stock warrants issued for acquisition intangible assets	\$ —	\$ 1,264,396

The accompanying notes are an integral part of these unaudited consolidated financial statements.

KAIVAL BRANDS INNOVATIONS GROUP, INC.
Notes to Unaudited Consolidated Financial Statements

Note 1 – Organization and Description of Business

Kaival Brands Innovations Group, Inc. (the “Company,” the “Registrant,” “we,” “us,” or “our”), formerly known as Quick Start Holdings, Inc., was incorporated on September 4, 2018, in the State of Delaware.

Current Description of Business

On March 9, 2020, the Company entered into an exclusive distribution agreement (the “Distribution Agreement”) of certain electronic nicotine delivery systems (“ENDS”) and related components (the “Products”) with Bidi Vapor, LLC, a Florida limited liability company (“Bidi”). The Distribution Agreement was amended and restated on May 21, 2020, again on April 20, 2021, again on June 10, 2022, and again on November 17, 2022 (collectively the “A&R Distribution Agreement”), in order to clarify some of the provisions and memorialize the Company’s current business relationship with Bidi. Pursuant to the A&R Distribution Agreement, Bidi granted the Company an exclusive worldwide right to distribute the Products for sale and resale to non-retail level customers. Currently, the Products consist primarily of the “Bidi Stick.”

On August 31, 2020, the Company formed Kaival Labs, Inc., a Delaware corporation (herein referred to as “Kaival Labs”), as a wholly owned subsidiary of the Company, for the purpose of developing Company-branded and white-label products and services. The Company has not yet launched any Kaival-branded product, nor has it begun to provide white label wholesale solutions for other product manufacturers. On March 11, 2022, the Company formed Kaival Brands International, LLC, a Delaware limited liability company (herein referred to as “KBI”), as a wholly owned subsidiary of the Company, for the purpose of entering into an international licensing agreement with Philip Morris Products S.A. (“PMPSA”), a wholly owned affiliate of Philip Morris International Inc. (“PMI”).

On June 13, 2022, the Company’s wholly owned subsidiary, KBI, entered into the PMI License Agreement with PMPSA, for the development and distribution of ENDS products in certain markets outside of the United States, subject to market (or regulatory) assessment. The PMI License Agreement grants to PMPSA a license of certain intellectual property rights relating to Bidi’s ENDS device, known as the BIDI® Stick in the United States, as well as potentially newly developed devices, to permit PMPSA to manufacture, promote, sell, and distribute such ENDS device and newly developed devices, in international markets, outside of the United States.

Current Product Offerings

Pursuant to the A&R Distribution Agreement, the Company sells and resells electronic nicotine delivery systems, which it may refer to herein as “ENDS Products”, or “e-cigarettes”, to non-retail level customers. The sole Product the Company resells is the “BIDI® Stick,” a disposable, tamper-resistant ENDS product that comes in a variety of flavor options for adult cigarette smokers. The Company does not manufacture any of the Products it resells. The BIDI® Stick is manufactured by Bidi. Pursuant to the terms of the A&R Distribution Agreement, Bidi provides the Company with all branding, logos, and marketing materials to be utilized by the Company in connection with its marketing and promotion of the Products.

Impact of the FDA PMTA Decision and Subsequent Court Actions

In September 2021, in connection with the Bidi’s Premarket Tobacco Product Application (“PMTA”) process, the U.S. Food and Drug Administration’s (“FDA”) effectively “banned” flavored ENDS by denying nearly all then-pending PMTAs for such products. Following the issuance of Marketing Denial Orders (“MDO”), manufacturers are required to stop selling non-tobacco flavored ENDS products.

Bidi, along with nearly every other company in the ENDS industry, received a MDO for its non-tobacco flavored ENDS products. With respect to Bidi, the MDO covered all non-tobacco flavored BIDI® Sticks, including its Arctic (menthol) BIDI® Stick. As a result, beginning in September 2021, Bidi pursued multiple avenues to challenge the MDO. First, on September 21, 2021, separate from the judicial appeal of the MDO in its entirety, Bidi filed a 21 C.F.R. § 10.75 internal FDA supervisory review request specifically of the decision to include the Arctic (menthol) BIDI® Stick in the MDO. In May 2022, the FDA issued a determination that it views the Arctic BIDI® Stick as a non-tobacco flavored ENDS product, and not strictly a menthol flavored product.

On September 29, 2021, Bidi petitioned the U.S. Court of Appeals for the Eleventh Circuit (the “11th Circuit”) to review the FDA’s denial of the comprehensive PMTAs for its non-tobacco flavored BIDI® Stick ENDS, arguing that it was arbitrary and capricious under the Administrative Procedure Act (“APA”), as well as ultra vires, for the FDA not to conduct any scientific review of Bidi’s comprehensive applications, as required by the Tobacco Control Act (“TCA”), to determine whether the BIDI® Sticks are “appropriate for the protection of the public health”. Bidi further argued that the FDA violated due process and the APA by failing to provide fair notice of the FDA’s new requirement for ENDS companies to conduct long-term comparative smoking cessation studies for their flavored products, and that the FDA should have gone through the notice and comment rulemaking process for this requirement.

On October 14, 2021, Bidi requested that the FDA re-review the MDO and reconsider its position that Bidi did not include certain scientific data in its applications sufficient to allow the PMTAs to proceed to scientific review. In light of this request, on October 22, 2021, pursuant to 21 C.F.R. § 10.35(a), the FDA issued an administrative stay of Bidi’s MDO pending its re-review, permitting the Company to continue sales. Subsequently, the FDA decided not to rescind the MDO and lifted its administrative stay on December 17, 2021. Following the lifting of the FDA’s administrative stay, Bidi filed a renewed motion to stay the MDO with the 11th Circuit. On February 1, 2022, the appellate court granted Bidi’s motion to stay (i.e., put on hold) the MDO, again allowing the Company to continue sales pending the litigation on the merits. Oral arguments in the merits-based proceeding were held on May 17, 2022.

On August 23, 2022, the U.S. Court of Appeals for the Eleventh Circuit set aside the MDO issued to the non-tobacco flavored BIDI® Sticks and remanded Bidi’s back to the FDA for further review. Specifically, the Court held that the MDO was “arbitrary and capricious” in violation of the Administrative Procedure Act (“APA”) because FDA failed to consider the relevant evidence before it, specifically Bidi’s aggressive and comprehensive marketing and sales-access-restrictions plans designed to prevent youth appeal and access.

The opinion further found indicated that the FDA did not properly review the data and evidence that it has long made clear are critical to the appropriate for the protection of the public health (“APPH”) standard for PMTAs set forth in the Tobacco Control Act including, in Bidi’s case, “product information, scientific safety testing, literature reviews, consumer insight surveys, and details about the company’s youth access prevention measures, distribution channels, and adult-focused marketing practices,” which “target only existing adult vapor product users, including current adult smokers,” as well as the Company’s retailer monitoring program and state-of-the-art anti-counterfeit authentication system. Because a MDO must be based on a consideration of the relevant factors, such as the marketing and sales-access-restrictions plans, the denial order was deemed arbitrary and capricious, and vacated by the FDA.

The FDA did not appeal to the 11th Circuit’s decision. The FDA had until October 7, 2022 (45 days from the August 23, 2022, decision) to either request a panel rehearing or a rehearing “en banc” (a review by the entire 11th Circuit, not just the 3-judge panel that issued the decision), and until November 21, 2022 (90 days after the decision) to seek review of the decision by the U.S. Supreme Court. No request for a rehearing was filed, and no petition for a writ of certiorari was made to the Supreme Court. On July 29, 2024, Bidi received a Recission of Marketing Denial letter from FDA formally rescinding the MDO for the non-tobacco flavored BIDI® Stick PMTAs and putting those applications back into the review process. The Company anticipates continued ability to market and sell the non-tobacco flavored BIDI® Sticks, subject to the FDA’s enforcement discretion, for the duration of the PMTA scientific review.

Separately, on or about May 13, 2022, the FDA placed the tobacco-flavored Classic BIDI® Stick into the final Phase III scientific review. In March 2023, FDA issued a deficiency letter regarding the Classic BIDI® Stick PMTA, to which Bidi submitted in June 2023. Subsequently, on January 22, 2024, FDA issued a MDO for the Classic BIDI® Stick. On January 26, 2024, Bidi filed a petition for review of the MDO with the 11th Circuit Court of Appeals, followed by a motion to stay the MDO. Bidi is arguing, among other things, that the MDO was arbitrary and capricious in violation of the Administrative Procedure Act. On February 2, 2024, Bidi filed a Time Sensitive Motion for a Stay Pending Review, which the court denied on February 18, 2024. The case is now proceeding on the merits, with Bidi’s opening merits brief filed on April 15, 2024. The Company cannot provide any assurances as to the timing or outcome. Unless the MDO is ultimately remanded by the 11th Circuit, the Classic BIDI® Stick is considered an adulterated tobacco product the continued marketing and distribution of which is prohibited.

Risks and Uncertainties

FDA has indicated that it is prioritizing enforcement of unauthorized ENDS against companies (1) that never submitted PMTAs, (2) whose PMTAs have been refused acceptance or filing by the FDA, (3) whose PMTAs remain subject to MDOs, and (4) that are continuing to market unauthorized synthetic nicotine products after the July 13, 2022, cutoff. Subject to FDA's enforcement discretion, until the scientific review process is complete on each of Bidi's PMTAs, the Company views the risk of FDA enforcement against Bidi as low and is no longer marketing the Classic BIDI® Stick per the MDO. The Company anticipates FDA will move forward with a review of Bidi's PMTA on remand, as directed by the Court; however, the Company cannot provide any assurances as to the timing or outcome.

Note 2 – Basis of Presentation and Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the financial statements of the Company's wholly-owned subsidiaries, Kaival Labs and KBI. Intercompany transactions are eliminated.

Basis of Presentation

The accompanying unaudited interim consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and the rules of the Securities and Exchange Commission ("SEC") and should be read in conjunction with the audited financial statements and notes thereto contained in the Company's most recent audited financial statements contained within the Company's Annual Report on Form 10-K, filed with the SEC on February 14, 2024 (the "2023 Annual Report"). In the opinion of management, all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of financial position and the results of operations for the interim period presented have been reflected herein. The results of operations for the interim period are not necessarily indicative of the results to be expected for the full fiscal year. Notes to the consolidated financial statements, which would substantially duplicate the disclosures contained in the audited financial statements for the most recent fiscal period as reported in the 2023 Annual Report, have been omitted.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. In the opinion of management, all adjustments necessary in order to make the financial statements not misleading have been included. Actual results could differ from those estimates.

Cash

The Company considers all highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents. There were no cash equivalents as of July 31, 2024, and October 31, 2023.

The Federal Deposit Insurance Corporation ("FDIC") insures deposits according to the ownership category in which the funds are insured and how the accounts are titled. The standard deposit insurance coverage limit is \$250,000 per depositor, per FDIC-insured bank, per ownership category. The Company had uninsured cash of \$4,092,824 and \$252,586 as of July 31, 2024, and October 31, 2023, respectively.

Advertising and Promotion

All advertising, promotion and marketing expenses, including commissions, are expensed when incurred.

Accounts Receivable and Reserve for Credit Losses

Accounts receivable pertain to contracts with customers who are granted credit by the Company in the ordinary course of business and are recorded at the invoiced amount. Accounts receivable does not bear interest. Accounts receivable presented on the consolidated balance sheet are adjusted for any write-offs and net of allowance for credit losses. The Company's reserve for credit losses is developed by using relevant available information including historical collection and loss experience, current economic conditions, prevailing economic conditions, supportable forecasted economic conditions and evaluations of customer balances. Once a receivable is deemed uncollectible after collection efforts have been exhausted, it is written off against the reserve for credit losses. The Company closely monitors the credit quality of its customers and does not generally require collateral or other security on receivables. The reserve for credit losses is measured on a collective basis when similar risk characteristics exist.

As of July 31, 2024, and October 31, 2023, based upon management's assessment of the accounts receivable aging and the customers' payment history, the Company has determined reserve for credit losses of \$203,382 and zero, respectively.

On January 22, 2024, the FDA issued an MDO on Bidi Vapor's "Classic" BIDI ® Stick PMTA, which Bidi is currently appealing before the 11th Circuit Court of Appeals. The Company evaluated the impact of this MDO to the financial statements and recorded an estimated accrual for potential customer returns of the "Classic" products of \$155,925 and \$113,243 as of July 31, 2024, and October 31, 2023, respectively, which is included in accrued expenses in the unaudited interim consolidated balance sheets.

Credit Risk

Financial instruments, which are potentially subject to concentrations of credit risk, consist primarily of purchases of inventories, accounts payable, accounts receivable, and revenue. The Company performs periodic credit evaluations of its customers and generally does not require collateral on trade receivables. Historically, the Company has not experienced significant credit losses.

Inventories

All product inventory is purchased from a related party, Bidi. Inventories are stated at the lower of cost and net realizable value. Cost includes all costs of purchase and other costs incurred in bringing the inventories to their present location and condition. The Company determines cost based on the first-in, first-out ("FIFO") method. Net realizable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale. As of July 31, 2024, and October 31, 2023, the inventories only consisted of finished goods and were located in two locations: the Company's main warehouse located in Florida and one customer warehouses whose service agreements are on a consignment basis with the Company.

On January 22, 2024, the FDA issued an MDO on Bidi Vapor's "Classic" BIDI ® Stick PMTA, which Bidi is currently appealing before the 11th Circuit Court of Appeals. The Company evaluated the impact of this MDO to the financial statements and recognized a full reserve for all remaining "Classic" products on hand amounting to \$309,932 and \$381,512 as of July 31, 2024, and October 31, 2023, respectively.

Leases

The Company determines if a contract contains a lease at commencement of the arrangement based on whether it has the right to obtain substantially all of the economic benefits from the use of an identified asset and whether it has the right to direct the use of an identified asset in exchange for consideration, which relates to an asset which the Company does not own. Right-of-use ("ROU") assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. The Company recognizes lease liabilities at the present value of the future lease payments and a corresponding ROU asset at the lease commencement date. The interest rate used to determine the present value of the future lease payments is the rate implicit in the lease unless that rate cannot be readily determined. When the interest rate implicit in the lease is not readily determinable, the interest rate used to determine the present value of the future lease payments is the Company's Incremental Borrowing Rate ("IBR"). The IBR is a hypothetical rate based on the Company's understanding of what its credit rating would be to borrow and resulting interest the Company would pay to borrow an amount equal to the lease payments in a similar economic environment over the lease term on a collateralized basis. Periods covered by the Company's option to extend or terminate the lease are included in the lease term when it is reasonably certain that the Company will exercise its option to extend or not exercise its option to terminate, as applicable.

Lease payments may be fixed or variable; however, only fixed payments or in-substance fixed payments are included in the Company's lease liability calculation. Variable lease payments may include costs such as common area maintenance, utilities, real estate taxes or other costs. Variable lease payments are recognized in operating expenses in the period in which the obligations for those payments are incurred. The Company records rent expense for its operating lease, which has escalating rent payments, on a straight-line basis over the lease term. The Company does not have any financing leases.

The Company made a policy election not to separate non-lease components from lease components for all its leases; therefore, it accounts for lease and non-lease components as a single lease component. The Company also elected the short-term lease recognition exemption for all leases that qualify, such that leases with a term of 12 months or less are not recognized on the balance sheet.

Impairment of Long-Lived Assets

The Company reviews its long-lived assets, which includes definite-lived intangibles, long-lived fixed assets and lease right-of-use assets, for impairment whenever events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Factors that could trigger an impairment review include significant under-performance relative to expected historical or projected future operating results, significant changes in the manner of the Company's use of the acquired assets or the strategy for the Company's overall business or significant negative industry or economic trends. If this evaluation indicates that the value of the long-lived asset may be impaired, the Company makes an assessment of the recoverability of the net carrying value of the asset over its remaining useful life. If this assessment indicates that the long-lived asset is not recoverable, based on the estimated undiscounted future cash flows of the technology over the remaining useful life, the Company reduces the net carrying value of the related asset to fair value and may adjust the remaining useful life. An impairment analysis is subjective and assumptions regarding future growth rates and operating expense levels can have a significant impact on the expected future cash flows and impairment analysis.

No impairment was identified for the nine months ended July 31, 2024 and 2023, respectively.

Revenue Recognition

The Company recognizes revenue in accordance with ASC Topic 606, "Revenue from Contracts with Customers" ("ASC 606"). The Company recognizes revenue when a customer obtains control of promised goods, in an amount that reflects the consideration that the Company expects to receive in exchange for the goods. To determine revenue recognition for arrangements within the scope of ASC 606, the Company performs the following five steps: (1) identify the contracts with a customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations in the contract; and (5) recognize revenue when or as the entity satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that the entity will collect the consideration it is entitled to in exchange for the goods it transfers to the customer. Under ASC 606, disaggregated revenue from contracts with customers depicts the nature, amount, timing, and uncertainty of revenue and cash flows affected by economic factors.

Deferred Revenue

The Company accepts partial payments for orders from wholesale customers, which it holds as deposits or deferred revenue, until the Company has received full payment and orders are shipped to the customer. Revenue for these orders is recognized at the time of shipment to the customer. As of July 31, 2024, and October 31, 2023, the Company had no amounts in deposits from customers.

Customer Refunds

In the normal course of business, the Company issues credits for product returns and certain customer incentives related to rebates, discounts and promotions. When such credits exceed amounts receivable from customers, the Company recognizes such excess amounts as customer refunds which will be applied against future product purchases. As of July 31, 2024, and October 31, 2023, the Company had customer refunds due in the amounts equal to \$461,718 and \$392,406, respectively.

Products Revenue

The Company generates products revenue from the sale of the Products (as defined above) to non-retail customers. The Company recognizes revenue at a point in time based on management's evaluation of when performance obligations under the terms of a contract with the customer are satisfied and control of the Products has been transferred to the customer. In most situations, transfer of control is considered complete when the products have been shipped to the customer. The Company determined that a customer obtains control of the Product upon shipment when title of such product and risk of loss transfer to the customer. However, when the Company enters a consignment agreement with a new customer, once it ships and delivers the requested amount of ordered Products to its distribution center for its retail sales locations, the Company retains ownership of the delivered Products until they are delivered to the actual retail stores (as opposed to the Company's consignment customer). The Company's shipping and handling costs are fulfillment costs, and such amounts are classified as part of cost of sales. The Company offers credit sales arrangements to non-retail (or wholesale) customers and monitors the collectability of each credit sale routinely.

Revenue is measured by the transaction price, which is defined as the amount of consideration expected to be received in exchange for providing goods to customers. The transaction price is adjusted for estimates of known or expected variable consideration, which includes refunds and returns as well as incentive offers and promotional discounts on current orders. Estimates for sales returns are based on, among other things, an assessment of historical trends, information from customers, and anticipated returns related to current sales activity. These estimates are established in the period of sale and reduce revenue in the period of the sale. Variable consideration related to incentive offers and promotional programs are recorded as a reduction to revenue based on amounts the Company expects to collect. Estimates are regularly updated, and the impact of any adjustments are recognized in the period the adjustments are identified. In many cases, key sales terms such as pricing and quantities ordered are established at the time an order is placed and incentives have very short-term durations.

Amounts billed and due from customers are short term in nature and are classified as receivable since payments are unconditional and only the passage of time related to credit terms is required before payments are due. The Company does not grant payment financing terms greater than one year. Payments received in advance of revenue recognition are recorded as deferred revenue, as noted above.

Royalty Revenue

On June 13, 2022, KBI entered into the PMI License Agreement with PMPSA, effective as of May 13, 2022 (the "PMI Commencement Date"). Pursuant to the PMI License Agreement, KBI granted PMPSA an exclusive irrevocable license to use its technology, documentation, and intellectual property to make, distribute, and sell disposable nicotine e-cigarettes Products based on the intellectual property in certain international markets set forth in the PMI License Agreement (the "PMI Markets"). The Company has the exclusive international distribution rights to the Products and, in order to allow KBI to fulfill its obligations set forth in the PMI License Agreement, has contributed the international distribution rights for the PMI Markets to KBI as set forth in a Capital Contribution Agreement, dated June 10, 2022. The sublicense granted to PMPSA is exclusive in the PMI Markets and neither KBI nor any of its affiliates can sell, promote, use, or distribute any competing products in the PMI Markets for the duration of the term of the PMI License Agreement and any Sell-Out Period (as defined in the PMI License Agreement). PMSPA will be responsible for any regulatory filings necessary to sell the Products in the PMI Markets. Both KBI and PMPSA agree to work together in the registration and maintenance of the Intellectual Property, but KBI will bear all costs and expense to implement the registration strategy. Finally, PMPSA has agreed to potential future development services with KBI in the PMI Markets and has been granted certain rights with respect to potential future products.

The initial term of the PMI License Agreement is five (5) years and automatically renews for an additional five-year period unless PMPSA has failed to meet the agreed upon minimum key performance indicators set forth in the PMI License Agreement, in which case the PMI License Agreement will automatically terminate at the end of the initial license term.

In consideration for the grant of the licensed rights, PMPSA agreed to pay to KBI a royalty equal to a percentage of the base price of the first sale of each unit of Product manufactured. In addition, before the launch of the first product in a market and each anniversary of such launch, PMPSA agrees to pre-pay to KBI a guaranteed minimum royalty based on the estimated royalties payable by PMPSA to KBI in relation to all markets in the twelve (12)-month period following the first launch or each successive anniversary of the first launch, subject to an aggregate maximum guaranteed royalty payment for all markets for each applicable twelve (12)-month period. PMPSA may require modification of certain products to be sold under the PMI Licensing Agreement to be modified for a PMI Market. Pursuant to the PMI Licensing Agreement, PMPSA has absolute discretion over sales, marketing, product branding and packaging pertaining to sales in the PMI Markets, as well as the right to select the specific PMI Markets in which to launch commercialization and determine what product types are to be promoted in each market, subject to sales and marketing plans and annual business plans set by PMPSA and certain expansion criteria agreed between PMPSA and KBI. Royalty revenue earned from the PMI License Agreement is recognized in the period the sales of the Product manufactured occurs.

The PMI License Agreement contains customary representations, warranties, covenants, and indemnification provisions; however, KBI's liability under the PMI License Agreement is capped at the greater of: (i) Ten Million Dollars (\$10,000,000); or (ii) an amount equal to the total of the royalties due to KBI (but not yet paid) plus the royalties (including the guaranteed royalty payment) paid to KBI pursuant to the PMI License Agreement during the immediately preceding twelve (12) consecutive months, provided that such amount shall not exceed Thirty Million Dollars (\$30,000,000).

On June 10, 2022, Bidi entered into a License Agreement (the "KBI License Agreement") with KBI, pursuant to which KBI has the exclusive irrevocable license to use Bidi's licensed intellectual property to the extent necessary for KBI to fulfill its obligations set forth in the PMI Licensing Agreement. Such irrevocable license includes: (i) the right of KBI to grant sub-licenses to PMPSA under the PMI License Agreement for the express purposes set forth in the PMI License Agreement, but for no other purpose; (ii) the right of KBI to grant to PMPSA the right to grant sub-sub-licenses in the manner set forth in the PMI License Agreement, but for no other purpose; and (iii) certain branding rights to the extent (but only to the extent) necessary to permit KBI to perform its obligations to PMPSA as set forth in the PMI License Agreement.

On August 12, 2023, the Company executed and entered into a Deed of Amendment No. 1 (the "PMI License Amendment") with PMPSA, Bidi and KBI. Pursuant to the PMI License Amendment (which has an effective date of June 30, 2023), the following material changes have been made to the PMI License Agreement:

1. **Royalty Rate.** The royalty paid by PMPSA to KBI will no longer be based on sales price of the Product being sold, but rather on the volume of liquid contained within Product being sold. The royalty will be on a sliding scale of between \$0.08 to \$0.16 per sale based on the volume of liquid contained in the Product, increasing to between \$0.10 to \$0.20 per sale upon meeting certain sales milestones. For purposes of determining aggregate sales threshold, all sales undertaken since commencement of the PMI Licensing Agreement will be counted.
2. **Elimination of Certain Potential Royalty Adjustments.** Certain potential adjustments to the royalties receivable by KBI as provided for in the PMI License Agreement have been eliminated.
3. **Guaranteed Royalty.** The guaranteed royalty payment owed to KBI under the PMI License Agreement has been eliminated. Instead, royalties will be paid on a quarterly basis going-forward based on actual sales. Any unpaid guaranteed royalty has been cancelled.

4. Insurance Tail Requirements. KBI's requirement to keep certain tail insurance after the expiration or termination of the PMI Licensing Agreement was reduced from 6 years to 2 years.
5. Markets. The identification of the PMI Markets that PMI may enter has been expanded to cover certain additional territories.
6. Net Reconciliation Payment to KBI. As a result of the changes to the PMI License Agreement described in paragraphs 1 through 3 above, the value of such changes was calculated and reconciled as of the date of commencement of the PMI Licensing Agreement through June 30, 2023. On September 8, 2023, the Company received the Net Reconciliation Payment from PMPSA of \$134,981 pursuant to this provision.

The KBI License Agreement provides that KBI shall pay Bidi license fees equivalent to 50% of the adjusted earned royalty payments, after any offsets due to jointly agreed costs such development costs incurred for entry to specific international markets. During the year ended October 31, 2023, the Company paid license fees of approximately \$150,000 to Bidi. As of July 31, 2024, the Company owes license fees of approximately \$208,000 to Bidi.

As of July 31, 2024, amounts receivable from PMPSA in connection with the PMI license agreement totaled \$485,000 of which \$485,000 pertain to royalties. As of October 31, 2023, amounts receivable from PMPSA in connection with the PMI License Agreement totaled \$1,002,196 of which \$289,672 and \$712,524 pertain to royalties and reimbursement of certain non-recurring engineering costs, respectively.

Net Loss Per Share

Basic net loss per share is computed by dividing net loss available to common stockholders by the weighted average number of common shares outstanding during the period, without consideration of potential common stock equivalents.

Diluted net loss per share is calculated by dividing net loss available to common stockholders by the weighted average number of common stock outstanding plus common share equivalents from conversion of dilutive stock options and warrants using the treasury method and preferred stock using the if-converted method, except when antidilutive. In the event of a net loss, the effects of all potentially dilutive shares are excluded from the diluted net loss per share calculation as their inclusion would be antidilutive.

Concentration of Revenues and Accounts Receivable

For the nine months ended July 31, 2024, (i) 24% or \$1,228,535 of the revenue from the sale of Products, solely consisting of the BIDI® Stick, was generated from QuikTrip Corporation, (ii) 19% or \$990,589 of the revenue from the sale of the Products was generated from GPM Investments, LLC, and (iii) 11% or \$575,183 of the revenue from the sale of the Products was generated from FAVS Business, LLC. On May 2, 2024, QuikTrip Corporation terminated its consignment arrangement with the Company.

For the nine months ended July 31, 2023, (i) 17% or \$1,453,780 of the revenue from the sale of Products, solely consisting of the BIDI® Stick, was generated from GPM Investments, LLC, (ii) 15% or \$1,270,841 of the revenue from the sale of the Products was generated from C Store Master, (iii) approximately 14% or \$1,169,310 of the revenue from the sale of Products, solely consisting of the BIDI Stick, was generated from FAVS Business, LLC, and (iv) approximately 12% or \$1,055,965 of the revenue from the sales of Products was generated from QuikTrip Corporation.

EbyBrown, with an outstanding balance of \$17,162, QuikTrip Corporation, with an outstanding balance of \$11,114 and Coremark, with an outstanding balance of \$5,758 accounted for 46%, 30%, and 15% of the total accounts receivable from customers, respectively, as of July 31, 2024.

FAVS Business LLC with an outstanding balance of \$302,400, C Store Master with an outstanding balance of \$300,590, and QuikTrip Corporation with an outstanding balance of \$164,987 accounted for approximately 35%, 35%, and 19% of the total accounts receivable from customers, respectively, as of October 31, 2023.

Share-Based Compensation

The Company measures the cost of services received in exchange for an award of equity instruments (share-based payments, referred to herein as “SBP”) based on the grant-date fair value of the award. That cost is recognized over the period during which a recipient is required to provide service in exchange for the SBP award—the requisite service period (vesting period). For SBP awards subject to performance conditions, compensation is not recognized until the performance condition is probable of occurrence. The grant-date fair value of share options is estimated using the Black-Scholes-Merton option-pricing model.

The fair value of each option granted during the fiscal nine month period ended July 31, 2024, and July 31, 2023, was estimated on the date of grant using the Black-Scholes-Merton option-pricing model with the weighted average assumptions in the following table:

	As of July 31, 2024	As of July 31, 2023
Expected dividend yield	0%	0%
Expected option term (years)	5.5 - 7	5.0
Expected volatility	214.72 - 225.52%	243.20 - 247.90%
Risk-free interest rate	3.78 - 4.63%	3.81 - 4.18%

The expected term of options granted represents the period of time that options granted are expected to be outstanding. The expected volatility was based on the volatility in the trading of the Company’s common stock. The risk-free interest rate used is based on the published U.S. Department of Treasury interest rates in effect at the time of stock option grant for zero coupon U.S. Treasury notes with maturities approximating each grant’s expected term. Forfeitures and cancellations are recorded as they occur.

Fair Value of Financial Instruments

The Company’s balance sheet includes certain financial instruments. The carrying amounts of current assets and current liabilities approximate their fair value because of the relatively short period of time between the origination of these instruments and their expected realization.

ASC 820, *Fair Value Measurements and Disclosures* (“ASC 820”), defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. ASC 820 also establishes a fair value hierarchy that distinguishes between (1) market participant assumptions developed based on market data obtained from independent sources (observable inputs) and (2) an entity’s own assumptions about market participant assumptions developed based on the best information available in the circumstances (unobservable inputs). The fair value hierarchy consists of three broad levels, which gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). The three levels of the fair value hierarchy are described below:

- Level 1 – Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.
- Level 2 – Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly, including quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; inputs other than quoted prices that are observable for the asset or liability (e.g., interest rates); and inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3 - Inputs that are both significant to the fair value measurement and unobservable.

Fair value estimates discussed herein are based upon certain market assumptions and pertinent information available to management as of July 31, 2024 and October 31, 2023. The respective carrying value of certain on-balance-sheet financial instruments approximated their fair values due to the short-term nature of these instruments. These financial instruments include cash, accounts receivable, accounts payable, accrued expenses, and loans payable. As of July 31, 2024 and October 31, 2023, the Company did not have any financial assets or liabilities measured and recorded at fair value on a recurring basis.

Recent Accounting Pronouncements - Adopted

The Company follows 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, which requires measurement and recognition of expected credit losses for financial assets held. The ASU became effective for the Company on November 1, 2023, and determined that the update applied to accounts receivable. The adoption of this new guidance did not have a material effect on the Company’s consolidated financial statements and did not significantly impact the Company’s accounting policies or estimation methods related to the allowance for doubtful accounts.

Recent Accounting Pronouncements - Not Yet Adopted

In December 2023, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2023-09, Income Taxes (Topic 740) - Improvements to Income Tax Disclosures (“ASU 2023-09”). ASU 2023-09 requires additional disclosures reconciling the rates of different categories of income tax (i.e. federal, state, foreign, etc.) and a disaggregation of taxes paid and refunded. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024, and for interim periods in fiscal years beginning after December 15, 2025, although early adoption is permitted. The Company is currently evaluating the impact of adopting this standard on its income tax disclosures.

In November 2023, the FASB issued ASU 2023-07, “Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures,” which is intended to improve reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. The purpose of the amendment is to enable investors to better understand an entity’s overall performance and assess potential future cash flows. The guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted. The guidance is to be applied retrospectively to all prior periods presented in the financial statements. The Company is continuing to evaluate the impact of adopting this new guidance but does not expect it to have a material impact on the Company’s financial statements.

Note 3 – Going Concern

The accompanying unaudited interim consolidated financial statements of the Company are prepared in accordance with U.S. GAAP applicable to a going concern, which contemplates realization of assets and the satisfaction of liabilities in the normal course of business within one year after the date the unaudited interim consolidated financial statements are issued. In accordance with Financial Accounting Standards Board (“FASB”), Accounting Standards Update (“ASU”) No. 2014-15, *Presentation of Financial Statements – Going Concern* (Subtopic 205-40), the Company’s management evaluates whether there are conditions or events, considered in aggregate, that raise substantial doubt about the Company’s ability to continue as a going concern within one year after the date that the accompanying unaudited interim consolidated financial statements are issued.

The Company will need significant additional funds to satisfy its outstanding payables, fund its working capital, and fully implement its business plan as the Company seeks to grow its revenues. In addition, the Company’s ability to continue as a going concern is adversely affected by the uncertainty surrounding Bidi’s PMTA process with FDA and outcome of Bidi’s petition with the 11th Circuit Court of Appeals regarding the FDA’s January 2024 MDO relating to Classic Bidi® Stick, as well as the Company’s significant recurring losses and present need for additional funding. All of these factors raise substantial doubt regarding the Company’s ability to continue as a going concern.

Management plans to continue similar operations with increased marketing and enhanced efforts to increase sales, which the Company believes will result in increased revenue and ultimately net income.

However, there is no assurance that the Company’s plans will be able to generate expected or greater amounts of revenues or ever achieve profitability due to the factors listed above as well as the regulation and public perception of ENDS products and the various other risks faced by the Company.

The accompanying consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of these or other risks or uncertainties.

Note 4 – Intangible Assets

The Company's intangible assets include patents and technology that were acquired as part of the Asset Purchase Agreement with GoFire, Inc. entered on May 30, 2023. The cost and accumulated amortization of the intangible assets amounted to \$11,795,975 and \$917,464 as of July 31, 2024, respectively and \$11,795,975 and \$327,666 as of October 31, 2023, respectively. Amortizable patents and technology have a useful life of 15.0 years with a weighted average remaining useful life of 13.8 years and 14.6 years as of July 31, 2024, and October 31, 2023; respectively.

The Company recognized amortization expense of \$589,798 and \$131,066 for the nine months ended July 31, 2024, and 2023, respectively. Amortization expense is included under general and administrative expenses in the unaudited interim consolidated statement of operations.

Future amortization expense of intangible assets is as follows:

Remaining period in 2024 (three months)	\$	196,600
Year ending October 31, 2025		786,398
Year ending October 31, 2026		786,398
Year ending October 31, 2027		786,398
Year ending October 31, 2028		786,398
Thereafter		7,536,319
Total	\$	<u>10,878,511</u>

Note 5 – Loans Payable

Insurance Loans

On May 10, 2024, the Company obtained two insurance loans. The first loan is a nine-month loan from First Insurance Bank to finance the annual D&O insurance, with the principal amount of \$381,077 and subject to an effective interest rate of 7.45%. The second loan is a nine-month loan from First Insurance Bank to finance the annual D&O insurance, with the principal amount of \$94,404 and subject to an effective interest rate of 11.15%. As of July 31, 2024, the outstanding balance of the Insurance loans amounted to \$371,566.

On May 20, 2023, the Company obtained a nine-month loan from Westfield Bank to finance the annual D&O insurance. The principal amount was \$342,001 and subject to an effective interest rate of 7.79%. As of July 31, 2024, and October 31, 2023, the remaining balance was zero and \$152,000, respectively.

Loan Agreements

On May 9, 2023, the Company entered into two loan agreements which are collateralized by all assets of the Company until the loans are repaid in full. As illustrated in the following table, under the terms of these agreements, the Company received the disclosed Purchase Price and agreed to repay the disclosed Purchase Amount, which is collected by the lenders at the disclosed weekly payment rate. The Company's former Chief Executive Officer, Eric Mosser personally guarantees the performance of these loans. These loans were fully paid on December 4, 2023, upon their maturity.

On November 29, 2023, the Company entered into two loan agreements which are collateralized by all assets of the Company until the loans are repaid in full. As illustrated in the following table, under the terms of these agreements, the Company received the disclosed Purchase Price and agreed to repay the disclosed Purchase Amount, which is collected by the lenders at the disclosed weekly payment rate. The Company's former Chief Executive Officer, Eric Mosser personally guarantees the performance of these loans. These loans were fully paid on June 13, 2024, upon their maturity.

The following table shows the loan agreements as of July 31, 2024:

Inception Date	Purchase Price	Purchased Amount	Outstanding Balance	Payment frequency	Payment Rate	Deferred Finance Fees
November 29, 2023	\$ 600,000	\$ 864,000	\$ —	Weekly	30,857	\$ —
November 29, 2023	600,000	864,000	—	Weekly	30,857	—
	<u>\$ 1,200,000</u>	<u>\$ 1,728,000</u>	<u>\$ —</u>			

The following table shows the loan agreements as of October 31, 2023:

Inception Date	Purchase Price	Purchased Amount	Outstanding Balance	Payment frequency	Payment Rate	Deferred Finance Fees
May 9, 2023	\$ 400,000	\$ 580,000	\$ 53,709	Weekly	20,714	\$ 3,434
May 9, 2023	400,000	580,000	80,467	Weekly	20,714	5,247
	<u>\$ 800,000</u>	<u>\$ 1,160,000</u>	<u>\$ 134,176</u>			<u>\$ 8,681</u>

The Company has accounted for these agreements as loans under ASC 860 because while the Company provided rights to current and future receipts, the Company still had control over the receipts. The difference between the Purchase Amount and the Purchase Price is imputed interest that is recorded as interest expense when paid.

On August 9, 2023, the Company entered into a Securities Purchase Agreement (the “SPA”) with AJB Capital Investments, LLC (“AJB”), pursuant to which the Company sold a Promissory Note in the principal amount of \$650,000 (the “Note”) to AJB in a private transaction for a purchase price of \$585,000 (giving effect to original issue discount of \$65,000). The Note matured on February 8, 2024 (the “Maturity Date”) and bore interest at the rate of 10% per annum. Interest was payable on a monthly basis beginning on the date that was one month following the date of issuance of the Note. Provided no event of default (as defined in the Note) was in effect as of the Maturity Date, the Company may elect to extend the Maturity Date for a period of six (6) months. Pursuant to the terms of the SPA, the Company paid a commitment fee to AJB in the form of 19,048 shares of Common Stock (the “Commitment Fee Shares”) with a relative fair value of \$130,478 which was recognized as discount to the note. The debt discount and issuance costs were amortized over the term of the note. Amortization expense amounted to \$38,273 and zero for the nine months ended July 31, 2024, and 2023, respectively.

Under the SPA, the Company has the right to repurchase half of the Commitment Fee Shares if the Note is repaid in full prior to maturity. On December 1, 2023, the Company fully paid the loan balance in advance of the maturity date. In connection with the repayment of the Note, the Company agreed that AJB would be permitted to retain all of the Commitment Fee Shares. The Company recognized zero and \$98,432 as loss on extinguishment of debt for the three and nine months ended July 31, 2024. As of July 31, 2024, and October 31, 2023, the carrying value of the loan and unamortized debt discount and issuance costs were zero and zero and \$513,295 and \$136,705, respectively.

Note 6 – Leases

The Company does not have financing leases and has only one operating lease for office space and inventory storage space with Just Pick, LLC (“Just Pick”), a related party owned and controlled by Nirajkumar Patel, the former Chief Executive Officer and Director of the Company (see Note 8). Certain of the Company’s leases, have and may in the future, include renewal options, which have been and might be in the future, included in the calculation of the lease liabilities and right of use assets when the Company is reasonably certain to exercise the option.

Cash flow information related to leases was as follows:

	July 31, 2024	July 31, 2023
Other Lease Information		
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ (148,012)	\$ (142,202)

The following table provides the maturities of lease liabilities on July 31, 2024:

	Operating Leases
Remaining period in 2024 (three months)	58,662
Year ending October 31, 2025	238,800
Year ending October 31, 2026	253,614
Year ending October 31, 2027	274,946
Year ending October 31, 2028	175,989
Total future undiscounted lease payments	\$ 1,002,011
Less: Interest	(87,250)
Present value of lease liabilities	\$ 914,761

At July 31, 2024, the Company had no additional leases which had not yet commenced.

Note 7 – Stockholders’ Equity

Series B Convertible Preferred Stock

On May 30, 2023, the Company issued 900,000 shares of the Series B Preferred Stock as consideration for the acquisition of the GoFire Purchased Assets. The Series B Preferred Stock carries no voting rights except: (i) with respect to the ability of the holders of a majority of the then outstanding Series B Preferred Stock (the “Majority Holders”), to nominate a director to the Company’s board of directors, and (ii) that the vote of the Majority Holders is necessary for effecting any amendment to the Company’s Certificate of Incorporation or Certificate of Designation that affects the Series B Preferred Stock. The Series B Preferred Stock is redeemable at the option of the Company at a redemption price of \$15 per share, subject to potential downward adjustments based on the trading price of the Common Stock. Subject to additional limitations in the GoFire APA, the Series B Preferred Stock holds seniority over the Common Stock and each other class of series of securities now existing or hereafter authorized with respect to dividend rights, the distribution of assets upon liquidation, and dissolution and redemption rights. Upon a liquidation and winding up of the Company, the holders of Series B Preferred Stock are entitled to a liquidation preference of \$15 per share (the “Liquidation Preference”), though the redemption may be adjusted downward based on the trading price of the Common Stock at the time of liquidation. The holders of Series B Preferred Stock are entitled to receive a dividend equal to 2% of the Liquidation Preference, accruing from the Closing Date and payable on the eighteen-month anniversary of the Closing Date. Amounts payable in respect of the Series B Dividend shall begin to accrue on a daily basis, be cumulative from and including the Original Issue Date, whether or not the Corporation has funds legally available for such dividends or such dividends are declared, shall compound on each six month anniversary of the Original Issue Date and shall be payable in arrears on the 18-month anniversary of the Original Issue Date. No preemptive rights are granted to the holders of Series B Preferred Stock. The Majority Holders have the ability to cause a voluntary conversion of the Series B Preferred Stock into Common Stock at a conversion rate of 0.3968 shares of Common Stock per share of Series B Preferred Stock which may only occur on or after the following dates 18-month, 24 month, 36 month, 48 month, and 60 month anniversary of the original issuance date; and only up to 180,000 shares of Series B Preferred Stock on each of these dates. All shares of Series B Preferred Stock will automatically convert to Common Stock upon the occurrence of a Change of Control (as defined in the GoFire APA).

Reverse Stock Split

On January 22, 2024, the Company filed a Certificate of Amendment to the Company’s Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware to affect a 1-for-21 reverse stock split (the “2024 Reverse Stock Split”) of the shares of the Common Stock. The 2024 Reverse Stock Split was effective on January 25, 2024, on the Nasdaq Stock Market. No fractional shares were issued in connection with the 2024 Reverse Stock Split. Any fractional shares of the Company’s Common Stock that would have otherwise resulted from the 2024 Reverse Stock Split were rounded up to the nearest whole number. In connection with the 2024 Reverse Stock Split, the Board approved appropriate and proportional adjustments to all outstanding securities or other rights convertible or exercisable into shares of the Common Stock, including, without limitation, all preferred stock, warrants, options, and other equity compensation rights. All historical share and per-share amounts reflected throughout the accompanying unaudited interim consolidated financial statements and other financial information in this Report have been retroactively adjusted to reflect the 2024 Reverse Stock Split as if the split occurred as of the earliest period presented. The par value per share of the Common Stock was not affected by the 2024 Reverse Stock Split.

Common Stock

During the three and nine months ended July 31, 2024, the Company issued 1,746,500 shares of common stock in connection with the June 2024 Public Offering (see below).

During the three and nine months ended July 31, 2024, the Company issued 2,174,456 shares of common stock from exercises of pre-funded warrants (see below).

During the three and nine months ended July 31, 2024, the Company issued zero 0 and 52,949 shares of common stock, respectively, for rounding of shares related to the Reverse Split.

During the three and nine months ended July 31, 2024, the Company issued zero 0 and 16,667 shares of common stock, respectively, to a FINRA member broker-dealer in connection with the termination of its relationship with such broker dealer. The fair value was \$62,000 based on the closing price of the common stock on the termination date and recorded as stock-based compensation.

June 2024 Public Offering

On June 21, 2024, the Company entered into a securities purchase agreement (the “Purchase Agreement”) with the certain purchasers (the “Purchasers”) for the purchase and sale of an aggregate of \$5,393,250 of the Company’s securities consisting of 3,525,000 units (the “Units”). With respect to (i) 1,350,000 of the Units (the “Common Units”), each such Common Unit consisted of one share of the Company’s common stock, par value \$0.001 per share (“Common Stock”) and one and one-half common warrants (“Common Warrants”) to purchase one and one-half shares of Common Stock and (ii) the other 2,175,000 Units (the “Pre-funded Units”), each such Pre-funded Unit consisted of a pre-funded warrant (“Pre-funded Warrant”) to purchase one share of Common Stock and one and one-half Common Warrants. Pursuant to the Purchase Agreement, the Common Units were sold at a purchase price of \$1.53 per Unit and the Pre-funded Units were sold at a purchase price of \$1.529 per Unit. The sale of the Units to the Purchasers closed on June 24, 2024 (the “Closing Date”). The Company also sold 396,500 Common Units to additional investors, who did not enter into the Purchase Agreement, under the same terms sold to Purchasers. The sale of securities by the Company pursuant to the Purchase Agreement combined with the concurrent sale of securities to additional investors is referred to herein as the “June 2024 Public Offering”. The aggregate gross proceeds to the Company from the June 2024 Public Offering were approximately \$5,997,720, before deducting placement agent fees and expenses and other transaction costs of \$744,993. Of the total gross proceeds, \$2,672,145 and \$3,325,575 were allocated to the common stock and the pre-funded warrants, respectively.

See further Common Warrants and Pre-Funded Warrants details below.

Stock Options

Summary of stock options information is as follows:

	Aggregate Number	Aggregate Exercise Price	Exercise Price Range	Weighted Average Exercise Price
Outstanding, October 31, 2023	449,106	\$ 14,081,408	\$ 10.08-602.28	\$ 31.36
Granted	104,693	529,899	2.81-11.76	5.06
Exercised	—	—	—	—
Cancelled, forfeited, or expired	(285,978)	(4,504,492)	2.81 - 36.12	15.75
Outstanding, July 31, 2024	<u>267,821</u>	<u>\$ 10,106,815</u>	<u>\$ 2.81-602.28</u>	<u>\$ 37.74</u>
Exercisable, July 31, 2024	<u>240,510</u>	<u>\$ 9,873,000</u>	<u>\$ 3.64-602.28</u>	<u>\$ 41.05</u>

During the three months ended July 31, 2024, and 2023, the Company recognized \$56,062 and \$597,221, respectively, of stock option expense related to outstanding stock options. During the nine months ended July 31, 2024, and 2023, the Company recognized \$76,932 and \$3,385,946, respectively, of stock option expense related to outstanding stock options. The stock option expense is net of forfeitures related to the stock option expense of cancelled stock options during the three and nine months ended July 31, 2024 that were reversed. The weighted-average grant-date fair value of the options granted during the fiscal nine-month periods ended July 31, 2024 and 2023 was \$5.03 and \$15.81, respectively.

On July 31, 2024, the Company had \$86,237 of unrecognized expenses related to options, which is expected to be recognized over a weighted-average period of approximately 0.9 years. The weighted average remaining contractual life is approximately 8.28 years for stock options outstanding on July 31, 2024. The aggregate intrinsic value of these outstanding options as of July 31, 2024, was zero.

Compensation expense related to performance-based options is recognized on a straight-line basis over the requisite service period, provided that it is probable that performance conditions will be achieved, with probability assessed on a quarterly basis and any changes in expectations recognized as an adjustment to earnings in the period of the change. Compensation cost is not recognized for service- and performance-based awards that do not vest because service or performance conditions are not satisfied, and any previously recognized compensation cost is reversed. If vesting occurs prior to the end of the requisite service period, expense is accelerated and fully recognized through the vesting date.

Warrants

Warrant information as of the periods indicated is as follows:

	Aggregate Number	Aggregate Exercise Price	Exercise Price Range	Weighted- Average Exercise Price
Outstanding, October 31, 2023	242,548	\$ 13,946,006	12.39-126	\$ 57.51
Granted	8,057,250	6,943,230	0.001-1.18	0.86
Exercised	(2,175,000)	(2,175)	0.001	0.001
Cancelled, forfeited, or expired	(36,912)	(544,025)	12.39-15.33	14.74
Outstanding, July 31, 2024	<u>6,087,886</u>	<u>\$ 20,343,036</u>	<u>\$ 0.001-126</u>	<u>\$ 3.34</u>
Exercisable, July 31, 2024	<u>6,087,886</u>	<u>\$ 20,343,036</u>	<u>\$ 0.001-126</u>	<u>\$ 3.34</u>

The weighted average remaining contractual life is approximately 4.82 years for Common Stock warrants outstanding as of July 31, 2024. As of July 31, 2024, the intrinsic value of outstanding stock warrants was zero.

June 2024 Public Offering Warrants

The Company issued a common stock purchase warrant to purchase an aggregate of 5,882,250 shares of Common Stock in connection with the June 2024 Public Offering with an initial exercise price of \$1.53 per share (equal to 100% of the public offering price of each unit sold in this offering). The warrant is exercisable immediately and will expire five years from the date of issuance. However, if, on the date that is 30 calendar days immediately following the Closing Date (the “Reset Date”), the Reset Price (as defined below) is less than the exercise price of the Common Warrants on the Reset Date, then the exercise price of the Common Warrants shall be decreased to the Reset Price. “Reset Price” means 100% of the arithmetic average of the daily VWAPs during the five trading days immediately preceding the Reset Date, provided, that in no event shall the Reset Price be less than \$0.574 per share (subject to adjustment for reverse and forward stock splits, recapitalizations and similar transactions following the date of the securities purchase agreement). Immediately after the Reset Date, the Reset Exercise Price is \$1.18 per share. As of July 31, 2024, June 2024 Public Offering Warrants to purchase 5,882,250 shares of Common Stock remain outstanding.

GoFire Acquisition Warrants

The Company issued a common stock purchase warrant to purchase an aggregate of 95,240 shares of Common Stock as consideration for the acquisition of the GoFire Purchased Assets. The Warrant is exercisable for a period of four (4) years from the Closing Date. The exercise price for the Warrant Shares is \$63.00, \$84.00, \$105.00 and \$126.00 per share, respectively, for each of four tranches of 23,810 Warrant Shares. The exercise prices of the Warrant are subject to customary stock-based (but not price-based) adjustments upon the occurrence of stock splits and the like involving the Common Stock. The Warrant is exercisable on a cash basis only, except that the Warrant may be exercised on a “cashless basis” if at the time of exercise there is not an effective registration statement under the Securities Act of 1933, as amended covering the public resale of the Warrant Shares. As of July 31, 2024, GoFire Acquisition Warrants to purchase 95,240 shares of Common Stock remain outstanding.

September 2021 Public Offering Warrants

The Company issued a common stock purchase warrant to purchase a total of 193,036 shares of Common Stock in connection of the Company’s underwritten public offering in September 2021, at an exercise price of \$39.90 per share. These warrants expire in 2026. As of July 31, 2024, September 2021 Public Offering Warrants to purchase 110,396 shares of Common Stock remain outstanding.

Other Warrants

The Company issued a common stock purchase warrant to purchase an aggregate of 17,524 shares of Common Stock as compensation for advisory services rendered directly related to the GoFire APA. The warrant is exercisable for a period of five (5) years from the Closing Date. The exercise price for the warrant shares is \$14.70 per share. The warrant is non-exercisable or transferrable for six months after the date of the closing of APA other than as permitted by FINRA Rule 5110. The warrant may be exercised as to all or a lesser number of shares of Common Stock for a period of five (5) years after the Closing Date.

The Company entered into a financial advisor and placement agent agreement in April 2023 with an advisor. As part of the consideration for the advisor’s services, the Company will issue warrants to purchase an aggregate of 17,143 shares of Common Stock at an exercise price of \$15.33 per share and a term of 5 years. During the twelve (12) month engagement period, the Company will grant the advisor warrants to purchase 1,429 shares of Common Stock each month. The Company issued the first six (6) months of warrants to purchase 8,572 shares of common stock upon the execution of the agreement and will issue monthly warrants each month at a rate of 1,429 warrants per month until 17,143 warrants have been issued in aggregate. The Company issued warrants to purchase a total of 15,715 shares of Common Stock.

The Company entered into a financial advisor and placement agent agreement in August 2023 with an advisor. As part of the consideration for the advisor’s services, the Company issued warrants to purchase an aggregate of 3,673 shares of common stock at an exercise price of \$12.39 per share and a term of 5 years.

The total Other Warrants to purchase 36,912 shares of Common Stock were cancelled on December 15, 2023.

Pre-Funded Warrants

The Company issued a pre-funded warrant to purchase an aggregate of 2,175,000 shares of Common Stock in connection with the June 2024 Public Offering. The Pre-funded Warrants were sold to Purchasers whose purchase of Common Units in the June 2024 Public Offering would have otherwise resulted in such Purchaser beneficially owning more than 4.99% (or, at the election of the purchaser, 9.99%) of the Company’s outstanding Common Stock. The exercise price of each Pre-funded Warrant is \$0.001 per share. The Pre-funded Warrants are exercisable immediately and may be exercised at any time until all of the Pre-funded Warrants are exercised in full.

Immediately after the Closing Date, the Purchasers of the Pre-funded Units exercised all of the 2,175,000 Pre-funded Warrants and purchased shares of common stock. The Company issued 2,174,456 shares of common stock from exercises of pre-funded warrants, consisting of 1,450,000 Pre-funded Warrants through cash exercise and 725,000 Pre-funded Warrants through cashless exercise. The Company received proceeds amounting to \$1,450 from the cash exercise of the Pre-funded Warrants. As of July 31, 2024, there were no Pre-Funded Warrants outstanding.

Note 8 – Related-Party Transactions

In March 2020, the Company commenced business operations as a result of becoming the exclusive distributor of certain ENDS and related components (the “Products”) manufactured by Bidi, a related party company that is also owned by Nirajkumar Patel, the former Chief Executive Officer and Director of the Company.

On June 24, 2024, the Company obtained a short-term loan from Bidi, a related party company to finance the state and franchise tax fees. The principal amount was \$218,787 and was not subject to interest. The entire principal balance of this loan shall be due and payable in full immediately upon receipt of funds by the Company pursuant to the June 2024 Public Offering noted above. This loan was fully paid on June 25, 2024, and as of July 31, 2024, had an outstanding balance of zero.

Revenue and Accounts Receivable

During the nine months ended July 31, 2024, the Company recognized revenue of \$5,950 from one company owned by Nirajkumar Patel, the former Chief Executive Officer and Director of the Company, and/or his wife. There was no accounts receivable balance for these transactions as of July 31, 2024.

During the nine months ended July 31, 2023, the Company recognized revenue of \$7,878 from three companies owned by Nirajkumar Patel, the former Chief Executive Officer and a Director of the Company, and/or his wife.

Concentration of Purchases and Accounts Payable

During the nine months ended July 31, 2024, 100% of the inventories of Products, consisting solely of the BIDI® Stick, were purchased from Bidi, a related party controlled by Nirajkumar Patel, the former Chief Executive Officer and Director of the Company, in the amount of \$273,060. As of July 31, 2024, the Company had accounts payable to Bidi of \$1,275,000 from purchases of inventory, and Products valued at \$200,364 were held in inventory.

During the nine months ended July 31, 2023, 100% of the inventories of Products, consisting solely of the BIDI® Stick, were purchased from Bidi, a related party controlled by Nirajkumar Patel, in the amount of \$8,764,380.

The KBI License agreement provides that KBI shall pay Bidi license fees equivalent to 50% of the adjusted earned royalty payments, after any offsets due to jointly agreed costs such development costs incurred for entry to specific international markets. As of July 31, 2024 and October 31, 2023, the Company had license fees of \$208,000 and zero payable to Bidi. As of July 31, 2024, the Company had no outstanding payable to Bidi for reimbursement of insurance expense. As of October 31, 2023, the Company had a payable to Bidi of \$712,524 for certain non-recurring engineering costs related to the PMI License Agreement which were fully paid in November 2023, and \$240,802 for reimbursement of insurance expense.

Leased Office Space and Storage Space

On June 10, 2022, the Company entered into a Lease Agreement with Just Pick, LLC, owned and controlled by Nirajkumar Patel, the former Chief Executive Officer and Director of the Company. The Company had \$49,844 and \$148,012 in operating lease expenses for the three and nine months ended July 31, 2024, respectively, and \$47,855 and \$142,202 for the three and nine months ended July 31, 2023, respectively.

Note 9 – Commitments and Contingencies

The Company follows ASC 450-20, *Loss Contingencies*, to report accounting for contingencies. Liabilities for loss contingencies arising from claims, assessments, litigation, fines and penalties and other sources are recorded when it is probable that a liability has been incurred and the amount of the assessment can be reasonably estimated. There were no commitments or contingencies as of July 31, 2024, and October 31, 2023, other than the below:

QuikfillRx Service Agreement Amendment

Effective as of November 9, 2022, the Company entered into its latest amendment to the Service Agreement with QuikfillRx (collectively with prior amendments, the “Amended Service Agreement”). The November 9, 2022 amendment to the Service Agreement was captioned as the “Fourth Amendment” although it was the fifth amendment to the Service Agreement. Pursuant to the Amended Service Agreement:

- (a) the term of the Amended Service Agreement was extended (unless earlier terminated pursuant to the terms of the Amended Service Agreement) from November 1, 2022 (the “Effective Date”) until October 31, 2025, following which the term shall automatically renew for successive one (1) year period beginning November 1, 2025;
- (b) QuikfillRx agreed to change its “doing business as” name to “Kaival Marketing Services” within thirty (30) days following the Effective Date;
- (c) it was provided that either party may terminate the Amended Service Agreement without cause upon not less than ninety (90) days prior written notice to the other party;
- (d) QuikfillRx was granted a one-time, fully vested, ten-year non-qualified option award to purchase up to 11,905 shares of Company common stock with an exercise price of \$20.72 per share (the closing price of the Company’s common stock on November 9, 2022). The option grant was memorialized pursuant to a Nonqualified Option Agreement, dated November 9, 2022, between the Company and QuikfillRx; and
- (e) the parties agreed to revise the compensation for services as follows: (i) payment of \$125,000 per month; (ii) bonus equivalent to 0.27% of the applicable gross quarterly sales and (iii) a grant of 3,000,000 nonqualified stock options to purchase shares of Company common stock which shall vest based on achievement of certain net revenue and profit margin targets up to \$180,000,000 in total net revenues over a period of 3 years.

On February 21, 2024, the Company terminated the agreement and all amendments with QuikFillRx. Per the termination, the Company was required to pay \$80,000 by March 1, 2024, in full satisfaction of all obligations, debts, and prior services, including but not limited to stock incentives, bonuses, third party obligations, owed by the Company to QuickfillRx. The Company made the required payment on February 28, 2024.

The Company accrued zero 0 and \$37,416 for a quarterly bonus payable to QuikfillRx, based on the Applicable Gross Quarterly Sales results of the three months ended July 31, 2024 and 2023, respectively.

International Trade Commission claims against the Company

On June 11, 2024, RAI Strategic Holdings, Inc., R.J. Reynolds Vapor Company, R.J. Reynolds Tobacco Company, and RAI Services Company (collectively, the “RJ Reynolds Entities”) filed a patent infringement complaint with the International Trade Commission (the “ITC”) against Bidi, the Company, and forty (40) other respondents (the “ITC Complaint”) pursuant to Section 337 of the Tariff Act of 1930, as amended. Specifically, the ITC Complaint alleges that one or more components or elements of the Bidi Stick infringe U.S. Patent No. 11,925,202, which is owned by one of the RJ Reynolds Entities. The ITC Complaint requests the ITC grant: (a) temporary and permanent limited exclusion orders pursuant to Section 337(e) of the Tariff Act of 1930, as amended, which would prohibit the importation of the Bidi Stick in the United States; and (b) issue temporary and permanent cease and desist orders pursuant to 337(f) of the Tariff Act of 1930, as amended, which would prohibit the sale and distribution of the Bidi Stick in the United States. On July 17, 2024, the Company was dismissed from the ITC proceeding and is no longer a defendant in the ITC proceeding. No damages are recoverable in the proceedings before the ITC. If Bidi is prohibited from importing the Bidi Stick, then the Company’s business, operations, financial results, and reputation would be significantly adversely impacted.

Note 10 – Subsequent Events

On September 12, 2024, the Company announced the passing of the Company’s Chief Executive Officer and Director, Nirajkumar Patel. Effective September 12, 2024, the Company announced that Mark Thoenes, a Director, had been appointed to serve as the Company’s interim Chief Executive Officer.

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

This Management's Discussion and Analysis of Financial Condition and Results of Operations is designed to provide a reader of the financial statements with a narrative report on our financial condition, results of operations, and liquidity. This discussion and analysis should be read in conjunction with the unaudited financial statements and notes thereto for the nine months ended July 31, 2024, included under Item 1 – Financial Statements in this Report and our audited financial statements and notes thereto for the year ended October 31, 2023, contained in the 2023 Annual Report. The following discussion contains forward-looking statements that involve risks and uncertainties, such as statements of our plans, objectives, expectations, and intentions. Our actual results could differ materially from those discussed in the forward-looking statements. Please also see the cautionary language at the beginning of this Report regarding forward-looking statements.

Overview

Our business is focused on the sales, marketing and distribution of ENDS products, also known as “e-cigarettes”, in a variety of ways. Our primary product is the Bidi® Stick as well as other products manufactured by our affiliate Bidi. We hold the exclusive worldwide right to market and distribute the Bidi® Stick and certain other products manufactured by Bidi.

Pursuant to the A&R Distribution Agreement, Bidi granted us an exclusive worldwide right to distribute Bidi's ENDS and related components (as more particularly set forth in the A&R Distribution Agreement and referred to herein as the products) for sale and resale to both retail level customers and nonretail level customers. Currently, the products consist solely of the “BIDI® Stick”, Bidi's disposable, tamper resistant ENDS product made with medical grade components, a UL-certified battery and technology designed to deliver a consistent vaping experience for adult smokers 21 and over. We presently distribute products to wholesalers and retailers of ENDS products, having ceased all direct-to-consumer sales in February 2021. Nirajkumar Patel, our former Chief Executive Officer and Director and an indirect controlling stockholder of our company, owns Bidi.

BIDI® Stick comes in a variety of flavor options for adult cigarette smokers. We do not manufacture any of the products we resell. The BIDI® Stick is manufactured by Bidi. Pursuant to the terms of the A&R Distribution Agreement, Bidi provides us with all branding, logos, and marketing materials to use with our commercial partners in connection with our marketing and promotion of the products.

We process all sales made only to non-retail customers, with all sales to non-retail customers made through Bidi's age-restricted website, www.wholesale.bidivapor.com. We ceased all direct-to-consumer sales in February 2021 in order to better ensure youth access prevention and to comply with the Prevent All Cigarette Trafficking (or PACT) Act. We provide all customer service and support at our own expense through QuikfillRx as described below. We set the minimum prices for all sales made by us. We maintain adequate inventory levels of products in order to meet the demands of our non-retail customers and deliver the products sold to these customers.

A key third-party collaborator of ours was QuikfillRx, LLC, (“QuikfillRx”) a Florida limited liability company which recently began doing business as “Kaival Marketing Services” to better reflect its contributions to our company. QuikfillRx provides us with certain services and support relating to sales management, website development and design, graphics, content, public communication, social media, management and analytics, and market and other research. QuikfillRx provides these services to us pursuant to a Services Agreement, most recently amended on November 9, 2022, pursuant to which QuikfillRx receives monthly cash compensation and was granted certain equity compensation in the form of options. This Agreement was terminated in February 2024. The Company has been performing the sales and marketing activities in-house.

We have also maintained key international licensing agreements with Philip Morris and its affiliates as described under Item 1 – Business.

We have also entered into key international licensing agreements with Philip Morris Products S.A. (“PMPSA”), a wholly owned affiliate of Philip Morris International Inc. (“PMI”).

On August 31, 2020, we formed Kaival Labs, Inc., a Delaware corporation (herein referred to as “Kaival Labs”), as a wholly owned subsidiary for the purpose of developing our own branded and white-label products and services, of which none has commenced as of the date of this Report. On March 11, 2022, we formed Kaival Brands International, LLC, a Delaware limited liability company (herein referred to as “KBI”), as a wholly owned subsidiary for the purpose of entering into an international licensing agreement with PMPSA.

GoFire Asset Acquisition

On May 30, 2023, we and Kaival Labs entered into an Asset Purchase Agreement (the “GoFire APA”) with GoFire, Inc. (“GoFire”). Pursuant to the terms of the GoFire APA, we purchased certain intellectual property assets of GoFire consisting of various patents and patent applications (the “Purchased Assets”) in exchange for equity securities of our company and certain contingent cash consideration. The Purchased Assets will be housed in Kaival Labs and consist of 19 existing and 47 pending patents with novel technologies related to vaporization and inhalation technologies. The patents and patent applications cover the U.S. and several international territories. The Purchased Assets also include four registered and two pending trademarks. The goal of this acquisition is to diversify our product offerings and create near and longer-term revenue opportunities in the form of potential licenses of the acquired technology and our development of new products based on the Purchased Assets. In the near term, we expect to seek third-party licensing opportunities in the cannabis, hemp/CBD, nicotine and nutraceutical markets. Longer term, we believe we can utilize the Purchased Assets to create innovative and market-disruptive products, including patent protected vaporizer devices and related hardware and software applications. No assurances can be given, however, that the Purchased Assets will generate revenue for us in the future or otherwise create the value for our company that we anticipate.

FDA PMTA Determinations, 11th Circuit Decision and Impact on Our Business

In September 2021, in connection with the Bidi’s Premarket Tobacco Product Application (“PMTA”) process for BIDI® Stick, the U.S. Food and Drug Administration’s (“FDA”) effectively “banned” non-tobacco flavored ENDS by denying nearly all then-pending PMTAs for such products (including Bidi’s). Following the issuance of by the FDA of a related Marketing Denial Order (“MDO”) regarding these ENDS products, manufacturers were required to stop selling non-tobacco flavored ENDS products. Bidi, along with nearly every other company in the ENDS industry, received a MDO for its non-tobacco flavored ENDS products. With respect to Bidi, the MDO covered all non-tobacco flavored BIDI® Sticks, including its Arctic (menthol) BIDI® Stick. As a result, beginning in September 2021, Bidi pursued multiple avenues to challenge the MDO. First, on September 21, 2021, separate from the judicial appeal of the MDO in its entirety, Bidi filed a 21 C.F.R. §10.75 internal FDA supervisory review request specifically of the decision to include the Arctic (menthol) BIDI® Stick in the MDO. In May 2022, the FDA issued a determination that it views the Arctic BIDI® Stick as a non-tobacco flavored ENDS product, and not strictly a menthol flavored product.

On September 29, 2021, Bidi petitioned the U.S. Court of Appeals for the Eleventh Circuit (the “11th Circuit”) to review the FDA’s denial of the PMTAs for its non-tobacco flavored BIDI® Stick ENDS (including the Arctic BIDI® Stick), arguing that it was arbitrary and capricious under the Administrative Procedure Act (“APA”), as well as ultra vires, for the FDA not to conduct any scientific review of Bidi’s comprehensive applications, as required by the Tobacco Control Act (“TCA”), to determine whether the BIDI® Sticks are “appropriate for the protection of the public health”. Bidi further argued that the FDA violated due process and the APA by failing to provide fair notice of the FDA’s new requirement for ENDS companies to conduct long-term comparative smoking cessation studies for their non-tobacco flavored products compared to tobacco-flavored ENDS products, and that the FDA should have gone through the notice and comment rulemaking process for this requirement.

On August 23, 2022, the 11th Circuit set aside (i.e., vacated) the MDO issued to the non-tobacco flavored BIDI® Sticks and remanded Bidi’s PMTA back to the FDA for further review. Specifically, the 11th Circuit held that the MDO was “arbitrary and capricious” in violation of the APA because the FDA failed to consider the relevant evidence before it, specifically Bidi’s aggressive and comprehensive marketing and sales-access-restrictions plans designed to prevent youth appeal and access.

The opinion further indicated that the FDA did not properly review the data and evidence that it has long made clear are critical to the appropriate for the protection of the public health (“APPH”) standard for PMTAs set forth in the Tobacco Control Act including, in Bidi’s case, “product information, scientific safety testing, literature reviews, consumer insight surveys, and details about the company’s youth access prevention measures, distribution channels, and adult-focused marketing practices,” which “target only existing adult vapor product users, including current adult smokers,” as well as our retailer monitoring program and state-of-the-art anti-counterfeit authentication system. Because a MDO must be based on a consideration of the relevant factors, such as the marketing and sales-access-restrictions plans, the denial order was deemed arbitrary and capricious, and vacated by the FDA.

The FDA did not appeal to the 11th Circuit’s decision. The FDA had until October 7, 2022 (45 days from the August 23, 2022 decision) to either request a panel rehearing or a rehearing “en banc” (a review by the entire 11th Circuit, not just the 3-judge panel that issued the decision), and until November 21, 2022 (90 days after the decision) to seek review of the decision by the U.S. Supreme Court. No request for a rehearing was filed, and no petition for a writ of certiorari was made to the Supreme Court. On July 29, 2024, Bidi received a Recission of Marketing Denial letter from FDA formally rescinding the MDO for the non-tobacco flavored BIDI® Stick PMTAs and putting those applications back into the review process.

In light of the 11th Circuit decision and FDA’s MDO rescission letter, we anticipate having the continued ability to market and sell the non-tobacco flavored BIDI® Sticks, subject to FDA’s enforcement discretion, for the duration of the PMTA scientific review. The FDA has indicated that it is prioritizing enforcement of unauthorized ENDS against companies (1) that never submitted PMTAs, (2) whose PMTAs have been refused acceptance or filing by the FDA, (3) whose PMTAs remain subject to MDOs, and (4) that are continuing to market unauthorized synthetic nicotine products after the July 13, 2022 cutoff. As none of these scenarios apply to Bidi, we believe the current risk of FDA enforcement is low.

Since the PMTA was remanded, Bidi has continued to update its application with the results of new studies, including a nationwide population prevalence study on the BIDI® Stick that has been published in a peer-reviewed scientific journal.

Separately, on or about May 13, 2022, FDA placed the tobacco-flavored Classic BIDI® Stick into the final Phase III scientific review, and in September 2022 completed a remote regulatory assessment of Bidi and its contract manufacturer in China, SMISS Technology Co. LTD, in relation to the pending PMTA for the Classic BIDI® Stick. In March 2023, Bidi received a deficiency letter with respect to the tobacco-flavored Classic BIDI® Stick PMTA, to which the company submitted in June 2023. Subsequently, on January 22, 2024, Bidi received a MDO regarding the Classic BIDI® Stick. The MDO identified three highly technical deficiencies related to certain analytical testing and Bidi’s pharmacokinetic (PK) study. On January 26, 2024, Bidi petitioned the 11th Circuit to review the MDO for the Classic BIDI® Stick, arguing that the denial is arbitrary and capricious under the APA, an abuse of discretion, or otherwise not in accordance with the law, as well as contrary to constitutional right and in excess of statutory authority. On February 2, 2024, Bidi filed a Time Sensitive Motion for a Stay Pending Review, which the court denied on February 18, 2024. The case is now proceeding on the merits, with Bidi’s opening merits brief filed on April 15, 2024. FDA filed its response brief on June 7, 2024, and Bidi filed its reply brief on July 29, 2024. The 11th Circuit will next schedule an oral argument for later this year. Unless the MDO ultimately remanded by the 11th Circuit, the Classic BIDI® Stick is considered an adulterated tobacco product the continued marketing and distribution of which is prohibited.

Material Items, Trends and Risks Impacting Our Business

We believe that the following items and trends may be useful in better understanding our results of operations.

Dependence on Bidi

We are wholly dependent on Bidi to supply the BIDI® Sticks to us for distribution. Accordingly, any supply or other issues that impact Bidi, indirectly impact us and our ability to operate our business. Moreover, and while we are seeking to diversify our product offerings, the loss of our relationship with Bidi would substantially harm the viability of our business.

Bidi is controlled by Nirajkumar Patel, our former Chief Executive Officer and a former Director of the Company. Moreover, Kaival Holdings, an entity controlled by Nirajkumar Patel, is our majority shareholder. In addition, our corporate headquarters is leased to us by an affiliate of Nirajkumar Patel. Therefore, Nirajkumar Patel has the power and ability to control or influence our business.

Ability to Develop and Monetize the GoFire Intellectual Property

We purchased certain vaporizer and inhalation-related technology from GoFire in May 2023 with the goal of diversifying our business and lessening our dependence on BIDI Vapor. We do not expect that the acquired assets will generate immediate revenue for us, and while we believe this to be a transformative acquisition for us and we are already seeking to develop and monetize the acquired assets, we can give no assurances at this time that either (i) the patent applications we acquired will eventuate in issued patents or (ii) we will be able to enter into successful monetizing arrangements with respect to these assets.

Nature of our Products and Regulation

Competition in the market for e-cigarettes from illicit sources may have an adverse effect on our overall sales volume, restricting our ability to increase selling prices and damaging our brand equity and reputation. Illicit trade and tobacco trafficking in the form of counterfeit products, smuggled genuine products, and locally manufactured products on which applicable taxes or regulatory requirements are evaded, represent a significant and growing threat to the legitimate tobacco industry, including the products we sell. Although we combat counterfeiting of our Products by engaging in certain tactics, such as requiring all sales force personnel to randomly collect our Products from retailers in order to be tested by our quality control team, maintaining a quality control group that is responsible for identifying counterfeit products and surveillance of retailers we suspect are selling counterfeit Products through our own secret shopper force, no assurance can be given that we will be able to detect or stop sales of all counterfeit products. In addition, while we may bring suits against retailers and distributors that sell certain counterfeit products, no assurance can be given that we will be successful in any such suits or that such suits will be successful in stopping other retailers or distributors from selling.

Counterfeit Products

Our Products (included in this context any products that we may develop from the GoFire Purchased Assets) are and will be heavily regulated by the FDA, which has broad regulatory powers. The market for ENDS products is subject to a great deal of uncertainty and is still evolving. ENDS products, having recently been introduced to market over the past 10 to 15 years, are at a relatively early stage of development, and represent core components of a market that is evolving rapidly, highly regulated, and characterized by a number of market participants. Rapid growth in the use of, and interest in, ENDS products is recent, and may not continue on a lasting basis. With respect to the GoFire Purchase Assets, the underlying technology touches on hemp/cannabis, nutraceutical and healthcare applications in addition to nicotine, all of which are heavily regulated by the FDA and other federal and state agencies. The demand and market acceptance for all of these products is subject to a high level of uncertainty. Therefore, we are subject to all the business risks associated with a new enterprise in an evolving market.

Some of our Product offerings through Bidi are subject to developing and unpredictable regulation. Our Products are sold through our distribution network and may be subject to uncertain and evolving federal, state, and local regulations, including hemp, non-THC cannabidiol (CBD) and other non-tobacco consumable products. Enforcement initiatives by those authorities are therefore unpredictable and impossible to anticipate. We anticipate that all levels of government, which have not already done so, are likely to seek in some way to regulate these products, but the type, timing, and impact of such regulations remains uncertain. With respect to CBD in particular, on January 26, 2023, the FDA announced that it would not initiate rulemaking to regulate CBD as a dietary food ingredient. Rather, after careful review, the FDA has concluded that a new regulatory pathway for CBD is needed and has further indicated that it is prepared to work with Congress to create a new regulatory pathway for CBD through legislation.

In addition to the de facto FDA flavor ban that has resulted from the denial of nearly all PMTAs for flavored ENDS, ENDS products that are non-tobacco flavored continue to face the threat of prohibition at the local level, as many state and local authorities and attorneys general push for bans or request the FDA to deny PMTAs for flavored ENDS. In addition, a number of states and localities have banned the sale of non-tobacco flavored tobacco products. Recently, for example, California passed Proposition 31, which prohibits the sale of non-tobacco flavored tobacco products, including e-cigarettes, in retail locations. Thus, the non-tobacco flavored BIDI® Sticks are not permitted to be sold in California retail locations. We anticipate more states and localities will take this approach. Several other states and localities have banned flavored ENDS, including New York, (and New York City), New Jersey, Rhode Island, Illinois (and Chicago) and Massachusetts, with several more considering similar bans (e.g., Maryland, and Connecticut).

Ability to Meet Demand for our Products

We believe that the matters described under “FDA PMTA Determinations, 11th Circuit Decision and Impact on Our Business” have increased demand for our Products and has opened new distribution channels for us through which we can sell our Products. However, a sharp increase in demand for the Products will require us to use cash and/or obtain financing in order to purchase Products from Bidi for resale in the marketplace. As a result, we are faced with the risk that such cash or financing will not be available in sufficient amounts or on terms acceptable to us (or at all) to meet the market demand for the Products. Our inability to fulfill this demand will damage our reputation and could materially impact our ability to increase sales of the Products which, in turn, would adversely impact our results of operations.

Inflation

Consumer purchases of tobacco products are historically affected by economic conditions, such as changes in employment, salary and wage levels, the availability of consumer credit, inflation, interest rates, fuel prices, sales taxes, and the level of consumer confidence in prevailing and future economic conditions. The U.S. has been experiencing an environment of material inflation in recent quarters, and this condition may impact discretionary consumer purchases, such as the BIDI® Stick. Demand for our Products may also decline during recessionary periods or at other times when disposable income is lower, and taxes may be higher.

Supply Chain

The spread of COVID-19 throughout the world as well as increasing tensions with China over the past several years has created global economic uncertainty, which may cause partners, suppliers, and potential customers to closely monitor their costs and reduce activities. Any of the foregoing could materially adversely affect the supply chain for Bidi and our Products, and any supply chain distribution for the Products could have a material adverse effect on our results of operations.

Corporate History

We were incorporated on September 4, 2018, in the State of Delaware. Effective July 12, 2019, we changed our corporate name from Quick Start Holdings, Inc. to Kaival Brands Innovations Group, Inc. The name change was effected through a parent/subsidiary short-form merger of Kaival Brands Innovations Group, Inc., our wholly-owned Delaware subsidiary formed solely for the purpose of the name change, with and into us. We were the surviving entity.

Change of Control

On February 6, 2019, we entered into a Share Purchase Agreement (the “Share Purchase Agreement”), by and among us, GMRZ Holdings LLC, a Nevada limited liability company (“GMRZ”), our then-controlling stockholder, and Kaival Holdings, LLC, a Delaware limited liability company (“KH”), pursuant to which, on February 20, 2019, GMRZ sold 24,000,000 shares of our restricted common stock, representing approximately 88.06% of our then issued and outstanding shares of common stock, to KH, and KH paid GMRZ consideration in the amount set forth in the Share Purchase Agreement. The consummation of the transactions contemplated by the Share Purchase Agreement resulted in a change in control, with KH becoming our largest controlling stockholder. Nirajkumar Patel and Eric Mosser are the sole voting members of KH.

Current Product Offerings

Pursuant to the A&R Distribution Agreement, the Company sells and resells electronic nicotine delivery systems, which it may refer to herein as “ENDS Products”, or “e-cigarettes”, to non-retail level customers. The sole Product the Company resells is the “BIDI® Stick,” a disposable, tamper-resistant ENDS product that comes in a variety of flavor options for adult cigarette smokers. The Company does not manufacture any of the Products it resells. The BIDI® Stick is manufactured by Bidi. Pursuant to the terms of the A&R Distribution Agreement, Bidi provides the Company with all branding, logos, and marketing materials to be utilized by the Company in connection with its marketing and promotion of the Products.

Other Potential Product Offerings

In addition to the BIDI® Stick, we anticipated launching distribution of the “BIDI® Pouch,” initially outside of the United States. The initial planned February 2021 roll-out of the BIDI® Pouch was delayed due to COVID-19 based manufacturing and supply chain constraints. Due to these complications, and in an effort to prevent future bottlenecks, Bidi decided to move manufacturing in-house. In 2021, Bidi modified the planned formulation of the BIDI® Pouch. The original BIDI® Pouch formulation (which never came to market) intended to utilize a tobacco-free (synthetic) nicotine formulation, along with natural fibers and a chew-base filler in six different flavors. However, production of the BIDI® Pouch was placed on hold domestically due to concerns about the safety of synthetic nicotine and the likelihood of the FDA enforcement of synthetic nicotine products either as unapproved drugs or unauthorized tobacco products. Subsequently, the Consolidated Appropriations Act of 2022, signed by President Biden on March 15, 2022, amended the definition of a “tobacco product” in the Food, Drug and Cosmetic Act and gave the FDA authority to regulate products containing nicotine from any source, including synthetic nicotine. The legislation also gave manufacturers of synthetic nicotine products 60 days to prepare and submit PMTAs by May 14, 2022. Synthetic nicotine products subject to timely submitted PMTAs were allowed to remain on the market without the threat of enforcement for another 60 days, until July 13, 2022. After July 13, 2022, all synthetic nicotine products, regardless of PMTA status, are illegal and subject to FDA enforcement (unless the product has actually been authorized and is subject to a PMTA Marketing Grant Order).

Also, on July 14, 2021, we announced plans to launch its first Kaival-branded product, a hemp CBD vaping product. In addition to our branded formulation, we anticipate that we will also provide white label, wholesale solutions for other product manufacturers through our subsidiary, Kaival Labs. We have not yet launched any branded product, nor has have begun to provide white label wholesale solutions for other product manufacturers, but the diversification of the types of products we distribute is an important part of our growth strategy.

Assuming we launch a hemp CBD product, of which there can be no assurances, we intend that all CBD products will be produced and distributed strictly in compliance under the Agriculture Improvement Act of 2018 (known as the 2018 Farm Bill), which defines hemp as the plant cannabis sativa and any part of the plant with a delta-9 THC concentration of not more than 0.3 percent by dry weight. According to the 2018 Farm Bill, hemp-derived products can be offered for retail sale in many forms: smoke, pouch, tinctures, topicals, capsules, vape oil and gummies/edibles. We plan to utilize Bidi’s patented BIDI® Stick delivery mechanism in order to provide a similar, premium experience in the initial CBD product line. We expect our industrial-grade hemp CBD formula to provide greater bioavailability than many market peers, resulting in a better consumer experience in less usage. On January 26, 2023, FDA announced that it would not initiate rulemaking to regulate CBD as a dietary food ingredient. Rather, after careful review, the FDA has concluded that a new regulatory pathway for CBD is needed that balances individuals’ desire for access to CBD products with the regulatory oversight needed to manage risks. FDA further indicated that it is prepared to work with Congress on this matter.

PMI Licensing Agreement and International Distribution

On June 13, 2022, we, through our wholly owned subsidiary, KBI, entered into the PMI License Agreement with PMPSA, a wholly owned affiliate of PMI, for the development and distribution of ENDS products in certain markets outside of the United States, subject to market (or regulatory assessment). The PMI License Agreement grants to PMPSA a license of certain intellectual property rights relating to Bidi’s ENDS device, known as the BIDI® Stick in the United States, as well as potentially newly developed devices, to permit PMPSA to manufacture, promote, sell, and distribute such ENDS device and newly developed devices, in international markets, outside of the United States.

On July 25, 2022, we announced the launch of PMPSA’s custom-branded self-contained e-vapor product, pursuant to the licensing agreement. The product, a self-contained e-vapor device, VEEBA, has been custom developed and was initially distributed in Canada. VEEBA was then commercially launched by PMPSA in Europe in February 2023, with additional market launches planned this year. VEEBA was recently rebranded VEEV NOW.

On August 12, 2023, the Company executed and entered into a Deed of Amendment No. 1 (the “PMI License Amendment”) with PMPSA, Bidi and KBI. Pursuant to the PMI License Amendment (which was effective on June 30, 2023), resulting in a Net Reconciliation Payment to KBI and ongoing quarterly royalty payments.

Going Concern

The accompanying unaudited interim consolidated financial statements of the Company are prepared in accordance with U.S. GAAP applicable to a going concern, which contemplates realization of assets and the satisfaction of liabilities in the normal course of business within one year after the date the unaudited interim consolidated financial statements are issued.

In accordance with Financial Accounting Standards Board (“FASB”), Accounting Standards Update (“ASU”) No. 2014-15, Presentation of Financial Statements – Going Concern (Subtopic 205-40), the Company’s management evaluates whether there are conditions or events, considered in aggregate, that raise substantial doubt about the Company’s ability to continue as a going concern within one year after the date that the accompanying unaudited interim consolidated financial statements are issued.

The Company will need significant additional funds to satisfy its outstanding payables, fund its working capital, and fully implement its business plan as the Company seeks to grow its revenues. In addition, the Company’s ability to continue as a going concern is adversely affected by the uncertainty surrounding Bidi’s PMTA process with FDA and outcome of Bidi’s petition with the 11th Circuit Court of Appeals regarding the FDA’s January 2024 MDO relating to Classic Bidi® Stick as well as the Company’s, significant recurring losses and present need for additional funding. All of these factors raise substantial doubt regarding the Company’s ability to continue as a going concern.

Management plans to continue similar operations with increased marketing and enhanced efforts to increase sales, which the Company believes will result in increased revenue and ultimately net income.

However, there is no assurance that the Company’s plans will be able to generate expected or greater amounts of revenues or ever achieve profitability due to the factors listed above as well as the regulation and public perception of ENDS products and the various other risks faced by the Company. The accompanying consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of these or other risks or uncertainties.

Liquidity and Capital Resources

We believe we will not generate sufficient revenue to support our operations for at least twelve months. As of July 31, 2024, we had working capital of \$2,509,396 and total cash of \$4,524,989.

We intend to generally rely on cash from operations and equity and debt offerings to the extent necessary and available, to satisfy our liquidity needs. There are several factors that could result in the need to raise additional funds, including a decline in revenue, a lack of anticipated sales growth, increased costs and our potential plan to redeem for cash the shares of our Series B Preferred Stock issued in connection with our GoFire asset purchase in May 2023. Our efforts are directed toward generating positive cash flow and, ultimately, profitability. As our efforts during our fiscal 2023 and since have not generated positive cash flows, we will need to raise additional capital. Should capital not be available to us at reasonable terms, other actions will become necessary, including implementing cost control measures and additional efforts to increase sales. We may also be required to take more strategic actions such as exploring strategic options for the sale of our company, the creation of joint ventures or strategic alliances under which we will pursue business opportunities, or other alternatives. We believe we have, or have access to, the financial resources to weather the impacts of the FDA’s PMTA process and Bidi’s receipt of MDOs from the FDA in 2021 and 2024, which are subject to additional FDA action and ongoing court proceedings, respectively. However, we will require further financing for the next twelve months, given our operating results.

Cash Flows:

Net cash flows provided by operations was approximately \$0.1 million for the nine months ended July 31, 2024, compared to net cash flows used in operations of approximately \$2.8 million net cash flows used in operations for the nine months ended July 31, 2023. The change in cash flow provided by operations for the nine months ended July 31, 2024, compared to the cash flow used in operations for the nine months ended July 31, 2023 was primarily due to the changes in accounts receivable, inventory and accounts payable – related party.

The Company had no cash flows used in investing activities for the nine months ended July 31, 2024, compared to approximately \$0.3 million cash flows used in investing activities for the nine months ended July 31, 2023. The cash used in investing activities for the nine months ended July 31, 2023, primarily consisted of cash used for transaction acquisition costs.

Net cash flows provided by financing activities was approximately \$3.9 million for the nine months ended July 31, 2024, compared to approximately \$0.5 million net cash flows provided by financing activities for the nine months ended July 31, 2023. The cash provided by financing activities for the nine months ended July 31, 2024, consisted primarily of proceeds from loans payable and issuance of common stock, warrants and pre-funded warrants, partially offset by payments on loans payables and payments for issuance costs. The cash provided by financing activities for the nine months ended July 31, 2023, consisted primarily of proceeds offset by payments on loans payables.

Results of Operations**Three months ended July 31, 2024, compared to three months ended July 31, 2023*****Revenues:***

Revenues for the three months ended July 31, 2024, were approximately \$0.7 million, compared to approximately \$3.6 million for the three months ended July 31, 2023. Revenues decreased during the three months ended July 31, 2024, primarily due to a decrease in the number of sticks sold to customers.

Cost of Revenue, Net and Gross Profit:

Gross profit for the three months ended July 31, 2024 was approximately \$0.4 million, or approximately 51.7% of revenues, net, compared to approximately \$1.3 million gross profit or approximately 36.3% of revenues, net, for the three months ended July 31, 2023. Total cost of revenue, net was approximately \$0.3 million, or approximately 48.3% of revenue, net for the three months ended July 31, 2024, compared to approximately \$2.3 million, or approximately 63.7% of revenue, net for the three months ended July 31, 2023. The increase in gross profit is due to fewer credits issued to customers and a decrease in cost of revenue as a percentage of total revenue during the three months ended July 31, 2024.

Operating Expenses:

Total operating expenses were approximately \$1.8 million for the three months ended July 31, 2024, compared to approximately \$3.0 million for the three months ended July 31, 2023. For the three months ended July 31, 2024, operating expenses consisted primarily of advertising and promotion fees of approximately \$30 thousand, stock option expense of approximately \$56 thousand, professional fees of approximately \$1.4 million, and all other general and administrative expenses of approximately \$0.3 million. General and administrative expenses for the three months ended July 31, 2024, consisted primarily of salaries and wages, insurance, lease expense, project expenses, banking fees, business fees and state and franchise taxes.

For the three months ended July 31, 2023, operating expenses consisted primarily of advertising and promotion fees of approximately \$0.6 million, stock option expense of approximately \$0.6 million, professional fees of approximately \$0.7 million, and all other general and administrative expenses of approximately \$1.1 million. General and administrative expenses for the three months ended July 31, 2023, consisted primarily of salaries and wages, stock option expense, insurance, lease expense, project expenses, banking fees, business fees and state and franchise taxes.

Income Taxes:

During the three months ended July 31, 2024, we did not accrue a tax provision for income taxes, due to the pre-tax loss of approximately \$1.6 million for the three months ended July 31, 2024. Similarly, we did not accrue a tax provision for income taxes during the three months ended July 31, 2023, due to the pre-tax loss of approximately \$1.8 million for the three months ended July 31, 2023.

Net Loss:

As a result of the items noted above, the net loss for the three months ended July 31, 2024, was approximately \$1.6 million, compared to a net loss of approximately \$1.8 million, for the three months ended July 31, 2023. The decrease in the net loss for the three months ended July 31, 2024, as compared to the three months ended July 31, 2023, is primarily attributable to the decrease in operating expenses as noted above, partially offset by a decrease in gross profit.

Nine months ended July 31, 2024, compared to Nine months ended July 31, 2023***Revenues:***

Revenues for the nine months ended July 31, 2024, were approximately \$6.2 million, compared to \$9.1 million for the nine months ended July 31, 2023. Revenues decreased during the nine months ended July 31, 2024, compared to the nine months ended July 31, 2023, generally due to a decrease in the number of sticks sold to customers.

Cost of Revenue and Gross Profit:

Gross profit for the nine months ended July 31, 2024, was approximately \$2.1 million, compared to gross profit of approximately \$1.7 million for the nine months ended July 31, 2023. Total cost of revenue was approximately \$4.1 million for the nine months ended July 31, 2024, compared to \$7.4 million for the nine months ended July 31, 2023. Therefore, the increase in gross profit of approximately \$0.4 million for the nine months ended July 31, 2024 compared to the nine months ended July 31, 2023 is primarily driven by the decrease in the cost of revenue, totaling approximately \$3.3 million, partially offset by a decrease in overall sales of approximately \$3.0 million.

Operating Expenses:

Total operating expenses were approximately \$6.5 million for the nine months ended July 31, 2024, compared to approximately \$10.3 million for the nine months ended July 31, 2023. For the nine months ended July 31, 2024, operating expenses consisted of advertising and promotion fees of approximately \$0.7 million, stock option expense of approximately \$77 thousand, professional fees of approximately \$1.9 million, and all other general and administrative expenses of approximately \$3.8 million. General and administrative expenses during the nine months ended July 31, 2024, consisted primarily of salaries and wages, insurance, lease expense, project expenses, banking fees, business fees and state and franchise taxes.

For the nine months ended July 31, 2023, operating expenses were approximately \$10.3 million, consisting primarily of advertising and promotion fees of approximately \$1.8 million, stock option expense of \$3.4 million, professional fees totaling approximately \$2.3 million, and all other general and administrative expenses of approximately \$2.8 million. General and administrative expenses during the nine months ended July 31, 2023, consisted primarily of salaries and wages, insurance, lease expense, project expenses, banking fees, business fees and state and franchise taxes.

Income Taxes:

During the nine months ended July 31, 2024, we did not accrue a tax provision for income taxes, due to the pre-tax loss of approximately \$5.2 million for the nine months ended July 31, 2024. Similarly, we did not accrue a tax provision for income taxes during the nine months ended July 31, 2023, due to the pre-tax loss of approximately \$8.8 million for the nine months ended July 31, 2023.

Net Loss:

The net loss for the first nine months ended July 31, 2024, was approximately \$5.2 million, compared to net loss for the nine months ended July 31, 2023, which was approximately \$8.8 million. The decrease in the net loss for the nine months ended July 31, 2024, as compared to the nine months ended July 31, 2023, is primarily attributable to the increase in gross profit and decrease in operating expenses as noted above.

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with GAAP requires management to make certain estimates and assumptions that affect reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. These estimates are based on information available as of the date of the financial statements; therefore actual results could differ from those estimates. Other than the policy changes disclosed in Note 2, *Basis of Presentation and Significant Accounting Policies*, to the unaudited interim consolidated financial statements in Item 1 of Part I of this Quarterly Report, there have been no material changes to our critical accounting policies and estimates during the nine months ended July 31, 2024 from those disclosed in Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, of our 2023 Annual Report for the year ended October 31, 2023.

Recent Accounting Pronouncements

Refer to Item 1, Financial Statements, Note 2, *Basis of Presentation and Significant Accounting Policies*.

Emerging Growth Company

We are an "emerging growth company," that is exempt from certain financial disclosure and governance requirements for up to five years as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). The JOBS Act eases restrictions on the sale of securities and increases the number of stockholders a company must have before becoming subject to the SEC's reporting and disclosure rules. We have not elected to use the extended transition period for complying with new or revised accounting standards under Section 102(b)(2) of the JOBS Act, that allows us to delay the adoption of new or revised accounting standards that have different effective dates for public and private companies until those standards apply to private companies.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

As a "smaller reporting company" as defined by Item 10 of Regulation S-K, the Company is not required to provide the information required by this Item.

Item 4. Controls and Procedures.**Evaluation of Disclosure Controls and Procedures**

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act, is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitations, controls and procedures designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and our principal financial officer, to allow timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including our President and Interim Chief Financial Officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) as of July 31, 2024, the end of the period covered by this Quarterly Report. Based on that evaluation, the President and Interim Chief Financial Officer concluded that because of material weaknesses in our internal control over financial reporting, our disclosure controls and procedures were not effective as of July 31, 2024.

Remediation of Material Weaknesses

We are committed to maintaining a strong internal control environment and implementing measures designed to help ensure that all material weaknesses are remediated as soon as possible. Management will continue to work to improve its disclosure controls and procedures during fiscal 2024 with the goal of improvement in the effectiveness of its systems in our internal controls during the next 12 months. We intend to hire additional staff and to take such other actions as may be necessary to address its material weaknesses. The Company engaged a technical advisory firm to review and add value to accounting matters related to the Company during the first nine months ended July 2024, and as such, we believe we have made progress in the implementation of certain internal controls, such as multiple levels of review and analysis of the accounting and reporting procedures and processes, and of journal entries and general ledger account reconciliations.

Changes in Internal Control over Financial Reporting

Due to the identification of certain material weaknesses, we continue to work on strengthening our internal control structure. We made no other changes in internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act, during the quarter ended July 31, 2024, that have materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time, we may become party to litigation or other legal proceedings that we consider to be a part of the ordinary course of our business. We are not currently involved in legal proceedings that could reasonably be expected to have a material adverse effect on our business, prospects, financial condition, or results of operations. To the best of our knowledge, no adverse legal activity is anticipated or threatened.

While we are not a party to the legal or regulatory proceedings involving Bidi described in Item 1 – Business – FDA PMTA and MDO Determinations, Related Court Actions and the Impact on Our Business, the outcome of those or related proceedings could have a material adverse or positive impact on our ability to operate our business given our reliance on Bidi.

Item 1A. Risk Factors.

As a smaller reporting company, we are not required to provide the information required by this item.

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

On June 21, 2024, we issued 396,500 units consisting of one share of the Company's Common Stock and one and one-half Warrants to purchase one and one-half shares of Common Stock to additional investors who did not enter into the Purchase Agreement and relied on the Registration Statement.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits

The following exhibits are filed herewith as a part of this Quarterly Report.

Exhibit Number	Description
31.1	<u>Certification of Chief Executive Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934*</u>
31.2	<u>Certification of Chief Financial Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934*</u>
32.1	<u>Chief Executive Officer pursuant to 18 U.S.C. Section 1350 of Chapter 63 of Title 18 of the United States Code*</u>
32.2	<u>Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350 of Chapter 63 of Title 18 of the United States Code*</u>
101.INS	Inline XBRL Instance Document*
101.SCH	Inline XBRL Taxonomy Extension Schema Document*
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document*
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document*
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document*
101.PRE	Inline XBRL Taxonomy Presentation Linkbase Document*
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)*

(1) Schedules and Exhibits omitted pursuant to Item 601(b) (10) (iv) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule to the Securities and Exchange Commission upon request; *provided, however*, that the Company may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any Schedule or Exhibit so furnished

*filed herewith.

SIGNATURES

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

KAIVAL BRANDS INNOVATIONS GROUP, INC.

Date: September 20, 2024

A /s/ Mark Thoenes
Mark Thoenes
Interim Chief Executive Officer

Date: September 20, 2024

By: /s/ Eric Morris
Eric Morris
Interim Chief Financial Officer

**Certification of Chief Executive Officer
Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934**

I, Mark Thoenes, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Kaival Brands Innovations Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 20, 2024

By: /s/ Mark Thoenes

Mark Thoenes
Interim Chief Executive Officer

Certification of Chief Financial Officer
Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934

I, Eric Morris, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Kaival Brands Innovations Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 20, 2024

By: /s/ Eric Morris
Eric Morris
Interim Chief Financial Officer

Certification of Chief Executive Officer
Pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code

Pursuant to U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned Chief Executive Officer of Kaival Brands Innovations Group, Inc. (the “Company”) does hereby certify, to the best of such officer’s knowledge, that:

1. The Quarterly Report on Form 10-Q of the Company for the quarterly period ended July 31, 2024 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; 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: September 20, 2024

By: /s/ Mark Thoenes
Mark Thoenes
Interim Chief Executive Officer

The certifications set forth above are being furnished as an exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Kaival Brands Innovations Group, Inc. and will be retained by Kaival Brands Innovations Group, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

Certification of Chief Financial Officer
Pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code

Pursuant to U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned Chief Financial Officer of Kaival Brands Innovations Group, Inc. (the “Company”) does hereby certify, to the best of such officer’s knowledge, that:

1. The Quarterly Report on Form 10-Q of the Company for the quarterly period ended July 31, 2024 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; 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: September 20, 2024

By: /s/ Eric Morris

Eric Morris

Interim Chief Financial Officer

The certifications set forth above are being furnished as an exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Kaival Brands Innovations Group, Inc. and will be retained by Kaival Brands Innovations Group, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.
