

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

Form 10-K

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

For the fiscal year ended December 31, 2022

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: 000-28820

JONES SODA CO.

(Exact name of registrant as specified in its charter)

Washington

(State or other jurisdiction of
incorporation or organization)

52-2336602

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

4786 1st Avenue South, Suite 103, Seattle, WA 98134

(Address of principal executive offices)

(206) 624-3357

(Registrant's telephone number, including area code)

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

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, no par value

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

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

Indicate by checkmark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

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

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

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

The aggregate market value of the registrant's common stock held by non-affiliates as of June 30, 2022, the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$26,566,146 using the closing price on that day of \$0.27.

As of March 27, 2023, there were 100,623,135 shares of the registrant's common stock issued and outstanding.

EXPLANATORY NOTE

Unless otherwise indicated or the context otherwise requires, all references in this Annual Report on Form 10-K to “we,” “us,” “our,” “Jones,” “Jones Soda,” and the “Company” are to Jones Soda Co., a Washington corporation, and our wholly-owned subsidiaries.

In addition, unless otherwise indicated or the context otherwise requires, all references in this Annual Report to “Jones Soda” refer to our premium beverages, including Jones® Soda and Lemoncocco® sold under the trademarked brand name “Jones Soda Co.®”

CAUTIONARY NOTICE REGARDING FORWARD LOOKING STATEMENTS

We desire to take advantage of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. This Annual Report on Form 10-K (this “Report”) contains a number of forward-looking statements that reflect management’s current views and expectations with respect to our business, strategies, products, future results and events, and financial performance. All statements made in this Report other than statements of historical fact, including statements that address operating performance, the economy, events or developments that management expects or anticipates will or may occur in the future, including statements related to sales, revenues, profitability, distributor channels, new products, adequacy of funds from operations, cash flows and financing, our ability to continue as a going concern, potential strategic transactions, statements regarding future operating results and non-historical information, are forward-looking statements. In particular, the words such as “believe,” “expect,” “intend,” “anticipate,” “estimate,” “may,” “will,” “can,” “plan,” “predict,” “could,” “future,” “continue,” variations of such words, and similar expressions identify forward-looking statements, but are not the exclusive means of identifying such statements and their absence does not mean that the statement is not forward-looking.

Readers should not place undue reliance on these forward-looking statements, which are based on management’s current expectations and projections about future events, are not guarantees of future performance, are subject to risks, uncertainties and assumptions and apply only as of the date of this Report. Our actual results, performance or achievements could differ materially from historical results as well as from the results expressed in, anticipated or implied by these forward-looking statements. Except as required by law, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

In particular, our business, including our financial condition and results of operations and our ability to continue as a going concern may be impacted by a number of factors, including, but not limited to, the following:

- Our ability to successfully execute on our growth strategy and operating plans;
 - Our ability to continue to effectively utilize the proceeds from our financings completed during the first half of 2022;
 - Our ability to execute our plans to continue to develop and market THC/CBD-infused and/or cannabis-infused beverages and edibles, and comply with the laws and regulations governing cannabis, hemp or related products, and the timing and costs of the development of this new product line;
 - Our ability to manage our operating expenses and generate cash flow from operations, along with our ability to secure additional financing if our sales goals take longer to achieve than anticipated;
 - Our ability to create and maintain brand name recognition and acceptance of our products, which is critical to our success in our competitive, brand-conscious industry;
 - Our ability to compete successfully against much larger, well-funded, established companies currently operating in the beverage industry generally, including in the fountain business, particularly from other major beverage companies;
 - Entrance into and increased focus on the craft beverage segment by other major beverage companies;
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- Our ability to respond to changes in the consumer beverage marketplace, including potential reduced consumer demand due to health concerns (including obesity) and legislative initiatives against sweetened beverages (including the imposition of taxes);
- Our ability to successfully develop and launch new products that match consumer beverage trends, and to manage consumer response to such new products and new initiatives;
- Our ability to maintain brand image and product quality and avoid risks from product issues such as product recalls;
- Our ability to establish, maintain and expand distribution arrangements with independent distributors, retailers, brokers and national retail accounts, most of whom sell and distribute competing products, and upon whom we rely to employ sufficient efforts in managing and selling our products, including re-stocking the retail shelves with our products;
- Our ability to manage our inventory levels and to predict the timing and amount of our sales;
- Our reliance on third-party contract manufacturers of our products and the geographic locations of their facilities, which could make management of our distribution efforts inefficient or unprofitable;
- Our ability to secure a continuous supply and availability of raw materials, as well as other factors that may adversely affect our supply chain, including increases in raw material costs, and the potential shortages of glass in the supply;
- Our ability to source our flavors on acceptable terms from our key flavor suppliers;
- Our ability to attract and retain key personnel, the loss of whom would directly affect our efficiency and operations and could materially impair our ability to execute our growth strategy;
- Our ability to protect our trademarks and trade secrets, the failure of which may prevent us from successfully marketing our products and competing effectively;
- Litigation or legal proceedings, which could expose us to significant liabilities and damage our reputation;
- Our ability to comply with the many regulations to which our business is subject;
- Our ability to maintain an effective information technology infrastructure;
- Failures or security breaches of our information technology systems could disrupt our operations and negatively impact our business;
- Fluctuations in fuel and freight costs;
- Fluctuations in currency exchange rates, particularly between the United States and Canadian dollars;
- Regional, national or global economic, political, social and other conditions that may adversely impact our business and results of operations;
- Our ability to maintain effective disclosure controls and procedures and internal control over financial reporting;
- Dilutive and other adverse effects on our existing shareholders and our stock price arising from future securities issuances; and
- Our ability to access the capital markets for any future equity financing, and any actual or perceived limitations to our common stock by being traded on the OTCQB Marketplace and the Canadian Stock Exchange, including the level of trading activity, volatility or market liquidity.

For a discussion of some of the factors that may affect our business, results and prospects, see “Item 1A. Risk Factors.” Readers are also urged to carefully review and consider the various disclosures made by us in this Report and in our other reports we file with the Securities and Exchange Commission, including our periodic reports on Forms 10-Q and current reports on Form 8-K, and those described from time to time in our press releases and other communications, which attempt to advise interested parties of the risks and factors that may affect our business, prospects and results of operations.

JONES SODA CO.

ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED DECEMBER 31, 2022

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PART I

ITEM 1. BUSINESS.

Overview

We develop, produce, market and distribute premium beverages that we sell and distribute primarily in the United States and Canada through our network of independent distributors and directly to our national and regional retail accounts. We also sell products in select international markets. Our products are sold in grocery stores, convenience and gas stores, on fountain in restaurants, “up and down the street” in independent accounts such as delicatessens, sandwich shops and burger restaurants, as well as through our national accounts with several large retailers. We refer to our network of independent distributors as our direct store delivery (“DSD”) channel, and we refer to our national and regional accounts who receive shipments directly from us as our direct to retail (“DTR”) channel. We do not directly manufacture our products, but instead outsource the manufacturing process to third-party contract manufacturers. We also sell various products online, including soda with customized labels, wearables, candy and other items, and we license our trademarks for use on products sold by other manufacturers. In addition, during 2022 we developed and began to sell THC infused cannabis products under the “Mary Jones” brand name.

Our company is a Washington corporation formed in 2000 as a successor to Urban Juice and Soda Company Ltd., a Canadian company formed in 1986. Our principal place of business is located at 4786 1st Avenue South, Suite 103, Seattle, WA 98134. Our telephone number is (206) 624-3357.

Jones Soda Products

Our strategy is to continue to focus on our core brand, Jones Soda, while also investing in additional initiatives, including Mary Jones cannabis infused sodas and syrups, fountain related beverages, and Lemoncocco. Our product line-up currently consists of the following:

Jones Soda

Jones Soda is our premium carbonated soft drink. We sell Jones Soda in premium glass bottles and cans, with labels featuring photos sent to us by our consumers. Over one million photos have been submitted to us. We believe this unique interaction with our consumers distinguishes our brand and offers a strong competitive advantage for Jones Soda. Additionally, we release various label campaigns that celebrate our consumers and the positive impact such consumers have on the world. Equally differentiating are the distinctive names of our products such as FuFu Berry, and the fact that our products are made from high quality ingredients, including cane sugar and natural colors and flavors when possible. We also sell Jones Soda in more traditional flavors such as Cream Soda, Root Beer and Orange & Cream.

Fountain

Drawing inspiration from our traditional bottles, our fountain equipment and cups are branded with an engaging collage of consumer-submitted photos that are inspired by the business themes of our retail partners and the regions in which they are located. Our fountain offerings include traditional flavors such as Cane Sugar Cola, Sugar Free Cola, as well as cane sugar sweetened Ginger Ale, Orange & Cream, Root Beer and Lemon Lime. Rounding out the lineup are two of our most popular cane sugar flavors, Berry Lemonade and Green Apple. We have developed other products in select markets that include teas, lemonade, vitamin enhanced waters, hydration beverages, as well as naturally flavored sparkling waters.

We continue to see growing interest from larger quick service restaurants, corporate accounts, retailers, celebrity chefs and a variety of other outlets looking for differentiated offerings in their fountain soda. We feel that Jones on fountain enhances the consumer experience, while appealing to a broad demographic. We believe our national brand awareness and customer-centric approach make us unique compared to other craft soda competitors within this category.

Mary Jones

We currently market and sell in California the following products under the Mary Jones brand name: 10mg Cannabis-Infused sodas, 100mg cannabis-infused soda packaged in a 16oz, 10-serving can; and a 100mg syrup cannabis tincture designed for mixing with other drinks, using as a food topping or sipping; are now available in California. The flavor of these beverages are based on the Jones Soda original flavors. The new Mary Jones products continue Jones Soda's tradition of using photographs submitted by consumers on their bottle labels and printing quotes from fans under the bottle caps.

We currently intend to expand both the products offered under the Mary Jones brand as well as the number states we offer such cannabis infused products in.

Lemoncocco

We officially launched Lemoncocco® in 2016. Lemoncocco represents an entirely new beverage category that was inspired by the distinctive refreshment stands found along the streets of Rome, Italy. Lemoncocco is a premium non-carbonated, naturally flavored beverage with the extracts of Sicilian lemons and a splash of coconut cream. Lemoncocco is lightly sweetened with a touch of cane sugar and only 90 calories per 12-ounce serving. Lemoncocco was designed to be on trend, beautifully bold in design and yield a higher gross profit margin than our current Jones bottle product offerings upon achieving a certain threshold of sales. We feel that Lemoncocco is an ideal choice for food pairing, making cocktails and hydration. We believe the overall appeal to the health channel and a wider age demographic makes Lemoncocco an exciting and diverse offering in the marketplace.

Co-Brand and Private Label Products

From time to time, when opportunities meet our required financial and operational metrics, we utilize our industry expertise to provide private label products for customers.

Sparkling Beverage Industry

Our Jones Soda beverages are classified in the sparkling beverage category, which encompasses carbonated soft drinks (CSD) and craft sodas. According to a December 2022 special issue of Research and Markets, The World's Largest Market Research Store, The size of the world's craft soda industry was estimated at \$641.24 million in 2021, and it is anticipated to rise to \$768.08 million by 2027. "Craft sodas" refers to sodas produced in smaller quantities and using more natural ingredients.

Our Focus: Sales Growth

Our focus is sales growth through execution of the following key initiatives:

- Expand the Jones Soda glass bottle business in existing and new sales channels;
- Expand our fountain program in the United States and Canada;
- Grow the new Mary Jones product line of Tetrahydrocannabinol (THC) and cannabidiol (CBD)-infused beverages, edibles, and other related products as well as the number of states where such products are sold; and,
- Increase distribution of Lemoncocco in the United States and Canada.

Product Distribution and Sales Strategy

Premium Soda Beverages

Our core products are distributed and sold throughout the United States and Canada and in select international markets. Our primary distribution channels are our direct store delivery (DSD) channel (sales and distribution through our network of independent distributors) and our direct to retail (DTR) channel (sales directly to national and regional retail accounts). We also have our online channel for internet sales of various products. We strategically build our national and regional retailer network by focusing on distribution systems that we believe will provide top-line drivers for our products and increased availability and visibility of our products in our core markets. In building and expanding our DSD channel, we also consider international markets and look for regions that data suggests have a high affinity for the Jones brand and can be pursued within our financial resources.

Part of our strategy in building our distribution system is to blend our DSD and DTR distribution channels, delivering different offerings through alternate channels. In addition to determining the most advantageous distribution channel, we work to ensure that our products are placed on shelves that are normally restricted to national mainstream brands and in the cold-aisle of stores, thus providing us access to the important "take home market." We have also introduced the JONES Cane Sugar Fountain program through a network of fountain distributors in select regions across the United States and Canada to provide our premium products and uniquely customized fountain equipment.

For the year ended December 31, 2022, A. Lassonde Inc. ("Lassonde"), one of our independent distributors and our top account by revenue represented approximately 20% of revenue. We intend to continue to expand our distributor network and DTR accounts, which we hope will result in a decreased dependence on any one or more of our independent distributors or national retail accounts.

We contract with independent trucking companies to have our product shipped from our contract manufacturers to independent warehouses and then on to our distributors and national retail accounts. Distributors then sell and deliver our products either to sub-distributors or directly to retail accounts. We recognize revenue upon receipt by our distributors and national account customers of our products, net of discounts and promotional allowances, and all sales are final; however, in limited instances, due to credit issues, quality or damage issues, or distributor changes, we may accept returned product, which to date has not been material.

DSD (direct store delivery)

We maintain a network of independent distributors across the United States and Canada. We have also secured distribution in select international markets and are evaluating other international opportunities for our products. We choose our distributors based on our perception of their ability to build our brand franchise in convenience stores, grocery stores, on fountain in restaurants and “up and down the street” in independent accounts such as delicatessens and sandwich shops.

Typically, we grant our independent distributors exclusive distribution rights in defined territories, which may include invasion fees in the event we provide any of our products directly to one of our national retailers located in the distributor’s region. We are also obligated to pay termination fees for cancellations of most of these written distributor agreements, unless the termination is for “cause. For example, we are party to a distribution agreement with Lassonde that, unless earlier terminated by either party for “cause,” currently renews on an annual basis, unless either party gives notice to the other party of its intention not to renew the agreement not less than 90 days prior to the commencement of the next renewal term. The distribution agreement grants Lassonde the exclusive right to sell our products throughout Canada, subject to certain exceptions for our national accounts, and imposes certain requirements on Lassonde, including obligations related to maintaining inventory levels and providing certain reports and prohibits “dumping” activities.

We intend to continue our efforts to reinforce and expand our distribution network by partnering with new distributors and replacing underperforming distributors. In addition to the efforts of our independent distributors in obtaining distribution of our products, we actively seek to obtain listings for our products with key retail grocery, convenience and mass merchandiser accounts, which are serviced through our independent distributor network.

Product availability at a specific store location for any of our retailers is subject to the retailer preference, consumer demand, and localized store variances. To find a retailer that carries our products, our product locator is available on our website under “Store Locator.”

DTR (direct to retail)

Our direct to retail channel of distribution is an important part of our strategy to target large national or regional restaurant chains and retail accounts, including convenience store chains, mass merchandisers and premier food-service businesses. Through these programs, we negotiate directly with the retailer to carry our products, and the account is serviced through the retailer’s appointed distribution system (rather than through our DSD network). These arrangements are terminable at any time by these retailers or us, and contain no minimum purchase commitments or termination fees.

Co-Brand and Private Label

We offer private label products directly to retailers. Our expertise in innovation and managing the manufacturing process allow for efficiencies for both us and the customer. We are able to produce these products with minimal sell through risk and ship them through our network of independent trucking companies or a preferred partner of the customer.

Fountain Distribution

We sell direct to certain retailers in addition to working with a network of fountain distributors in select focus regions within the United States and Canada to provide our premium products, including our fountain and slush products, and uniquely customized fountain equipment.

Sales

Our premium beverage products are sold throughout the United States and Canada, primarily in grocery stores, convenience and gas stores, on fountain in restaurants and “up and down the street” in independent accounts such as delicatessens, sandwich shops and burger restaurants as well as through our national accounts with several large retailers. In 2022, sales in the United States represented approximately 80% of total sales, while sales in Canada represented approximately 19% (primarily through our distributor relationship with Lassonde), and we had approximately 1% in other international sales.

Our Premium Soda Brands

Building our Brand

We have built our brand to a large extent on our fun and independent image as well as by providing what we believe to be unique and exciting flavors that appeal to consumers who prefer alternatives to the corporate carbonated soft drink brands. We believe this market is driven by trendy, young consumers looking for a distinctive tonality and better ingredients in their beverage choices. While we are known for our unique and innovative flavors, we also feature traditional flavors and feel that our broad appeal helps position us as a leader in the growing premium craft segment of the industry. Additionally, through the labels on our bottles and our invitation to consumers to send in photographs to be featured on the Jones Soda labels, we focus on building brand loyalty and customer engagement. We select photos throughout the year to be placed on our bottles and cans for distribution, and also invite consumers to celebrate special occasions and memories by creating their own label through myJones.com. In that space, consumers have the ability to customize their own label and product with a photo and short caption using a proprietary patented process.

We continue to attempt to “bring our labels to life” with a series of augmented reality labels showcasing extreme athletes and artists in action that we believe builds on Jones Soda’s long-time association with action sports and creators of all kinds, involving influencers ranging from a gravity-defying professional scooter rider with 150,000 Instagram followers to a tattoo artist, jewelry designer and street muralist. These labels are “brought to life” with a new Jones Soda app that shoppers simply download the Jones Soda app and use their phone camera to scan the image on any bottle carrying a “Reel Label” icon. The scan triggers a short video bringing the viewer inside the unique world of its creator, whether he or she is painting a mural in time-lapse or doing a hardflip at the skatepark.

In addition to creative labeling on our products, we provide our distributors with point-of-sale promotional materials and branded apparel items. We believe that our labeling, marketing and promotional materials are important elements to creating and increasing consumer appeal, as well as distributor and retailer awareness, and that our branding efforts have helped us achieve strong consumer connections and affinity levels for our products.

Brand Marketing

Our marketing team has developed brand positioning and brand identity that is an integral asset and we believe allows our brand to be widely known in a positive way among a large demographic. We have focused on positioning ourselves as an alternative to mainstream soda brands and try to focus on locations where such brands are not sold. We also have a program of sponsoring alternative sport athletes to promote our products in youth alternative sports, including Ultimate Fighting Championship, auto-racing, skateboarding, BMX biking, snowboarding and skiing. In addition, we completed a program of sponsoring up-and-coming musicians and artists. We believe this effort to position our products in alternative accounts and venues helps draw a younger generation of customers that value their independence away from the larger soft drink brands.

Social Media

Our core marketing pillar is the open access our consumers have to define the brand through our social media channels and our website at Jonesoda.com. We actively participate in social media campaigns as a way of direct engagement with our consumers in order to listen to their voices and better understand their issues and changes in consumer trends. Social media represents one of the largest shifts in modern business away from static advertising, and we have had success in creating social media hubs through forums such as Facebook, Twitter and Instagram. Our consumers have responded by bringing us onto their social media pages and into their lives, creating a personal connection that we believe helps ensure they are actively engaged with our brand and our products.

Consumer-Submitted Photos

We are well-known for the consumer submitted photos on our labels and cans. We invite our consumers to send us photos of their lives, and we select from those photos for use on our labels. Photos can be submitted through our website at our “Jones Soda Photo Gallery.”

Customized Photo Labels

We also provide our Jones Soda customers, ranging from businesses to end consumers, customized and personalized 12-packs of Jones Soda (in bottles) that they can create with their own photos on the labels. The strategy of this program is to provide a customized and personalized product offering to our consumers as well as an innovative marketing opportunity for our Jones Soda brand. Consumers can upload their photos through our website and create their own “myJones” labels. The personalized labels are downloaded at our headquarters, applied to 12-packs of Jones Soda and delivered to the consumer.

We believe our photo strategy has increased awareness for, as well as provided for increased consumer interactivity with, the Jones Soda brand.

Point of Sale and Consumer Awareness

We use point-of-sale materials such as posters, stickers, hats and T-shirts to create and increase consumer awareness of our proprietary products and brands. In response to consumer demand, we also sell our products and our wearables on our website. In selected cities, we participate at a “grassroots” level at certain community and sporting events in an attempt to create and increase brand awareness and loyalty. As noted above, we use recreational vehicles, vans and independent distributor vehicles painted with the Jones colors and logos to create consumer awareness and enthusiasm at these events and to assist distributors as they open new retail accounts and markets.

From time to time, we partner with companies that will manufacture Jones-related products that we feel extend and enhance our Jones brand. We currently have a licensing arrangement with a third party to manufacture and distribute Jones Soda Flavor Booster hard candy. In addition to these marketing techniques, we also pursue cross-promotional campaigns with other companies.

Events

In addition to all of the above marketing efforts, we are also investing in various events that are in alignment with our brand demographic. We invest in skateboarding events and partner with like-minded companies that we believe maintain a similar connection to our core demographic. At these events, we are able to display our logo and participate in sampling activities where we encourage the tasting of our products to encourage purchases of our brand at retail establishments where our products are sold. We anticipate investing in more of these events as we focus on marketing efforts in support of our core brand, Jones Soda, subject to any ongoing restrictions that may be imposed by the COVID-19 pandemic or any other future pandemics.

Brand and Product Development - Premium Soda Beverages

We understand the importance of creating new beverage products and enhancing our existing products to meet the ever-changing consumer taste profile. We continue to expand our Jones Cane Sugar Fountain program that allows for our Jones Soda product line to be offered “on tap.” We partner with restaurants and grocery stores that prefer to offer new innovative and pure cane sugar fountain opportunities for their guests and we utilize a select group of fountain distributors to service these retail customers.

Our strategy is to focus on innovative products that will be accepted by consumers, retailers and distributors. We believe this is accomplished by keeping open dialog directly with our consumers through our website, blogs and social media as well as with our retail and distributor partners to ensure we are current with consumer trends in the beverage industry.

We develop the majority of our brands and products in-house. We used a similar process initially to create the Jones Soda brand, and we intend to continue utilizing this process to create our future brands and products. This process primarily consists of the following steps:

Market Evaluation. We evaluate the strengths and weaknesses of certain categories and segments of the beverage industry with a view to pinpointing potential opportunities.

Financial Evaluation. We evaluate consumer price tolerance and sensitivity. All new products must be able to scale and meet strict margin requirements.

Distributor Evaluation. We analyze existing and potential distribution channels, whether DSD, DTR or a blend of these channels. This analysis addresses, among other things, which companies will distribute particular beverage brands and products, where such companies may distribute such brands and products, and what will motivate these distributors to distribute such brands and products.

Production Evaluation. We review all aspects of production of our beverages, including contract packing capacity, strategic production locations, and quality control, and prepare a cost analysis of the various considerations that will be critical to producing our brands and products.

Image and Design. Based on our evaluation of the market, distributors and production issues, we create and develop the concept for a beverage brand, product or product extension. Our technical services department then works with various flavor concentrate houses to test, choose and develop product flavors for the brand.

We believe that the ongoing process of creating new brands, products and product extensions will be an important factor in our long-term success. For example, we recently completed a successful Q4 special release program where we sold the products “Sugar Cookie” and “Turkey and Gravy.” Additionally, in 2022 we partnered with ICEE to create the popular Cherry flavor as the newest entry in our Special Release program featuring limited-edition flavors that combines the familiar Jones Soda label design with the ICEE logo and a whimsical drawing of ICEE’s bear mascot to facilitate brand recognition on the shelf. We also intend to continue to launch a line of cannabis-infused sodas, syrups and gummies under a new brand, “Mary Jones”.

In addition to creating new brands, we believe we need to continuously improve our core product line, Jones Soda, as consumer tastes continue to change. We intend that each new flavor of Jones Soda that we introduce will be made with less sugar and no artificial colors or flavors whenever possible. In addition, we continue to re-formulate and re-introduce lower calorie content versions of each of our existing flavors of Jones Soda as and when we believe we have created an acceptable replacement that will appeal to existing customers and attract new customers.

Moreover, in addition to the above extensions to the Jones Soda brand, we have created and launched a brand with its own separate identity from the Jones Soda brand, Lemnoccoco®. We believe that Lemnoccoco represents a new category in the non-carbonated beverage industry and that developing a separate all-natural beverage brand is an important opportunity for our company.

Competition

Premium Beverage Industry

The beverage industry is highly competitive. Principal methods of competition in the beverage industry include:

- brand name and image;
- distribution;
- shelf-management;
- licensing;
- price;
- labeling and packaging;
- advertising;
- product quality and taste;
- trade and consumer promotions; and
- development of new brands, products and product extensions.

We compete with other beverage companies not only for consumer acceptance but also for shelf space in retail stores and for marketing focus by our distributors, all of whom also distribute other beverage brands. Our products compete with all non-alcoholic beverages, most of which are marketed by companies with substantially greater financial resources than ours. We also compete with regional beverage producers and “private label” soft drink suppliers. Our direct competitors in the sparkling beverage industry include traditional large soft drink manufacturers and distributors as well as regional premium soft drink companies.

In order to compete effectively in the beverage industry, from time to time we develop and introduce new products and product extensions.

Although we believe that we will be able to continue to create competitive and relevant brands and products to satisfy consumers’ changing preferences, there can be no assurance that we will be able to do so or that other companies will not be more successful in this regard over the long term.

Pricing of the products is also important. We believe that our products are priced in the same price range or higher than competitive brands and products, and compete on quality as they are premium product offerings.

Cannabis Industry

We facing intense competition in the Cannabis industry from other companies, some of which have longer operating histories and more financial resources and longer history of the production and marketing of cannabis products than then we do. Competitors are primarily branded and private label cannabis companies who are operating in multiple states. We are currently in direct competition with Keef Brands, Cann Social Tonics, and Tonik Beverages, none of which are national consumer packaged goods brands in the United States. We are confident that our cannabis products will be highly competitive. We seek a competitive advantage over our competitors by applying our Mary Jones brand name recognition and by offering quality cannabis products to our loyal customer base. Because of the early stage of the cannabis industry in the United States and Canada, we also face additional competition from new entrants. If the number of users of medical and recreational cannabis increases, the demand for products will increase and we expect that competition will become more intense, as current and future competitors begin to offer an increasing number of diversified products and pricing strategies. To remain competitive, the believe we will be required to make a high level of investment in our planned licenses, partnerships, branding, products and technologies, distribution, research and development, marketing, sales and client support. We may not have sufficient resources to maintain its marketing, sales and client support efforts on a competitive basis which could materially and adversely affect our business, financial condition, and results of operations of our planned cannabis business.

Production

Contract Packing Arrangements

We do not directly manufacture our premium soda beverage products, but instead outsource the manufacturing process to third-party bottlers and independent contract manufacturers (co-packers). We currently use primary co-packers located in Canada and the United States. Once the product is manufactured, the finished products are stored either at the co-packer's location or in nearby third-party warehouses. Other than minimum case volume requirements per production batch or "run" for most co-packers, we do not have annual minimum production commitments with our co-packers. Our co-packers may terminate their arrangements with us at any time, in which case we could experience disruptions in our ability to deliver products to our customers. We continually review our contract packing needs in light of regulatory compliance and logistical requirements and may add or change co-packers based on those needs.

Raw Materials

The raw materials used in the manufacturing of our premium soda beverage products consist primarily of concentrate, flavors, supplements, sugar, bottles, cans, labels, trays, caps and packaging. Substantially all of the raw materials used in the preparation, bottling and packaging of our bottle and can products are purchased by us or by our contract manufacturers in accordance with our specifications. These raw materials are purchased from suppliers selected by us or by our contract manufacturers. We believe that we have adequate sources of raw materials, which are available from multiple suppliers.

We purchase flavor concentrate from our suppliers. Generally, flavor concentrate suppliers own the proprietary rights to the flavors. Although we do not have the list of ingredients or formulas for our flavors, we have exclusive rights to the use of the flavor concentrates developed with our suppliers. In connection with the development of new soda products and flavors, independent suppliers bear a large portion of the expense for product development, thereby enabling us to develop new products and flavors at relatively low cost. If we have to replace a flavor supplier, we could experience disruptions in our ability to deliver products to our customers, which could have a material adverse effect on our results of operations.

The costs of raw materials fluctuate and in certain instances we enter into supply agreements to address these risks. We have a three-year fixed price supply agreement with our primary glass supplier which expires at the end of 2023. The price of glass continues to increase each year due to the shortage of available glass in the industry; however, our supply agreement with our glass supplier provides us with some price protection through 2023.

As the global supply chain continues to see disruptions, there is higher risk for continued labor shortages, raw material cost increases, and increased costs of transportation that could adversely impact our business. The extent to which the global supply chain disruptions may continue to impact our results of operations, including the long-term nature of the impact, depends on numerous evolving factors, which are highly uncertain and difficult to predict.

Quality Control

Our premium soda beverage products are made from high-quality ingredients and natural and artificial flavors. We seek to ensure that all of our products satisfy our high-quality standards. Contract manufacturers are selected and monitored by our quality control representatives in an effort to ensure adherence to our production procedures and quality standards.

For every batch or "run" of product, our contract manufacturer undertakes extensive testing of product quality and packaging. This includes testing levels of sweetness, carbonation, taste, product integrity, packaging and various regulatory cross checks. Samples from each production run are analyzed and categorized in a reference library. For each product, the contract manufacturer must transmit all quality control test results to us for reference following each production run.

Testing also includes microbiological checks and other tests to ensure the production facilities meet the standards and specifications of our quality assurance program. Water quality is monitored during production and at scheduled testing times to ensure compliance with beverage industry standards. The water used to produce our products is filtered and is also treated to reduce alkalinity. Flavors are pre-tested by the flavor concentrate supplier before shipment to contract manufacturers. We are committed to ongoing product improvement with a view towards ensuring the high quality of our product through a stringent co-packer selection, training and communication program.

Cannabis Operations

During 2022, we began to develop, market and distribute cannabis-infused beverages and syrups under the "Mary Jones" brand name in California to complement our existing soda beverage business. Similar to the manufacturing process with our premium soda products we outsource the manufacturing and distribution of our products to third parties with whom we enter licensing agreement with concerning our cannabis products being manufactured and sold. We operate our cannabis operations in California under newly created California subsidiary that is separate from our current soda beverage business. We currently plan to expand our cannabis operations into other states that have legalized the recreational use of cannabis using a similar structure to our operations in California.

Regulation

Premium Beverage Business

The production and marketing of our proprietary beverages are subject to the rules and regulations of various federal, provincial, state and local health agencies, including in particular Health Canada, Agriculture and Agri-Food Canada (AAFC) and the United States Food and Drug Administration (FDA). The FDA and AAFC also regulate labeling of our products. From time to time, we may receive notifications of various technical labeling or ingredient reviews with respect to our products. We believe that we have a compliance program in place to ensure compliance with production, marketing and labeling regulations.

Legal requirements have been enacted in several jurisdictions in the United States and Canada requiring that deposits or certain eco-taxes or fees be charged for the sale, marketing and use of certain non-refillable beverage containers. The precise requirements imposed by these measures vary. Other beverage container-related deposit, recycling, eco-tax and/or product stewardship proposals have been introduced in various jurisdictions in the United States and Canada. We anticipate that similar legislation or regulations may be proposed in the future at local, state and federal levels, both in the United States and Canada.

Cannabis Business

Application of Federal Law

Although certain states have legalized either medical marijuana or medical and adult use cannabis, at the federal level, cannabis currently remains a Schedule I drug under the Controlled Substances Act of 1970 (21 U.S.C. §§ 811 et seq.). Under United States federal law, a Schedule I drug or substance has a high potential for abuse, no accepted medical use in the United States, and a lack of accepted safety for the use of the drug under medical supervision. As such, cannabis related practices or activities, including without limitation, the cultivation, manufacture, importation, possession, use, or distribution of cannabis, remain illegal under United States federal law.

Although federally illegal, the U.S. federal government's approach to enforcement of such laws has trended toward non-enforcement. On August 29, 2013, the U.S. Department of Justice ("DOJ") issued a memorandum known as the "Cole Memorandum" to all U.S. Attorneys' offices (federal prosecutors). The Cole Memorandum generally directed U.S. Attorneys not to prioritize the enforcement of federal marijuana laws against individuals and businesses that rigorously comply with state regulatory provisions in states with strictly regulated medical or recreational cannabis programs. While not legally binding, and merely prosecutorial guidance, the Cole Memorandum laid a framework for managing the tension between state and federal laws concerning state regulated marijuana businesses.

However, on January 4, 2018 the Cole Memorandum was revoked by Attorney General Jeff Sessions. While this did not create a change in federal law, as the Cole Memorandum was not itself law, the revocation removed the DOJ's guidance to U.S. Attorneys that state regulated cannabis industries substantively in compliance with the Cole Memorandum's guidelines should not be a prosecutorial priority.

In addition to his revocation of the Cole Memorandum, Attorney General Sessions also issued a one-page memorandum known as the "Sessions Memorandum." The Sessions Memorandum confirmed the rescission of the Cole Memorandum and explained the rationale of the DOJ in doing so: the Cole Memorandum, according to the Sessions Memorandum, was "unnecessary" due to existing general enforcement guidance adopted in the 1980s, as set forth in the U.S. Attorney's Manual (the "USAM"). The USAM enforcement priorities, like those of the Cole Memorandum, are also based on the federal government's limited resources, and include "law enforcement priorities set by the Attorney General," the "seriousness" of the alleged crimes, the "deterrent effect of criminal prosecution," and "the cumulative impact of particular crimes on the community."

While the Sessions Memorandum emphasizes that marijuana is a Schedule I controlled substance, and reiterates the statutory view that cannabis is a "dangerous drug and that marijuana activity is a serious crime," it does not otherwise indicate that the prosecution of marijuana-related offenses is now a DOJ priority. Furthermore, the Sessions Memorandum explicitly describes itself as a guide to prosecutorial discretion. Such discretion is firmly in the hands of U.S. Attorneys in deciding whether to prosecute marijuana-related offenses. Our outside U.S. counsel continuously monitors all U.S. Attorney comments related to regulated medical and adult-use cannabis laws to assess various risks and enforcement priorities within each jurisdiction. Dozens of U.S. Attorneys across the country have affirmed that their view of federal enforcement priorities has not changed, although a few have displayed greater ambivalence.

In his February 2021 confirmation hearing, current Attorney General Merrick Garland affirmed the principles of prosecutorial discretion from the rescinded Cole Memorandum. He noted that "It does not seem to me a useful use of limited resources that we have to be pursuing prosecutions in states that have legalized and are regulating the use of marijuana either medically or otherwise." Attorney General, Merrick Garland, has not officially indicated any change in enforcement priority for state-compliant marijuana businesses, however, uncertainty regarding federal enforcement remains.

Most recently, on October 6, 2022, President Joe Biden announced a three-step program to bring broad changes to federal cannabis policy. As an initial step towards reform, President Biden began the process of pardoning all federal offenders convicted of simple cannabis possession. As a second step, President Biden also encouraged Governors to take similar steps to pardon state simple cannabis possession charges. Finally, President Biden directed the Department of Health and Human Services and Attorney General Merrick Garland to “expeditiously” review cannabis’s status as a Schedule I controlled drug pursuant to the federal Controlled Substances Act. With these positive developments it is important to acknowledge that these policy directives have not yet changed the “laws on the books” and so there remains uncertainty regarding whether such policies and enforcement priorities may change in the future.

Regardless, marijuana remains a Schedule I controlled substance at the federal level, and neither the Cole Memorandum nor its rescission has altered that fact. The federal government of the United States has always reserved the right to enforce federal law in regard to the sale and disbursement of medical or recreational marijuana, even if state law sanctioned such sale and disbursement. From a regulatory and enforcement perspective, the criminal risk today remains identical to the risk on January 3, 2018. It remains unclear whether the risk of enforcement has been altered.

Additionally, under U.S. federal law it may potentially be a violation of federal money laundering statutes for financial institutions to take any proceeds from marijuana sales or any other Schedule I substance. Banks and other financial institutions could be prosecuted and possibly convicted of money laundering for providing services to cannabis businesses. Under U.S. federal law, banks or other financial institutions that provide a cannabis business with a checking account, debit or credit card, small business loan, or any other service could be found guilty of money laundering or conspiracy. Despite these laws, the U.S. Department of the Treasury issued a memorandum in February of 2014 (the “FinCEN Memorandum”) outlining the pathways for financial institutions to bank state-sanctioned marijuana businesses. Under these guidelines, financial institutions must submit a “suspicious activity report” (“SAR”) as required by federal money laundering laws. These marijuana related SARs are divided into three categories: marijuana limited, marijuana priority, and marijuana terminated, based on the financial institution’s belief that the marijuana business follows state law, is operating out of compliance with state law, or where the banking relationship has been terminated.

On the same day the FinCEN Memorandum was published, the DOJ issued a memorandum (the “2014 Cole Memo”) directing prosecutors to apply the enforcement priorities of the Cole Memorandum in determining whether to charge individuals or institutions with crimes related to financial transactions involving the proceeds of marijuana-related conduct. The 2014 Cole Memo has been rescinded as of January 4, 2018, along with the Cole Memorandum, removing guidance that enforcement of applicable financial crimes was not a DOJ priority.

However, Attorney General Sessions’ revocation of the Cole Memorandum and the 2014 Cole Memo has not affected the status of the FinCEN Memorandum, nor has the Department of the Treasury given any indication that it intends to rescind the FinCEN Memorandum itself. Though it was originally intended for the 2014 Cole Memo and the FinCEN Memorandum to work in tandem, the FinCEN Memorandum can act as a standalone document which explicitly lists the eight enforcement priorities originally cited in the Cole Memorandum. As such, the FinCEN Memorandum remains intact.

Enforcement Proceedings under Federal Law

Although the Cole Memorandum and 2014 Cole Memo have been rescinded, the United States Congress has repeatedly enacted legislation to protect the medical marijuana industry from prosecution. The United States Congress has passed appropriations bills each of the last three years that included the Rohrabacher Amendment Title: H.R.2578 — Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016, which by its terms does not appropriate any federal funds to the U.S. DOJ for the prosecution of medical cannabis offenses of individuals who are in compliance with State medical cannabis laws. Subsequent to the issuance of the Sessions Memorandum on January 4, 2018, the United States Congress passed its omnibus appropriations bill, SJ 1662, which for the fourth consecutive year contained the Rohrabacher-Blumenauer Amendment language (the “Leahy Amendment”) and continued the protections for the medical cannabis marketplace and its lawful participants from interference by the DOJ up and through the 2018 appropriations deadline of September 30, 2018. The deadline has passed, but the Leahy Amendment has remained in effect by virtue of a series of short-term spending bills signed on September 28, 2018, December 7, 2018, January 25, 2019 and February 8, 2019. On February 15 the amendment was renewed through the signing of the fiscal year 2019 omnibus spending bill, effective through September 30, 2019. On May 16, 2019, a House subcommittee released a base appropriations bill with the amendment included. On September 26, 2019 the Senate Appropriations Committee approved a base appropriations bill with the amendment included. On September 27, 2019 the amendment was renewed through a stopgap spending bill, and again on November 21, 2019. On December 20, 2019 the amendment was renewed through the signing of the fiscal year 2020 omnibus spending bill, effective through September 30, 2020. In July 2020, a House subcommittee introduced a base appropriations bill with the amendment included. The amendment was then renewed through a series of stopgap spending bills on October 1, 2020 December 11, 2020 December 18, 2020 December 20, 2020 and December 22, 2020. On December 27, 2020, the amendment was renewed through the signing of the fiscal year 2021 omnibus spending bill, effective through September 30, 2021. In 2021, President Joe Biden became the first president to propose a budget with the Leahy Amendment included. The amendment was then renewed through a series of stopgap spending bills on September 30, December 3, February 18, and March 11. On March 15 the amendment was renewed through the signing of the FY 2022 omnibus spending bill, effective through September 30, 2022. As of December 29, 2022, the amendment is effective through September 30, 2023.

State Regulatory Environment

The following sections describe the legal and regulatory landscape in California, which is the first state where we intend to commence our planned cannabis operations. While we will work to ensure that our operations comply with applicable state laws, regulations, and licensing requirements, for the reasons described above and the risks further described under the heading “Risk Factors”, there are significant risks associated with our planned cannabis business. Readers are strongly encouraged to carefully read and consider all of the risk factors contained under the heading “Risk Factors” below.

California Regulatory Landscape

In 1996, California was the first state to legalize medical marijuana through Proposition 215, the Compassionate Use Act of 1996. This legalized the use, possession and cultivation of medical marijuana by patients with a physician recommendation for treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

In 2003, Senate Bill 420 was signed into law establishing an optional identification card system for medical marijuana patients.

In September 2015, the California legislature passed three bills collectively known as the Medical Cannabis Regulation and Safety Act (“MCRSA”). The MCRSA established a licensing and regulatory framework for medical marijuana businesses in California. The system created multiple license types for dispensaries, infused products manufacturers, cultivation facilities, testing laboratories, transportation companies, and distributors. Edible infused product manufacturers would require either volatile solvent or non-volatile solvent manufacturing licenses depending on their specific extraction methodology. Multiple agencies would oversee different aspects of the program and businesses would require a state license and local approval to operate. However, in November 2016, voters in California overwhelmingly passed Proposition 64, the Adult Use of Marijuana Act (“AUMA”) creating an adult-use marijuana program for adults 21 years of age or older. AUMA had some conflicting provisions with MCRSA, so in June 2017, the California State Legislature passed Senate Bill No. 94, known as Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which amalgamates MCRSA and AUMA to provide a set of regulations to govern a medical and adult-use licensing regime for cannabis businesses in the State of California. The four agencies that originally regulated marijuana at the state level were the Bureau of Cannabis Control (“BCC”), California Department of Food and Agriculture (“DFA”), California Department of Public Health (“DPH”), and California Department of Tax and Fee Administration. MAUCRSA went into effect on January 1, 2018.

On July 1, 2019, California enacted A.B. 97. In relevant part, the bill authorizes licensing authorities to issue citations and fines to a licensee or an unlicensed person who violates MAUCRSA. The maximum fine is \$5,000 per violation for licensees and \$30,000 per violation for unlicensed persons. Each day of a violation constitutes a separate violation.

A.B. 97 also repeals a prior requirement that an applicant for a provisional license first hold a temporary license. The bill also requires applicants for provisional licenses to submit evidence of compliance with the California Environmental Quality Act, limits the validity of a provisional license to 12 months with subsequent renewals as approved by the relevant licensing authority, and allows licensing authorities to revoke provisional licenses for failing to diligently pursue final licensure. Finally, the bill requires the DPH to establish a certification program for manufactured cannabis products comparable to the National Organic Program and the California Organic Food and Farming Act.

On October 12, 2019, California enacted A.B. 1529. The bill mandates that all cannabis vaping cartridges and cannabis vaporizers must include a universal symbol identifying the product as a vaping product.

On July 12, 2021, California Governor Gavin Newsom signed into law Assembly Bill 141 (AB-141), which creates the Department of Cannabis Control (“DCC”). The DCC is in the process of consolidating the state’s cannabis program oversight from three of the existing agencies – the BCC, the DFA, and the DPH – under a single department in an effort to centralize and simplify regulatory and licensing oversight in California. DCC similarly announced its intention to create a single Licensing Division that would be responsible for licensing of all cannabis businesses. On or about September 15, 2021, the DCC filed emergency regulations to consolidate, clarify, and make consistent cannabis regulations to the California Office of Administrative Law. After a limited comment period, these consolidated emergency regulations were approved and became effective on or about September 27, 2021. These regulations created consistent standards for cannabis licensees across all license types, by aligning application requirements, unifying terminology, and clarifying ownership and financial interest requirements. Further consolidated regulations and modifications of existing regulations were issued for public comment on March 4, 2022.

At present, to legally operate a medical or adult-use cannabis business in California, the operator must have both a local and state license. This requires license holders to operate in cities with marijuana licensing programs. Therefore, cities in California are allowed to determine the number of licenses they will issue to marijuana operators or can choose to outright ban marijuana.

California Licensing Requirements

A medicinal retailer license permits the sale of medicinal cannabis and cannabis products to a medicinal cannabis patient in California who possesses a physician's recommendation. Only certified physicians may provide medicinal marijuana recommendations. An adult-use retailer license permits the sale of cannabis and cannabis products to any individual age 21 years of age or older who presents a valid government-issued photo identification.

An adult-use or medicinal cultivation license permits cannabis cultivation activity which means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis. Such licenses further permit the production of a limited number of non-manufactured cannabis products and the sales of cannabis to certain licensed entities within the state of California for resale or manufacturing purposes.

An adult-use or medical manufacturing license permits the manufacturing of cannabis products. Manufacturing includes the compounding, blending, extracting, infusion, packaging or repackaging, labeling or relabeling, or other preparation of a cannabis product.

In the state of California, only cannabis that is grown in the state can be sold in the state. Although California is not a vertically-integrated system, the state allows licensees to make wholesale purchase of cannabis from, or a distribution of cannabis and cannabis product to, another licensed entity within the state.

Holders of marijuana licenses in California are subject to a detailed regulatory scheme encompassing: security, staffing, sales, manufacturing standards, inspections, inventory, advertising and marketing, product packaging and labeling, records and reporting, and more. As with all jurisdictions, the full regulations, as promulgated by each applicable state agency, should be consulted for further information about any particular operational area.

Licensed cannabis businesses may partner with non-licensed business entities pursuant to intellectual property licensing agreements subject to certain disclosure requirements and approvals by the DCC.

California Dispensary Requirements

Cannabis retailers may only sell cannabis products that were received by the retail licensee from a licensed distributor or licensed microbusiness authorized to engage in distribution, and the licensed retailer must verify that the cannabis goods have not exceeded their best-by, sell-by, or expiration date if one is provided. The goods must have undergone appropriate laboratory testing, and the batch number labeled on the package of cannabis goods must match the batch number on the corresponding certificate of analysis for regulatory compliance testing. The packaging and goods must comply with all applicable laws in order for the goods to be sold at the retail location. In addition to cannabis goods, a licensed retailer may sell only cannabis accessories and licensee's branded merchandise. A licensed retailer may not provide free cannabis goods except for in certain limited circumstances.

Cannabis retailers may only display cannabis goods for inspection and sale in the retail area. Such goods may be removed from their packaging and placed in containers to allow for customer inspection, so long as the containers are not readily accessible to customers without assistance of retailer personnel. A container must be provided to the customer by the licensed retailer or its employees, who must remain with the customer at all times that the container is being inspected by the customer. Cannabis goods removed from their packaging in this way may not be sold or consumed. They must be destroyed appropriately when they are no longer being used for display.

California Reporting Requirements

The state of California uses METRC as the state's track-and-trace ("T&T") system used to track commercial cannabis activity and movement across the distribution chain for all state-issued annual licensees. The system allows for other third-party system integration via application programming interface. Only licensees have access to METRC.

California Storage, Transportation, and Security Requirements

To ensure the safety and security of cannabis business premises and to maintain adequate controls against the diversion, theft, and loss of cannabis or cannabis products, California's marijuana businesses are required to do the following:

- maintain a fully operational security alarm system;
- contract for security guard services;
- maintain a video surveillance system that records continuously 24 hours a day;
- ensure that the facility's outdoor premises have sufficient lighting;
- not dispense from its premises outside of permissible hours of operation;
- store cannabis and cannabis product only in areas per the premises diagram submitted to the state of California during the licensing process;
- store all cannabis and cannabis products in a secured, locked room or a vault;
- report to local law enforcement within 24 hours after being notified or becoming aware of the theft, diversion, or loss of cannabis; and
- ensure the safe transport of cannabis and cannabis products between licensed facilities, maintain a delivery manifest in any vehicle transporting cannabis and cannabis products. Only vehicles registered with the BCC that meet BCC distribution requirements are to be used to transport cannabis and cannabis products.

DCC Inspections

The DCC, and its authorized representatives, shall have full and immediate access to inspect and enter onto any premises licensed by the DCC. Prior notice of an inspection, investigation, review, or audit is not required. The DCC may also test any vehicle or equipment possessed by, in control of, or used by a licensee or their agents and employees for the purpose of conducting commercial cannabis activity. Moreover, it may test any cannabis goods or cannabis-related materials, or products possessed by, in control of, or used by a licensee or their agents and employees for the purpose of conducting commercial cannabis activity. The DCC may also copy any materials, books, or records of any licensee or their agents and employees. Failure to cooperate with and participate in any DCC investigation pending against the licensee may result in a licensing violation subject to discipline.

Trademarks, Flavor Concentrate Trade Secrets and Patent Rights

In the United States, we own a number of trademark registrations (designated by the ® symbol) and pending trademark applications (designated by the ™ symbol) for use in connection with our products, including "JONES®," "JONES SODA CO.®," "LEMONCOCCO®" and "MARY JONES®,".

In general, trademark registrations expire 10 years from the filing date or registration date, with the exception in Canada, where trademark registrations expire 15 years from the registration date. All trademark registrations may be renewed for a nominal fee.

Although our flavor concentrate suppliers generally own the proprietary rights to the flavors, we have the exclusive rights to our flavor concentrates developed with our current flavor concentrate suppliers, which we protect as trade secrets. We will continue to take appropriate measures to maintain the secrecy and proprietary nature of our flavor concentrates.

We consider our trademarks and trade secrets to be of considerable value and importance to our business.

Seasonality

Our sales are seasonal and we experience fluctuations in quarterly results as a result of many factors. We historically have generated a greater percentage of our revenues during the warm weather months of April through September. Sales may fluctuate materially on a quarter to quarter basis or an annual basis when we launch a new product or fill the "pipeline" of a new distribution partner or a large retail partner. Sales results may also fluctuate based on the number of stock keeping units or "SKUs" selected or removed by our distributors and retail partners through the normal course of serving consumers in the dynamic, trend-oriented beverage industry. As a result, management believes that period-to-period comparisons of results of operations are not necessarily meaningful and should not be relied upon as any indication of future performance or results expected for the fiscal year.

Employees

As of the date of this Report, we have 29 employees, all of which are full-time, and with the exception of one employee located in Canada are all located in the United States. Of our 29 employees, 17 are employed in sales and marketing capacities, 6 are employed in administrative capacities and 6 are employed in customer service, manufacturing and quality control capacities. None of our employees are represented by labor unions.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. The principal purposes of our equity and cash incentive plans are to attract, retain and reward personnel through the granting of stock-based and cash-based compensation awards, in order to increase shareholder value and the success of our Company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

Securities Exchange Act Reports and other Available Information

As a public company, we are required to file our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statements on Schedule 14A and other information (including any amendments) with the Securities and Exchange Commission (the "SEC"). You can find our SEC filings at the SEC's website at www.sec.gov.

Our Internet address is www.jonessoda.com. Information contained on our website is not part of this annual report on Form 10-K.

We make available on or through our website at www.jonessoda.com our SEC filings free of charge as soon as reasonably practicable after we electronically file the information with, or furnish it to, the SEC. In addition, the following corporate governance materials are also available on our website under "Investor Relations — Corporate Governance:"

- Audit Committee Charter
- Compensation and Governance Committee Charter
- Code of Conduct applicable to all directors, officers and employees of Jones Soda Co.
- Code of Ethics for our CEO and senior financial officers.

A copy of any of the materials filed with or furnished to the SEC or copies of the corporate governance materials described above are available free of charge and can be mailed to you upon request to Jones Soda Co., 4786 1st Avenue South, Suite 103, Seattle, Washington 98134.

Executive Officers

Mark Murray, President and Chief Executive Officer

Eric Chastain, Chief Operating Officer, President of Jones Soda Beverage Division, and Corporate Secretary

Joe Culp, Director of Finance, Interim Chief Financial Officer and Principal Financial Officer

Directors

Jamie Colbourne, Chairman

Paul Norman

Clive Sirkin

Chad Bronstein

Gregg Reichman

Mark Murray

ITEM 1A. RISK FACTORS.

You should carefully consider the following risk factors that may affect our business, including our financial condition and results of operations. The risks and uncertainties described below are not the only risks we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business. If any of the following risks actually occur, our business could be harmed, the trading price of our common stock could decline and you could lose all or part of your investment in us.

Risks Related to our Financial Condition and Capital Requirements

We have experienced recurring losses from operations and negative cash flows from operating activities

We have experienced recurring losses from operations and negative cash flows from operating activities. We incurred a net loss of \$6.4 million for the year ended December 31, 2022. Our accumulated deficit increased to \$78.2 million as of December 31, 2022 compared to the prior year's deficit of \$71.8 million.

We may encounter unforeseen expenses, difficulties, complications, delays, and other unknown factors that may adversely affect our financial condition. Our prior losses and possible future losses have had an adverse effect on our financial condition. If our products do not achieve sufficient market acceptance and our revenues do not increase as expected, we may continue to generate operating losses for the foreseeable future. If we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. Our failure to become and remain profitable would decrease the value of our company and could impair our ability to raise capital, expand our business, diversify our product offerings or continue our operations. A decline in the value of our company could cause you to lose all or part of your investment.

If we are not able to successfully execute on our future operating plans, our financial condition and results of operation may be materially adversely affected, and we may not be able to continue as a going concern.

It is critical that we meet our sales goals and increase sales going forward as our operating plan already reflects prior significant cost containment measures and may make it difficult to achieve top-line growth if further significant reductions become necessary. If we do not meet our sales goals, our available cash and working capital will decrease and our financial condition will be negatively impacted.

We may need additional financing in the future, which may not be available when needed or may be costly and dilutive.

We may require additional financing to support our working capital needs in the future. The amount of additional capital we may require, the timing of our capital needs and the availability of financing to fund those needs will depend on a number of factors, including our strategic initiatives and operating plans, the performance of our business and the market conditions for debt or equity financing. Additionally, the amount of capital required will depend on our ability to meet our sales goals and otherwise successfully execute our operating plan. We believe it is imperative that we meet these sales objectives in order to lessen our reliance on external financing in the future. We intend to continually monitor and adjust our operating plan as necessary to respond to developments in our business, our markets and the broader economy. Although we believe various debt and equity financing alternatives will be available to us to support our working capital needs, financing arrangements on acceptable terms may not be available to us when needed. Moreover, these alternatives may require significant cash payments for interest and other costs or could be highly dilutive to our existing shareholders. Any such financing alternatives may not provide us with sufficient funds to meet our long-term capital requirements. If necessary, we may explore strategic transactions that we consider to be in the best interest of the company and our shareholders, which may include, without limitation, public or private offerings of debt or equity securities, a rights offering, and other strategic alternatives; however, these options may not ultimately be available or feasible when needed.

Risk Factors Relating to Our Current Brand and Beverage Industry

We compete in an industry that is brand-conscious, so brand name recognition and acceptance of our products are critical to our success.

Our business is substantially dependent upon awareness and market acceptance of our products and brands by our target market, trendy, young consumers looking for a distinctive tonality in their beverage choices. In addition, our business depends on acceptance by our independent distributors and retailers of our brands as beverage brands that have the potential to provide incremental sales growth. If we are not successful in the revitalization and growth of our brand and product offerings, we may not achieve and maintain satisfactory levels of acceptance by independent distributors and retail consumers. Any failure of our Jones Soda brand to maintain or increase acceptance or market penetration would likely have a material adverse effect on our revenues and financial results.

Our brand and image are keys to our business and any inability to maintain a positive brand image could have a material adverse effect on our results of operations.

Our success depends on our ability to maintain brand image for our existing products and effectively build up brand image for new products and brand extensions. We cannot predict whether our advertising, marketing and promotional programs will have the desired impact on our products' branding and on consumer preferences. In addition, negative public relations and product quality issues, whether real or imagined, could tarnish our reputation and image of the affected brands and could cause consumers to choose other products. Our brand image can also be adversely affected by unfavorable reports, studies and articles, litigation, or regulatory or other governmental action, whether involving our products or those of our competitors.

Competition from traditional and large, well-financed non-alcoholic beverage manufacturers may adversely affect our distribution relationships and may hinder development of our existing markets, as well as prevent us from expanding our markets.

The beverage industry is highly competitive. We compete with other beverage companies not only for consumer acceptance but also for shelf space in retail outlets and for marketing focus by our distributors, all of whom also distribute other beverage brands. Our products compete with all non-alcoholic beverages, most of which are marketed by companies with substantially greater financial resources than ours. Some of these competitors are placing severe pressure on independent distributors not to carry competitive sparkling brands such as ours. We also compete with regional beverage producers and "private label" soft drink suppliers.

Our direct competitors in the sparkling beverage category include traditional large beverage companies and distributors, and regional premium soft drink companies. These national and international competitors have advantages such as lower production costs, larger marketing budgets, greater financial and other resources and more developed and extensive distribution networks than ours. We may not be able to grow our volumes or maintain our selling prices, whether in existing markets or as we enter new markets.

Increased competitor consolidations, market-place competition, particularly among branded beverage products, and competitive product and pricing pressures could impact our earnings, market share and volume growth. If, due to such pressure or other competitive threats, we are unable to sufficiently maintain or develop our distribution channels, we may be unable to achieve our current revenue and financial targets. As a means of maintaining and expanding our distribution network, we intend to introduce product extensions and additional brands. We may not be successful in doing this, or it may take us longer than anticipated to achieve market acceptance of these new products and brands, if at all. Other companies may be more successful in this regard over the long term. Competition, particularly from companies with greater financial and marketing resources than ours, could have a material adverse effect on our existing markets, as well as on our ability to expand the market for our products.

We compete in an industry characterized by rapid changes in consumer preferences and public perception, so our ability to continue developing new products to satisfy the changing preferences of consumers will determine our long-term success.

Failure to introduce new brands, products or product extensions into the marketplace as current ones mature and to meet the changing preferences of consumers could prevent us from gaining market share and achieving long-term profitability. Product lifecycles can vary and consumer preferences and loyalties change over time. Although we try to anticipate these shifts and innovate new products to introduce to our consumers, we may not succeed. Consumer preferences also are affected by factors other than taste, such as health and nutrition considerations and obesity concerns, shifting consumer needs, changes in consumer lifestyles, increased consumer information and competitive product and pricing pressures. Sales of our products may be adversely affected by the negative publicity associated with these issues. If we do not adequately anticipate or adjust to respond to these and other changes in consumer preferences, we may not be able to maintain and grow our brand image and our sales may be adversely affected.

We may experience a reduced demand for some of our products due to health concerns (including obesity) and legislative initiatives against sweetened beverages.

Consumers are concerned about health and wellness; public health officials and government officials are increasingly vocal about obesity and its consequences. There has been a trend among some public health advocates and dietary guidelines to recommend a reduction in sweetened beverages, as well as increased public scrutiny, new taxes on sugar-sweetened beverages (as described below), and additional governmental regulations concerning the marketing and labeling/packing of the beverage industry. Additional or revised regulatory requirements, whether labeling, tax or otherwise, could have a material adverse effect on our financial condition and results of operations. Further, increasing public concern with respect to sweetened beverages could reduce demand for our beverages and increase desire for more low-calorie soft drinks, water, enhanced water, coffee-flavored beverages, tea, and beverages with natural sweeteners. We are continuously working to reduce calories and sugar in our Jones Cane Sugar products while launching additional products like Lemoncocco, to pair with existing brand extensions such as Jones Sugar Free that round out our diversified portfolio.

Legislative or regulatory changes that affect our products, including new taxes, could reduce demand for products or increase our costs.

Taxes imposed on the sale of certain of our products by federal, state and local governments in the United States, or other countries in which we operate could cause consumers to shift away from purchasing our beverages. Several municipalities in the United States have implemented or are considering implementing taxes on the sale of certain “sugared” beverages, including non-diet soft drinks, fruit drinks, teas and flavored waters to help fund various initiatives. These taxes could materially affect our business and financial results.

Risk Factors Relating to the Cannabis Industry

Our plans to expand our cannabis operations may not be successful, which would have an adverse impact on our business, financial condition and results of operations.

Our strategy for growth in the cannabis industry is dependent on, among other things, our ability to partner with local licensed cannabis manufacturers to launch and market THC/CBD-infused and/or cannabis-infused beverages, tinctures, edibles and other products. Although we intend to devote significant financial and other resources to expanding our business to the production of cannabis-containing beverages and related products, these efforts may not be commercially successful or achieve the desired results. Our financial results and our ability to maintain or improve our competitive position will depend on our ability to effectively gauge the direction of the cannabis industry and successfully identify, develop, market and sell new or improved products and services in this changing marketplace. Our inability to successfully implement our cannabis strategy could have a material adverse effect on our business, financial condition and results of operations

Companies that operate in the cannabis industry face unique and evolving risks

If we expand our business to the production or sale of cannabis containing beverages, edibles and related products as currently planned, we and our operations may be adversely effected by the risks faced by companies operating in the cannabis industry, including but not limited to, the following:

Marijuana remains illegal under United States federal law

Marijuana is a Schedule-I controlled substance under the Controlled Substances Act, or CSA, and is illegal under federal law. It remains illegal under United States federal law to grow, cultivate, sell or possess marijuana for any purpose or to assist or conspire with those who do so. Additionally, 21 U.S.C. 856 a.1. states that it shall be unlawful to “knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance.” Even in those states in which the use of marijuana has been authorized, its use remains a violation of federal law. Since federal law criminalizing the use of marijuana is not preempted by state laws that legalize its use, strict enforcement of federal law regarding marijuana would likely adversely affect demands for any cannabis products we develop.

Uncertainty of federal enforcement

On January 4, 2018, former Attorney General Sessions rescinded the previously issued memoranda (known as the Cole Memorandum) from the DOJ that had de-prioritized the enforcement of federal law against marijuana users and businesses that comply with state marijuana laws, adding uncertainty to the question of how the federal government will choose to enforce federal laws regarding marijuana. Former Attorney General Sessions issued a memorandum to all United States Attorneys in which the DOJ affirmatively rescinded the previous guidance as to marijuana enforcement, calling such guidance “unnecessary.” This one-page memorandum was vague in nature, stating that federal prosecutors should use established principles in setting their law enforcement priorities. Under previous administrations, the DOJ indicated that those users and suppliers of medical marijuana who complied with state laws, which required compliance with certain criteria, would not be prosecuted. On November 7, 2018, Jeff Sessions resigned from his position as Attorney General. The current Attorney General, Merrick Garland, has not indicated any change in enforcement priority for state-compliant marijuana businesses, however, substantial uncertainty regarding federal enforcement remains. Most recently, President Biden announced pardons for persons convicted for simple cannabis possession under federal law and indicated policy priorities geared toward cannabis reform. Regardless, the federal government has always reserved the right to enforce federal law regarding the sale and disbursement of medical or recreational marijuana, even if state law sanctioned such sale and disbursement. Although the rescission of the Cole Memorandum does not necessarily indicate that marijuana industry prosecutions are now affirmatively a priority for the DOJ, there can be no assurance that the federal government will not enforce such laws in the future. Likewise, although President Biden has made policy directive encouraging reform by states and federal agencies, those statements have not changed the underlying applicable federal law. As a result, it is now unclear if the DOJ will seek to enforce the CSA against those users and suppliers who comply with state marijuana laws.

In 2014, Congress passed a spending bill, or the 2015 Appropriations Bill, containing a provision, or the Appropriations Rider, blocking federal funds and resources allocated under the 2015 Appropriations Bill from being used to “prevent such States from implementing their own State medical marijuana law.” The Appropriations Rider provided a budgetary constraint on the federal government from interfering with the ability of states to administer their medical marijuana laws, although it did not codify federal protections for medical marijuana patients and producers. Moreover, despite the Appropriations Rider, the DOJ maintains that it can still prosecute violations of the federal marijuana ban and continue cases already in the courts. However, the Ninth Circuit Court of Appeals and other courts have interpreted the language to mean that the DOL cannot prosecute medical marijuana operators complying strictly with state medical marijuana laws. Additionally, the Appropriations Rider must be re-enacted every year. The Appropriations Rider was renewed on December 20, 2019 through the signing of the fiscal year 2020 omnibus spending bill, effective through September 30, 2020, continued re-authorization of the Appropriations Rider cannot be guaranteed. Subsequently, the Appropriations Rider was extended through a series of stopgap spending bills on October 1, December 11, December 18, December 20 and December 22, 2020. On December 27, 2020 the Appropriations Rider was included in the fiscal year 2021 omnibus spending bill and will remain in effect through September 30, 2021. If the Appropriation Rider is not extended in the future, the risk of federal enforcement and override of state medical marijuana laws would increase.

Despite the rescission of the Cole Memorandum, the Department of the Treasury, Financial Crimes Enforcement Network, has not rescinded the “FinCEN Memo” dated February 14, 2014, which de-prioritizes enforcement of the Bank Secrecy Act against financial institutions and marijuana-related businesses which utilize them. This memo appears to be a standalone document and is presumptively still in effect. At any time, however, the Department of the Treasury, Financial Crimes Enforcement Network, could elect to rescind the FinCEN Memo. This would make it more difficult for us and our clients and potential clients to access the U.S. banking systems and conduct financial transactions, which would adversely affect our operations.

We could become subject to racketeering laws

The Racketeer Influenced Corrupt Organizations Act (“RICO”) is a federal statute providing criminal penalties in addition to a civil cause of action for acts performed as part of an ongoing criminal organization. Under RICO, it is unlawful for any person who has received income derived from a pattern of racketeering activity (which includes most felonious violations of the CSA), to use or invest any of that income in the acquisition of any interest, or the establishment or operation of, any enterprise which is engaged in interstate commerce. RICO also authorizes private parties whose properties or businesses are harmed by such patterns of racketeering activity to initiate a civil action against the individuals involved. Although RICO suits against the cannabis industry are rare, a few cannabis businesses have been subject to a civil RICO action. Any violation of RICO could result in significant fines, penalties, administrative sanctions, convictions or settlements arising from civil proceedings conducted by either the federal government or private citizens or criminal charges, including but not limited to, seizure of assets, disgorgement of profits, cessation of our business activities or divestiture.

Banking regulations could limit access to banking services and expose us to risk

In February 2014, the FCEN of the U.S. Department of the Treasury issued the FCEN Memo. The FCEN Memo states that in some circumstances, it may not be appropriate to prosecute banks that provide services to marijuana-related businesses for violations of federal money laundering laws. It refers to supplementary guidance that Deputy Attorney General Cole issued to federal prosecutors relating to the prosecution of money laundering offenses predicated on cannabis-related violations of the CSA. It is unclear at this time whether the current administration will follow the guidelines of the FCEN Memo. Under U.S. federal law, banks or other financial institutions that provide a cannabis-related business with a checking account, debit or credit card, small business loan, or any other service could be found guilty of money laundering, aiding and abetting, or conspiracy. As a result, any cannabis operations we develop may have the effect of limiting our access to banking or other financial services in the United States. The inability or limitation on our ability to open or maintain bank accounts in the United States, to obtain other banking services and/or accept credit card and debit card payments may make it difficult to operate and conduct our business. Although multiple legislative reforms related to cannabis and cannabis-related banking are currently being considered by the federal government in the United States, such as the Strengthening the Tenth Amendment Through Entrusting States Act, the Marijuana Opportunity, Reinvestment and Expungement Act and the Secure and Fair Enforcement Banking Act, there can be no assurance that any of these pieces of legislation will become law in the United States.

Further legislative development beneficial to our operations is not guaranteed

The success of our planned business expansion into cannabis products will depend on the continued development of the cannabis industry and the activity of commercial business and government regulatory agencies within the industry. The continued development of the cannabis industry is dependent upon continued legislative and regulatory authorization of cannabis at the state level and a continued laissez-faire approach by federal enforcement agencies. Any number of factors could slow or halt progress in this area. Further regulatory progress beneficial to the industry cannot be assured. While there may be ample public support for legislative action, numerous factors impact the legislative and regulatory process, including election results, scientific findings or general public events. Any one of these factors could slow or halt progressive legislation relating to cannabis and the current tolerance for the use of cannabis by consumers, which could adversely affect the demand for our product and operations.

Changing legislation and evolving interpretations of the law

Laws and regulations affecting the medical and adult-use marijuana industry are constantly changing, which could detrimentally affect our planned cannabis operations. Local, state, and federal marijuana laws and regulations are broad in scope and subject to evolving interpretations, which could require us to incur substantial costs associated with modification of operations to ensure compliance. In addition, violations of these laws, or allegations of such violations, could disrupt our planned cannabis business and result in a material adverse effect on our operations. We cannot predict the nature of any future laws, regulations, interpretations, or applications, nor can we determine what effect additional governmental regulations or administrative policies and procedures, when and if promulgated, could have on our operations.

Dependence on client licensing

Our planned cannabis business will be dependent on us obtaining or partnering on various licenses from various municipalities and state licensing agencies. There can be no assurance that any or all licenses necessary for us to operate our planned cannabis businesses will be obtained, retained or renewed. If a licensing body were to determine that we had violated applicable rules and regulations, there is a risk the license granted to us could be revoked, which could adversely affect our operations.

Insurance risks

In the United States, many marijuana-related businesses are subject to a lack of adequate insurance coverage. In addition, many insurance companies may deny claims for any loss relating to marijuana or marijuana-related operations based on their illegality under federal law, noting that a contract for an illegal transaction is unenforceable.

The cannabis industry is an evolving industry and we must anticipate and respond to changes.

The cannabis industry is not yet well-developed, and many aspects of this industry's development and evolution cannot be accurately predicted. While we have attempted to identify any risks specific to the cannabis industry that would be applicable to our planned cannabis operations, you should carefully consider that there are other risks that cannot be foreseen or are not described in this report, which could materially and adversely affect the development of our cannabis business and our future financial performance. We expect that the cannabis market and our business will evolve in ways that are difficult to predict. Our long-term success will depend on our ability to successfully adjust our strategy to meet the changing market dynamics. If we are unable to successfully adapt to changes in the cannabis industry, our operations could be adversely affected.

Risk Factors Relating to Our Business Operations and Financial Results

Our reliance on distributors, retailers and brokers could affect our ability to efficiently and profitably distribute and market our products, maintain our existing markets and expand our business into other geographic markets.

Our ability to maintain and expand our existing markets for our products, and to establish markets in new geographic distribution areas, is dependent on our ability to establish and maintain successful relationships with reliable distributors, retailers and brokers strategically positioned to serve those areas. Most of our distributors, retailers and brokers sell and distribute competing products, including non-alcoholic and alcoholic beverages, and our products may represent a small portion of their businesses. The success of this network will depend on the performance of the distributors, retailers and brokers of this network. There is a risk that the mentioned entities may not adequately perform their functions within the network by, without limitation, failing to distribute to sufficient retailers or positioning our products in localities that may not be receptive to our product. Our ability to incentivize and motivate distributors to manage and sell our products is affected by competition from other beverage companies who have greater resources than we do. To the extent that our distributors, retailers and brokers are distracted from selling our products or do not employ sufficient efforts in managing and selling our products, including re-stocking the retail shelves with our products, our sales and results of operations could be adversely affected. Furthermore, such third-parties' financial position or market share may deteriorate, which could adversely affect our distribution, marketing and sales activities.

Our ability to maintain and expand our distribution network and attract additional distributors, retailers and brokers will depend on a number of factors, some of which are outside our control. Some of these factors include:

- the level of demand for our brands and products in a particular distribution area;
- our ability to price our products at levels competitive with those of competing products; and
- our ability to deliver products in the quantity and at the time ordered by distributors, retailers and brokers.

We may not be able to successfully manage all or any of these factors in any of our current or prospective geographic areas of distribution. Our inability to achieve success with regards to any of these factors in a geographic distribution area will have a material adverse effect on our relationships in that particular geographic area, thus limiting our ability to maintain or expand our market, which will likely adversely affect our revenues and financial results.

We incur significant time and expense in attracting and maintaining key distributors.

Our marketing and sales strategy depends in large part on the availability and performance of our independent distributors. We currently do not have, nor do we anticipate in the future that we will be able to establish, long-term contractual commitments from some of our distributors. We may not be able to maintain our current distribution relationships or establish and maintain successful relationships with distributors in new geographic distribution areas. Moreover, there is the additional possibility that we may have to incur additional expenditures to attract and maintain key distributors in one or more of our geographic distribution areas in order to profitably exploit our geographic markets.

If we lose any of our key distributors or national retail accounts, our financial condition and results of operations could be adversely affected.

For the year ended December 31, 2022, A. Lassonde Inc. (“Lassonde”), one of our independent distributors and our top account by revenue represented approximately 17% of revenue. We continually seek to expand and upgrade our distributor network, DTR accounts and national retail relationships. However, we may not be able to maintain our key distributor base. The loss of any of our key distributors (such as Lassonde) or national accounts would have a material adverse effect on our revenues, liquidity and financial results, could negatively impact our ability to retain our relationships with our other distributors and our ability to expand our market, and would place increased dependence on our other independent distributors and national accounts.

It is difficult to predict the timing and amount of our sales because our distributors are not required to place minimum orders with us.

Our independent distributors and national accounts are not required to place minimum monthly or annual orders for our products. In order to reduce their inventory costs, independent distributors typically order products from us on a “just in time” basis in quantities and at such times based on the demand for the products in a particular distribution area. Accordingly, we cannot predict the timing or quantity of purchases by any of our independent distributors or whether any of our distributors will continue to purchase products from us in the same frequencies and volumes as they may have done in the past. Additionally, our larger distributors and national partners, may make orders that are larger than we have historically been required to fill. Shortages in inventory levels, supply of raw materials or other key supplies could negatively affect us.

If we do not adequately manage our inventory levels, our operating results could be adversely affected.

We need to maintain adequate inventory levels to be able to deliver products to distributors on a timely basis. Our inventory supply depends on our ability to correctly estimate demand for our products. Our ability to estimate demand for our products is imprecise, particularly for new products, seasonal promotions and new markets. If we materially underestimate demand for our products or are unable to maintain sufficient inventory of raw materials, we might not be able to satisfy demand on a short-term basis. If we overestimate distributor or retailer demand for our products, we may end up with too much inventory, resulting in higher storage costs, increased trade spend and the risk of inventory spoilage. If we fail to manage our inventory to meet demand, we could damage our relationships with our distributors and retailers and could delay or lose sales opportunities, which would unfavorably impact our future sales and adversely affect our operating results. In addition, if the inventory of our products held by our distributors and retailers is too high, they will not place orders for additional products, which would also unfavorably impact our sales and adversely affect our operating results.

If we fail to maintain relationships with our independent contract manufacturers, our business could be harmed.

We do not manufacture our products but instead outsource the manufacturing process to third-party bottlers and independent contract manufacturers (co-packers). We do not own the plants or the majority of the equipment required to manufacture and package our beverage products, and we do not anticipate bringing the manufacturing process in-house in the future. Our ability to maintain effective relationships with contract manufacturers and other third parties for the production and delivery of our beverage products in a particular geographic distribution area is important to the success of our operations within each distribution area. Competition for contract manufacturers’ business is intense, especially in the western United States, and this could make it more difficult for us to obtain new or replacement manufacturers, or to locate back-up manufacturers, in our various distribution areas, and could also affect the economic terms of our agreements with our existing manufacturers. We may not be able to maintain our relationships with current contract manufacturers or establish satisfactory relationships with new or replacement contract manufacturers, whether in existing or new geographic distribution areas. The failure to establish and maintain effective relationships with contract manufacturers for a distribution area could increase our manufacturing costs and thereby materially reduce gross profits from the sale of our products in that area. Poor relations with any of our contract manufacturers could adversely affect the amount and timing of product delivered to our distributors for resale, which would in turn adversely affect our revenues and financial condition. In addition, our agreements with our contract manufacturers are terminable at any time, and any such termination could disrupt our ability to deliver products to our customers.

Our dependence on independent contract manufacturers could make management of our manufacturing and distribution efforts inefficient or unprofitable.

We are expected to arrange for our contract manufacturing needs sufficiently in advance of anticipated requirements, which is customary in the contract manufacturing industry for comparably sized companies. Based on the cost structure and forecasted demand for the particular geographic area where our contract manufacturers are located, we continually evaluate which of our contract manufacturers to use. To the extent demand for our products exceeds available inventory or the production capacity of our contract manufacturing arrangements, or orders are not submitted on a timely basis, we will be unable to fulfill distributor orders on demand. Conversely, we may produce more product inventory than warranted by the actual demand for it, resulting in higher storage costs and the potential risk of inventory spoilage. Our failure to accurately predict and manage our contract manufacturing requirements and our inventory levels may impair relationships with our independent distributors and key accounts, which, in turn, would likely have a material adverse effect on our ability to maintain effective relationships with those distributors and key accounts.

Increases in costs or shortages of raw materials could harm our business and financial results.

The principal raw materials we use include glass bottles, aluminum cans, labels and cardboard cartons, aluminum closures, flavorings, sucrose/inverted pure cane sugar and sucralose. In addition, certain of our contract manufacturing arrangements allow such contract manufacturers to increase their charges to us based on their own cost increases. These manufacturing and ingredient costs are subject to fluctuation. Substantial increases in the prices of our ingredients, raw materials and packaging materials, to the extent that they cannot be recouped through increases in the prices of finished beverage products, would increase our operating costs and could reduce our profitability. If our supply of these raw materials is impaired or if prices increase significantly, it could affect the affordability of our products and reduce sales.

The beverage industry has experienced increased prices for glass bottles over the last several years and the availability of glass supply diminished for companies not under contract. Our fixed-price purchase commitment for glass, which helps mitigate the risk of unexpected price increases, expires at the end of 2023. The prices of any of the above or any other raw materials or ingredients may continue to rise in the future. Due to the price sensitivity of our products, we may not be able to pass such increases on to our customers, which could have a material adverse effect on our business and financial results.

If we are unable to secure sufficient ingredients or raw materials including glass, sugar, and other key supplies, we might not be able to satisfy demand on a short-term basis. Moreover, in the past there have been industry-wide shortages of certain concentrates, supplements and sweeteners and these shortages could occur again from time to time in the future, which could interfere with and delay production of our products and could have a material adverse effect on our business and financial results.

In addition, suppliers could fail to provide ingredients or raw materials on a timely basis, or fail to meet our performance expectations, for a number of reasons, including, for example, disruption to the global supply chain as a result of the COVID-19 pandemic, which could cause a serious disruption to our business, increase our costs, decrease our operating efficiencies and have a material adverse effect on our business, results of operations and financial condition.

Increases in costs of energy and increased regulations may have an adverse impact on our gross margin.

Over the past few years, volatility in the global oil markets has resulted in high fuel prices, which many shipping companies have passed on to their customers by way of higher base pricing and increased fuel surcharges. If fuel prices increase, we expect to experience higher shipping rates and fuel surcharges, as well as energy surcharges on our raw materials. It is hard to predict what will happen in the fuel markets in 2022 and beyond. Due to the price sensitivity of our products, we may not be able to pass such increases on to our customers.

Disruption within our supply chain, contract manufacturing or distribution channels could have an adverse effect on our business, financial condition and results of operations.

Our ability, through our suppliers, business partners, contract manufacturers, independent distributors and retailers, to make, move and sell products is critical to our success. Damage or disruption to our suppliers or to manufacturing or distribution capabilities due to weather, natural disaster, fire or explosion, terrorism, pandemics such as influenza and the COVID-19 pandemic, labor strikes or other reasons, could impair the manufacture, distribution and sale of our products. Many of these events are outside of our control. Failure to take adequate steps to protect against or mitigate the likelihood or potential impact of such events, or to effectively manage such events if they occur, could adversely affect our business, financial condition and results of operations. As the the global supply chain continues to see disruptions, there is higher risk for continued labor shortages, raw material cost increases, and increased costs of transportation that will adversely impact our business. The extent to which the global supply chain disruptions may continue to impact our results of operations, including the long-term nature of the impact, depends on numerous evolving factors, which are highly uncertain and difficult to predict.

We rely upon our ongoing relationships with our key flavor suppliers. If we are unable to source our flavors on acceptable terms from our key suppliers, we could suffer disruptions in our business.

We currently purchase our flavor concentrate from various flavor concentrate suppliers, and continually develop other sources of flavor concentrate for each of our products. Generally, flavor suppliers hold the proprietary rights to their flavors. Although we have the exclusive rights to flavor concentrates developed with our current flavor concentrate suppliers, we do not have the list of ingredients or formulas for our flavors and concentrates. Consequently, we may be unable to obtain these same flavors or concentrates from alternative suppliers on short notice. If we have to replace a flavor supplier, we could experience disruptions in our ability to deliver products to our customers, which could have a material adverse effect on our results of operations.

If we are unable to attract and retain key personnel, our efficiency and operations would be adversely affected; in addition, management turnover causes uncertainties and could harm our business.

Our success depends on our ability to attract and retain highly qualified employees in such areas as finance, sales, marketing and product development. We compete to hire new employees, and, in some cases, must train them and develop their skills and competencies. We may not be able to provide our employees with competitive salaries, and our operating results could be adversely affected by increased costs due to increased competition for employees, higher employee turnover or increased employee benefit costs.

To the extent we experience management turnover, our operations, financial condition and employee morale could be negatively impacted. In addition, competition for top management is high and it may take months to find a candidate that meets our requirements. If we are unable to attract and retain qualified management personnel, our business could suffer.

If we lose the services of our Chief Executive Officer or Chief Operating Operator, our operations could be disrupted and our business could be harmed.

Our business plan relies significantly on the continued services of Mark Murray, who we hired as our Chief Executive Officer and President in December 2020, and on the continued services of Eric Chastain, our Chief Operating Officer and President of Jones Soda Beverage Division, who was appointed as our Chief Operating Officer effective June 2014 and has been with the Company for 20 years. If we were to lose the services of Mr. Murray or Mr. Chastain, our ability to execute our business plan could be materially impaired. We are not aware of any facts or circumstances that suggest they might leave us.

If we fail to protect our trademarks and trade secrets, we may be unable to successfully market our products and compete effectively.

We rely on a combination of trademark and trade secrecy laws, confidentiality procedures and contractual provisions to protect our intellectual property rights. Failure to protect our intellectual property could harm our brand and our reputation, and adversely affect our ability to compete effectively. Further, enforcing or defending our intellectual property rights, including our trademarks, copyrights, licenses and trade secrets, could result in the expenditure of significant financial and managerial resources. We regard our intellectual property, particularly our trademarks and trade secrets to be of considerable value and importance to our business and our success, and we actively pursue the registration of our trademarks in the United States, Canada and internationally. However, the steps taken by us to protect these proprietary rights may not be adequate and may not prevent third parties from infringing or misappropriating our trademarks, trade secrets or similar proprietary rights. In addition, other parties may seek to assert infringement claims against us, and we may have to pursue litigation against other parties to assert our rights. Any such claim or litigation could be costly. In addition, any event that would jeopardize our proprietary rights or any claims of infringement by third parties could have a material adverse effect on our ability to market or sell our brands, profitably exploit our products or recoup our associated research and development costs.

As part of the licensing strategy of our brands, we enter into licensing agreements under which we grant our licensing partners certain rights to use our trademarks and other designs. Although our agreements require that the use of our trademarks and designs is subject to our control and approval, any breach of these provisions, or any other action by any of our licensing partners that is harmful to our brands, goodwill and overall image, could have a material adverse impact on our business.

If we encounter product recalls or other product quality issues, our business may suffer.

Product quality issues, real or imagined, or allegations of product contamination, even when false or unfounded, could tarnish our image and could cause consumers to choose other products. In addition, because of changing government regulations or implementation thereof, or allegations of product contamination, we may be required from time to time to recall products entirely or from specific markets. Product recalls could affect our profitability and could negatively affect brand image.

We could be exposed to product liability claims.

Although we have product liability and basic recall insurance, insurance coverage may not be sufficient to cover all product liability claims that may arise. To the extent our product liability coverage is insufficient, a product liability claim would likely have a material adverse effect upon our financial condition. In addition, any product liability claim brought against us may materially damage the reputation and brand image of our products and business.

Our business is subject to many regulations and noncompliance is costly.

The production, marketing and sale of our beverages, including contents, labels, caps and containers, are subject to the rules and regulations of various federal, provincial, state and local health agencies. If a regulatory authority finds that a current or future product or production batch or “run” is not in compliance with any of these regulations, we may be fined, or production may be stopped, which would adversely affect our financial condition and results of operations. Similarly, any adverse publicity associated with any noncompliance may damage our reputation and our ability to successfully market our products. Furthermore, the rules and regulations are subject to change from time to time and while we closely monitor developments in this area, we cannot anticipate whether changes in these rules and regulations will impact our business adversely. Additional or revised regulatory requirements, whether labeling, environmental, tax or otherwise, could have a material adverse effect on our financial condition and results of operations.

Significant additional labeling or warning requirements may inhibit sales of affected products.

Various jurisdictions may seek to adopt significant additional product labeling or warning requirements relating to the chemical content or perceived adverse health consequences of certain of our products. These types of requirements, if they become applicable to one or more of our products under current or future environmental or health laws or regulations, may inhibit sales of such products. In California, a law requires that a specific warning appear on any product that contains a component listed by the state as having been found to cause cancer or birth defects. This law recognizes no generally applicable quantitative thresholds below which a warning is not required. If a component found in one of our products is added to the list, or if the increasing sensitivity of detection methodology that may become available under this law and related regulations as they currently exist, or as they may be amended, results in the detection of an infinitesimal quantity of a listed substance in one of our beverages produced for sale in California, the resulting warning requirements or adverse publicity could affect our sales.

Litigation or legal proceedings could expose us to significant liabilities and damage our reputation.

We may become party to litigation claims and legal proceedings. Litigation involves significant risks, uncertainties and costs, including distraction of management attention away from our business operations. We evaluate litigation claims and legal proceedings to assess the likelihood of unfavorable outcomes and to estimate, if possible, the amount of potential losses. Based on these assessments and estimates, we establish reserves and disclose the relevant litigation claims or legal proceedings, as appropriate. These assessments and estimates are based on the information available to management at the time and involve a significant amount of management judgment. Actual outcomes or losses may differ materially from those envisioned by our current assessments and estimates. Our policies and procedures require strict compliance by our employees and agents with all U.S. and local laws and regulations applicable to our business operations, including those prohibiting improper payments to government officials. Nonetheless, our policies and procedures may not ensure full compliance by our employees and agents with all applicable legal requirements. Improper conduct by our employees or agents could damage our reputation or lead to litigation or legal proceedings that could result in civil or criminal penalties, including substantial monetary fines, as well as disgorgement of profits.

We are subject to risks inherent in sales of products in international markets.

Our operations outside of the United States, contribute to our revenue and profitability, and we believe that developing and emerging markets could present future growth opportunities for us. However, there can be no assurance that existing or new products that we manufacture, distribute or sell will be accepted or be successful in any particular foreign market, due to local or global competition, product price, cultural differences, consumer preferences or otherwise. There are many factors that could adversely affect demand for our products in foreign markets, including our inability to attract and maintain key distributors in these markets; volatility in the economic growth of certain of these markets; changes in economic, political or social conditions, the status and renegotiations of the North American Free Trade Agreement, imposition of new or increased labeling, product or production requirements, or other legal restrictions; restrictions on the import or export of our products or ingredients or substances used in our products; inflationary currency, devaluation or fluctuation; increased costs of doing business due to compliance with complex foreign and U.S. laws and regulations. If we are unable to effectively operate or manage the risks associated with operating in international markets, our business, financial condition or results of operations could be adversely affected.

Climate change may negatively affect our business.

There is growing concern that a gradual increase in global average temperatures may cause an adverse change in weather patterns around the globe resulting in an increase in the frequency and severity of natural disasters. While warmer weather has historically been associated with increased sales of our products, changing weather patterns could have a negative impact on agricultural productivity, which may limit availability or increase the cost of certain key ingredients such as sugar cane, natural flavors and supplements used in our products. Also, increased frequency or duration of extreme weather conditions may disrupt the productivity of the facilities that produce our products, the operation of our supply chain or impact demand for our products. In addition, the increasing concern over climate change may result in more regional, federal and global legal and regulatory requirements and could result in increased production, transportation and raw material costs. As a result, the effects of climate change could have a long-term adverse impact on our business and results of operations.

Our business and operations would be adversely impacted in the event of a failure or interruption of our information technology infrastructure or as a result of a cybersecurity attack.

The proper functioning of our own information technology (IT) infrastructure is critical to the efficient operation and management of our business. We may not have the necessary financial resources to update and maintain our IT infrastructure, and any failure or interruption of our IT system could adversely impact our operations. In addition, our IT is vulnerable to cyberattacks, computer viruses, worms and other malicious software programs, physical and electronic break-ins, sabotage and similar disruptions from unauthorized tampering with our computer systems. We believe that we have adopted appropriate measures to mitigate potential risks to our technology infrastructure and our operations from these IT-related and other potential disruptions. However, given the unpredictability of the timing, nature and scope of any such IT failures or disruptions, we could potentially be subject to downtimes, transactional errors, processing inefficiencies, operational delays, other detrimental impacts on our operations or ability to provide products to our customers, the compromising of confidential or personal information, destruction or corruption of data, security breaches, other manipulation or improper use of our systems and networks, financial losses from remedial actions, loss of business or potential liability, and/or damage to our reputation, any of which could have a material adverse effect on our cash flows, competitive position, financial condition or results of operations.

Our results of operations may fluctuate from quarter to quarter for many reasons, including seasonality.

Our sales are seasonal and we experience fluctuations in quarterly results as a result of many factors. We historically have generated a greater percentage of our revenues during the warm weather months of April through September. Timing of customer purchases will vary each year and sales can be expected to shift from one quarter to another. As a result, management believes that period-to-period comparisons of results of operations are not necessarily meaningful and should not be relied upon as any indication of future performance or results expected for the fiscal year.

In addition, our operating results may fluctuate due to a number of other factors including, but not limited to:

- Our ability to maintain, develop and expand distribution channels for current and new products, develop favorable arrangements with third party distributors of our products and minimize or reduce issues associated with engaging new distributors and retailers, including, but not limited to, transition costs and expenses and down time resulting from the initial deployment of our products in each new distributor's network;
- Unilateral decisions by distributors, grocery store chains, specialty chain stores, club stores, mass merchandisers and other customers to discontinue carrying all or any of our products that they are carrying at any time;
- Our ability to maintain, develop and expand our direct-to-retail sales channels and national retail accounts, as well as our "myJones" business;
- Our ability to manage our resources to sufficiently support general operating activities, promotion allowances and slotting fees, promotion and selling activities, and capital expansion, and our ability to sustain profitability;
- Our ability to meet the competitive response by much larger, well-funded and established companies currently operating in the beverage industry, as we introduce new competitive products, such as Lemnoco and our fountain products; and
- Competitive products and pricing pressures and our ability to gain or maintain share of sales in the marketplace as a result of actions by competitors.

Due to these and other factors, our results of operations have fluctuated from period to period and may continue to do so in the future, which could cause our operating results in a particular quarter to fail to meet market expectations.

Our business and periodic financial results can be affected by currency rate fluctuations, because a significant percentage of our business is in Canada.

A significant percentage of our sales are conducted through our Canadian subsidiary, for which we receive revenues in the Canadian dollar. In addition, a significant percentage of our costs of goods are denominated in the Canadian dollar, due to our co-packing facility in Canada. Because of this we are affected by changes in U.S. exchange rates with the Canadian dollar.

In preparing our consolidated financial statements, certain financial information is required to be translated from the Canadian dollar to the U.S. dollar. The translation of our Canadian revenues, cash and other assets is adversely affected when the United States dollar strengthens against the Canadian dollar and is positively affected when the U.S. dollar weakens. Similarly, translation of our Canadian expenses and liabilities is positively affected when the U.S. dollar strengthens against the Canadian dollar and adversely affected when the U.S. dollar weakens. This exposure to foreign currency risk could significantly affect our revenues and profitability from our Canadian operations and could result in significant fluctuations to our periodic income statements and consolidated balance sheets.

Throughout 2022, the U.S. dollar's strength fluctuated significantly in comparison to the Canadian dollar. As of February 13, 2023, the Canadian dollar exchange rate for one U.S. dollar was equal to \$0.74 (was also \$0.74 as of December 31, 2022 but \$0.79 as of December 31, 2021). We cannot predict future changes in these exchange rates. We do not engage in foreign currency hedging transactions.

Changes in our effective tax rate may impact our results of operations.

We are subject to taxes in the U.S. and other jurisdictions. Tax rates in these jurisdictions may be subject to significant change due to economic and/or political conditions. A number of other factors may also impact our future effective tax rate including:

- the jurisdictions in which profits are determined to be earned and taxed;
- the resolution of issues arising from tax audits with various tax authorities;
- changes in valuation of our deferred tax assets and liabilities;
- increases in expenses not deductible for tax purposes, including write-offs of acquired intangibles and impairment of goodwill in connection with acquisitions;
- changes in availability of tax credits, tax holidays, and tax deductions;
- changes in share-based compensation; and
- changes in tax laws or the interpretation of such tax laws and changes in generally accepted accounting principles.

In December 2017, President Trump signed into law legislation that significantly revised the Internal Revenue Code. In addition, on March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was signed into law. The December 2017 law, as modified by the CARES Act, among other things, contained significant changes to corporate taxation, including reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21% beginning in 2018, limitation of the tax deduction for interest expense to 30% of adjusted earnings, limitation of the deduction for net operating losses to 80% of current year taxable income and elimination of net operating loss carrybacks for tax years beginning in 2021, one time taxation of offshore earnings at reduced rates regardless of whether they are repatriated, immediate deductions for certain new investments instead of deductions for depreciation expense over time, and modifying or repealing many business deductions and credits (including reducing the business tax credit for certain clinical testing expenses incurred in the testing of certain drugs for rare diseases or conditions). Notwithstanding the reduction in the corporate income tax rate, the overall impact of the new federal tax laws remain uncertain and our business and financial condition could be adversely affected. In addition, it is uncertain if and to what extent various states will conform to the newly enacted federal tax laws. The impact of this tax reform on holders of our common stock is also uncertain and could be adverse. We urge shareholders to consult with their legal and tax advisors with respect to this legislation and the potential tax consequences of investing in or holding our common stock.

Global economic, political, social and other conditions, including the COVID-19 pandemic, may continue to adversely impact our business and results of operations.

The beverage industry, and particularly those companies selling premium beverages like us, can be affected by macro-economic factors, including changes in national, regional, and local economic conditions, unemployment levels and consumer spending patterns, which together may impact the willingness of consumers to purchase our products as they adjust their discretionary spending. Adverse economic conditions may adversely affect the ability of our distributors to obtain the credit necessary to fund their working capital needs, which could negatively impact their ability or desire to continue to purchase products from us in the same frequencies and volumes as they have done in the past. If we experience similar adverse economic conditions in the future, sales of our products could be adversely affected, collectability of accounts receivable may be compromised and we may face obsolescence issues with our inventory, any of which could have a material adverse impact on our operating results and financial condition.

Changes in accounting standards and subjective assumptions, estimates and judgments by management related to complex accounting matters could significantly affect our financial results.

The United States generally accepted accounting principles and related pronouncements, implementation guidelines and interpretations with regard to a wide variety of matters that are relevant to our business, such as, but not limited to, stock-based compensation, trade spend and promotions, and income taxes are highly complex and involve many subjective assumptions, estimates and judgments by our management. Changes to these rules or their interpretation or changes in underlying assumptions, estimates or judgments by our management could significantly change our reported results.

If we are unable to maintain effective disclosure controls and procedures and internal control over financial reporting, our stock price and investor confidence could be materially and adversely affected.

We are required to maintain both disclosure controls and procedures and internal control over financial reporting that are effective. Because of their inherent limitations, internal control over financial reporting, however well designed and operated, can only provide reasonable, and not absolute, assurance that the controls will prevent or detect misstatements. Because of these and other inherent limitations of control systems, there is only the reasonable assurance that our controls will succeed in achieving their goals under all potential future conditions. The failure of controls by design deficiencies or absence of adequate controls could result in a material adverse effect on our business and financial results, which could also negatively impact our stock price and investor confidence.

Risk Factors Related to Our Common Stock

The price of our common stock may be volatile, and a shareholder's investment in our common stock could suffer a decline in value.

There has been significant volatility in the volume and market price of our common stock, and this volatility may continue in the future. In addition, factors such as quarterly variations in our operating results, our issuance of new securities, announcements about company developments and initiatives, litigation involving us, general trends relating to the beverage industry, actions by governmental agencies, national economic and stock market considerations as well as other events and circumstances beyond our control, could have a significant impact on the future market price of our common stock and the relative volatility of such market price.

A prolonged decline in the price of our common stock could result in a reduction in the liquidity of our common stock and a reduction in our ability to raise capital. If we are unable to raise the funds required for all of our planned operations and key initiatives, we may be forced to allocate funds from other planned uses, which may negatively impact our business and operations, including our ability to develop new products and continue our current operations.

Any future equity or debt issuances by us may have dilutive or adverse effects on our existing shareholders.

From time to time, we may issue additional shares of common stock or convertible securities. The issuance of these securities could dilute our shareholders' ownership in our company and may include terms that give new investors rights that are superior to those of our current shareholders. Moreover, any issuances by us of equity securities may be at or below the prevailing market price of our common stock and in any event may have a dilutive impact on our shareholders' ownership interest, which could cause the market price of our common stock to decline.

Our common stock is traded on the OTCQB and the Canadian Stock Exchange Marketplace, which may have an unfavorable impact on our stock price and liquidity.

Our stock is traded on the OTCQB Marketplace in the United States and the Canadian Stock Exchange ("CSE") in Canada. The OTCQB and CSE are significantly more limited markets than the United States national securities exchanges such as the New York Stock Exchange, the American Stock Exchange or Nasdaq system, and there are lower financial or qualitative standards that a company must meet to be listed on the OTCQB and CSE. Trading in our common stock on each of the OTCQB and the CSE may be subject to abuses, volatility and shorting, which may have little to do with our operations or business prospects. This volatility could depress the market price of our common stock for reasons unrelated to operating performance. The Financial Industry Regulatory Authority ("FINRA"), which has jurisdiction over the OTCQB, has adopted rules that require a broker-dealer to have reasonable grounds for believing an investment is suitable for that customer when recommending an investment to a customer. FINRA believes that there is a high probability that speculative low-priced securities will not be suitable for some customers and may make it more difficult for broker-dealers to recommend that their customers buy our common stock, which may result in a limited ability to buy and sell our stock. We currently do not meet applicable listing standards of a market senior to the OTC in the United States and we may never apply or qualify for future listing on Nasdaq or a senior market.

We do not intend to pay any cash dividends on our shares of common stock in the near future, so our shareholders will not be able to receive a return on their shares unless they sell their shares.

We intend to retain any future earnings to finance the development and expansion of our business. We do not anticipate paying any cash dividends on our common stock in the foreseeable future. There is no assurance that future dividends will be paid, and if dividends are paid, there is no assurance with respect to the amount of any such dividend. Unless we pay dividends, our shareholders will not be able to receive a return on their shares unless they sell such shares.

Anti-takeover provisions in our charter documents and under Washington law could make an acquisition of us, which may be beneficial to our shareholders, difficult and prevent attempts by our shareholders to replace or remove our current management.

Provisions in our articles of incorporation and bylaws and under Washington law may delay or prevent an acquisition of us or a change in our management. These provisions include a prohibition on shareholder actions by less than unanimous written consent, limitations on the ability of shareholders to call a special meeting of shareholders and advance notice procedures with respect to the nomination of candidates for election as directors. In addition, because we are incorporated in Washington, we are governed by the provisions of Chapter 23B.19 of the Washington Business Corporation Act, which, among other things, restricts the ability of shareholders owning 10% or more of our outstanding voting stock from merging or combining with us. Although we believe these provisions collectively provide for an opportunity to receive higher bids by requiring potential acquirers to negotiate with our board of directors, they would apply even if an offer may be considered beneficial by some shareholders. In addition, these provisions may frustrate or prevent any attempts by our shareholders to replace or remove our current management by making it difficult for shareholders to replace members of our board of directors, which is responsible for appointing the members of our management.

We reached a determination to restate previously issued consolidated financial statements, which resulted in unanticipated costs and may affect investor confidence and raise reputational issues.

As discussed in Note 1, "Nature of Operations and Summary of Significant Accounting Policies", in this Annual Report on Form 10-K, we reached a determination to restate our consolidated financial statements and related disclosures for the years ended December 31, 2021 and to restate each of the quarterly periods for the three months ended March 31, 2022 and June 30, 2022, following the identification of misstatements. As a result, we have incurred unanticipated legal fees in connection with or related to the restatement, and have become subject to a number of additional risks and uncertainties, which may affect investor confidence in the accuracy of our financial disclosures and may raise reputational issues for our business.

ITEM 1B. UNRESOLVED STAFF COMMENTS.

None.

ITEM 2. PROPERTIES.

During 2022 we terminated our lease of approximately 6,500 square feet of retail/office space in Seattle, Washington for our principal executive and administrative offices. The initial term of the lease was five years; in February 2020, we amended the lease to extend the term through February 28, 2025 but then terminated it in the third quarter of 2022.

On September 1, 2022 we entered into a membership/licensing agreement with Saltbox Inc. This agreement gives us right to our portion of a shared office and warehouse facility in Seattle, WA. The structure of the agreement is a revocable license to access the office suite and warehouse. The relationship between Saltbox Inc. and Jones Soda is that of a licensor and licensee only, and not a landlord-tenant or lessor-lessee relationship. The agreement does not give right, title, interest, easement, or lien in or to Saltbox Inc's business, the office suite and adjacent premises, or anything contained therein.

We do not own real property.

ITEM 3. LEGAL PROCEEDINGS.

We are not currently involved in any material legal proceedings. We may be involved from time to time in various claims and legal actions arising in the ordinary course of business, including proceedings involving employee claims, contract disputes, product liability and other general liability claims, as well as trademark, copyright, and related claims and legal actions. In the opinion of our management, the ultimate disposition of these matters will not have a material adverse effect on our consolidated financial position, results of operations or liquidity.

ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

PART II

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

Market Information

Our common stock currently trades on the OTCQB Marketplace in the United States under the symbol "JSDA" and on the Canadian Securities Exchange in Canada under the symbol "JSDA."

Holder

As of March 20, 2023, there were 100,623,135 shares of common stock issued and outstanding, held by approximately 244 holders of record, although there are a much larger number of beneficial owners. The last reported sale price per share on March 20, 2023 was \$ 0.25.

Dividends

We have not paid any dividends on our shares of common stock, and we do not anticipate paying any dividends in the foreseeable future.

Equity Compensation Plans

See "Equity Compensation Plan Information" under "Item 12 Security Ownership of Certain Beneficial Owners and Management and Related Shareholder Matters" for information on our equity compensation plans.

Recent Sales of Unregistered Securities

None.

Issuer Purchases of Equity Securities

None.

ITEM 6. [RESERVED].

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

The following discussion of our financial condition and results of operations contains forward-looking statements that involve risks and uncertainties, such as statements of our plans, objectives, expectations and intentions. As described at the beginning of this Annual Report on Form 10-K, our actual results could differ materially from those anticipated in these forward-looking statements. Factors that could contribute to such differences include those discussed at the beginning of this Report, below in this section and in the section above entitled "Risk Factors." You should not place undue reliance on these forward-looking statements, which apply only as of the date of this Report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect new information, events or circumstances after the date of this Report, or to reflect the occurrence of unanticipated events. You should read the following discussion and analysis in conjunction with our consolidated financial statements and the accompanying notes thereto included elsewhere in this Report.

We have restated our financial statements for 2021 due to the correction of an error in the accounting for a financing agreement as discussed in Note 1, "Nature of Operations and Summary of Significant Accounting Policies." Accordingly, the Management's Discussion and Analysis of Financial Condition and Results of Operations set forth below reflects the effects of the restatements on our balance sheet and statement of cash flow figures.

Overview

We develop, produce, market and distribute premium beverages that we sell and distribute primarily in North America through our network of independent distributors and directly to our national and regional retail accounts. We also sell premium soda beverage products in select international markets and sell cannabis infused beverages and syrups in California. Our premium soda beverage products are sold primarily in grocery stores, convenience and gas stores, on fountain in restaurants, "up and down the street" in independent accounts such as delicatessens, sandwich shops and burger restaurants, as well as through our national accounts with several large retailers. We refer to our network of independent distributors as our direct store delivery ("DSD") channel, and we refer to our national and regional accounts who receive shipments directly from us as our direct to retail ("DTR") channel. We do not directly manufacture any of our premium soda beverage products, but instead outsource the manufacturing process to third-party contract manufacturers. We also sell various premium beverage soda products online, including soda with customized labels, wearables, candy and other items, and we license our trademarks for use on products sold by other manufacturers. In addition, we currently market and sell several cannabis infused beverages and syrups in California through third party manufacturers and distributors. We plan to expand our cannabis product offerings and the states in which we offer such products.

Our Focus: Sales Growth

Our focus is sales growth through execution of the following key initiatives:

- Expand the Jones Soda glass bottle business in existing and new sales channels;
- Expand our fountain program in the United States and Canada;
- Grow the new Mary Jones product line of Tetrahydrocannabinol (THC) and cannabidiol (CBD)-infused beverages, edibles, and other related products; and
- Increase distribution of Lemnoco in the United States and Canada.

Results of Operations

Years Ended December 31, 2022 and 2021

Revenue

For the year ended December 31, 2022, revenue was approximately \$19.1 million, an increase of \$4.3 million, or 29.0%, from approximately \$14.8 million in revenue for the year ended December 31, 2021. This increase was primarily a result of increased core bottled soda sales in the United States and Canada. Additionally, sales revenues from our fountain business were \$2.0 million during 2022 compared to \$1.5 million during 2021, mostly as a result of increased sales in the food service channel. We also received an aggregate of \$353,000 in sales revenues from our cannabis infused beverages and syrups sold during 2022. For the year ended December 31, 2022, promotion allowances and slotting fees, which offset revenue, totaled approximately \$1.6 million, an increase of approximately \$121,000, or 8.4%, from approximately \$1.5 million in 2021.

During 2022 and 2021, the percentage of our revenues generated in Canada was 19% and 22%, respectively.

Gross Profit

	Year Ended December 31,			% Change
	2022	2021		
	(Dollars in thousands)			
Gross Profit	\$ 5,143	\$ 4,398		16.9%
% of Revenue	26.9%	29.7%		

For the year ended December 31, 2022, gross profit increased by \$745,000, or 16.9%, to approximately \$5.1 million compared to approximately \$4.4 million for the year ended December 31, 2021, driven primarily by higher revenue during the year ended December 31, 2022 as compared to the year ended December 31, 2021. For the year ended December 31, 2022, gross margin decreased to 26.9% from 29.7% for the year ended December 31, 2021. This decrease was primarily driven by the impacts of inflation, mostly driven by increased material and freight costs, and the overall impacts of product mix.

Selling and Marketing Expenses

Selling and marketing expenses for the year ended December 31, 2022 were approximately \$5.0 million, an increase of \$2.0 million, or 65.3%, from approximately \$3.0 million for the year ended December 31, 2021. This increase was primarily a result of non-cash stock consideration paid by the Company in connection with two sponsorship agreements entered into by the Company during the third quarter of 2022. Additionally, the increase in marketing expenses during the current quarter compared to 2021 can also be attributed to marketing expenses associated with the launch of the Company's cannabis products in 2022 combined with increased social and digital marketing expenses incurred during the year in an effort to expand customer engagement. As revenue continues to increase, we expect that selling and marketing expenses will increase to support this growth. Selling and marketing expenses as a percentage of revenue increased to 26.0% for the year ended December 31, 2022 from 20.3% in 2021. We will continue to work on balancing selling and marketing expenses with our working capital resources.

General and Administrative Expenses

General and administrative expenses for the year ended December 31, 2022 were approximately \$6.3 million, an increase of \$3.0 million, or 89.9%, compared to approximately \$3.3 million for the year ended December 31, 2021. This increase in general and administrative expenses was primarily due to the start-up administrative costs associated with the cannabis product launch. General and administrative expenses as a percentage of revenue increased to 32.9% for the year ended December 31, 2022 from 22.3% in 2021. We will continue work on balancing general and administrative expenses with our working capital resources.

Interest Expense

We incurred approximately \$377,000 of interest expense for the year ended December 31, 2022, compared to approximately \$225,000 for the year ended December 31, 2021 which was the result of the Contingent Convertible Debentures and Convertible Notes (each as defined in Note 5) that were outstanding and accruing interest during the year ended December 31, 2021. Since all of the outstanding Contingent Convertible Debentures and Convertible Notes were either converted into shares of our common stock or matured pursuant to their terms during the first half of 2022, the Company did not incur accrued interest since the second quarter of 2022. The interest expense incurred during the years ended December 31, 2022 and December 31, 2021 was non-cash.

Interest Income

We earned approximately \$6,000 of interest income for the year ended December 31, 2022, compared to \$4,000 for the year ended December 31, 2021.

Income Tax Expense

We had income tax expense of \$28,000 and \$27,000 for the years ended December 31, 2022 and 2021, respectively, primarily related to the tax provision on income from our Canadian operations. We have not recorded any tax benefit for the loss in our U.S. operations as we have recorded a full valuation allowance on our U.S. net deferred tax assets. We expect to continue to record a full valuation allowance on our U.S. net deferred tax assets until we sustain an appropriate level of taxable income through improved U.S. operations. Our effective tax rate is based on recurring factors, including the forecasted mix of income before taxes in various jurisdictions, estimated permanent differences and the recording of a full valuation allowance on our U.S. net deferred tax assets.

Net Loss

Net loss for the year ended December 31, 2022 increased to approximately \$6.4 million from a net loss of \$1.8 million for the year ended December 31, 2021. The increase in net loss was primarily due to the increase marketing and administrative costs associated with the launch of our cannabis infused beverage and syrups in 2022 and the beforementioned non-cash stock consideration paid by the Company in connection with two sponsorship agreements entered into by the Company during the third quarter of 2022.

Liquidity and Capital Resources

As of December 31, 2022 and 2021, we had cash and cash-equivalents of approximately \$8.0 million and \$4.7 million, respectively, and working capital of approximately \$11.6 million and \$6.0 million, respectively. Net cash used in operations during fiscal years 2022 and 2021 totaled approximately \$6.0 million and \$3.4 million, respectively. Net cash used in operations increased primarily due to the increase in net loss in 2022. Our cash flows vary throughout the year based on seasonality.

For the year ended December 31, 2022, net cash provided by financing activities totaled approximately \$9.2 million due to the issuance of \$3,000,000 in Contingent Convertible Debentures (See note 5), that fully converted into 6,022,192 shares of common stock on May 16, 2022. Additionally, upon the consummation of a statutory plan of arrangement under the Business Corporations Act (British Columbia) (the "Plan of Arrangement") with Pinestar Gold Inc. ("Pinestar") the Company received \$7.1 million in net proceeds from a subscription receipt offering completed by Pinestar (the "Pinestar Subscription Receipt Offering") prior to the Plan of Arrangement. The Plan of Arrangement resulted in issuance of an aggregate of 20,000,048 shares of the Company's common stock which were issued in exchange for all of the outstanding common shares of Pinestar (the "Pinestar Shares"), including the Pinestar Shares issued in connection with the Pinestar Subscription Receipt Offering, on a one-for-one basis.

We incurred a net loss of approximately \$6.4 million for the year ended December 31, 2022 compared to a net loss of approximately \$1.8 million for the year ended December 31, 2021. Our accumulated deficit increased to \$78.2 million as of December 31, 2022 compared to an accumulated deficit of \$71.8 million as of December 31, 2021.

During 2022 and 2021, we received \$0 and \$296,000, respectively, from the cash exercise of stock options. From time to time, we may receive additional cash through the exercise of stock options or stock warrants. However, we cannot predict the timing or amount of cash proceeds we may receive from the exercise, if at all, of any of the outstanding stock options or warrants.

We may require additional financing to support our working capital needs in the future. The amount of additional capital we may require, the timing of our capital needs and the availability of financing to fund those needs will depend on a number of factors, including our strategic initiatives and operating plans, the performance of our business and the market conditions for available debt or equity financing. Additionally, the amount of capital required will depend on our ability to meet our sales goals and otherwise successfully execute our operating plan. We believe it is imperative that we meet these sales objectives in order to lessen our reliance on external financing in the future. We intend to continually monitor and adjust our operating plan as necessary to respond to developments in our business, our markets and the broader economy. In addition, the uncertain market conditions may limit our ability to access capital, may reduce demand for certain products, and may negatively impact our supply chain. Although we believe various debt and equity financing alternatives will be available to us to support our working capital needs, financing arrangements on acceptable terms may not be available to us when needed. Moreover, these alternatives may require significant cash payments for interest and other costs or could be highly dilutive to our existing shareholders. Any such financing alternatives may not provide us with sufficient funds to meet our long-term capital requirements. If necessary, we may explore strategic transactions that we consider to be in the best interest of our company and our shareholders, which may include, without limitation, public or private offerings of debt or equity securities, a rights offering, and other strategic alternatives; however, these options may not ultimately be available or feasible when needed.

Seasonality

Our sales are seasonal and we experience fluctuations in quarterly results as a result of many factors. We historically have generated a greater percentage of our revenues during the warm weather months of April through September. Sales may fluctuate materially on a quarter-to-quarter basis or an annual basis when we launch a new product or fill the "pipeline" of a new distribution partner or a large retail partner. Sales results may also fluctuate based on the number of stock keeping units ("SKUs") selected or removed by our distributors and retail partners through the normal course of serving consumers in the dynamic, trend-oriented beverage industry. As a result, management believes that period-to-period comparisons of results of operations are not necessarily meaningful and should not be relied upon as any indication of future performance or results expected for the fiscal year.

Critical Accounting Policies

The discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an on-going basis, we evaluate our estimates based on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form our basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions, or if management made different judgments or utilized different estimates. Many of our estimates or judgments are based on anticipated future events or performance, and as such are forward-looking in nature, and are subject to many risks and uncertainties, including those discussed below and elsewhere in this Report. We do not undertake any obligation to update or revise this discussion to reflect any future events or circumstances.

There are certain critical accounting estimates that we believe require significant judgment in the preparation of our consolidated financial statements. We have identified below our accounting policies that we use in arriving at key estimates that we consider critical to our business operations and the understanding of our results of operations. This is not a complete list of all of our accounting policies, and there may be other accounting policies that are significant to us. For a detailed discussion on the application of these and our other accounting policies, see Note 1 to Consolidated Financial Statements of this Report.

Revenue Recognition

We recognize revenue under Accounting Standards Codification (“ASC”) 606, *Revenue from Contracts with Customers* (“ASC 606”). The core principle of the revenue standard is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. We only apply the five-step model (as described in Note 1 to the Consolidated Financial Statements of this Report) to contracts when it is probable that we will collect the consideration it is entitled to in exchange for the goods and services transferred to the customer.

Inventory

We hold raw materials and finished goods inventories, which are manufactured and procured based on our sales forecasts. We value inventory at the lower of cost or net realizable value and include adjustments for estimated obsolete or excess inventory, on a first in-first out basis. These valuations are subject to customer acceptance, planned and actual product changes, demand for the particular products, and our estimates of future realizable values based on these forecasted demands. We regularly review inventory detail to determine whether a write-down is necessary. We consider various factors in making this determination, including recent sales history and predicted trends, industry market conditions and general economic conditions. The amount and timing of write-downs for any period could change if we make different judgments or use different estimates. We also determine whether a provision for obsolete or excess inventory is required on products that are over 12 months from production date or any changes related to market conditions, slow-moving inventory or obsolete products.

Trade Spend and Promotion Expenses

Throughout the year, we run trade spend and promotional programs with distributors and retailers to help promote on-shelf discounts to our consumers. Additionally, in more limited instances, we enter into customer marketing agreements or various other slotting arrangements. The provisions for discounts, slotting fees and promotion allowances is recorded as an offset to revenue and shown net on the consolidated statement of operations. Estimates are made to accrue for amounts that have not yet been invoiced in the month that the program occurs, or in the case of slotting, when the commitment is made.

ITEM 7A. *QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.*

Not applicable.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Shareholders and Board of Directors
Jones Soda Co.
Seattle, Washington

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Jones Soda Co. and its subsidiaries (the Company) as of December 31, 2022 and 2021, and the related consolidated statements of operations, comprehensive loss, shareholders' equity, and cash flows for each of the two years ended December 31, 2022, and the related notes (collectively referred to as the consolidated financial statements).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the two years ended December 31, 2022 in conformity with accounting principles generally accepted in the United States of America.

Restatement of Previously Issued Consolidated Financial Statements

As discussed in Note 1 to the consolidated financial statements, the 2021 consolidated financial statements have been restated to correct misstatements.

Basis for Opinion

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

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

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

Critical Audit Matter

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

Promotional Allowances — Refer to Note 1 to the Consolidated Financial Statements

Critical Audit Matter Description

As described in Note 1 to the consolidated financial statements, the Company's revenue is recorded net of promotional allowances. The recognition of these promotional allowances requires the Company to make estimates regarding the volume of sales, cost of the promotional allowances, and amount of the promotional allowances that are expected to be redeemed. These estimates are made using various information including historical and forecasted data.

Significant judgment is exercised by the Company in determining the promotional allowances accrual, and includes the following:

- Determination of the completeness of the various promotional allowances with customers and the forecasted sales volume for the period.
- Assessing the estimate of promotional allowances that are expected to be redeemed subsequent to period end.

Given these factors, the related audit effort in evaluating management's judgments in determining promotional allowances for these customer agreements was extensive and required a high degree of auditor judgment.

How the Critical Audit Matter Was Addressed in the Audit

Our principal audit procedures related to the Company's promotional allowances for these customer agreements included the following:

- We selected a sample of promotional allowance claims and performed the following procedures:
 - o Obtained tested the source documents for each selection, including promotional campaign and other documents that were part of the agreement to identify significant terms.
 - o Traced a sample of promotional allowance claims to a listing of promotional campaigns during the period for completeness Assessed the terms in the promotional campaign and evaluated the appropriateness of management's application of their accounting policies, along with their use of estimates, in the determination of promotional allowance conclusions.
- We analyzed the customer base and historical promotional allowances offered to customers.
- We evaluated the reasonableness and accuracy of management's judgements and estimates used in accounting for promotional allowances. This included testing management's estimate of calculating expected claims based on historical data, comparing the estimate to revenue in the current period, current promotional offer redemptions to historical estimates, and comparing actual promotional allowances applied subsequent to December 31, 2022 to the promotional allowances as of December 31, 2022.

/s/ ArmaninoLLP

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

Bellevue, Washington
March 29, 2023

JONES SODA CO.
CONSOLIDATED BALANCE SHEETS

	<u>December 31, 2022</u>	<u>December 31, 2021</u> <u>As Restated</u>
	<u>(In thousands, except share data)</u>	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 7,971	\$ 4,667
Accounts receivable, net of allowance of \$110 and \$114, respectively	3,170	2,662
Inventory	2,621	1,923
Prefunded insurance premiums - Financing	612	903
Prepaid expenses and other current assets	601	358
Total current assets	<u>14,975</u>	<u>10,513</u>
Fixed assets, net of accumulated depreciation of \$309 and \$627, respectively	127	238
Right-of-use lease asset	-	365
Other assets	-	33
Total assets	<u>\$ 15,102</u>	<u>\$ 11,149</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 1,069	\$ 1,239
Accrued expenses	1,644	1,544
Insurance premium financing	612	903
Lease liability, current portion	-	109
Taxes payable	10	8
Current portion of convertible subordinated notes payable, net	-	92
Current portion of accrued interest expense	-	55
2022 Financing Proceeds Received, Net of Closing Costs	-	538
Total current liabilities	<u>3,335</u>	<u>4,488</u>
Net convertible subordinated notes payable, net of current portion	-	1,778
Lease liability, net of current portion	-	266
Total liabilities	<u>3,335</u>	<u>6,532</u>
Shareholders' equity:		
Common stock, no par value:		
Authorized — 800,000,000 issued and outstanding shares — 100,263,135 shares and 67,840,941 shares, respectively	89,680	76,017
Accumulated other comprehensive income	287	396
Accumulated deficit	<u>(78,200)</u>	<u>(71,796)</u>
Total shareholders' equity	<u>11,767</u>	<u>4,617</u>
Total liabilities and shareholders' equity	<u>\$ 15,102</u>	<u>\$ 11,149</u>

See accompanying notes to consolidated financial statements.

JONES SODA CO.

CONSOLIDATED STATEMENTS OF OPERATIONS

	Year Ended December 31,	
	2022	2021
	(In thousands, except share data)	
Revenue	\$ 19,085	\$ 14,792
Cost of goods sold	13,942	10,394
Gross profit	5,143	4,398
Operating expenses:		
Selling and marketing	4,965	3,003
General and administrative	6,271	3,302
Total operating expenses	11,236	6,305
Loss from operations	(6,093)	(1,907)
Interest income	6	4
Interest expense	(377)	(225)
Other income, net	88	344
Loss before income taxes	(6,376)	(1,784)
Income tax expense	(28)	(27)
Net loss	\$ (6,404)	\$ (1,811)
Net income (loss) per share - basic and diluted	\$ (0.07)	\$ (0.03)
Weighted average common shares outstanding - basic and diluted	94,177,863	65,542,609

See accompanying notes to consolidated financial statements.

JONES SODA CO.**CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**

	Year ended December 31,	
	2022	2021
	(In thousands)	
Net loss	\$ (6,404)	\$ (1,811)
Other comprehensive loss:		
Foreign currency translation adjustment	(109)	(15)
Total comprehensive loss	<u>\$ (6,513)</u>	<u>\$ (1,826)</u>

See accompanying notes to consolidated financial statements.

JONES SODA CO.

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
Years Ended December 31, 2022 and 2021
(In thousands, except share data)

	Common Stock		Accumulated Other Comprehensive Income	Accumulated Deficit	Total Shareholders' Equity
	Number	Amount			
Balance as of December 31, 2020	61,975,748	\$ 73,953	\$ 411	\$ (69,985)	\$ 4,379
Stock-based compensation expense	-	147	-	-	147
Common stock issued upon conversion of notes payable	5,064,137	1,621	-	-	1,621
Issuance of common stock upon exercise of stock options	801,056	296	-	-	296
Net loss	-	-	-	(1,811)	(1,811)
Other comprehensive income	-	-	(15)	-	(15)
Balance as of December 31, 2021	<u>67,840,941</u>	<u>\$ 76,017</u>	<u>\$ 396</u>	<u>\$ (71,796)</u>	<u>\$ 4,617</u>
Stock-based compensation expense	1,950,000	1,364	-	-	1,364
Common stock issued upon conversion of notes payable	10,472,146	5,147	-	-	5,147
Common stock and warrants issued, net of closing costs of \$848	20,000,048	7,152	-	-	7,152
Net loss	-	-	-	(6,404)	(6,404)
Other comprehensive loss	-	-	(109)	-	(109)
Balance as of December 31, 2022	<u>100,263,135</u>	<u>\$ 89,680</u>	<u>\$ 287</u>	<u>\$ (78,200)</u>	<u>\$ 11,767</u>

See accompanying notes to consolidated financial statements.

JONES SODA CO.
CONSOLIDATED STATEMENTS OF CASH FLOWS

	Year Ended December 31,	
	2022	2021 As Restated
	(In thousands)	
OPERATING ACTIVITIES:		
Net loss	\$ (6,404)	\$ (1,811)
Adjustments to reconcile net loss to net cash flows from operating activities:		
Depreciation and amortization	414	166
Stock-based compensation	1,364	144
Change in allowance for doubtful accounts	(4)	21
Forgiveness of PPP SBA loan	-	(335)
Loss (gain) on sale of fixed asset	(31)	5
Gain on insurance claim	(23)	-
Changes in operating assets and liabilities:		
Accounts receivable	(542)	(1,129)
Inventory	(714)	(66)
Prefunded insurance premiums from financing	292	(903)
Prepaid expenses and other current assets	(243)	(164)
Other assets	35	-
Accounts payable	(167)	(147)
Accrued expenses	73	783
Taxes payable	3	1
Other liabilities	(10)	4
Net cash used in operating activities	(5,957)	(3,431)
INVESTING ACTIVITIES:		
Proceeds from insurance claim on property damage	31	-
Proceeds from sale of fixed assets	98	4
Purchase of fixed assets	(29)	(35)
Net cash from investing activities	100	(31)
FINANCING ACTIVITIES:		
Proceeds from exercise of stock options	-	296
Proceeds from issuance of convertible notes, net	2,354	1,778
Proceeds from 2022 convertible notes prior to close, net	-	538
Repayments on Insurance financing, net of additional financing	(292)	-
Additional financing for insurance premiums, net of repayments	-	903
Proceeds from issuance of common stock and warrants, net	7,152	-
Net cash provided by financing activities	9,214	3,515
Net change in cash and cash equivalents	3,357	53
Effect of exchange rate changes on cash	(53)	-
Cash and cash equivalents, beginning of period	4,667	4,614
Cash and cash equivalents, end of period	\$ 7,971	\$ 4,667
Supplemental disclosure:		
Cash paid during period for:		
Interest	\$ 47	-
Income taxes	23	\$ 24
Supplemental disclosure of non-cash transactions:		
Conversion of notes payable	\$ 5,147	\$ 1,621
Beneficial conversion feature on convertible notes and accrued interest	-	4

See accompanying notes to consolidated financial statements.

JONES SODA CO.**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**
Years Ended December 31, 2022 and 2021**1. Nature of Operations and Summary of Significant Accounting Policies**

Jones Soda Co. develops, produces, markets and distributes premium beverages which it sells and distributes primarily in the United States and Canada through its network of independent distributors and directly to its national and regional retail accounts.

In addition, following the closing of the Plan of Arrangement (See note 7(d)), we intend to use the proceeds from our recent financings exclusively for the purpose of expanding our business to the production of cannabis-containing beverages and related products.

We are a Washington corporation and have five subsidiaries, Jones Soda Co. (USA) Inc., Jones Soda (Canada) Inc., Jones Soda Cannabis Inc., Mary Jones California, LLC, and Pinestar Gold Inc. (Subsidiaries).

Basis of presentation and consolidation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP) and the Securities and Exchange Commission (SEC) rules and regulations applicable to financial reporting. The consolidated financial statements include our accounts and accounts of our wholly owned subsidiaries. All intercompany transactions between us and our subsidiaries have been eliminated in consolidation.

Liquidity

As of December 31, 2022 and 2021, we had cash and cash-equivalents of approximately \$8.0 million and \$4.7 million, respectively, and working capital of approximately \$11.6 million and \$6.0 million, respectively. Net cash used in operations during fiscal years 2022 and 2021 totaled approximately \$6.0 million and \$3.4 million, respectively. Net cash used in operations increased primarily due to the increase in net loss in 2022. Our cash flows vary throughout the year based on seasonality.

For the year ended December 31, 2022, net cash provided by financing activities totaled approximately \$9.2 million due to the issuance of \$3,000,000 in Contingent Convertible Debentures (See note 5), that fully converted into 6,022,192 shares of common stock on May 16, 2022. Additionally, upon the consummation of a statutory plan of arrangement under the Business Corporations Act (British Columbia) (the "Plan of Arrangement") with Pinestar Gold Inc. ("Pinestar") the Company received \$7.1 million in net proceeds from a subscription receipt offering completed by Pinestar (the "Pinestar Subscription Receipt Offering") prior to the Plan of Arrangement. The Plan of Arrangement resulted in issuance of an aggregate of 20,000,048 shares of the Company's common stock which were issued in exchange for all of the outstanding common shares of Pinestar (the "Pinestar Shares"), including the Pinestar Shares issued in connection with the Pinestar Subscription Receipt Offering, on a one-for-one basis.

We incurred a net loss of approximately \$6.4 million for the year ended December 31, 2022 compared to a net loss of approximately \$1.8 million for the year ended December 31, 2021. Our accumulated deficit increased to \$78.2 million as of December 31, 2022 compared to an accumulated deficit of \$71.8 million as of December 31, 2021.

During 2022 and 2021, we received \$0 and \$296,000, respectively, from the cash exercise of stock options. From time to time, we may receive additional cash through the exercise of stock options or stock warrants. However, we cannot predict the timing or amount of cash proceeds we may receive from the exercise, if at all, of any of the outstanding stock options or warrants.

We may require additional financing to support our working capital needs in the future. The amount of additional capital we may require, the timing of our capital needs and the availability of financing to fund those needs will depend on a number of factors, including our strategic initiatives and operating plans, the performance of our business and the market conditions for available debt or equity financing. Additionally, the amount of capital required will depend on our ability to meet our sales goals and otherwise successfully execute our operating plan. We believe it is imperative that we meet these sales objectives in order to lessen our reliance on external financing in the future. We intend to continually monitor and adjust our operating plan as necessary to respond to developments in our business, our markets and the broader economy. In addition, uncertain market conditions may limit our ability to access capital, may reduce demand for certain products, and may negatively impact our supply chain. Although we believe various debt and equity financing alternatives will be available to us to support our working capital needs, financing arrangements on acceptable terms may not be available to us when needed. Moreover, these alternatives may require significant cash payments for interest and other costs or could be highly dilutive to our existing shareholders. Any such financing alternatives may not provide us with sufficient funds to meet our long-term capital requirements. If necessary, we may explore strategic transactions that we consider to be in the best interest of our company and our shareholders, which may include, without limitation, public or private offerings of debt or equity securities, a rights offering, and other strategic alternatives; however, these options may not ultimately be available or feasible when needed.

As of the date of this Report, as a result of our cash on hand from the beforementioned financings, we believe that our current cash and cash equivalents will be sufficient to meet the Company's funding requirements for one year after these condensed consolidated financial statements are issued.

Restatement of Previously Issued Consolidated Financial Statements for Errors surrounding short-term financing

As part of preparing our consolidated financial statements as at and for the year ended December 31, 2022, an error was identified in the accounting for a short-term financing agreement that had an impact on the financial statements for the year ended December 31, 2021, which had been previously filed. Effective November 15, 2021, the Company entered into a one year financing agreement with IPFS Corporation (“IPFS”) to fund a portion of its insurance premiums in the amount of \$903,000. Repayments were made quarterly on January 15, 2022, April 15, 2022, and July 15, 2022 under the terms of this financing agreement with IPFS, and the entirety of the financing was paid off in full on July 15, 2022. Since under the terms of the financing agreement with IPFS, IPFS funded a portion of our insurance premiums a prepaid asset was required to be recognized on our balance sheet for the year ended December 31, 2021, along with an associated liability or obligation to pay down this financing per the quarterly payment schedule noted above. The Company did not record this beforementioned asset or liability on the Company’s balance sheet as of December 31, 2021, which was previously filed with the SEC.

As a result of the identification of this error, we concluded that the previously issued consolidated financial statements as at and for the year ended December 31, 2021, were misstated. Accordingly, we have restated our consolidated financial statements as at and for the year ended December 31, 2021, to increase current assets and current liabilities by \$903,000 on the balance sheet. Additionally, recorded the \$903,000 change in prepaid asset in the operating activity portion on the statement of cash flows and the \$903,000 liability in the financing activity portion of the statement of cash flows.

This error did not have any impact on our consolidated statement of operations, consolidated statements of comprehensive loss, or consolidated statement of shareholders' equity.

The impacts of this correction to fiscal year 2021 is as follows:

	As of December 31, 2021		
	As Reported	Restatement Adjustments (In thousands)	As Restated
Consolidated Balance Sheet:			
Current assets:			
Cash and cash equivalents	\$ 4,667	\$ -	\$ 4,667
Accounts receivable, net of allowance of \$114	2,662	-	2,662
Inventory	1,923	-	1,923
Prefunded insurance premiums from financing	-	903	903
Prepaid expenses and other current assets	358	-	358
Total current assets	\$ 9,610	\$ 903	\$ 10,513
Current liabilities:			
Accounts payable	1,239	-	1,239
Accrued expenses	1,544	-	1,544
Insurance Premium Financing	-	903	903
Lease liability, current portion	109	-	109
Taxes payable	8	-	8
Current portion of convertible subordinated notes payable, net	92	-	92
Current portion of accrued interest expense	55	-	55
2022 Financing Proceeds Received, Net of Closing Costs	538	-	538
Total current liabilities	\$ 3,585	\$ 903	\$ 4,488

	Year Ended December 31, 2021		
	As Reported	Restatement Adjustments (In thousands)	As Restated
Consolidated Statement of Cash flows:			
OPERATING ACTIVITIES:			
Net loss	\$ (1,811)	\$ -	\$ (1,811)
Adjustments to reconcile net loss to net cash flows from operating activities:			
Depreciation and amortization	166	-	166
Stock-based compensation	144	-	144
Change in allowance for doubtful accounts	21	-	21
Forgiveness of PPP SBA loan	(335)	-	(335)
Loss (gain) on sale of fixed asset	5	-	5
Changes in operating assets and liabilities:			
Accounts receivable	(1,129)	-	(1,129)
Inventory	(66)	-	(66)
Prefunded insurance premiums from financing	-	(903)	(903)
Prepaid expenses and other current assets	(164)	-	(164)
Accounts payable	(147)	-	(147)
Accrued expenses	783	-	783
Taxes payable	1	-	1
Other liabilities	4	-	4
Net cash used in operating activities	(2,528)	(903)	(3,431)
FINANCING ACTIVITIES:			
Proceeds from exercise of stock options	\$ 296	\$ -	\$ 296
Proceeds from issuance of convertible notes, net	1,778	-	1,778
Proceeds from 2022 convertible notes prior to close, net	538	-	538
Additional financing for insurance premiums, net of repayments	-	903	903
Net cash provided by financing activities	\$ 2,612	\$ 903	\$ 3,515

The impacts of this correction for the quarter-ending March 31, 2022 is as follows:

Consolidated Balance Sheet:	As of March 31, 2022			
	As Reported	(In thousands) Restatement Adjustments		As Restated
Current assets:				
Cash and cash equivalents	\$ 11,856	\$ -		\$ 11,856
Accounts receivable, net of allowance of \$111	3,216	-		3,216
Inventory	2,907	-		2,907
Prefunded insurance premiums from financing	-	597		597
Prepaid expenses and other current assets	477	-		477
Total current assets	\$ 18,456	\$ 597		\$ 19,053
Current liabilities:				
Accounts payable	1,735	-		1,735
Accrued expenses	1,526	-		1,526
Insurance Premium Financing	-	597		597
Lease liability, current portion	111	-		111
Taxes payable	9	-		9
Current portion of convertible subordinated notes payable, net	2,893	-		2,893
Total current liabilities	\$ 6,274	\$ 597		\$ 6,871

Consolidated Statement of Cash flows:	Quarter Ended March 31, 2022			
	As Reported	(In thousands) Restatement Adjustments		As Restated
OPERATING ACTIVITIES:				
Net loss	\$ (1,664)	\$ -		\$ (1,664)
Adjustments to reconcile net loss to net cash flows from operating activities:				
Depreciation and amortization	247	-		247
Stock-based compensation	268	-		268
Change in allowance for doubtful accounts	(3)	-		(3)
Changes in operating assets and liabilities:				
Accounts receivable	(545)	-		(545)
Inventory	(982)	-		(982)
Prefunded insurance premiums from financing	-	306		306
Prepaid expenses and other current assets	(119)	-		(119)
Other assets	25	-		25
Accounts payable	496	-		496
Accrued expenses	(66)	-		(66)
Taxes payable	1	-		1
Other liabilities	1	-		1
Net cash used in operating activities	\$ (2,341)	\$ 306		\$ (2,035)
FINANCING ACTIVITIES:				
Proceeds from issuance of convertible notes, net	\$ 2,354	\$ -		\$ 2,354
Repayments on Insurance financing, net of additional financing	-	(306)		(306)
Proceeds from issuance of common stock and warrants, net	7,152	-		7,152
Net cash provided by financing activities	\$ 9,506	\$ (306)		\$ 9,200

The impacts of this correction for the six months ending June 30, 2022 is as follows:

	As of June 30, 2022 (In thousands)		
	As Reported	Restatement Adjustments	As Restated
Consolidated Balance Sheet:			
Current assets:			
Cash and cash equivalents	\$ 9,285	\$ -	\$ 9,285
Accounts receivable, net of allowance of \$119	4,071	-	4,071
Inventory	2,833	-	2,833
Prefunded insurance premiums from financing	-	289	289
Prepaid expenses and other current assets	944	-	944
Total current assets	\$ 17,133	\$ 289	\$ 17,422
Current liabilities:			
Accounts payable	1,619	-	1,619
Accrued expenses	1,529	-	1,529
Insurance Premium Financing	-	289	289
Lease liability, current portion	114	-	114
Taxes payable	14	-	14
Total current liabilities	\$ 3,276	\$ 289	\$ 3,565
Six months Ended June 30, 2022 (In thousands)			
	As Reported	Restatement Adjustments	As Restated
Consolidated Statement of Cash flows:			
OPERATING ACTIVITIES:			
Net loss	\$ (3,099)	\$ -	\$ (3,099)
Adjustments to reconcile net loss to net cash flows from operating activities:			
Depreciation and amortization	382	-	382
Stock-based compensation	386	-	386
Change in allowance for doubtful accounts	5	-	5
Changes in operating assets and liabilities:			
Accounts receivable	(1,428)	-	(1,428)
Inventory	(916)	-	(916)
Prefunded insurance premiums from financing	-	614	614
Prepaid expenses and other current assets	(585)	-	(585)
Other assets	25	-	25
Accounts payable	383	-	383
Accrued expenses	(43)	-	(43)
Taxes payable	6	-	6
Other liabilities	1	-	1
Net cash used in operating activities	\$ (4,883)	\$ 614	\$ (4,269)
FINANCING ACTIVITIES:			
Proceeds from issuance of convertible notes, net	\$ 2,354	\$ -	\$ 2,354
Repayments on Insurance financing, net of additional financing	-	(614)	(614)
Proceeds from issuance of common stock and warrants, net	7,152	-	7,152
Net cash provided by financing activities	\$ 9,506	\$ (614)	\$ 8,892

The impacts of the restatement have been reflected throughout the financial statements, including the applicable footnotes, as appropriate.

Use of estimates

The preparation of the consolidated financial statements requires management to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Significant items subject to such estimates and assumptions include, but are not limited to, inventory valuation, depreciable lives and valuation of capital assets, valuation allowances for receivables, trade promotion liabilities, stock-based compensation expense, valuation allowance for deferred income tax assets, contingencies, and forecasts supporting the going concern assumption and related disclosures. Actual results could differ from those estimates.

Cash and cash equivalents

We consider all highly liquid short-term investments with an original or remaining maturity of three months or less at the date of purchase to be cash equivalents.

Fair value of financial instruments

Applicable accounting standards define fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (an exit price). We measure our assets and liabilities using inputs from the following three levels of the fair value hierarchy: Level 1 inputs are unadjusted quoted prices in active markets for identical assets or liabilities that we have the ability to access at the measurement date, Level 2 inputs include quoted prices for similar assets and 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, and inputs that are derived principally from or corroborated by market data by correlation or other means, and Level 3 includes unobservable inputs that reflect assumptions about what factors market participants would use in pricing the asset or liability and are developed based on the best information available, including our own data.

The carrying amounts for cash and cash equivalents, receivables, and payables approximate fair value due to the short-term maturity of these instruments.

Accounts receivable

Our accounts receivable balance primarily includes balances from trade sales to distributors and retail customers. The allowance for doubtful accounts is our best estimate of the amount of probable credit losses in our existing accounts receivable. We determine the allowance for doubtful accounts based primarily on historical write-off experience. Account balances that are deemed uncollectible, are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. Allowances for doubtful accounts of approximately \$110,000 and \$114,000 as of December 31, 2022 and 2021, respectively, are netted against accounts receivable. Changes in accounts receivable are primarily due to the timing and magnitude of orders of products, the timing of when control of products is transferred to distributors and the timing of cash collections.

Activity in the allowance for doubtful accounts consists of the following for the years ended December 31 (in thousands):

	2022	2021
Balance, beginning of year	\$ 114	\$ 93
Net charges to bad debt expense	(5)	42
Recoveries (write-offs)	1	(21)
Balance, end of year	<u>\$ 110</u>	<u>\$ 114</u>

As of December 31, 2022, two customers made up 22% of our outstanding accounts receivable. As of December 31, 2021, one customer made up 19% of our outstanding accounts receivable.

Inventories

Inventories consist of raw materials and finished goods and are stated at the lower of cost or net realizable value and include adjustments for estimated obsolete or excess inventory. Cost is based on actual cost on a first-in first-out basis. Raw materials that will be used in production in the next twelve months are recorded in inventory. The provisions for obsolete or excess inventory are based on estimated forecasted usage of inventories. A significant change in demand for certain products as compared to forecasted amounts may result in recording additional provisions for obsolete inventory. Provisions for obsolete or excess inventory are recorded as cost of goods sold and totaled \$156,000 and \$27,000 for the years ended December 31, 2022 and 2021, respectively.

Fixed assets

Fixed assets are recorded at cost less accumulated depreciation and are depreciated on the declining balance basis over the estimated useful lives of the assets as follows:

Asset	Rate		
Equipment	20%	to	30%
Vehicles and office and computer equipment			30%

Impairment of long-lived assets

Long-lived assets, which include fixed assets, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the assets to future undiscounted net cash flows expected to be generated by the assets. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Long-lived assets are grouped at the lowest level for which there are identifiable cash flows when evaluating for impairment. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

Foreign currency translation

The functional currency of our Canadian subsidiary is the Canadian dollar. We translate assets and liabilities related to these operations to U.S. dollars at the exchange rate in effect at the date of the consolidated balance sheet; we convert revenues and expenses into U.S. dollars using the average monthly exchange rates. Translation gains and losses are reported as a separate component of accumulated other comprehensive income. Transaction gains and losses arising from the transactions denominated in a currency other than the functional currency are included in other expense, net in the accompanying consolidated statement of operations. Net transaction loss was \$7,000 for 2022 and a net transaction gain of \$18,000 occurred in 2021.

Revenue recognition

The Company recognizes revenue under Accounting Standards Codification (“ASC”) 606, *Revenue from Contracts with Customers*, (“ASC 606”). The core principle of the revenue standard is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. The Company only applies the five-step model to contracts when it is probable that the Company will collect the consideration it is entitled to in exchange for the goods and services transferred to the customer. The following five steps are applied to achieve that core principle:

- Step 1: Identify the contract with the customer
- Step 2: Identify the performance obligations in the contract
- Step 3: Determine the transaction price
- Step 4: Allocate the transaction price to the performance obligations in the contract
- Step 5: Recognize revenue when the company satisfies a performance obligation

See Note 11, Segment information, for information on revenue disaggregated by geographic area.

Because the Company’s agreements have an expected duration of one year or less, the Company has elected the practical expedient in ASC 606-10-50-14(a) to not disclose information about its remaining performance obligations.

Our contracts have a single performance obligation which is satisfied at the point in time when the customer has title and the significant risks and rewards of ownership of the product. Title and the significant risk and rewards of ownership are deemed to transfer when products are loaded onto a truck for shipment or Free on Board (“FOB”) shipping point. The Company primarily receives fixed consideration for sales of product, subject to adjustment as described below. Shipping and handling amounts paid by customers are primarily for online orders, and are included in revenue, and totaled \$163,000 and \$120,000 for the years ended December 31, 2022 and 2021, respectively. Sales tax and other similar taxes are excluded from revenue.

Revenue is recorded net of provisions for discounts, slotting fees payable by us to retailers to stock our products and promotion allowances. Discounts, slotting fees and promotional allowances vary the consideration the Company is entitled to in exchange for the sale of products to distributors. The Company estimates these discounts, slotting fees and promotional allowances in the same period that the revenue is recognized for product sales to customers. These estimates are based on contract terms and our historical experience with similar programs and require management judgement with respect to estimating customer participation and performance levels. Differences between estimated expense and actual costs are normally insignificant and are recognized in earnings in the period such differences are determined. The amount of revenue recognized represents the amount that will not be subject to a significant future reversal of revenue. The liability for promotional allowances is included in accrued expenses on the consolidated balance sheets. Amounts paid for slotting fees are recorded as prepaid expenses on the consolidated balance sheets and amortized over the corresponding term. For the years ended December 31, 2022 and 2021, our revenue was reduced by approximately \$1.6 million and \$1.4 million, respectively, for slotting fees and promotion allowances.

All sales to distributors and customers are generally final. In limited instances we may accept returned product due to quality issues or distributor terminations, and in such situations we would have variable consideration. To date, returns have not been material. The Company’s customers generally pay within 30 days from the receipt of a valid invoice. The Company offers prompt pay discounts of up to 2% to certain customers typically for payments made within 15 days. Prompt pay discounts are estimated in the period of sale based on experience with sales to eligible customers. Early pay discounts are recorded as a deduction to the accounts receivable balance presented on the consolidated balance sheets.

Advertising costs

Advertising costs, which also include promotions and sponsorships, are expensed as incurred. During the years ended December 31, 2022 and 2021, we incurred advertising costs of \$1.0 million and \$731,000, respectively.

Income taxes

We account for income taxes by recognizing the amount of taxes payable for the current year and deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in our financial statements. Under this method, deferred tax assets and liabilities are determined on the basis of the differences between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. We perform periodic evaluations of recorded tax assets and liabilities and maintain a valuation allowance, if considered necessary based on whether they are more likely than not to be realized. The determination of taxes payable for the current year includes estimates. We believe that we have appropriate support for the income tax positions taken, and to be taken, on our tax returns and that our accruals for tax liabilities are adequate for all open years based on an assessment of many factors including past experience and interpretations of tax law applied to the facts of each matter. No reserves for an uncertain income tax position have been recorded for the years ended December 31, 2022 or 2021.

Net loss per share

Basic net loss per share is computed using the weighted average number of common shares outstanding during the periods. Diluted earnings per share is computed by adjusting the weighted average number of common shares by the effective net exercise or conversion of all dilutive securities. Due to the net loss in 2022 and 2021, outstanding stock options amounting to 3,369,332 and 3,405,511 shares, outstanding warrants of 27,721,945 and 0, and shares issuable upon the conversion of the 2018 Convertible Notes of 0 and 5,372,440, respectively, were anti-dilutive.

Comprehensive loss

Comprehensive loss is comprised of net loss and translation adjustments. We do not provide income taxes on currency translation adjustments, as the historical earnings from our Canadian subsidiary is considered to be indefinitely reinvested.

Seasonality

Our sales are seasonal and we experience fluctuations in quarterly results as a result of many factors. We historically have generated a greater percentage of our revenues during the warm weather months of April through September. Sales may fluctuate materially on a quarter to quarter basis or an annual basis when we launch a new product or fill the “pipeline” of a new distribution partner or a large retail partner. Sales results may also fluctuate based on the number of SKUs selected or removed by our distributors and retail partners through the normal course of serving consumers in the dynamic, trend-oriented beverage industry. As a result, management believes that period-to-period comparisons of results of operations are not necessarily meaningful and should not be relied upon as any indication of future performance or results expected for the fiscal year.

Deferred financing costs

We defer costs related to the issuance of debt which are included on the accompanying balance sheets as a deduction from the debt liability. Deferred financing costs are amortized over the term of the related loan and are included as a component of interest expense on the accompanying consolidated statements of operations.

Recent accounting guidance

No new accounting pronouncements issued or effective during 2022 had, or are expected to have, a material impact on the Company’s consolidated financial statements.

2. Inventory

Inventory consisted of the following as of December 31 (in thousands):

	December 31, 2022	December 31, 2021
Finished goods	\$ 1,234	\$ 1,361
Raw materials	1,387	562
	<u>\$ 2,621</u>	<u>\$ 1,923</u>

Finished goods primarily include product ready for shipment, as well as promotional merchandise held for sale. Raw materials primarily include ingredients, concentrate and packaging.

3. Fixed Assets, net

Fixed assets, net consisted of the following as of December 31 (in thousands):

	2022	2021
Vehicles	\$ 37	\$ 496
Equipment	210	210
Office and computer equipment	189	159
	436	865
Accumulated depreciation	(309)	(627)
	<u>\$ 127</u>	<u>\$ 238</u>

Depreciation expense was \$66,000 and \$93,000, for the years ended December 31, 2022 and 2021, respectively. Depreciation expense is primarily associated with the Company’s equipment and vehicles. The company recorded a gain on disposal of fixed assets of \$54,000 during the year ended December 31, 2022. The company recorded a loss on disposal of fixed assets of \$5,000 during the year ended December 31, 2022.

4. Accrued Expenses

Accrued expenses consisted of the following as of December 31 (in thousands):

	2022	2021
Employee benefits	\$ 604	\$ 405
Selling and marketing	465	354
Other accruals	575	785
	<u>\$ 1,644</u>	<u>\$ 1,544</u>

5. Convertible Debentures

2018 Convertible Subordinated Note Payable

On March 23, 2018, and April 18, 2018, we issued and sold an aggregate principal amount of \$2,920,000 of convertible subordinated promissory notes (the “2018 Convertible Notes”) to institutional investors and our management team, and other individual investors.

The 2018 Convertible Notes had a four-year term from the date of issuance and bear interest at 6% per annum until maturity on March 23, 2022, and April 18, 2022. The holders could convert the 2018 Convertible Notes at any time into the number of shares of our common stock equal to the quotient obtained by dividing (i) the amount of the unpaid principal and interest on such 2018 Convertible Note by (ii) \$0.32 (the “Conversion Price”). The Conversion Price was subject to anti-dilution adjustment on a broad-based, weighted average basis if we issue shares or equity-linked instruments at a conversion price below \$0.32 per share. No payments of principal or interest were due until the maturity.

The 2018 Convertible Notes were subordinated in right of payment to the prior payment in full of all of our Senior Indebtedness, which is defined as amounts due in connection with our indebtedness for borrowed money to banks, commercial finance lenders, or other lending institutions regularly engaged in the business of lending money, with certain restrictions.

The fair value of our common stock on the March 23, 2018, closing date for the issuance of the 2018 Convertible Notes was \$0.36 per share, therefore, the 2018 Convertible Notes contained a beneficial conversion feature with an aggregate intrinsic value of \$350,000. The fair value of our common stock on the April 18, 2018, closing date for the issuance of the 2018 Convertible Notes was \$0.30 per share, which did not result in an additional beneficial conversion feature. The resulting debt discount for the 2018 Convertible Notes issued on March 23, 2018 is presented as a direct deduction from the carrying value of the 2018 Convertible Notes and was recorded with an increase to additional paid-in capital. The discount along with the related closing costs amounting to \$137,000 were amortized through interest expense over the term of the 2018 Convertible Notes. As of April 18, 2022 all convertible notes have been converted into shares and the current balance of the 2018 Convertible Subordinated Note Payable as of September 30, 2022 is \$0.

2021 Unsecured Convertible Debenture

On July 14, 2021, we issued a \$2,000,000 5.00% unsecured convertible debenture due July 14, 2023 (the “2021 Debenture”) to SOL Verano Blocker I LLC that was convertible into units of the Company (each a “Jones Unit”) at a conversion price of \$0.50 per Jones Unit, with each Jones Unit consisting of one Jones Share and one share purchase special warrant of Jones (each a “Jones Special Warrant”). Each Jones Special Warrant will be exercisable into one Jones Share at a price of \$0.625 per Jones Share for a period of 24 months from the date of issuance, which was conditional upon us increasing our authorized capital to an amount to cover the Jones Shares issuable pursuant to all of the outstanding Jones Special Warrants as well as the other Jones Shares issuable pursuant to our then-outstanding convertible/exercisable securities. The 2021 Debenture accrued interest at a rate of 5.00% and we had \$47,000 of interest due to SOL Verano Blocker I LLC on December 31, 2021.

The closing of the Plan of Arrangement resulted in the automatic conversion of the 2021 Debenture into an aggregate of 4,025,035 Jones Shares and 4,025,035 Jones Special Warrants at a conversion price of \$0.50 per Jones Share and Jones Special Warrant. As a result, the carrying amount of the converted principal amount of such 2021 Unsecured Convertible Debenture, in an aggregate amount of \$2,000,000, was credited to common stock.

2022 Unsecured Convertible Debenture

On February 9, 2022, we issued \$3,000,000 in aggregate principal amount of 3.00% unsecured convertible debentures due February 9, 2023 (the “Contingent Convertible Debentures”), which were converted into Jones Units of Jones at a conversion price of \$0.50 per Jones Unit on May 16, 2022. The Contingent Convertible Debentures were automatically convertible into Jones Units upon Jones Soda increasing its authorized capital to an amount to cover the Jones Shares issuable pursuant to all of the outstanding Contingent Convertible Debentures as well as all of the other then outstanding convertible/exercisable securities of Jones (a “Conversion Event”). The Contingent Convertible Debentures were only convertible into Jones Units upon the occurrence of a Conversion Event. The Contingent Convertible Debentures were set to mature on February 9, 2023 (the “Convertible Debenture Maturity Date”) and began accruing interest at a rate of 3.00% commencing on April 1, 2022. Under the terms of the Contingent Convertible Debentures, the Company covenants to the holders of the Contingent Convertible Debentures that the Company will use their commercially reasonable efforts to cause the Conversion Event to occur as soon as practicable after the closing of the Plan of Arrangement. We received net proceeds of \$538,000 prior to December 31, 2021 and the remaining of the total \$3,000,000 during the quarter ended March 31, 2022. The related closing costs amounting to \$108,000 were amortized through interest expense over the term of the Contingent Convertible Debentures. On May 16, 2022 all Contingent Convertible Debentures were converted into common stock, and the remaining unamortized capitalized closing costs were expensed, and the current balance of the Contingent Convertible Debentures as of September 30, 2022 was \$0.

6. Lease Obligations

During the year ended December 31, 2022 we terminated our lease of approximately 6,500 square feet of retail/office space in Seattle, Washington for our principal executive and administrative offices. The initial term of the lease was five years; in February 2020, we amended the lease to extend the term through February 28, 2025. As a result of the lease amendment, we recognized a lease liability and right-of-use asset of \$556,000 which represents the remaining lease payments discounted at a rate of 4%. Due to the termination, we derecognized the Right-of-Use asset and total lease liabilities of \$310,000 and \$322,000, respectively from our consolidated balance sheet. The remaining difference of \$12,000 was recorded as Other Income. Additionally, we incurred a net termination fee of \$41,000 upon execution of the termination agreement.

On September 1, 2022 we entered into a membership/licensing agreement with Saltbox Inc. This agreement gives us right to our portion of a shared office (“Suite”) and warehouse facility in Seattle, WA. The structure of the agreement is a revocable license to access the suite and warehouse. The relationship between Saltbox Inc. and Jones Soda is that of a licensor and licensee only, and not a landlord-tenant or lessor-lessee relationship. The agreement does not give right, title, interest, easement, or lien in or to Saltbox Inc’s business, the Suite, the Premises, or anything contained therein, nor will the Agreement be interpreted or construed as a lease. Thus, we will not be recording a lease liability or right-of-use asset associated with this agreement. The term of the agreement is for 1 year with an option to renew and 12 monthly payments of \$6,000 payable each month.

During the year ended December 31, 2022 and 2021, we incurred rental expenses on the previous lease of \$109,000 and \$122,000, respectively. During the year ended December 31, 2022, we incurred licensing expenses for right to our suite and warehouse of \$29,000.

7. Shareholders’ Equity

On May 16, 2022, our shareholders approved the adoption of the Jones Soda Co. 2022 Omnibus Equity Incentive Plan (the “2022 Plan”), which replaced the 2011 Plan (defined below) and provides for the granting incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock, restricted stock units and other stock-based awards to participants to acquire shares of Company common stock under the 2022 Plan. Under the terms of the 2022 Plan, the sum of (i) 10,000,000 shares of the Company’s common stock, plus (ii) the number of shares of common stock reserved, but unissued under the 2011 Plan, plus (iii) the number of shares of common stock underlying forfeited awards under the 2011 Plan are initially available for issuance as awards under the 2022 Plan.

1,936,074 shares of common stock reserved under the terms of our 2011 Incentive Plan (the “2011 Plan”) but unissued were transferred to the reserve for the 2022 Plan. Thus, the total number of shares of common stock authorized under the Plan was 11,936,074 shares.

Under the terms of the 2022 Plan, the Board may grant awards to employees, officers, directors, consultants, agents, advisors and independent contractors. Stock options are granted with an exercise price equal to the closing price of our stock on the date of grant, and generally have a ten-year term. As of December 31, 2022, there were 11,663,574 shares of unissued common stock authorized and available for future awards under the Plan.

(a) *Stock options:*

A summary of our stock option activity is as follows:

	Outstanding Options	
	Number of Shares	Weighted Average Exercise Price (Per Share)
Balance at January 1, 2022	3,405,511	\$ 0.38
Options granted	828,148	0.51
Options forfeited/expired	(864,327)	0.41
Balance at December 31, 2022	3,369,332	\$ 0.41
Exercisable, December 31, 2022	2,460,674	\$ 0.34
Vested and expected to vest	3,116,129	\$ 0.40

	Outstanding Options	
	Number of Shares	Weighted Average Exercise Price (Per Share)
Balance at January 1, 2021	3,589,783	\$ 0.36
Options granted	1,423,450	0.49
Options exercised	(797,306)	0.37
Options forfeited/expired	(810,416)	0.48
Balance at December 31, 2021	3,405,511	\$ 0.38
Exercisable, December 31, 2021	1,616,439	\$ 0.34
Vested and expected to vest	2,808,039	\$ 0.37

The following table summarizes information about stock options outstanding and exercisable under our stock incentive plans at December 31, 2022:

	Number Outstanding	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price Per Share	Number Exercisable	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price Per Share
\$0.15 to \$0.50	2,835,258	7.13	\$ 0.34	2,240,258	6.55	\$ 0.31
\$0.51 to \$1.09	529,074	8.65	0.78	215,416	8.26	0.73
\$1.10 to \$2.99	5,000	8.59	1.33	5,000	8.59	1.33
	<u>3,369,332</u>	7.37	0.41	<u>2,460,674</u>	6.70	0.34

(b) Restricted stock awards:

Beginning on May 13, 2022 the Company’s board of directors (the “Board”) determined that it was in the best interests of the Company to periodically award restricted stock units as equity compensation for non-employee directors upon the recommendation of the Compensation and Governance Committee of the Board in lieu of stock options. Each restricted stock unit granted vests incrementally over the period in the specific award agreement, and certain restricted stock awards will immediately vest upon the occurrence of a “Change in Control” as defined in the 2022 Plan. For the period from January 1, 2020 through February 15, 2022, equity compensation for non-employee director service consisted of the grant of an annual non-qualified stock option award that vested on the first anniversary of the date of grant (subject to the director’s continuing service as of such anniversary date), with the number of shares underlying such award being determined by dividing \$25,000 by the closing share price (as quoted on the OTCQB marketplace) on the date of grant (which was the first trading day in January in each calendar year), and such stock option award had an exercise price equal to our closing share price (as quoted on the OTCQB marketplace) on the date of grant. Prior to February 15, 2022, when joining the Board, each non-employee director was previously granted a non-qualified stock option award that vested on the first anniversary of the date of grant (subject to the director’s continuing service as of such anniversary date), with the number of shares underlying such award being determined by dividing \$25,000 by our closing stock price on the first trading day following the date on which such director is appointed), prorated based on the date on which such director is appointed, and which stock option shall be granted as of the first trading day following the date on which such director was appointed, and had an exercise price equal to our closing share price (as quoted on the OTCQB marketplace) on the date of grant. The stock option and restricted stock unit awards described above are governed by either the 2022 Plan or the 2011 Plan (if granted prior to the adoption of the 2022 Plan) and standard form of stock option grant notice and agreement and standard form of restricted stock unit grant notice and agreement.

On December 30, 2022, the Company entered into rescission agreements (the “Rescission Agreements”) with the certain non-employee directors on the Board who were awarded restricted stock units during 2022 as well as the Company’s Chief Executive Officer and President who received restricted stock units during 2022 under the terms of his employment agreement with the Company. Under the terms of the Rescission Agreements, each of the Company and the applicable RSU grantee agreed to rescind and cancel for no consideration all currently outstanding restricted stock units previously granted to each such grantee during 2022 as well as all shares of the Company’s common stock previously issued to any such grantee as a result of the vesting of any restricted stock units in August 2022.

There was no restricted stock activity during 2021. A summary of our 2022 restricted stock activity is as follows:

	Restricted Shares	Weighted-Average Grant Date Fair Value per share	Weighted-Average Contractual Life (years)
Non-vested restricted stock at January 1, 2022	-	\$ -	-
Granted	4,920,000	0.20	-
Vested	(70,000)	0.22	-
Cancelled/expired/rescinded	(4,850,000)	0.20	-
Non-vested restricted stock at December 31, 2022	-	\$ -	-

(c) Stock-based compensation expense:

Stock-based compensation expense is recognized using the straight-line attribution method over the employees’ requisite service period. We recognize compensation expense for only the portion of stock options or restricted stock expected to vest. Therefore, we apply estimated forfeiture rates that are derived from historical employee termination behavior. If the actual number of forfeitures differs from those estimated by management, additional adjustments to stock-based compensation expense may be required in future periods.

At December 31, 2022, we had unrecognized compensation expense related to stock options and non-vested stock of \$212,000 to be recognized over a weighted-average period of 2.7 years.

The following table summarizes the stock-based compensation expense (in thousands):

	Year Ended December 31,	
	2022	2021
Stock options	\$ 353	\$ 162
Pinestar warrants (defined below)	76	-
Restricted stock	935	12
	<u>\$ 1,364</u>	<u>\$ 174</u>
Income statement account:		
Selling and marketing	\$ 843	\$ 65
General and administrative	521	109
	<u>\$ 1,364</u>	<u>\$ 174</u>

We employ the following key weighted-average assumptions in determining the fair value of stock options, using the Black-Scholes option pricing model and the simplified method to estimate the expected term of “plain vanilla” options:

	Year Ended December 31,	
	2022	2021
Expected dividend yield	—	—
Expected stock price volatility	79.3%	74.7%
Risk-free interest rate	2.2%	0.9%
Expected term (in years)	6.0	5.8
Weighted-average grant date fair-value	\$ 0.35	\$ 0.32

During the year ended December 31, 2022, no material modifications were made to outstanding stock options.

The aggregate intrinsic value of stock options outstanding at December 31, 2022 and 2021 was \$77,000 and \$1.3 million, respectively and for options exercisable was \$77,000 and \$690,000, respectively. The intrinsic value of outstanding and exercisable stock options is calculated as the quoted market price of the stock at the balance sheet date less the exercise price of the option. The total intrinsic value of options exercised during the year ended December 31, 2022 and 2021 was zero and \$435,000, respectively. During the years ended December 31, 2022 and 2021, there were zero and 797,306 options exercised, respectively. The Company’s policy is to issue new shares upon exercise of options.

(d) Closing of the Pinestar Gold Inc. - Plan of Arrangement:

On February 15, 2022, Jones issued an aggregate of 20,000,048 Jones Shares in connection with the completion of the Plan of Arrangement whereby the outstanding Pinestar Shares were exchanged for newly issued Jones Shares on a one-for-one basis. The Plan of Arrangement had previously been approved by both Pinestar’s shareholders as well as by the Supreme Court of British Columbia after such court held a hearing on the fairness of the terms and conditions of the Plan of Arrangement at which all Pinestar shareholders had the right to appear.

In connection with the Plan of Arrangement, Pinestar completed the Pinestar Subscription Receipt Offering for aggregate net proceeds of \$7,152,000, at a price per subscription receipt equal to \$0.50. As part of the closing of the Plan of Arrangement, each such subscription receipt automatically converted into one Pinestar Share and one new common share purchase warrant of Pinestar, which were then immediately exchanged for Jones Shares and Jones Special Warrants, respectively, in accordance with a 1:1 exchange ratio.

The issuance of Jones Shares to the holders of Pinestar Shares (including Pinestar Shares received upon the conversion of the subscription receipts issued in the Pinestar Subscription Receipt Offering) in the Plan of Arrangement was exempt from the registration requirements under the United States Securities Act of 1933, as amended (the “Securities Act”) pursuant to Section 3(a)(10) of the Securities Act, which exempts from the registration requirements under the Securities Act any securities that are issued in exchange for one or more bona fide outstanding securities where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court expressly authorized by law to grant such approval.

The following table summarizes the Company’s outstanding warrants as of December 31, 2022:

	Number Outstanding	Remaining Contractual Life (Years)	Exercise Price Per Share	Number Exercisable
Jones Special Warrants (1)	26,047,137	1.20	\$ 0.63 USD	26,047,137
Pinestar Warrants (2)	1,674,808	1.25	0.06 CAD	1,674,808
Outstanding Warrants as of December 31, 2022	27,721,945			27,721,945

(1) Upon conversion of the beforementioned 2021 Unsecured Convertible Debenture, 4,025,035 Jones Special Warrants were issued. In connection with the beforementioned Plan of Arrangement, Pinestar completed an offering for Subscription Receipts for aggregate gross proceeds of \$8,000,000. Pursuant to the Plan of Arrangement, each Subscription Receipt automatically converted into 16,000,000 Jones Special Warrants. Lastly, Upon conversion of the beforementioned 2022 Unsecured Convertible Debenture, 6,022,102 Jones Special Warrants were issued.

(2) In connection with the beforementioned Plan of Arrangement, Pinestar, Pinestar had outstanding 16,800,000 existing common share purchase warrants and as a result of the consolidation, and the number of Pinestar Shares issuable pursuant to the Pinestar warrants as adjusted in accordance with their terms to account for the consolidation (10,031 pre consolidation shares to 1 post consolidation), resulting in an aggregate of approximately 1,674,808 post-consolidated Pinestar warrants, subject to rounding, each exercisable for the purchase of one post-consolidation Pinestar Share at a price of \$0.06 CAD per share. 600,000 warrants were transferred to two Board of Director members for 2022 services, thus resulting in \$76,000 in stock compensation expense incurred during the year ended December 31, 2022.

8. Employee 401(k) Plan

We have a 401(k) plan whereby eligible employees who have completed at least one hour of service per month in three consecutive months of employment may enroll. Employees can elect to contribute up to 100% of their eligible compensation to the 401(k) plan subject to Internal Revenue Service’s limitations. As currently established, we are not required to make and have not made any contributions to the 401(k) plan during the years ended December 31, 2022 and 2021. We did accrue and fund our employees’ 401(k) accounts in 2023 for matching contributions related to 2022 in the amount of \$42,000.

9. Commitments and Contingencies

Commitments

As of December 31, 2022, we continue to have commitments to various suppliers of raw materials. Purchase obligations under these commitments are expected to total \$1.5 million in 2023.

Legal proceedings

We are or may be involved from time to time in various claims and legal actions arising in the ordinary course of business, including proceedings involving employee claims, contract disputes, product liability and other general liability claims, as well as trademark, copyright, and related claims and legal actions. In the opinion of our management, the ultimate disposition of these matters will not have a material adverse effect on our consolidated financial position, results of operations or liquidity.

10. Income Taxes

The provision for income taxes consisted of the following for the years ended December 31 (in thousands):

	2022	2021
Current		
State	\$ 7	\$ 4
Foreign	21	23
Provision for income taxes	<u>\$ 28</u>	<u>\$ 27</u>

Loss before provision for income taxes was as follows for the years ended December 31 (in thousands):

	2022	2021
United States	\$ (6,469)	\$ (1,881)
Foreign	93	97
Total	<u>\$ (6,376)</u>	<u>\$ (1,784)</u>

The items accounting for the difference between income taxes computed at the federal statutory rate and the provision for income taxes are as follows:

	2022	2021
Federal statutory rate	21.00%	21.00%
Effect of:		
Permanent differences	(1.17)	3.84
Stock Compensation	(0.85)	0.11
State income taxes, net of federal benefit	0.77	3.10
Change in valuation allowance	(16.20)	(10.27)
Other, net	(3.99)	(19.30)
Provision for income taxes	<u>(0.44)%</u>	<u>(1.51)%</u>

Deferred income taxes reflect the tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of our deferred income taxes were as follows (in thousands):

	2022	2021
Federal and state net operating loss carryforwards	\$ 15,765	\$ 14,896
Stock-based compensation	212	125
Other, net	205	157
Total deferred tax asset	<u>16,182</u>	<u>15,178</u>
Valuation allowance	<u>(16,182)</u>	<u>(15,178)</u>
Net deferred tax asset	<u>\$ —</u>	<u>\$ —</u>

We continue to experience significant losses in our U.S. operations that are material to our decision to maintain a full valuation allowance against our net U.S. deferred tax assets. This is due to the fact that the relevant accounting guidance puts more weight on the negative objective evidence of cumulative losses in recent years than the positive subjective evidence of future projections of pretax income. For the years ended December 31, 2022 and December 31, 2021, the valuation allowance increased by \$1.0 million, and \$185,000, respectively.

We continually analyze the realizability of our deferred tax assets, but we reasonably expect to continue to record a full valuation allowance on future U.S. tax benefits until we sustain an appropriate level of taxable income through improved U.S. operations and tax planning strategies.

At December 31, 2022, we had net operating loss carryforwards for federal and state income tax purposes of \$54.9 million, and \$19.5 million, respectively, which expire at various times commencing 2023. We also had net operating loss carryforwards for federal and state income tax purposes of \$14.8 million, and \$0.3 million, respectively, that may be carried forward indefinitely. Net operating loss carryforwards may be subject to certain limitations under Section 382 of the Internal Revenue code.

There are no uncertain tax positions to recognize as of December 31, 2022 and 2021.

The tax years that remain open to examination by the taxing authorities are 2017-2021, generally. The net operating losses for prior years are subject to adjustment under examination to the extent they remain unutilized in an open year.

On March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was signed into law. There was no financial statement impact related to the CARES Act for the years ended December 31, 2022 and 2021.

11. Segment Information

We have one operating segment with operations primarily in the United States and Canada. Sales are assigned to geographic locations based on the location of customers. Geographic information for the years ended December 31 is as follows (in thousands):

	Year Ended December 31,	
	2022	2021
Revenue:		
United States	\$ 15,313	\$ 11,385
Canada	3,609	3,240
Other countries	163	167
Total revenue	\$ 19,085	\$ 14,792

During the year ended December 31, 2022, one of our customers represented approximately 17% of our revenues and during the year ended December 31, 2021 one of our customers represented approximately 21% of revenues.

12. Insurance Premium Financing

Restatement of Previously Issued Consolidated Financial Statements for Errors surrounding short-term financing

Prior year amounts have been restated to reflect the correction of the error discussed in Note 1, "Nature of Operations and Summary of Significant Accounting Policies."

Effective November 15, 2021, the Company entered into a one year financing agreement with IPFS Corporation to fund a portion of its insurance premiums in the amount of \$903,000. Repayments are made quarterly on January 15, 2022, April 15, 2022, and by July 15, 2022, the entirety of the financing is paid off in full. The interest rate is 4.75% and there are no covenants associated with this agreement.

Effective November 15, 2022, the Company entered into a one year financing agreement with IPFS Corporation to fund a portion of its insurance premiums in the amount of \$612,000. Repayments are made quarterly on January 15, 2023, April 15, 2023, and by July 15, 2023, the entirety of the financing is paid off in full. The interest rate is 6.99% and there are no covenants associated with this agreement.

13. Related party Transactions

On January 6, 2022 we executed a contract with Julianna Pena for Sponsorship services in which we paid Ms. Pena \$100,000 during 2022 along with a 10% Royalty for the sale of the Julianna Pena “Crushed Melon” product. Julianna Pena is considered a related party of the Company due to the direct interest of Ms. Pena’s current Manger, a member of our Board Members, Chad Bronstein. Pursuant to the beforementioned contract with Julianna Pena, we paid Ms. Pena approximately \$136,000 during the year ended December 31, 2022. For the year ended December 31, 2021, except as set forth herein, we were not a party to any transactions in which the amount involved in the transaction in which was material.

On February 9, 2022, current director Chad Bronstein and former director Alexander Spiro purchased, prior to becoming directors on our Board of Directors, an aggregate principal amount of \$100,000 and \$400,000, respectively, of 3.00% unsecured convertible debentures (“Contingent Convertible Debentures”) of the Company, which were convertible into units of our Company at a conversion price of \$0.50 per unit, with each unit consisting of one share of our common stock and one share purchase special warrant of our Company (“Jones Special Warrant”). Each Jones Special Warrant will be exercisable into one share of our common stock at a price of \$0.625 per share for a period of 24 months from the date of issuance. The Contingent Convertible Debentures were automatically convertible into our units upon us increasing our authorized capital in May of 2022.

Jamie Colbourne, a director and the former Chairman of our Board of Directors and former Interim Chief Financial Officer, Mark Murray, our President and Chief Executive Officer and a member our Board of Directors, former director Jeffrey Anderson, current director Clive Sirkin and current Chairman of the Board Paul Norman, each acquired \$200,000 in subscription receipts in Pinestar Gold Inc., and consequently each of these related persons acquired 400,000 shares of our common stock and 400,000 Jones Special Warrants (exercisable into shares of our common stock at an exercise price of \$0.625 per share) in connection with the closing of the plan of arrangement under the Business Corporations Act (British Columbia) on February 15, 2022. The issuance of our shares of common stock and the Jones Special Warrants to these related parties was approved by the Company’s Audit Committee.

Additionally, during the year ended December 31, 2022, 400,000 and 200,000 Pinestar Warrants, as described in Note 7 were transferred to Jamie Colbourne and Paul Norman, respectively.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES.

Disclosure Control and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Interim Chief Financial Officer, we conducted an evaluation of our disclosure controls and procedures as such term is defined under Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended ("Exchange Act"). Based on this evaluation, our Chief Executive Officer and Interim Chief Financial Officer concluded that because of the material weakness in our internal control over financial reporting described below, our disclosure controls and procedures were not effective as of December 31, 2022 to provide reasonable assurance that information required to be disclosed in our reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Interim Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. Management necessarily applies its judgment in assessing the costs and benefits of such disclosure controls and procedures that, by their nature, can only provide reasonable assurance regarding management's control objectives.

Management has concluded that, notwithstanding the material weakness described below, the company's consolidated financial statements in this Form 10-K fairly present, in all material respects, our financial position, results of operations and cash flows as of the dates, and for the periods presented, in conformity with U.S. GAAP.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f) and 15d-15(f) promulgated under the Exchange Act). Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of our financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. Internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect our transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary for preparation of our financial statements in accordance with generally accepted accounting principles; (iii) provide reasonable assurance that our receipts and expenditures are made in accordance with management authorization; and (iv) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting, however well designed and operated can provide only reasonable, and not absolute, assurance that the controls will prevent or detect misstatements. In addition, the design of any control system is based in part upon certain assumptions about the likelihood of future events. Because of these and other inherent limitations of control systems, there is only the reasonable assurance that our controls will succeed in achieving their goals under all potential future conditions.

Management, under the supervision and with the participation of our Chief Executive Officer and Principal Financial Officer, conducted an evaluation of our internal control over financial reporting as of December 31, 2022, based on the framework in *Internal Control-Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

As a result of this assessment, management concluded that we did not design and maintain effective controls over the completeness and accuracy of the accounting for, and disclosure of, short-term financings. Specifically, we did not design appropriate controls to identify and reconcile prepaid assets and associated short-term liabilities. This material weakness resulted in material error in connection with our IPFS Corporation Financing Agreement that was corrected through the restatement of the consolidated financial statements as of and for the year ended December 31, 2021, and the correction of the unaudited quarterly financial information for period endings March 31, 2022 and June 30, 2022. Additionally, this material weakness could result in misstatements to the aforementioned account balances or disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected.

Management's Plan for Remediation of the Material Weakness

In response to the material weakness described above, with the oversight of the Audit Committee of our Board of Directors, management is currently evaluating our policies and procedures related to the accounting for short term financings and is working to implement adequate internal controls to ensure that (i) the liability associated with short-term financings are identified and recorded properly, and (ii) the associated asset with said financings are identified and recorded.

The remediation efforts are intended both to address the identified material weakness and to enhance our overall financial control environment. Management is committed to continuous improvement of the Company's internal control over financial reporting and will continue to diligently review the Company's internal control over financial reporting.

Other than the changes described above in “Management’s Plan for Remediation of the Material Weakness”, there were no changes in our internal control over financial reporting (as such term is defined in the Exchange Act) during the year ended December 31, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

This Report does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Additionally, management’s report was not subject to attestation by our registered public accounting firm pursuant to the permanent exemption from Section 404(b) of the Sarbanes-Oxley Act of 2002 for non-accelerated filers.

ITEM 9B. OTHER INFORMATION

Not applicable.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

Information regarding our Code of Ethics is included in Item 1 of Part I, and that information is incorporated by reference herein.

The other information called for by Part III, Item 10, will be included in our proxy statement relating to our 2023 Annual Meeting of Shareholders (our “2023 Proxy Statement”), and is incorporated herein by reference to the sections captioned “Nominees,” “Compliance with Section 16(a),” “Board Meetings and Committees,” “Audit Committee,” “Director Nomination Process,” and “Executive Officers.” Our 2022 Proxy Statement will be filed within 120 days of December 31, 2022, our fiscal year end.

ITEM 11. EXECUTIVE COMPENSATION

Information called for by Part III, Item 11, will be included in our 2023 Proxy Statement, and is incorporated herein by reference to the sections captioned “Executive Compensation” and “Director Compensation.” Our 2023 Proxy Statement will be filed within 120 days of December 31, 2022, our fiscal year end.

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

Certain information called for by Part III, Item 12, will be included in our 2022 Proxy Statement, and is incorporated herein by reference to the section captioned “Security Ownership Of Certain Beneficial Owners And Management.” Our 2022 Proxy Statement will be filed within 120 days of December 31, 2022, our fiscal year end.

Equity Compensation Plan Information

The following table gives information as of December 31, 2022, the end of the most recently completed fiscal year, about shares of common stock that may be issued pursuant to currently outstanding stock options granted under Jones Soda Co. 2011 Incentive Plan, as well as shares of common stock issuable pursuant to awards granted under the Jones Soda Co. 2022 Omnibus Equity Incentive Plan.

Plan Category	(a) No. of Shares to be Issued Upon Exercise or Vesting of Outstanding Stock Options, RSUs	(b) Weighted Average Exercise Price of Outstanding Stock Options, Warrants and Rights	(c) Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities (a))
Equity Compensation Plans Approved by Shareholders	3,589,783	\$ 0.36	6,972,192 (1)
Equity Compensation Plans Not Approved by Shareholders	N/A	N/A	N/A
TOTAL	3,589,783	\$ 0.36	6,972,192 (1)

(1) On May 16, 2022, our shareholders approved the adoption of the Jones Soda Co. 2022 Omnibus Equity Incentive Plan (the “2022 Plan”), which replaced the Jones Soda Co. 2011 Incentive Plan (the “2011 Plan”) and provides for the granting incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock, restricted stock units and other stock-based awards to participants to acquire shares of Company common stock under the 2022 Plan. Under the terms of the 2022 Plan, the sum of (i) 10,000,000 shares of the Company’s common stock, plus (ii) the number of shares of common stock reserved, but unissued under the 2011 Plan, plus (iii) the number of shares of common stock underlying forfeited awards under the 2011 Plan are initially available for issuance as awards under the 2022 Plan.

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

Information called for by Part III, Item 13, will be included in our 2023 Proxy Statement, and is incorporated herein by reference to the sections captioned “Transactions with Related Persons” and “Independence of Board of Directors.” Our 2023 Proxy Statement will be filed within 120 days of December 31, 2022, our fiscal year end.

ITEM 14. *PRINCIPAL ACCOUNTING FEES AND SERVICES*

Information called for by Part III, Item 14, will be included in our 2023 Proxy Statement, and is incorporated herein by reference to the sections captioned “Policy for Approval of Audit and Permitted Non-Audit Services” and “Audit and Audit-Related Fees.” Our 2023 Proxy Statement will be filed within 120 days of December 31, 2022, our fiscal year end.

PART IV

ITEM 15. *EXHIBITS AND FINANCIAL STATEMENT SCHEDULES*

(a) Documents filed as part of this Report are as follows:

- 1) Financial Statements: The consolidated financial statements, related notes and report of independent registered public accounting firm are included in Item 8 of Part II of this Report.
- 2) Financial Statement Schedules: All schedules have been omitted because they are not applicable or not required, or the required information is included in the financial statements or notes thereto.
- 3) Exhibits: The required exhibits are included at the end of this Report and are described in the exhibit index.

ITEM 16. *10-K SUMMARY*

Not applicable.

EXHIBIT INDEX

The following exhibits are filed as part of this Annual Report on Form 10-K or are incorporated herein by reference. Where an exhibit is incorporated by reference, the document to which it is cross referenced is made.

- 3.1 [Articles of Incorporation of Jones Soda Co. \(Previously filed as, and incorporated herein by reference to, Exhibit 3.1 to our annual report on Form 10-KSB for the fiscal year ended December 31, 2000, filed on March 30, 2001; File No. 333-75913\).](#)
- 3.2 [Amended and Restated Bylaws of Jones Soda Co. \(Previously filed with, and incorporated herein by reference to, Exhibit 3.1 to our quarterly report on Form 10-Q, filed on November 8, 2013; File No. 000-28820\).](#)
- 3.3 [Articles of Amendment to Articles of Incorporation of Jones Soda Co. dated May 16, 2022. \(Previously filed with, and incorporated herein by reference to, Exhibit 3.3 to our registration statement on Form S-1, filed on June 14, 2022; File No. 333-265598\).](#)
- 4.1 [Description of Registrant's Securities \(Filed herewith\).](#)
- 4.2 [Form of Registration Rights Agreement \(\(Previously filed with, and incorporated herein by reference to, Exhibit 10.3 to our current report on Form 8-K, filed on March 27, 2018; File No. 000-28820\).](#)
- 4.3 [Registration Rights Agreement dated July 14, 2021 between Jones Soda Co. and SOL Verano Blocker 1 LLC \(Previously filed with, and incorporated herein by reference to, Exhibit 10.2 to our Current Report on Form 8-K, filed on July 20, 2021; File No. 000-28820\).](#)
- 4.4 [Registration Rights Agreement dated February 9, 2022 between Jones Soda Co. and the holders of the Contingent Convertible Debentures \(Previously filed with, and incorporated herein by reference to, Exhibit 10.2 to our Current Report on Form 8-K, filed on February 15, 2022; File No. 000-28820\).](#)
- 10.1* [Jones Soda Co. 2011 Incentive Plan. \(Previously filed with, and incorporated herein by reference to, Annex A to our Definitive Proxy Statement on Schedule 14A, filed on April 12, 2011, File No. 000-28820\).](#)
- 10.2* [Form of Stock Option Grant Notice and Agreement under the 2011 Equity Incentive Plan, as readopted \(Previously filed with, and incorporated herein by reference to, Exhibit 10.3 to our quarterly report on Form 10-Q, filed August 12, 2011; File No. 000-28820\).](#)
- 10.3* [2022 Omnibus Equity Incentive Plan \(Previously filed with, and incorporated herein by reference to, Appendix B to our definitive proxy statement on Schedule 14A, filed April 1, 2022\)](#)
- 10.4* [Form of Restricted Stock Unit Award Notice and Agreement under the 2022 Omnibus Equity Incentive Plan \(Filed herewith\).](#)
- 10.5* [Form of Stock Option Grant Notice and Agreement under the 2022 Omnibus Equity Incentive Plan \(Filed herewith\).](#)
- 10.6 [Form of Indemnification Agreement \(Previously filed with, and incorporated herein by reference to, Exhibit 10.6 to our current report on Form 8-K, filed on July 12, 2019; File No. 000-28820\).](#)
- 10.7* [Employment Agreement between Jones Soda Co. and Mark Murray dated effective May 27, 2022 \(Previously filed with, and incorporated herein by reference to, our Current Report on Form 8-K, filed June 2, 2022; File No. 000-28820\).](#)
- 10.8* [Rescission Agreement between Jones Soda Co. and Mark Murray dated December 30, 2022 Previously filed with, and incorporated herein by reference to, our Current Report on Form 8-K, filed January 6, 2023; File No. 000-28820\).](#)

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21.1	Subsidiaries of the Registrant (Filed herewith).
23.1	Consent of Armanino LLP (Filed herewith).
31.1	Certification by Mark Murray, Chief Executive Officer, pursuant to Rule 13a-14(a), pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Filed herewith).
31.2	Certification by Joe Culp, Interim Chief Financial Officer, pursuant to Rule 13a-14(a), pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Filed herewith).
32.1	Certification by Mark Murray, Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Filed herewith).
32.2	Certification by Joe Culp, Interim Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Filed herewith).
101.INS**	Inline XBRL Instance Document.
101.SCH**	Inline XBRL Taxonomy Extension Schema Document.
101.CAL**	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF**	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB**	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE**	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Management contract or compensatory plan or arrangement.

** Pursuant to Rule 406T of Regulation S-T, these interactive data files are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933 or Section 18 of the Securities Exchange Act of 1934 and otherwise are not subject to liability.

SIGNATURES

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

March 29, 2023

JONES SODA CO.

By: /s/ Joe Culp

**Director of Finance, Principal
Financial Officer, and Interim Chief
Financial Officer**

POWER OF ATTORNEY

Each person whose individual signature appears below hereby authorizes and appoints Mark Murray and Jamie Colbourne and each of them, with full power of substitution and resubstitution and full power to act without the other, as his true and lawful attorney-in-fact and agent to act in his or her name, place and stead and to execute in the name and on behalf of each person, individually and in each capacity stated below, and to file, any and all amendments to this report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in fact and agents, and each of them, full power and authority to do and perform each and every act and thing, ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or his or her substitute or substitutes may lawfully do or cause to be done by virtue thereof.

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

<u>Signature</u>	<u>Capacities</u>	<u>Date</u>
/s/ MARK MURRAY Mark Murray	President and Chief Executive Officer (<i>Principal Executive Officer</i>)	March 29, 2023
/s/ JOE CULP Joe Culp	Interim Chief Financial Officer (<i>Principal Financial Officer and Principal Accounting Officer</i>)	March 29, 2023
/s/JAMIE COLBOURNE Jamie Colbourne	Director	March 29, 2023
/s/ CHAD BRONSTEIN Chad Bronstein	Director	March 29, 2023
/s/ PAUL NORMAN Paul Norman	Chairman of the Board, Director	March 29, 2023
/s/ CLIVE SIRKIN Clive Sirkin	Director	March 29, 2023
/s/ GREGG REICHMAN Gregg Reichman	Director	March 29, 2023

DESCRIPTION OF REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

The following description of our common stock is a summary and does not purport to be complete. It is subject to, and qualified in its entirety by reference to, our Articles of Incorporation, as amended and Amended and Restated Bylaws ("Bylaws"), each of which have been filed with the Securities and Exchange Commission. This description also summarizes relevant provisions of Washington law. We encourage you to read our Articles of Incorporation, Bylaws and the applicable provisions of Washington law for additional information.

General

Our authorized capital stock consists of 800,000,000 shares of common stock, without par value.

Common Stock

All outstanding shares of common stock are of the same class and have equal rights and attributes. The holders of our common stock are entitled to one vote per share on all matters submitted to a vote of shareholders of the Company. All shareholders are entitled to share equally in all dividends, if any, as may be declared from time to time by our board of directors out of funds legally available. In the event of liquidation, the holders of our common stock are entitled to share ratably in all assets remaining after payment of all liabilities. The shareholders do not have cumulative voting or preemptive rights. Our common stock currently trades on the OTCQB Marketplace under the symbol "JSDA" and on the Canadian Securities Exchange under the symbol "JSDA." Our transfer agent and registrar for our common stock is Odyssey Trust Company. The transfer agent's and registrar's address is United Kingdom Building, 350 – 409 Granville Street Vancouver BC V6C 1T2.

Antitakeover Effects of Certain Provisions of our Articles of Incorporation, Bylaws and Washington Law

Certain provisions of our Articles of Incorporation, Bylaws and Washington law may discourage, delay or prevent a change in the control of us or a change in our management, even if doing so would be beneficial to our shareholders. The existence of these anti-takeover provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock.

Shareholder Meetings; Quorum. Our Bylaws provide that our shareholders may call a special meeting only upon the request of holders of at least 10% of the votes entitled to be cast on any matter proposed for consideration at such special meeting. Additionally, our president or our board of directors may call special meetings of shareholders. Except as required by law, a quorum at any annual or special meeting of shareholders consists of the presence of at least 33 1/3% of the shares entitled to be cast by each voting group.

Unanimous Written Consent of Shareholders. Washington law limits the ability of shareholders to act by written consent by requiring unanimous written consent for shareholder action to be effective. This limit may lengthen the amount of time required to take shareholder actions and would effectively prevent the amendment of our Articles of Incorporation and Bylaws and the removal of directors by our shareholders without holding a meeting of shareholders.

Requirements for Advance Notification of Shareholder Nominations. Our Bylaws contain advance notice procedures with respect to the nomination of candidates for election as directors, other than nominations made by or at the direction of our board of directors or a committee thereof. The existence of these advance notification provisions may make it more difficult for a third party to acquire, or may discourage a third party from acquiring, control of our board of directors.

Washington Anti-Takeover Statute. Washington law imposes restrictions on certain transactions between a corporation and certain significant shareholders. Chapter 23B.19 of the Washington Business Corporation Act generally prohibits a "target corporation" from engaging in certain significant business transactions with an "acquiring person," which is defined as a person or group of persons that beneficially owns 10% or more of the voting securities of the target corporation, for a period of five years after the date the acquiring person first became a 10% beneficial owner of the voting securities of the target corporation, unless the business transaction or the acquisition of shares is approved by a majority of the members of the target corporation's board of directors prior to the time the acquiring person first became a 10% beneficial owner of the target corporation's voting securities. Such prohibited transactions include, among other things:

- a merger or consolidation with, disposition of assets to, or issuance or redemption of stock to or from, the acquiring person;
- termination of 5% or more of the employees of the target corporation as a result of the acquiring person's acquisition of 10% or more of the shares; or
- receipt by the acquiring person of any disproportionate benefit as a shareholder.

After the five-year period, a "significant business transaction" may occur if it complies with "fair price" provisions specified in the statute. A corporation may not "opt out" of this statute. We expect the existence of this provision to have an antitakeover effect with respect to transactions that our board of directors does not approve in advance and may discourage takeover attempts that might result in the payment of a premium over the market price for common stock held by shareholders or otherwise might benefit shareholders.

Jones Soda Co.
2022 Omnibus Equity Incentive Plan

RESTRICTED STOCK UNIT AWARD NOTICE

Jones Soda Co. (the "*Company*") hereby grants to you a Restricted Stock Unit Award (the "*Award*"). The Award is subject to all the terms and conditions set forth in this Restricted Stock Unit Award Notice (the "*Award Notice*") and in the Restricted Stock Unit Award Agreement and the Jones Soda Co. 2022 Omnibus Equity Incentive Plan (the "*Plan*"), which are incorporated into the Award Notice in their entirety.

- Participant:**
- Grant Date:**
- Number of Restricted Stock Units:**
- Vesting Schedule:**

Additional Terms/Acknowledgement: You acknowledge receipt of, and understand and agree to, the Award Notice, the Restricted Stock Unit Award Agreement and the Plan. You further acknowledge that as of the Grant Date, the Award Notice, the Restricted Stock Unit Award Agreement and the Plan set forth the entire understanding between you and the Company regarding the Award and supersede all prior oral and written agreements on the subject.

JONES SODA CO.

PARTICIPANT

By: _____
Title: _____

[Name]

- Attachments:**
- I. Restricted Stock Unit Award Agreement



Jones Soda Co.
2022 Omnibus Equity Incentive Plan

RESTRICTED STOCK UNIT AWARD AGREEMENT

Pursuant to your Restricted Stock Unit Award Notice (the "**Award Notice**") and this Restricted Stock Unit Award Agreement (this "**Agreement**"), Jones Soda Co. (the "**Company**") has granted you a Restricted Stock Unit Award (the "**Award**") under its 2022 Omnibus Equity Incentive Plan (the "**Plan**") for the number of Restricted Stock Units indicated in your Award Notice. Capitalized terms not explicitly defined in this Agreement but defined in the Plan have the same definitions as in the Plan.

The details of the Award are as follows:

1. Vesting

The Award will vest and become payable according to the vesting schedule set forth in the Award Notice (the "**Vesting Schedule**"). One share of the Company's Common Stock will be issuable for each Restricted Stock Unit that vests. Restricted Stock Units that have vested and are no longer subject to forfeiture according to the Vesting Schedule are referred to herein as "**Vested Units**." Restricted Stock Units that have not vested and remain subject to forfeiture under the Vesting Schedule are referred to herein as "**Unvested Units**." The Unvested Units will vest (and to the extent so vested cease to be Unvested Units remaining subject to forfeiture) in accordance with the Vesting Schedule (the Unvested and Vested Units are collectively referred to herein as the "**Units**").

All Unvested Units shall immediately vest upon the occurrence of a "Change in Control" as defined in the Plan.

As soon as practicable after Unvested Units become Vested Units, but in no event later than forty-five days after vesting, the Company will settle the Vested Units by issuing to you one share of the Company's Common Stock for each Vested Unit.

2. Termination of Service

Unvested Units will terminate automatically and be forfeited to the Company immediately and without further notice upon the voluntary or involuntary termination of your employment (or if you received the Award as a member of the Company's board of directors (the "**Board**"), your service as a member of the Board) for any reason with the Company or any subsidiary of the Company (including as a result of death or disability). A transfer of employment or services between or among the Company and its subsidiaries shall not be considered a termination of employment. In case of termination of your employment for Cause, the Award shall automatically terminate upon first notification to you of such termination, unless the Administrator determines otherwise. If your employment is suspended pending an investigation of whether you should be terminated for Cause, all of your rights under the Award likewise shall be suspended during the period of investigation. Unless otherwise determined by the Administrator, if you received the Award in connection with your service as a member of the Board, all Unvested Units will terminate on the effective date of your resignation, removal or retirement from the Board. No Shares shall be issued or issuable with respect to any portion of the Award that terminates unvested and is forfeited.

The Administrator shall have the exclusive discretion for the purposes of the Award to determine whether your employment with the Company is terminated.

3. Consideration for Award

The Company acknowledges your payment of full consideration for the Award in the form of services previously rendered and/or services to be rendered hereafter to the Company (in either case, in an amount equal to no less than the aggregate par value of the shares of the subject to the Award).

4. Securities Law Compliance

4.1 You acknowledge that the Company currently has an effective registration statement on file with the Securities and Exchange Commission with respect to the shares of the Company's Common Stock (the "**Shares**") subject to the Award. The Company intends to maintain this registration but has no obligation to do so. If the registration ceases to be effective, you will not be able to transfer or sell Shares issued to you pursuant to the Award unless exemptions from registration under applicable securities laws are available. Such exemptions from registration are very limited and might be unavailable. You agree that any resale by you of the shares of Common Stock issued pursuant to the Award shall comply in all respects with the requirements of all applicable securities laws, rules and regulations (including, without limitation, the provisions of the Securities Act, and the respective rules and regulations promulgated thereunder) and any other law, rule or regulation applicable thereto, as such laws, rules, and regulations may be amended from time to time. The Company shall not be obligated to either issue the Shares or permit the resale of any Shares if such issuance or resale would violate any such requirements.

4.2 You represent and warrant that you (a) have been furnished with a copy of the Plan and all information which you deem necessary to evaluate the merits and risks of receipt of the Award, (b) have had the opportunity to ask questions and receive answers concerning the information received about the Award and the Company, and (c) have been given the opportunity to obtain any additional information you deem necessary to verify the accuracy of any information obtained concerning the Award and the Company.

4.3 You hereby agree that you will in no event sell or distribute all or any part of the Shares unless (a) there is an effective registration statement under the Securities Act and applicable state securities laws covering any such transaction involving the Shares or (b) the Company receives an opinion of your legal counsel (concurring in by legal counsel for the Company) stating that such transaction is exempt from registration or the Company otherwise satisfies itself that such transaction is exempt from registration.

4.4 You confirm that you have been advised, prior to your receipt of the Award, that neither the offering of the Shares nor any offering materials have been reviewed by any administrator under the Securities Act or any other applicable securities act.

4.5 You hereby agree to indemnify the Company and hold it harmless from and against any loss, claim or liability, including attorneys' fees or legal expenses, incurred by the Company as a result of any breach by you of, or any inaccuracy in, any representation, warranty or statement made by you in this Agreement or the breach by you of any terms or conditions of this Agreement.

5. Transfer Restrictions

Any sale, transfer, assignment, pledge, encumbrance, hypothecation, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, whether voluntary or by operation of law, directly or indirectly, of Units will be strictly prohibited and void.

6. No Rights as Shareholder

You will not have voting or other rights as a shareholder of the Company with respect to the Units.

7. Independent Tax Advice

You acknowledge that determining the actual tax consequences to you of receiving or disposing of the Units and Shares issued thereunder may be complicated. These tax consequences will depend, in part, on your specific situation and may also depend on the resolution of currently uncertain tax law and other variables not within the control of the Company. You are aware that you should consult a competent and independent tax advisor for a full understanding of the specific tax consequences to you of receiving the Units and receiving or disposing of the Shares. Prior to executing this Agreement, you either have consulted with a competent tax advisor independent of the Company to obtain tax advice concerning the receipt of the Units and the receipt or disposition of the Shares in light of your specific situation or you have had the opportunity to consult with such a tax advisor but chose not to do so.

8. Book Entry Registration of Shares

The Company may issue the Shares by registering the Shares in book entry form with the Company's transfer agent in your name in which case the applicable restrictions will be noted in the records of the Company's transfer agent and in the book entry system.

9. Tax Withholding

You agree to make arrangements satisfactory to the Company for the payment of any federal, state, local or foreign withholding tax obligations in connection with this Award (e.g., at vesting and/or upon receipt of the Shares) and you acknowledge that the Company may refuse to issue any Shares to you until you satisfy such withholding tax obligations. You may satisfy such withholding obligation by any of the following means or a combination thereof: (a) tendering a cash payment to the Company, (b) having the Company withhold an amount from any cash amount otherwise due or become due from the Company to you, (c) having the Company withhold a number of shares of the Company's Common Stock that would otherwise become issuable under the Award (up to the employer's minimum tax withholding rate) or (d) surrendering to the Company already owned shares of the Company's Common Stock (up to the employer's minimum required tax withholding rate). Notwithstanding the previous sentence, you acknowledge and agree that the Company has the right to deduct from payments of any kind otherwise due to you any federal, state or local taxes of any kind required by law to be withheld with respect to the Award.

10. General Provisions

10.1 Assignment. The Company may assign its rights under this Agreement at any time, whether or not such rights are then exercisable, to any person or entity selected by the Company's Board of Directors, including, but not limited to, one or more of the Company's shareholders.

10.2 No Waiver. No waiver of any provision of this Agreement will be valid unless in writing and signed by the person against whom such waiver is sought to be enforced, nor will failure to enforce any right hereunder constitute a continuing waiver of the same or a waiver of any other right hereunder.

10.3 Undertaking. You hereby agree to take whatever additional action and execute whatever additional documents the Company may deem necessary or advisable in order to carry out or effect one or more of the obligations or restrictions imposed on either you or the Units pursuant to the express provisions of this Agreement.

10.4 Agreement Is Entire Contract. This Agreement and the Award Notice constitute the entire contract between the parties hereto with regard to the subject matter hereof and supersede all prior oral or written agreements on the subject. This Agreement is made pursuant to the provisions of the Plan and will in all respects be construed in conformity with the express terms and provisions of the Plan.

10.5 Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding on, the Company and its successors and assigns and you and your legal representatives, heirs, legatees, distributees, assigns and transferees by operation of law, whether or not any such person will have become a party to this Agreement and agreed in writing to join herein and be bound by the terms and conditions hereof.

10.6 No Employment or Service Contract. Nothing in this Agreement will affect in any manner whatsoever the right or power of the Company to terminate your employment or services on behalf of the Company, for any reason, with or without Cause.

10.7 Section 409A Compliance. Payments made pursuant to this Agreement and the Plan are intended to qualify for an exception from or comply with Section 409A of the Code. Notwithstanding any other provision in this Agreement and the Plan to the contrary, the Company, to the extent it deems necessary or advisable in its sole discretion, reserves the right, but shall not be required, to unilaterally amend or modify this Agreement and/or the Plan so that the Award qualifies for exemption from or complies with Section 409A of the Code; provided, however, that the Company makes no representations that the Award shall be exempt from or comply with Section 409A of the Code and makes no undertaking to preclude Section 409A of the Code from applying to the Award.

10.8 Counterparts. This Award Notice may be executed in two or more counterparts, each of which will be deemed an original, but which, upon execution, will constitute one and the same instrument.

10.9 Governing Law. To the extent not otherwise governed by the last of the United States, this Agreement will be construed and administered in accordance with and governed by the laws of the State of Washington without giving effect to principles of conflicts of law.

11. Limitation on Rights; No Right to Future Grants; Extraordinary Item of Compensation.

In accepting the Award, you acknowledge, understand and agree that (a) the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time; (b) the grant of the Award is voluntary and occasional and does not create any contractual or other right to receive future grants of Awards, or benefits in lieu of Awards, even if have been granted repeatedly in the past; (c) all decisions with respect to future Award grants, if any, will be at the sole discretion of the Company; (d) you are voluntarily participating in the Plan; (e) the Award and any Shares acquired under the Plan are extraordinary items that do not constitute compensation of any kind for services of any kind rendered to the Company, and which is outside the scope of your service contract, if any; (f) the Award and any Shares acquired under the Plan are not intended to replace any compensation; (g) the Award and any Shares acquired under the Plan are not part of normal or expected compensation for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, long-service awards, or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company; (h) the future value of the Award is unknown and cannot be predicted with certainty; (i) no claim or entitlement to compensation or damages shall arise from forfeiture of the Award resulting from the termination of your employment or service with the Company (for any reason whatsoever and whether or not in breach of local laws) and in consideration of the grant of the Award to which you are otherwise not entitled, you irrevocably agree never to institute any claim against the Company, waive your ability, if any, to bring any such claim, and release the Company from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, you shall be deemed irrevocably to have agreed not to pursue such claim and agree to execute any and all documents necessary to request dismissal or withdrawal of such claims; (j) in the event of your separation of service (whether or not in breach of local laws), your right to vest in the Award under the Plan, if any, will terminate effective as of the date that you are no longer actively retained and will not be extended by any notice period mandated under local law; and (k) the Award and the benefits under the Plan, if any, will not automatically transfer to another company in the case of a merger, take-over or transfer of liability.

12. Data Privacy.

By entering into this Agreement and accepting the Award, you explicitly and unambiguously consent to the collection, use and transfer, in electronic or other form, of any of your personal data that is necessary to facilitate the implementation, administration and management of the Award and the Plan. You understand that the Company may, for the purpose of implementing, administering and managing the Plan, hold certain personal information about you, including, but not limited to, your name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title any shares of stock or directorships held in the Company, details of all Awards or any other entitlement to shares of stock awarded, canceled, exercised, vested, unvested or outstanding in your favor, for the exclusive purpose of implementing, administering and managing the Plan ("**Data**").

You understand that Data may be transferred to any third parties assisting in the implementation, administration and management of the Plan, including any broker with whom the Shares issued upon vesting of the Award may be deposited, and that these recipients may be located in your country or elsewhere, and that the recipient's country (e.g., the United States) may have different data privacy laws and protections than your country. You understand that you may request a list with the names and addresses of any potential recipients of the Data by contacting the Company. You authorize the Company, and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purposes of implementing, administering and managing your participation in the Plan. You understand that Data will be held only as long as is necessary to implement, administer and manage your participation in the Plan. You understand that you may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing the Company. You understand, however, that refusing or withdrawing your consent may affect your ability to participate in the Plan. For more information on the consequences of your refusal to consent or withdrawal of consent, you understand that you may contact the Company.

Jones Soda Co.
2022 Omnibus Equity Incentive Plan

STOCK OPTION GRANT NOTICE

Jones Soda Co. (the "*Company*") hereby grants to you an Option (the "*Option*") to purchase shares of the Company's Common Stock under the Company's 2022 Omnibus Equity Incentive Plan (the "*Plan*"). The Option is subject to all the terms and conditions set forth in this Stock Option Grant Notice (this "*Grant Notice*") and in the Stock Option Agreement and the Plan, which are incorporated into this Grant Notice in their entirety.

Participant:
Grant Date:
Vesting Commencement Date:
Number of Shares Subject to Option (the "*Shares*"):
Exercise Price (per Share):
Option Expiration Date:
Type of Option:
Vesting and Exercisability Schedule:

Additional Terms/Acknowledgement: You acknowledge receipt of, and understand and agree to, this Grant Notice, the Stock Option Agreement and the Plan. You further acknowledge that as of the Grant Date, this Grant Notice, the Stock Option Agreement and the Plan set forth the entire understanding between you and the Company regarding the Option and supersede all prior oral and written agreements on the subject.

JONES SODA CO.

PARTICIPANT

By: Mark Murray
Title: President and CEO

Employee Name

Attachments:
1. Stock Option Agreement

Jones Soda Co.
2022 Omnibus Equity Incentive Plan

STOCK OPTION AGREEMENT

Pursuant to your Stock Option Grant Notice (the "**Grant Notice**") and this Stock Option Agreement, Jones Soda Co. has granted you an Option under its 2022 Omnibus Equity Incentive Plan (the "**Plan**") to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice (the "**Shares**") at the exercise price indicated in your Grant Notice. Capitalized terms not explicitly defined in this Stock Option Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of the Option are as follows:

1. **Vesting and Exercisability.** Subject to the limitations contained herein, the Option will vest and become exercisable as provided in your Grant Notice, provided that vesting will cease upon the termination of your employment or service (including service as a member of the Company's board of directors) with the Company ("**Termination of Service**") and the unvested portion of the Option will terminate.

2. **Securities Law Compliance.** Notwithstanding any other provision of this Agreement, you may not exercise the Option unless the Shares issuable upon exercise are registered under the Securities Act or, if such Shares are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of the Option must also comply with other applicable laws and regulations governing the Option, and you may not exercise the Option if the Company determines that such exercise would not be in material compliance with such laws and regulations.

3. **Independent Tax Advice.** You should obtain tax advice independent from the Company when exercising the Option and prior to the disposition of the Shares.

4. **Method of Exercise.** You may exercise the Option by giving written notice to the Company, in form and substance satisfactory to the Company, which will state your election to exercise the Option and the number of Shares for which you are exercising the Option. The written notice must be accompanied by full payment of the exercise price for the number of Shares you are purchasing. You may make this payment in any combination of the following: (a) by cash; (b) by wire transfer or check acceptable to the Company; (c) if the Common Stock is registered under the Securities Exchange Act of 1934, as amended, and to the extent permitted by law, by instructing a broker to deliver to the Company the total payment required; or (d) by any other method permitted by the Committee.

5. **Treatment Upon Termination of Service.** The unvested portion of the Option will terminate automatically and without further notice immediately upon your Termination of Service. You may exercise the vested portion of the Option as follows:

(a) **General Rule.** You must exercise the vested portion of the Option on or before the earlier of (i) three months after your Termination of Service and (ii) the Option Expiration Date;

(b) **Disability.** If your employment or service relationship terminates due to Disability, you must exercise the vested portion of the Option on or before the earlier of (i) one year after your Termination of Service and (ii) the Option Expiration Date.

(c) **Death.** If your employment or service relationship terminates due to your death, the vested portion of the Option must be exercised on or before the earlier of (i) one year after your death and (ii) the Option Expiration Date; and

(d) **Cause.** The vested portion of the Option will automatically expire at the time the Company first notifies you of the termination of your employment with the Company for Cause, unless the Committee determines otherwise. If your employment or service relationship is suspended pending an investigation of whether you will be terminated for Cause, all your rights under the Option likewise will be suspended during the period of investigation. If any facts that would constitute termination for Cause are discovered after the termination of your employment with the Company, any Option you then hold may be immediately terminated by the Committee.

It is your responsibility to be aware of the date the Option terminates.

6. **Limited Transferability.** During your lifetime only you can exercise the Option. The Option is not transferable except by will or by the applicable laws of descent and distribution. The Plan provides for exercise of the Option by a beneficiary designated on a Company-approved form. Notwithstanding the foregoing and to the extent permitted by Section 422 of the Code, the Committee, in its sole discretion, may permit you to assign or transfer the Option, subject to such terms and conditions as specified by the Committee.

7. **Withholding Taxes.** As a condition to the exercise of any portion of an Option, you must make such arrangements as the Company may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such exercise.

8. **Option Not an Employment or Service Contract.** Nothing in the Plan or any Award granted under the Plan will be deemed to constitute an employment contract or confer or be deemed to confer any right for you to continue in the employ of, or to continue any other relationship with, the Company or limit in any way the right of the Company to terminate your employment or other service relationship at any time, with or without Cause.

9. **No Right to Damages.** You will have no right to bring a claim or to receive damages if you are required to exercise the vested portion of the Option within three months (one year in the case of Retirement, Disability or death) of your Termination of Service or if any portion of the Option is cancelled or expires unexercised. The loss of existing or potential profit in Awards will not constitute an element of damages in the event of your Termination of Service for any reason even if the termination is in violation of an obligation of the Company to you.

10. **Binding Effect.** This Agreement will inure to the benefit of the successors and assigns of the Company and be binding upon you and your heirs, executors, administrators, successors and assigns.

11. **Section 409A.** Notwithstanding any provision in the Plan or this Agreement to the contrary, the Committee may, at any time and without your consent, modify the terms of the Option as it determines appropriate to avoid the imposition of interest or penalties under Section 409A; provided, however, that the Company makes no representations that the Option shall be exempt from or comply with Section 409A and makes no undertaking to preclude Section 409A from applying to the Option.

12. **Limitation on Rights; No Right to Future Grants; Extraordinary Item of Compensation.** In accepting the Option, you acknowledge, understand and agree that (a) the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time; (b) the grant of the Option is voluntary and occasional and does not create any contractual or other right to receive future grants of options, or benefits in lieu of options, even if options have been granted repeatedly in the past; (c) all decisions with respect to future option grants, if any, will be at the sole discretion of the Company; (d) you are voluntarily participating in the Plan; (e) the Option and any Shares acquired under the Plan are extraordinary items that do not constitute compensation of any kind for services of any kind rendered to the Company, and which is outside the scope of your service contract, if any; (f) the Option and any Shares acquired under the Plan are not intended to replace any compensation; (g) the Option and any Shares acquired under the Plan are not part of normal or expected compensation for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, long-service awards, or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company; (h) the future value of the Shares underlying the Option is unknown and cannot be predicted with certainty; (i) if the underlying Shares do not increase in value, the Option will have no value; (j) if you exercise the Option and acquire Shares, the value of such Shares may increase or decrease in value, even below the exercise price; (k) no claim or entitlement to compensation or damages shall arise from forfeiture of the Option resulting from your Termination of Service by the Company (for any reason whatsoever and whether or not in breach of local laws) and in consideration of the grant of the Option to which you are otherwise not entitled, you irrevocably agree never to institute any claim against the Company, waive your ability, if any, to bring any such claim, and release the Company from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, you shall be deemed irrevocably to have agreed not to pursue such claim and agree to execute any and all documents necessary to request dismissal or withdrawal of such claims; (l) in the event of your Termination of Service (whether or not in breach of local laws), your right to vest in the Option under the Plan, if any, will terminate effective as of the date that you are no longer actively retained and will not be extended by any notice period mandated under local law; furthermore, in the event of your Termination of Service (whether or not in breach of local laws), your right to exercise the Option after Termination of Service, if any, will be measured by the date of termination of your active service and will not be extended by any notice period mandated under local law; the Committee shall have the exclusive discretion to determine when you are no longer actively retained in service for purposes of your Option grant; and (m) the Option and the benefits under the Plan, if any, will not automatically transfer to another company in the case of a merger, take-over or transfer of liability.

13. **Data Privacy.** By entering into this Agreement and accepting the Option, you explicitly and unambiguously consent to the collection, use and transfer, in electronic or other form, of any of your personal data that is necessary to facilitate the implementation, administration and management of the Option and the Plan. You understand that the Company may, for the purpose of implementing, administering and managing the Plan, hold certain personal information about you, including, but not limited to, your name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title any shares of stock or directorships held in the Company, details of all options or any other entitlement to shares of stock awarded, canceled, exercised, vested, unvested or outstanding in your favor, for the exclusive purpose of implementing, administering and managing the Plan ("**Data**").

You understand that Data may be transferred to any third parties assisting in the implementation, administration and management of the Plan, including any broker with whom the Shares issued upon vesting of the Option may be deposited, and that these recipients may be located in your country or elsewhere, and that the recipient's country (e.g., the United States) may have different data privacy laws and protections than your country. You understand that you may request a list with the names and addresses of any potential recipients of the Data by contacting the Company. You authorize the Company, and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purposes of implementing, administering and managing your participation in the Plan. You understand that Data will be held only as long as is necessary to implement, administer and manage your participation in the Plan. You understand that you may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing the Company. You understand, however, that refusing or withdrawing your consent may affect your ability to participate in the Plan. For more information on the consequences of your refusal to consent or withdrawal of consent, you understand that you may contact the Company.

SUBSIDIARIES OF JONES SODA CO.

- Jones Soda Co. (USA) Inc.—A wholly-owned subsidiary, incorporated in the State of Washington
- Jones Soda (Canada) Inc.—A wholly-owned subsidiary, incorporated in British Columbia
- Mary Jones Holdings, Inc. —A wholly-owned subsidiary, incorporated in the State of Delaware.
- Mary Jones, California LLC.—A wholly-owned subsidiary of Mary Jones Holdings, Inc., existing under the laws of the State of California
- Mary Jones Michigan LLC - A wholly-owned subsidiary of Mary Jones Holdings, Inc., existing under the laws of the State of Michigan.
- Pinestar Gold, Inc.—A wholly-owned subsidiary, incorporated in British Columbia.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-1 No. 333-225049), pertaining to the registration of up to 11,315,000 shares of common stock,
- (2) Registration Statement (Form S-1 No. 333-263641), pertaining to the registration of up to 28,693,506 shares of common stock, including 4,999,843 shares issuable upon exercise of outstanding warrants,
- (3) Registration Statement (Form S-1 No. 333-265598), pertaining to the registration of up to 24,324,384 shares of common stock, including 18,302,192 shares issuable upon exercise of outstanding warrants,
- (4) Registration Statement (Form S-8 No. 333-265133) pertaining to the Jones Soda Co. 2022 Omnibus Equity Incentive Plan
- (5) Registration Statement (Form S-8 No. 333-233723) pertaining to the Jones Soda Co. 2011 Incentive Plan,
- (6) Registration Statement (Form S-8 No. 333-176386) pertaining to the Jones Soda Co. 2011 Incentive Plan,

of our report dated March 29, 2023, with respect to the consolidated financial statements of Jones Soda Co., included in this Annual Report (Form 10-K) of Jones Soda Co. for the year ended December 31, 2022.

/s/ Armanino LLP
Bellevue, Washington
March 29, 2023

**CERTIFICATION OF PRESIDENT AND CHIEF EXECUTIVE OFFICER
PURSUANT TO RULES 13(a)-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934**

I, Mark Murray, certify that:

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

Date: March 29, 2023

/s/ Mark Murray

Mark Murray
President and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF PRESIDENT AND CHIEF EXECUTIVE OFFICER
PURSUANT TO RULES 13(a)-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934**

I, Joe Culp, certify that:

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

Date: March 29, 2023

/s/ Joe Culp

Joe Culp
Interim Chief Financial Officer
(Principal Financial Officer)

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

In connection with the Annual Report of Jones Soda Co. (the "Company") on Form 10-K for the fiscal year ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Form 10-K"), I, Mark Murray, President and Chief Executive Officer of the Company, hereby certify that, to my knowledge, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Form 10-K fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) The information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 29, 2023

/s/ Mark Murray

Mark Murray
President and Chief Executive Officer
(Principal Executive Officer)

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

In connection with the Annual Report of Jones Soda Co. (the "Company") on Form 10-K for the fiscal year ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Form 10-K"), I, Joe Culp, Interim Chief Financial Officer and Principal Financial Officer of the Company, hereby certify that, to my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002:

- (1) The Form 10-K fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) The information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 29, 2023

/s/ Joe Culp

Joe Culp

Interim Chief Financial Officer (Principal Financial Officer)