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

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2023

Or

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

For the transition period from to
Commission file number: 000-49799

OVERSTOCK.COM, INC.
(Exact name of registrant as specified in its charter)

Delaware	**87-0634302**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
799 West Coliseum Way **Midvale** **Utah**	**84047**
(Address of principal executive offices)	(Zip Code)

(801) 947-3100
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.0001 par value	OSTK	NASDAQ Global Market

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

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

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

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

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

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

45,203,152 shares of the registrant's common stock, par value $0.0001, are outstanding on July 28, 2023.

OVERSTOCK.COM, INC.
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For the Quarterly Period Ended June 30, 2023

Special Cautionary Note Regarding Forward-Looking Statements

This Report on Form 10-Q and the documents incorporated herein by reference, and our other public documents and statements our officers and representatives may make from time to time, contain forward-looking statements within the meaning of the federal securities laws. These statements are therefore entitled to the protection of the safe harbor provisions of these laws. You can find many of these statements by looking for words such as "may," "would," "could," "should," "will," "expect," "anticipate," "predict," "project," "potential," "continue," "contemplate," "seek," "assume," "believe," "intend," "plan," "forecast," "goal," "estimate," or other similar expressions which identify these forward-looking statements.

These forward-looking statements involve risks and uncertainties and relate to future events or our future financial or operating performance. These forward-looking statements are not historical facts, and are based on current expectations, estimates and projections about our industry and business, and on management's beliefs and certain assumptions made by management, many of which, by their nature, are inherently uncertain and beyond our control. Accordingly, you are cautioned that any such forward-looking statements are not guarantees of future performance and are subject to assumptions, risks and uncertainties that are difficult to predict, and that actual results and outcomes may be materially different from the results or outcomes expressed or implied by any of our forward-looking statements for a variety of reasons, including among others:

- *a recession, other economic downturns, inflation, high interest rates, our increasing exposure to the U.S. housing market, or other changes in U.S. and global economic conditions or U.S. consumer spending;*
- *any difficulties we may encounter as a result of our reliance on third-parties that we do not control for the performance of critical functions material to our business, such as carriers, fulfillment partners, and SaaS/IaaS providers;*
- *any inability to compete successfully against existing or future competitors or to effectively market our business and generate customer traffic;*
- *any increases in the price of importing into the U.S. or transporting to our customers the types of merchandise we sell or other supply chain challenges that limit our ability to deliver merchandise to our customers in a timely manner;*
- *any difficulties or negative consequences we may encounter as a result of our purchase, implementation, integration, or use of the Bed Bath & Beyond brand and intellectual property;*
- *any inability to attract and/or retain key personnel;*
- *any inability to generate and maintain unpaid natural traffic to our Website;*
- *any inability to optimize and effectively operate our distribution center, warehouse, and customer service operations;*
- *any inability to maintain profitability and/or generate positive cash flow from operations;*
- *any negative impact from our workforce working on a remote, in-office, or hybrid schedule;*
- *any challenges that would result in the event of any loss of functionality or unavailability of our Website or reduced performance of our transaction systems;*
- *our exposure to cyber-security risks, risks of data loss and other security breaches;*
- *the risk that the amount of deferred tax assets we consider realizable could be reduced if estimates of future taxable income during the carryforward period are reduced;*
- *the risk that we may be required to recognize losses relating to our equity and debt investments;*
- *the impacts that we would experience if governmental entities or providers of consumer devices and internet browsers further restrict or regulate the use of "cookie" tracking technologies;*
- *the impact that any litigation, claims, or regulatory matters could have on our business, financial condition, results of operations, and cash flows;*
- *negative economic consequences of various global conflicts;*
- *the possibility that we are unable to protect our proprietary technology and to obtain trademark protection for our marks;*
- *current and future claims of intellectual property infringement to which we are subject;*
- *any difficulties we may encounter as a result of our reliance on third-parties that we do not control for their representations regarding product compliance with various laws and regulations;*
- *any problems associated with our lack of transparency into, and our lack of influence over, our equity method investments, including our reliance on third-parties to timely and accurately report material events to us;*
- *any difficulties we may encounter as a result of our evolving business practices, including our exit from non-home categories and our continuing expansion into international markets;*

- *any inability of Pelion Venture Partners to successfully manage the Medici Ventures, L.P. fund, in which we are the limited partner, or any other entity in which we also have a direct minority interest; and*
- *the other risks described in this report or in our other public filings.*

In evaluating all forward-looking statements, you should specifically consider the risks outlined above and in this report, especially under the headings "Special Cautionary Note Regarding Forward-Looking Statements," "Risk Factors," "Legal Proceedings," and "Management's Discussion and Analysis of Financial Condition and Results of Operations." These factors may cause our actual results and outcomes to differ materially from those contemplated by any forward-looking statement. Although we believe that our expectations reflected in the forward-looking statements are reasonable, we cannot guarantee or offer any assurance of future results, levels of activity, performance or achievements or other future events. Our forward-looking statements contained in this report speak only as of the date of this report and, except as required by law, we undertake no obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this report or any changes in our expectations or any change in any events, conditions or circumstances on which any of our forward-looking statements are based.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS (UNAUDITED)

Overstock.com, Inc.
Consolidated Balance Sheets (Unaudited)
(in thousands, except per share data)

	June 30, 2023	December 31, 2022
Assets		
Current assets:		
Cash and cash equivalents	$ 342,891	$ 371,263
Restricted cash	185	194
Accounts receivable, net of allowance for credit losses of $2,006 and $3,223	19,122	17,693
Inventories	6,313	6,526
Prepaids and other current assets	20,369	18,833
Total current assets	388,880	414,509
Property and equipment, net	109,949	109,906
Deferred tax assets, net	52,941	41,439
Intangible assets, net	25,583	9
Goodwill	6,160	6,160
Equity securities, including securities measured at fair value of $38,400 and $82,823	208,476	296,317
Operating lease right-of-use assets	4,985	7,460
Other long-term assets, net	13,578	2,746
Total assets	$ 810,552	$ 878,546
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 86,016	$ 75,130
Accrued liabilities	62,603	63,614
Unearned revenue	43,379	44,480
Operating lease liabilities, current	3,108	4,410
Other current liabilities	2,029	3,508
Total current liabilities	197,135	191,142
Long-term debt, net	34,219	34,476
Operating lease liabilities, non-current	2,319	3,626
Other long-term liabilities	3,713	3,476
Total liabilities	237,386	232,720
Commitments and contingencies (Note 9)		

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See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Consolidated Balance Sheets (Unaudited)
(in thousands, except per share data)

	June 30, 2023	December 31, 2022
Stockholders' equity:		
Preferred stock, $0.0001 par value, authorized shares - 5,000, issued and outstanding - none	—	—
Common stock, $0.0001 par value, authorized shares - 100,000		
Issued shares - 51,455 and 51,102		
Outstanding shares - 45,202 and 44,951	5	5
Additional paid-in capital	995,904	982,718
Accumulated deficit	(257,629)	(173,829)
Accumulated other comprehensive loss	(514)	(522)
Treasury stock at cost - 6,253 and 6,151	(164,600)	(162,546)
Total stockholders' equity	573,166	645,826
Total liabilities and stockholders' equity	$ 810,552	$ 878,546

See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Operations (Unaudited)
(in thousands, except per share data)

	Three months ended June 30,		Six months ended June 30,	
	2023	**2022**	**2023**	**2022**
Net revenue	$ 422,211	$ 528,122	$ 803,351	$ 1,064,159
Cost of goods sold	327,839	407,017	619,266	817,842
Gross profit	94,372	121,105	184,085	246,317
Operating expenses				
Sales and marketing	49,242	57,940	96,290	116,453
Technology	27,706	30,542	58,252	63,531
General and administrative	21,673	21,081	42,156	42,337
Total operating expenses	98,621	109,563	196,698	222,321
Operating income (loss)	(4,249)	11,542	(12,613)	23,996
Interest income (expense), net	3,059	115	5,618	(10)
Other expense, net	(80,673)	(1,981)	(88,062)	(2,095)
Income (loss) before income taxes	(81,863)	9,676	(95,057)	21,891
Provision (benefit) for income taxes	(8,370)	2,529	(11,257)	4,621
Net income (loss)	$ (73,493)	$ 7,147	$ (83,800)	$ 17,270
Net income (loss) per share of common stock:				
Basic	$ (1.63)	$ 0.12	$ (1.86)	$ 0.33
Diluted	$ (1.63)	$ 0.12	$ (1.86)	$ 0.33
Weighted average shares of common stock outstanding:				
Basic	45,200	43,072	45,134	43,062
Diluted	45,200	43,159	45,134	43,221

See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Comprehensive Income (Loss) (Unaudited)
(in thousands)

	Three months ended June 30,		Six months ended June 30,	
	2023	**2022**	**2023**	**2022**
Net income (loss)	$ (73,493)	$ 7,147	$ (83,800)	$ 17,270
Other comprehensive income				
Unrealized gain on cash flow hedges, net of expense for taxes of $0, $0, $0, and $0	4	4	8	8
Other comprehensive income	4	4	8	8
Comprehensive income (loss)	$ (73,489)	$ 7,151	$ (83,792)	$ 17,278

See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Changes in Stockholders' Equity (Unaudited)
(in thousands)

	Three months ended June 30,		Six months ended June 30,	
	2023	**2022**	**2023**	**2022**
Equity attributable to stockholders of Overstock.com, Inc.				
Shares of common stock issued				
Balance at beginning of period	51,438	46,910	51,102	46,625
Common stock issued upon vesting of restricted stock	17	18	285	261
Common stock issued for ESPP purchases	—	—	68	42
Conversion of preferred stock	—	4,098	—	4,098
Balance at end of period	51,455	51,026	51,455	51,026
Shares of treasury stock				
Balance at beginning of period	6,247	4,190	6,151	3,602
Repurchases of common stock	—	1,135	—	1,652
Tax withholding upon vesting of employee stock awards	6	6	102	77
Balance at end of period	6,253	5,331	6,253	5,331
Total shares of common stock outstanding	45,202	45,695	45,202	45,695
Common stock				
Balance at beginning of period	$ 5	$ 4	$ 5	$ 4
Conversion and elimination of preferred stock	—	1	—	1
Balance at end of period	$ 5	$ 5	$ 5	$ 5
Shares of Series A-1 preferred stock issued				
Balance at beginning of period	—	4,204	—	4,204
Conversion and elimination of preferred stock	—	(4,204)	—	(4,204)
Balance at end of period	—	—	—	—
Shares of treasury stock				
Balance at beginning of period	—	6	—	—
Repurchases of shares	—	1	—	7
Conversion and elimination of preferred stock	—	(7)	—	(7)
Balance at end of period	—	—	—	—
Total shares of Series A-1 preferred stock outstanding	—	—	—	—
Shares of Series B preferred stock issued and outstanding				
Balance at beginning of period	—	357	—	357
Conversion and elimination of preferred stock	—	(357)	—	(357)
Balance at end of period	—	—	—	—
Preferred stock	$ —	$ —	$ —	$ —

Continued on the following page

See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Changes in Stockholders' Equity (Unaudited)
(in thousands)

	Three months ended June 30,		Six months ended June 30,	
	2023	**2022**	**2023**	**2022**
Additional paid-in capital				
Balance at beginning of period	$ 989,634	$ 967,073	$ 982,718	$ 960,544
Stock-based compensation to employees and directors	6,270	4,695	12,065	9,334
Common stock issued for ESPP purchases	—	—	1,121	1,890
Conversion and elimination of preferred stock	—	1,043	—	1,043
Other	—	34	—	34
Balance at end of period	$ 995,904	$ 972,845	$ 995,904	$ 972,845
Accumulated deficit				
Balance at beginning of period	$ (184,136)	$ (126,467)	$ (173,829)	$ (136,590)
Net income (loss)	(73,493)	7,147	(83,800)	17,270
Dividend issued upon conversion and elimination of preferred stock	—	(1,697)	—	(1,697)
Conversion and elimination of preferred stock	—	(306)	—	(306)
Balance at end of period	$ (257,629)	$ (121,323)	$ (257,629)	$ (121,323)
Accumulated other comprehensive loss				
Balance at beginning of period	$ (518)	$ (533)	$ (522)	$ (537)
Net other comprehensive income	4	4	8	8
Balance at end of period	$ (514)	$ (529)	$ (514)	$ (529)
Treasury stock				
Balance at beginning of period	$ (164,480)	$ (107,467)	$ (162,546)	$ (79,035)
Repurchases of common and Series A-1 preferred stock	—	(34,912)	—	(60,077)
Tax withholding upon vesting of employee stock awards	(120)	(215)	(2,054)	(3,482)
Conversion and elimination of preferred stock	—	306	—	306
Balance at end of period	$ (164,600)	$ (142,288)	$ (164,600)	$ (142,288)
Total stockholders' equity	$ 573,166	$ 708,710	$ 573,166	$ 708,710

See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Cash Flows (Unaudited)
(in thousands)

	Six months ended June 30, 2023	Six months ended June 30, 2022
Cash flows from operating activities:		
Net income (loss)	$ (83,800)	$ 17,270
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	10,501	8,350
Non-cash operating lease cost	2,554	2,736
Stock-based compensation to employees and directors	12,065	9,334
(Increase) decrease in deferred tax assets, net	(11,502)	2,622
Loss from equity method securities	87,820	2,583
Other non-cash adjustments	(186)	(114)
Changes in operating assets and liabilities:		
Accounts receivable, net	(1,429)	(1,504)
Inventories	213	(529)
Prepaids and other current assets	(907)	2,318
Other long-term assets, net	(1,537)	(943)
Accounts payable	11,992	(6,104)
Accrued liabilities	(3,369)	(8,339)
Unearned revenue	(1,101)	(2,833)
Operating lease liabilities	(2,779)	(2,850)
Other long-term liabilities	237	(175)
Net cash provided by operating activities	18,772	21,822
Cash flows from investing activities:		
Disbursement for notes receivable	(10,000)	—
Purchase of intangible assets	(22,832)	—
Purchase of equity securities	—	(11,420)
Capital distribution from investment	—	1,162
Expenditures for property and equipment	(12,048)	(6,406)
Other investing activities, net	445	(505)
Net cash used in investing activities	(44,435)	(17,169)
Cash flows from financing activities:		
Repurchase of shares	—	(60,077)
Payments of taxes withheld upon vesting of employee stock awards	(2,054)	(3,482)
Other financing activities, net	(664)	(1,673)
Net cash used in financing activities	(2,718)	(65,232)
Net decrease in cash, cash equivalents, and restricted cash	(28,381)	(60,579)
Cash, cash equivalents, and restricted cash, beginning of period	371,457	503,366
Cash, cash equivalents, and restricted cash, end of period	$ 343,076	$ 442,787

See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Notes to Unaudited Consolidated Financial Statements

1. DESCRIPTION OF BUSINESS

Overstock.com, Inc. is a leading online furniture and home furnishings retailer and technology-focused innovator that sells products at a smart value. Overstock.com owns the Bed Bath & Beyond brand and other intellectual property related to the brand. Our online shopping site offers a wide selection of quality furniture, décor, area rugs, bedding and bath, home improvement, outdoor, and kitchen and dining items, among others. Overstock.com, which receives tens of millions of visits per month, provides customers access to millions of products from third-party partners. As used herein, "Overstock," "the Company," "we," "our" and similar terms include Overstock.com, Inc. and its wholly-owned subsidiaries, unless the context indicates otherwise. As used herein, the term "Website" refers to the Company's internet websites located at www.overstock.com, www.o.co, www.overstock.ca, www.bedbathandbeyond.ca, and www.overstockgovernment.com and the Company's mobile app.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

We have prepared the accompanying unaudited consolidated financial statements pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States ("GAAP") have been omitted in accordance with the rules and regulations of the SEC. These financial statements should be read in conjunction with our audited annual consolidated financial statements and related notes included in our Annual Report on Form 10-K for the year ended December 31, 2022. There have been no significant changes to our significant accounting policies disclosed in Note 2—Accounting Policies, included in Part II, Item 8, Financial Statements and Supplementary Data, of our Annual Report on Form 10-K for the year ended December 31, 2022.

The accompanying unaudited consolidated financial statements include our accounts and the accounts of our wholly-owned subsidiaries and reflect all adjustments, consisting only of normal recurring adjustments, which are, in our opinion, necessary for a fair presentation of results for the interim periods presented. All intercompany account balances and transactions have been eliminated in consolidation. The results of operations for the three and six months ended June 30, 2023 are not necessarily indicative of the results to be expected for any future period or the full fiscal year, due to seasonality and other factors.

Use of estimates

The preparation of financial statements in conformity with GAAP requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent liabilities in our consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, receivables valuation, revenue recognition, Club O and gift card breakage, sales returns, inventory valuation, depreciable lives, equity and debt securities valuation, income taxes, stock-based compensation, performance-based compensation, self-funded health insurance liabilities, and contingencies. Although these estimates are based on our best knowledge of current events and actions that we may undertake in the future, our accounting of these estimates may change from period to period. To the extent there are differences between these estimates and actual results, our consolidated financial statements may be materially affected.

Available-for-sale debt securities

During the six months ended June 30, 2023, we invested $10.0 million in GrainChain, Inc. in the form of a convertible promissory note (the "Note"). The Note bears interest at an annual interest rate of 5% and accrued interest is recorded in Interest income (expense), net in our consolidated statements of operations. The Note has a maturity date of January 3, 2025 at which time the outstanding principal and any unpaid accrued interest will automatically convert into shares of a newly created series of preferred stock issued by GrainChain, Inc. unless converted earlier under limited circumstances. The carrying amount of the Note, including accrued interest, was $10.2 million at June 30, 2023, which is included in Other long-term assets, net on our consolidated balance sheets.

Based on the nature of our indirect ownership interests in GrainChain, Inc. through Medici Ventures, L.P. and the extent of our contributed capital, we held a variable interest in GrainChain, Inc., which meets the definition of a variable interest entity; however, we are not the primary beneficiary of this entity for purposes of consolidation as we do not have the power (either explicit or implicit), through voting rights or otherwise, to direct the activities of GrainChain, Inc. that most significantly impact its economic performance. Our maximum exposure to loss in this variable interest entity totaled $27.6 million as of June 30, 2023, representing our direct and indirect interest in GrainChain, Inc.

Intangible assets other than goodwill

We capitalize and amortize intangible assets other than goodwill over their estimated useful lives unless such lives are indefinite. Intangible assets other than goodwill acquired separately from third-parties are capitalized at cost, including any related direct acquisition costs, while such assets acquired as part of a business combination are capitalized at their acquisition-date fair value. Indefinite-lived intangible assets are tested for impairment annually or more frequently when events or circumstances indicate that the carrying value more likely than not exceeds its fair value. In addition, we routinely evaluate the remaining useful life of intangible assets not being amortized to determine whether events or circumstances continue to support an indefinite useful life, including any legal, regulatory, contractual, competitive, economic, or other factors that may limit their useful lives. Definite lived intangible assets are amortized using the straight-line method of amortization over their useful lives, with the exception of certain intangibles (such as acquired customer lists) which are amortized using an accelerated method of amortization based on estimated customer attrition rates. These definite lived intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable.

3. FAIR VALUE MEASUREMENT

The following tables summarize our assets and liabilities measured at fair value on a recurring basis using the following levels of inputs (in thousands):

	Fair Value Measurements at June 30, 2023			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Cash equivalents—Money market funds	$ 258,258	$ 258,258	$ —	$ —
Equity securities, at fair value	38,400	15	—	38,385
Available-for-sale debt securities (1)	10,232	—	—	10,232
Trading securities held in a "rabbi trust" (1)	443	443	—	—
Total assets	$ 307,333	$ 258,716	$ —	$ 48,617
Liabilities:				
Deferred compensation accrual "rabbi trust" (2)	$ 460	$ 460	$ —	$ —
Total liabilities	$ 460	$ 460	$ —	$ —

	Fair Value Measurements at December 31, 2022			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Cash equivalents—Money market funds	$ 252,650	$ 252,650	$ —	$ —
Equity securities, at fair value	82,823	36	—	82,787
Trading securities held in a "rabbi trust" (1)	399	399	—	—
Total assets	$ 335,872	$ 253,085	$ —	$ 82,787
Liabilities:				
Deferred compensation accrual "rabbi trust" (2)	$ 396	$ 396	$ —	$ —
Total liabilities	$ 396	$ 396	$ —	$ —

(1) Included in Other long-term assets, net in the consolidated balance sheets.
(2) Included in Accrued liabilities and Other long-term liabilities in the consolidated balance sheets.

The following table provides activity for our Level 3 investments (in thousands):

	Amount
Level 3 investments at December 31, 2021	$ 102,355
Increase due to purchases of Level 3 investments	18,920
Decrease in fair value of Level 3 investments	(38,488)
Level 3 investments at December 31, 2022	82,787
Increase due to purchases of Level 3 investments	10,000
Decrease in fair value of Level 3 investments	(44,402)
Accrued interest on Level 3 investments	232
Level 3 investments at June 30, 2023	$ 48,617

4. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consist of the following (in thousands):

	June 30, 2023	December 31, 2022
Computer hardware and software, including internal-use software and website development	$ 246,369	$ 240,148
Building	69,356	69,350
Land	12,781	12,781
Furniture and equipment	13,329	12,642
Building machinery and equipment	9,791	9,791
Land improvements	7,060	7,060
Leasehold improvements	2,823	2,904
	361,509	354,676
Less: accumulated depreciation	(251,560)	(244,770)
Total property and equipment, net	$ 109,949	$ 109,906

Capitalized costs associated with internal-use software and website development, both developed internally and acquired externally, and depreciation of costs for the same periods associated with internal-use software and website development consist of the following (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Capitalized internal-use software and website development	$ 4,234	$ 2,343	$ 6,281	$ 4,112
Depreciation of internal-use software and website development	1,645	1,555	4,715	3,281

Depreciation expense is classified within the corresponding operating expense categories on our consolidated statements of operations as follows (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Cost of goods sold	$ 206	$ 171	$ 440	$ 338
Technology	3,286	2,946	7,990	6,146
General and administrative	1,021	913	2,063	1,832
Total depreciation	$ 4,513	$ 4,030	$ 10,493	$ 8,316

5. INTANGIBLE ASSETS, NET

On June 12, 2023, we entered into an Asset Purchase Agreement with Bed Bath & Beyond Inc. ("BBBY"), and certain subsidiaries, to acquire certain intellectual property assets of the Bed Bath & Beyond banner from BBBY. On June 27, 2023, under a Bankruptcy Court supervised process, the U.S. Bankruptcy Court for the District of New Jersey approved the sale of the assets to the Company and on June 28, 2023, BBBY delivered all intellectual property assets via an Intellectual Property Assignment Agreement. The total purchase price, inclusive of direct acquisition-related expenses totaled $25.6 million which has been allocated to two major asset categories consisting of $21.8 million for trade names with an indefinite useful life and $3.8 million for customers lists with an estimated useful life of five years.

Intangible assets, net consist of the following (in thousands):

	June 30, 2023	December 31, 2022
Intangible assets subject to amortization, gross (1)	$ 5,331	$ 1,552
Less: accumulated amortization of intangible assets	(1,551)	(1,543)
Intangible assets subject to amortization, net	3,780	9
Intangible assets not subject to amortization	21,803	—
Total intangible assets, net	$ 25,583	$ 9

(1) At June 30, 2023, the weighted average remaining useful life for intangible assets subject to amortization, gross was 5.0 years.

6. EQUITY SECURITIES

Equity securities consist of the following (in thousands):

	June 30, 2023	December 31, 2022
Equity securities accounted for under the equity method under ASC 323	$ 170,076	$ 213,494
Equity securities accounted for under the equity method under the fair value option	38,385	82,787
Equity securities under ASC 321	15	36
Total equity securities	$ 208,476	$ 296,317

Our equity securities accounted for under the equity method under ASC 323 include equity securities in which we can exercise significant influence, but not control, over these entities through holding more than a 20% voting interest in the entity. The following table includes our equity securities accounted for under the equity method and related ownership interest as of June 30, 2023:

	Ownership interest
Medici Ventures, L.P.	99%
tZERO Group, Inc.	28%
SpeedRoute, LLC	49%

The carrying amount of our equity method securities was $208.5 million at June 30, 2023, which is included in Equity securities on our consolidated balance sheets, of which $38.4 million is valued under the fair value option (tZERO and SpeedRoute). For our investments in Medici Ventures, tZERO, and SpeedRoute there is no difference in the carrying amount of the assets and liabilities and our maximum exposure to loss, and there is no difference between the carrying amount of our investment in Medici Ventures and the amount of underlying equity we have in the entity's net assets.

The following table summarizes the net loss recognized on equity method securities recorded in Other expense, net in our consolidated statements of operations (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Net loss recognized on our proportionate share of the net assets of our equity method securities	$ (36,237)	$ (2,284)	$ (43,418)	$ (3,748)
Increase (decrease) in fair value of equity method securities held under fair value option	(44,402)	—	(44,402)	1,165

Regulation S-X Rule 10-01(b)(1)

In accordance with Rule 10-01(b)(1) of Regulation S-X, which applies to interim reports on Form 10-Q, the Company must determine if its equity method investees are considered "significant subsidiaries". Summarized income statement information of an equity method investee is required in an interim report if the significance criteria are met as defined under SEC guidance.

The following is the unaudited summarized financial information for those equity method securities that met the significance criteria for the period ended June 30, 2023 (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Results of Operations				
Revenues	$ 266	$ 820	$ 764	$ 1,560
Pre-tax loss	(3,088)	(8,067)	(8,295)	(13,447)
Net loss	(3,111)	(8,816)	(8,435)	(13,196)

7. BORROWINGS

In March 2020, we entered into two loan agreements. The loan agreements provide a $34.5 million Senior Note, carrying interest at an annual rate of 4.242%, and a $13.0 million Mezzanine Note, carrying interest at an annual rate of 5.002%. The loans carry a blended annual interest rate of 4.45%. The Senior Note is for a 10-year term (stated maturity date is March 6, 2030) and requires interest only payments, with the principal amount and any then unpaid interest due and payable at the end of the 10-year term. The Mezzanine Note has a stated 10-year term, though the agreement requires principal and interest payments monthly over approximately a 46-month payment period. Our debt issuance costs and debt discount are amortized using the straight-line basis which approximates the effective interest method.

As of June 30, 2023, the total outstanding debt on these loans was $36.2 million, net of $355,000 in capitalized debt issuance costs, and the total amount of the current portion of these loans included in Other current liabilities on our consolidated balance sheets was $2.0 million.

Both loans include certain financial and non-financial covenants and are secured by our corporate headquarters and the related land and rank senior to stockholders. The financial covenants require that Overstock maintain a net worth in excess of $30 million and minimum liquid assets of $3 million for so long as the Mezzanine Note is outstanding and is reduced to maintaining a net worth in excess of $15 million and minimum liquid assets of $1 million for the remainder of the term that the Senior Note is outstanding. We are in compliance with our debt covenants and continue to monitor our ongoing compliance with our debt covenants.

8. LEASES

We have operating leases for warehouses, office space, and data centers. Our leases have remaining lease terms of one year to four years, some of which may include options to extend the leases perpetually, and some of which may include options to terminate the leases within one year.

The components of lease expenses were as follows (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Operating lease cost	$ 1,492	$ 1,569	$ 2,898	$ 3,078
Variable lease cost	383	264	747	762

The following table provides a summary of other information related to leases (in thousands):

	Six months ended June 30,	
	2023	2022
Cash payments included in operating cash flows from lease arrangements	$ 3,023	$ 3,159

The following table provides supplemental balance sheet information related to leases:

	June 30, 2023	December 31, 2022
Weighted-average remaining lease term—operating leases	1.87 years	2.04 years
Weighted-average discount rate—operating leases	7 %	7 %

Maturity of lease liabilities under our non-cancellable operating leases as of June 30, 2023, are as follows (in thousands):

Payments due by period	Amount
2023 (Remainder)	$ 1,951
2024	2,880
2025	689
2026	250
2027	83
Thereafter	—
Total lease payments	5,853
Less interest	426
Present value of lease liabilities	$ 5,427

9. COMMITMENTS AND CONTINGENCIES

Legal proceedings and contingencies

From time to time, we are involved in litigation concerning consumer protection, employment, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. In connection with such litigation, we have been in the past and we may be in the future subject to significant damages. In some instances, other parties may have contractual indemnification obligations to us. However, such contractual obligations may prove unenforceable or non-collectible, and if we cannot enforce or collect on indemnification obligations, we may bear the full responsibility for damages, fees, and costs resulting from such litigation. We may also be subject to penalties and equitable remedies that could force us to alter important business practices. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. The nature of the loss contingencies relating to claims that have been asserted against us are described below.

As previously disclosed, in October 2019, we received a subpoena from the SEC requiring us to produce documents and other information related to the Series A-1 Preferred stock dividend we announced to stockholders in June 2019 and requesting copies of 10b5-1 plans entered into by certain officers and directors. In December 2019, we received a subpoena from the SEC requesting our insider trading policies and certain employment and consulting agreements. We also received requests from the SEC for our communications with our former Chief Executive Officer and Director, Patrick Byrne, and the matters referenced in the December 2019 subpoenas. In January 2021, we received a subpoena from the SEC requesting information regarding our retail guidance in 2019 and certain communications with current and former executives, board members, and investors. We continue to cooperate with the SEC on these matters.

On September 27, 2019, a purported securities class action lawsuit was filed against us and our former Chief Executive Officer and former Chief Financial Officer in the United States District Court of Utah, alleging violations under Section 10(b), Rule 10b-5, Section 20(a), and Section 20A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). On October 8, 2019, October 17, 2019, October 31, 2019, and November 20, 2019, four similar lawsuits were filed in the same court also naming us and the above referenced former executives as defendants, bringing similar claims under the Exchange Act, and seeking similar relief. These cases were consolidated into a single lawsuit in December 2019. The Court appointed The Mangrove Partners Master Fund Ltd. as lead plaintiff in January 2020. In March 2020, an amended consolidated complaint was filed against us, our President, our former Chief Executive Officer, and our former Chief Financial Officer. We filed a motion to dismiss and, on September 28, 2020, the court granted our motion and entered judgment in our favor. The plaintiffs filed a motion to amend their complaint on October 23, 2020. The United States District Court of Utah granted the plaintiffs' motion to amend their complaint on January 6, 2021. The plaintiffs filed their amended complaint on January 11, 2021. We filed a motion to dismiss plaintiffs' amended complaint, and on September 20, 2021, the court granted our motion and entered judgment in our favor. On October 18, 2021, the plaintiffs filed a Notice of Appeal, appealing the ruling of the district court to the United States Court of Appeals for the Tenth Circuit. We are awaiting a ruling from the Tenth Circuit that heard oral argument on the appeal on February 9, 2023. No estimates of the possible losses or range of losses can be made at this time. We intend to continue to vigorously defend this consolidated action.

On November 22, 2019, a shareholder derivative suit was filed against us and certain past and present directors and officers of ours in the United States District Court for the District of Delaware, with allegations that include: (i) breach of fiduciary duties, (ii) unjust enrichment, (iii) insider selling and misappropriation of the Company's information, and (iv) contribution under Sections 10(b) and 21D of the Exchange Act. On December 17, 2019, a similar lawsuit was filed in the same court, naming the same defendants, bringing similar claims, and seeking similar relief. These cases were consolidated into a single lawsuit in January 2020. In March 2020, the court entered a stay on litigation, pending the outcome of the securities class action motion to dismiss. The case remains stayed pending the outcome of the plaintiffs' appeal to the Tenth Circuit in the securities class action. No estimates of the possible losses or range of losses can be made at this time. We intend to vigorously defend these actions.

On April 23, 2020, a putative class action lawsuit was filed against us in the Circuit Court of the County of St. Louis, State of Missouri, alleging that we over-collected taxes on products sold into the state of Missouri. We removed the case to United States District Court, Eastern District of Missouri on May 22, 2020, and on February 9, 2021, the case against us was dismissed. On March 1, 2021, a putative class action lawsuit was filed against us in the Circuit Court of the County of St. Louis, State of Missouri, alleging similar allegations to the April 23, 2020 putative class action lawsuit that was dismissed, that we over-collected taxes on products sold into the state of Missouri. We filed a motion to compel arbitration, which was denied on October 13, 2021. We filed a motion to dismiss, which was denied on March 16, 2022. No estimates of the possible losses or range of losses can be made at this time. We intend to vigorously defend this action.

We establish liabilities when a particular contingency is probable and estimable. At June 30, 2023 and December 31, 2022, our established liabilities were not material.

10. INDEMNIFICATIONS AND GUARANTEES

During our normal course of business, we have made certain indemnities, commitments, and guarantees under which we may be required to make payments in relation to certain transactions. These indemnities include, but are not limited to, indemnities we entered into in favor of Loan Core Capital Funding Corporation LLC under our building loan agreements, various lessors in connection with facility leases for certain claims arising from such facility or lease, the environmental indemnity we entered into in favor of the lenders under our prior loan agreements, customary indemnification arrangements in underwriting agreements and similar agreements, and indemnities to our directors and officers to the maximum extent permitted under the laws of the State of Delaware. The duration of these indemnities, commitments, and guarantees varies, and in certain cases, is indefinite. In addition, the majority of these indemnities, commitments, and guarantees do not provide for any limitation of the maximum potential future payments we could be obligated to make. As such, we are unable to estimate with any reasonableness our potential exposure under these items. We have not recorded any liability for these indemnities, commitments, and guarantees in the accompanying consolidated balance sheets. We do, however, accrue for losses for any known contingent liability, including those that may arise from indemnification provisions, when future payment is both probable and reasonably estimable.

11. STOCKHOLDERS' EQUITY

Common stock

Each share of common stock has the right to one vote. The holders of common stock are also entitled to receive dividends declared by the Board of Directors out of funds legally available, subject to prior rights of holders of all classes of stock outstanding having priority rights as to dividends.

Preferred stock conversion

Following the June 10, 2022 conversion of all outstanding Series A-1 and Series B preferred stock into shares of our common stock, the Company eliminated the Series A-1 and Series B preferred stock class by filing Certificates of Elimination with the Delaware Secretary of State.

JonesTrading Sales Agreement

Our "at the market" sales agreement with JonesTrading Institutional Services LLC and D.A. Davidson & Co. remains active; however, the authorization from our Board of Directors to sell shares of our common stock pursuant to the "at the market" sales program has expired. During the six months ended June 30, 2023 and 2022, we did not sell any shares of our common stock pursuant to the "at the market" sales program.

Stock Repurchase Program

During the three and six months ended June 30, 2023, we did not repurchase any shares of our common stock under our stock repurchase program. During the three months ended June 30, 2022, we repurchased $34.9 million of our common stock and $50,000 of our Series A-1 preferred stock under the stock repurchase program at average prices of $30.69 and $31.30 per share, respectively. During the six months ended June 30, 2022, we repurchased $59.8 million of our common stock and $306,000 of our Series A-1 preferred stock under the stock repurchase program at average prices of $36.16 and $42.16 per share, respectively. During the six months ended June 30, 2022, we retired 7,244 shares of our Series A-1 preferred stock treasury stock which had been previously repurchased under the stock repurchase program. The retirement increased Accumulated deficit by $306,000. As of June 30, 2023, we had $19.9 million available for future share repurchases under our current repurchase authorization through December 31, 2023.

12. STOCK-BASED AWARDS

Stock-based compensation expense is classified within the corresponding operating expense categories on our consolidated statements of operations as follows (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Cost of goods sold	$ 11	$ 13	$ 30	$ 67
Sales and marketing	238	245	428	590
Technology	2,609	1,942	5,031	3,782
General and administrative	3,412	2,495	6,576	4,895
Total stock-based compensation	$ 6,270	$ 4,695	$ 12,065	$ 9,334

Overstock restricted stock awards

The Overstock.com, Inc. Amended and Restated 2005 Equity Incentive Plan provides for the grant of restricted stock units to employees and directors of the Company and other types of equity awards of the Company. These restricted stock awards generally vest over three years at 33.3% at the end of the first year, 33.3% at the end of the second year and 33.4% at the end of the third year, subject to the recipient's continuing service to us.

The following table summarizes restricted stock award activity (in thousands, except per share data):

	Six months ended June 30, 2023	
	Units	Weighted Average Grant Date Fair Value
Outstanding—beginning of year	781	$ 50.17
Granted at fair value	1,058	20.87
Vested	(285)	43.07
Forfeited	(87)	37.60
Outstanding—end of period	1,467	$ 31.18

Employee Stock Purchase Plan

Purchases under the Overstock.com, Inc. 2021 Employee Stock Purchase Plan (the "ESPP") during the six months ended June 30, 2023 and 2022 were 68,011 shares and 41,918 shares, respectively, at an average purchase price per share of $16.46 and $48.37, respectively. At June 30, 2023, approximately 2.8 million shares of common stock remained available under the ESPP.

Stock-based compensation related to the ESPP is included in the stock-based compensation expense table above combined with the expense associated with our restricted stock units. Stock-based compensation related to the ESPP was $515,000 and $610,000 for the three months ended June 30, 2023 and 2022, respectively, and $1.1 million and $1.2 million for the six months ended June 30, 2023 and 2022, respectively.

13. REVENUE AND CONTRACT LIABILITY

Unearned Revenue

The following table provides information about unearned revenue from contracts with customers, including significant changes in unearned revenue balances during the periods presented (in thousands):

	Amount
Unearned revenue at December 31, 2021	$ 59,387
Increase due to deferral of revenue at period end, net	32,993
Decrease due to beginning contract liabilities recognized as revenue	(47,900)
Unearned revenue at December 31, 2022	44,480
Increase due to deferral of revenue at period end, net	25,248
Decrease due to beginning contract liabilities recognized as revenue	(26,349)
Unearned revenue at June 30, 2023	$ 43,379

Our total unearned revenue related to outstanding Club O Reward dollars was $10.5 million and $10.9 million at June 30, 2023 and December 31, 2022, respectively. Breakage income related to Club O Reward dollars and gift cards is recognized in Net revenue in our consolidated statements of operations. Breakage included in revenue was $1.0 million and $1.1 million for the three months ended June 30, 2023 and 2022, respectively, and $1.9 million and $2.2 million for the six months ended June 30, 2023 and 2022, respectively. The timing of revenue recognition of these reward dollars is driven by actual customer activities, such as redemptions and expirations.

Sales returns allowance

The following table provides additions to and deductions from the sales returns allowance, which is included in our Accrued liabilities balance in our consolidated balance sheets (in thousands):

	Amount
Allowance for returns at December 31, 2021	$ 13,923
Additions to the allowance	161,492
Deductions from the allowance	(165,193)
Allowance for returns at December 31, 2022	10,222
Additions to the allowance	66,298
Deductions from the allowance	(65,227)
Allowance for returns at June 30, 2023	$ 11,293

14. NET INCOME (LOSS) PER SHARE

The following table sets forth the computation of basic and diluted net income (loss) per common share for the periods indicated (in thousands, except per share data):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Numerator:				
Net income (loss)	$ (73,493)	$ 7,147	$ (83,800)	$ 17,270
Less: Preferred stock dividends—issued	—	1,697	—	1,697
Undistributed income (loss)	(73,493)	5,450	(83,800)	15,573
Less: Undistributed income (loss) allocated to participating securities	—	410	—	1,332
Net income (loss) attributable to common stockholders	$ (73,493)	$ 5,040	$ (83,800)	$ 14,241
Denominator:				
Weighted average shares of common stock outstanding—basic	45,200	43,072	45,134	43,062
Effect of dilutive securities:				
Restricted stock awards	—	87	—	159
Weighted average shares of common stock outstanding—diluted	45,200	43,159	45,134	43,221
Net income (loss) per share of common stock:				
Basic	$ (1.63)	$ 0.12	$ (1.86)	$ 0.33
Diluted	$ (1.63)	$ 0.12	$ (1.86)	$ 0.33

The following shares were excluded from the calculation of diluted shares outstanding as their effect would have been anti-dilutive (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Restricted stock units	1,467	689	1,467	597
Employee stock purchase plan	110	101	110	83

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion provides information that we believe to be relevant to an understanding of our consolidated financial condition and results of operations. The statements in this section regarding industry outlook, our expectations regarding the performance of our business and any other non-historical statements are forward-looking statements. Our actual results and outcomes may differ materially from those contained in or implied by any forward-looking statements contained herein. These forward-looking statements are subject to numerous risks and uncertainties, including, but not limited to, the risks and uncertainties described in "Special Cautionary Note Regarding Forward Looking Statements" and in Part II, Item 1A, "Risk Factors" included in this Quarterly Report on Form 10-Q. You should read the following discussion together with our consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q and with the sections entitled "Special Cautionary Note Regarding Forward-Looking Statements," Part I, Item 1A, "Risk Factors," and our consolidated financial statements and related notes included in our Annual Report on Form 10-K for the year ended December 31, 2022.

We are an online furniture and home furnishings retailer and technology-focused innovator. As used herein, "Overstock," "the Company," "we," "our" and similar terms include Overstock.com, Inc. and our controlled subsidiaries, unless the context indicates otherwise.

Overview

Overstock provides furniture and home furnishings to assist consumers in "Making Dream Homes Come True," particularly for our target customers—consumers who seek smart value on quality, stylish furniture and home furnishings at competitive prices, and who want an easy shopping experience. We believe that the furniture and home furnishings market, which is highly fragmented and has traditionally been served by brick-and-mortar stores, will continue transitioning to online sales as consumers become increasingly comfortable shopping online for goods in this product category. We continually update and augment our product assortment to meet the evolving preferences of our customers and current trends. Our products include furniture, décor, area rugs, bedding and bath, home improvement, outdoor, and kitchen and dining items, among others. We recently acquired the Bed Bath & Beyond brand and other intellectual property related to the brand. We sell our products and services primarily through our internet websites located at www.overstock.com, www.o.co, www.overstock.ca, www.bedbathandbeyond.ca, and www.overstockgovernment.com (referred to collectively as the "Website") and through our mobile app. Nearly all of our retail sales through our Website and mobile app were from transactions in which we fulfilled orders through our network of manufacturers, distributors and other suppliers ("partners") selling on our Website. Our use of the term "partner" does not mean that we have formed any legal partnerships with any of our retail partners. We provide our partners with access to a large customer base and convenient services for marketing, order fulfillment, customer service, returns handling, and other services. Our supply chain allows us to ship directly to our customers from our partners or from our warehouses. Our warehouses primarily fulfill orders from sales of our partners' owned inventory, including some customer returns of partner products.

We expect our recent acquisition of the Bed Bath & Beyond brand and other intellectual property to assist us in driving growth as we continue to focus on driving growth through expanding our home assortment to improve our brand association with home, making it easier for our customers to find and view a broad assortment of products, increasing mobile app adoption driving higher customer retention, average order size, and brand loyalty, optimizing our marketing efforts to grow Overstock consideration among home shoppers, growing our customer base in Canada, and gaining market share by strengthening our brand pillars of "Product Findability," "Smart Value," and "Easy Delivery and Support."

Executive Commentary

This executive commentary is intended to provide investors with a view of our business through the eyes of our management. As an executive commentary, it necessarily focuses on selected aspects of our business. This executive commentary is intended as a supplement to, but not a substitute for, the more detailed discussion of our business included elsewhere herein. Investors are cautioned to read our entire "Management's Discussion and Analysis of Financial Condition and Results of Operations," our interim and audited financial statements, and the discussion of our business and risk factors and other information included elsewhere or incorporated in this report. This executive commentary includes forward-looking statements, and investors are cautioned to read "Special Cautionary Note Regarding Forward-Looking Statements."

Revenue decreased 20.1% for the three months ended June 30, 2023, compared to the same period in 2022. This decrease was primarily due to a 16% decrease in the number of customer orders delivered and a decrease in average order value of 5%. This decreased order activity was largely driven by the impact of macroeconomic factors including a relatively high inflationary environment and uncertainty impacting consumer sentiment, a shift in consumer spending preferences, and our strategy to exit non-home categories.

Gross profit decreased 22.1% for the three months ended June 30, 2023, compared to the same period in 2022, due to lower sales and a decrease in gross margin. Gross margin decreased to 22.4% for the three months ended June 30, 2023, compared to 22.9% for the same period in 2022, primarily due to increased promotional discounting and carrier costs. The decrease was partially offset by merchandising actions and operational efficiencies.

Sales and marketing expenses as a percentage of revenue increased from 11.0% for the three months ended June 30, 2022 to 11.7% for the three months ended June 30, 2023, primarily due to increased performance marketing expense partially offset by lower brand advertising.

Technology expenses totaled $27.7 million for the three months ended June 30, 2023, a $2.8 million decrease compared to the three months ended June 30, 2022, primarily due to a reduction in staff-related expenses.

General and administrative expenses increased $592,000 for the three months ended June 30, 2023 compared to the three months ended June 30, 2022, primarily due to increased legal and other third-party expenses partially offset by a reduction in staff-related expenses.

Our consolidated cash and cash equivalents balance decreased from $371.3 million as of December 31, 2022, to $342.9 million as of June 30, 2023.

Additional commentary related to macroeconomic trends

We continue to monitor recent macroeconomic trends, including, but not limited to, geopolitical events, fluctuating interest rates, and inflation. These events have and may continue to negatively impact consumer confidence and consumer spending which have and may continue to adversely affect our business and our results of operations. Due to the uncertain and constantly evolving nature and volatility created by these disruptions to global economic activities, we cannot currently predict the long-term impact of these events on our operations and financial results. Nevertheless, as of June 30, 2023, the challenges arising from these events have not adversely affected our liquidity or capacity to service our debt, nor have these conditions required us to reduce our capital expenditures.

Results of Operations

Comparisons of Three Months Ended June 30, 2023 to Three Months Ended June 30, 2022, and Six Months Ended June 30, 2023 to Six Months Ended June 30, 2022.

Net revenue, cost of goods sold, gross profit and gross margin

The following table summarizes our net revenue, cost of goods sold, and gross profit (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Net revenue	$ 422,211	$ 528,122	$ 803,351	$ 1,064,159
Cost of goods sold				
Product costs and other cost of goods sold	311,950	386,007	588,571	774,977
Merchant fees, customer service, and other	15,889	21,010	30,695	42,865
Total cost of goods sold	327,839	407,017	619,266	817,842
Gross profit	$ 94,372	$ 121,105	$ 184,085	$ 246,317
Year-over-year percentage change				
Net revenue	(20.1)%		(24.5)%	
Gross profit	(22.1)%		(25.3)%	
Percent of total net revenue				
Cost of goods sold				
Product costs and other cost of goods sold	73.9 %	73.1 %	73.3 %	72.8 %
Merchant fees, customer service, and other	3.8 %	4.0 %	3.8 %	4.0 %
Total cost of goods sold	77.6 %	77.1 %	77.1 %	76.9 %
Gross margin	22.4 %	22.9 %	22.9 %	23.1 %

The 20.1% decrease in net revenue for the three months ended June 30, 2023, as compared to the same period in 2022, was primarily due to a 16% decrease in the number of customer orders delivered and a decrease in average order value of 5%. This decreased order activity was largely driven by the impact of macroeconomic factors including a relatively high inflationary environment and uncertainty impacting consumer sentiment, a shift in consumer spending preferences, and our strategy to exit non-home categories.

The 24.5% decrease in net revenue for the six months ended June 30, 2023, as compared to the same period in 2022, was primarily due to a 22% decrease in the number of customer orders delivered and a decrease in average order value of 3%. This decreased order activity was largely driven by the impact of macroeconomic factors including a relatively high inflationary environment and uncertainty impacting consumer sentiment, a shift in consumer spending preferences, and our strategy to exit non-home categories.

We cannot estimate the impact that macroeconomic conditions, such as supply chain challenges, inflation, rising interest rates, or geopolitical events will have on our business in the future due to the unpredictable nature of the ultimate development and duration of these conditions.

International net revenues were less than 2% of total net revenues for each of the three and six months ended June 30, 2023 and 2022.

Change in estimate of average transit times (days)

Our revenue related to merchandise sales is recognized upon delivery to our customers. As we ship high volumes of packages through multiple carriers, it is not practical for us to track the actual delivery date of each shipment. Therefore, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times. We review and update our estimates on a quarterly basis based on our actual transit time experience. However, actual shipping times may differ from our estimates, which can be further impacted by uncertainty, volatility, and any disruption to our carriers caused by certain macroeconomic conditions, such as supply chain challenges, inflation, rising interest rates, or geopolitical events.

The following table shows the effect that hypothetical changes in the estimate of average shipping transit times would have had on the reported amount of revenue and income before income taxes (in thousands):

	Three months ended June 30, 2023	
Change in the Estimate of Average Transit Times (Days)	**Increase (Decrease) Revenue**	**Increase (Decrease) Income Before Income Taxes**
2	$ (12,946)	$ (2,486)
1	$ (4,956)	$ (951)
As reported	As reported	As reported
-1	$ 4,091	$ 784
-2	$ 7,729	$ 1,482

Gross profit and gross margin

Our overall gross margins fluctuate based on competitive pricing; product costs; discounting; product mix of sales; advertising revenue and our marketing allowance program; and operational and fulfillment costs. Merchant fees, customer service, and other (previously labeled "Fulfillment and related costs") include merchant processing fees associated with customer payments made by credit cards and other payment methods and other variable fees, customer service costs, costs incurred to operate and staff our warehouses, including rent and depreciation expense associated with these facilities, costs to receive, inspect, pick, and prepare customer order for delivery, and direct and indirect labor costs including payroll, payroll-related benefits, and stock-based compensation, all of which we include as costs in calculating gross margin. Merchant fees, customer service, and other as a percentage of sales may vary due to several factors, such as our ability to effectively manage merchant fees, customer service costs, and warehouse costs. We believe that some companies in our industry, including some of our competitors, account for merchant fees, customer service, and other costs within operating expenses, and therefore exclude merchant fees, customer service, and other costs from gross margin. As a result, our gross margin may not be directly comparable to others in our industry.

Gross margins for the past six quarterly periods and fiscal year ending 2022 were:

	Q1 2022	**Q2 2022**	**Q3 2022**	**Q4 2022**	**FY 2022**	**Q1 2023**	**Q2 2023**
Gross margin	23.4 %	22.9 %	23.3 %	22.1 %	23.0 %	23.5 %	22.4 %

Gross profit for the three months ended June 30, 2023 decreased 22.1% compared to the same period in 2022, due to lower sales and a decrease in gross margin. Gross margin decreased to 22.4% for the three months ended June 30, 2023, compared to 22.9% for the same period in 2022, primarily due to increased promotional discounting and carrier costs. The decrease was partially offset by merchandising actions and operational efficiencies.

Gross profit for the six months ended June 30, 2023 decreased 25.3% compared to the same period in 2022, primarily due to lower sales and a decrease in gross margin. Gross margin decreased to 22.9% for the six months ended June 30, 2023, compared to 23.1% for the same period in 2022, primarily due to increased promotional discounting and carrier costs. The decrease was partially offset by merchandising actions and operational efficiencies.

Operating expenses

Sales and marketing expenses

We use a variety of online advertising channels to attract new and repeat customers, including search engine marketing, personalized emails, mobile app, loyalty program, affiliate marketing, display banners, and social media. We also build our brand awareness through linear and streaming TV.

Costs associated with our discounted shipping and other promotions, such as coupons, are not included in sales and marketing expense. Rather, they are accounted for as a reduction in revenue as they reduce the amount of consideration we expect to receive in exchange for goods or services and therefore affect net revenues and gross margin. We consider discounted shipping and other promotions, such as our policy for free shipping on orders, as an effective marketing tool.

The following table summarizes our sales and marketing expenses (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Sales and marketing expenses	$ 49,242	$ 57,940	$ 96,290	$ 116,453
Advertising expense included in sales and marketing expenses	46,883	55,334	91,689	111,046
Year-over-year percentage change				
Sales and marketing expenses	(15.0)%		(17.3)%	
Advertising expense included in sales and marketing expenses	(15.3)%		(17.4)%	
Percentage of net revenues				
Sales and marketing expenses	11.7 %	11.0 %	12.0 %	10.9 %
Advertising expense included in sales and marketing expenses	11.1 %	10.5 %	11.4 %	10.4 %

The 70 basis point increase in sales and marketing expenses as a percent of net revenues for the three months ended June 30, 2023, as compared to the same period in 2022, was primarily due to increased performance marketing expense partially offset by lower brand advertising.

The 110 basis point increase in sales and marketing expenses as a percent of net revenues for the six months ended June 30, 2023, as compared to the same period in 2022, was primarily due to increased performance marketing expense partially offset by lower brand advertising.

Technology expenses

We seek to deploy our capital resources efficiently in technology to support operations including private and public cloud, web services, customer support solutions, and product search. We also invest in technology to enhance the customer experience including machine learning algorithms, generative AI, improving our process automation and efficiency, modernizing and expanding our systems, and supporting and expanding our logistics infrastructure. We expect to continue to incur technology expenses to support these efforts and these expenditures may continue to be material.

The frequency and variety of cyberattacks on our Website, enterprise systems, services, and on third parties we use to support our technology continues to increase. The impact of such attacks, their costs, and the costs we incur to protect ourselves against future attacks, have not been material to date. However, we consider the risk introduced by cyberattacks to be serious and will continue to incur costs related to efforts to protect ourselves against them.

The following table summarizes our technology expenses (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Technology expenses	$ 27,706	$ 30,542	$ 58,252	$ 63,531
Year-over-year percentage change				
Technology expenses	(9.3)%		(8.3)%	
Technology expenses as a percent of net revenues	6.6 %	5.8 %	7.3 %	6.0 %

The $2.8 million decrease in technology expenses for the three months ended June 30, 2023, as compared to the same period in 2022, was primarily due to a reduction in staff-related expenses.

The $5.3 million decrease in technology expenses for the six months ended June 30, 2023, as compared to the same period in 2022, was primarily due to a reduction in staff-related expenses.

General and administrative expenses

The following table summarizes our general and administrative expenses (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
General and administrative expenses	$ 21,673	$ 21,081	$ 42,156	$ 42,337
Year-over-year percentage change				
General and administrative expenses	2.8 %		(0.4)%	
General and administrative expenses as a percent of net revenues	5.1 %	4.0 %	5.2 %	4.0 %

The $592,000 increase in general and administrative expenses for the three months ended June 30, 2023, as compared to the same period in 2022, was primarily due to increased legal and other third-party expenses partially offset by a reduction in staff-related expenses.

The $181,000 decrease in general and administrative expenses for the six months ended June 30, 2023, as compared to the same period in 2022, was relatively flat year-over-year.

Other expense, net

Other expense, net for the three months ended June 30, 2023 was $80.7 million as compared to $2.0 million for the three months ended June 30, 2022. The increase was primarily due to a $78.4 million increase in loss recognized from our equity method securities.

Other expense, net for the six months ended June 30, 2023 was $88.1 million as compared to $2.1 million for the six months ended June 30, 2022. The increase was primarily due to a $85.2 million increase in loss recognized from our equity method securities.

Income taxes

Our income tax provision for interim periods is determined using an estimate of our annual effective tax rate adjusted for discrete items, if any, for relevant interim periods. We update our estimate of the annual effective tax rate each quarter and make cumulative adjustments if our estimated annual effective tax rate changes.

Our quarterly tax provision and our quarterly estimate of our annual effective tax rate are subject to significant variations due to several factors including: variability in predicting our pre-tax and taxable income, the mix of jurisdictions to which those items relate, relative changes in expenses or losses for which tax benefits are limited or not recognized, how we do business, fluctuations in our stock price, economic outlook, political climate, and other conditions such as supply chain challenges, inflation, rising interest rates, and geopolitical events. In addition, changes in laws, regulations, and administrative practices will impact our rate. Our effective tax rate can be volatile based on the amount of pre-tax income. For example, the impact of discrete items on our effective tax rate is greater when pre-tax income is lower.

Our provision (benefit) for income tax for the three months ended June 30, 2023 and 2022 was $(8.4) million and $2.5 million, respectively. The effective tax rate for the three months ended June 30, 2023 and 2022 was 10.2% and 26.1%, respectively. Our provision (benefit) for income tax for the six months ended June 30, 2023 and 2022 was $(11.3) million and $4.6 million, respectively. The effective tax rate for the six months ended June 30, 2023 and 2022 was 11.8% and 21.1%, respectively. Our tax expense decreased during the three and six months ended June 30, 2023 as compared to the same period in 2022, primarily due to a decrease in income before income taxes. Our tax rate decreased during the three and six months ended June 30, 2023 as compared to the same period in 2022, primarily due to year-to-date losses on our equity method securities for which tax benefits are limited. Our effective tax rate for the three and six months ended June 30, 2023 differs from the statutory federal income tax rate of 21% primarily due to year-to-date losses on our equity method securities for which tax benefits are limited.

Each quarter we assess the recoverability of our deferred tax assets under ASC Topic 740. We assess available positive and negative evidence to estimate whether we will generate sufficient future taxable income to use our existing deferred tax assets. We have no carryback ability, and therefore we must rely on future taxable income, including tax planning strategies and future reversals of taxable temporary differences, to support their realizability. We maintain a valuation allowance against our deferred tax assets for capital losses and the state of Utah where not supported by future reversals of taxable temporary differences, because of the uncertainty regarding the realizability of these deferred tax assets. Any activities that impact the valuation allowance will be recognized discretely in the period in which they occur. We will continue to monitor the need for a valuation allowance against our other deferred tax assets on a quarterly basis.

We are subject to taxation in the United States and multiple state and foreign jurisdictions. Tax years beginning in 2018 are subject to examination by taxing authorities, although net operating loss and credit carryforwards from all years are subject to examinations and adjustments for at least three years following the year in which the attributes are used.

Liquidity and Capital Resources

Overview

We believe that our cash and cash equivalents currently on hand and expected cash flows from future operations will be sufficient to continue operations for at least the next twelve months. We continue to monitor, evaluate, and manage our operating plans, forecasts, and liquidity considering the most recent developments driven by macroeconomic conditions, such as supply chain challenges, inflation, rising interest rates, and geopolitical events. We proactively seek opportunities to improve the efficiency of our operations and have in the past and may in the future take steps to realize internal cost savings, including aligning our staffing needs based on our current and expected future levels of operations and process streamlining.

Current sources of liquidity

Our principal sources of liquidity are existing cash and cash equivalents and accounts receivable, net. At June 30, 2023, we had $342.9 million of cash and cash equivalents and $19.1 million of accounts receivable, net.

Cash flow information is as follows (in thousands):

	Six months ended June 30,	
	2023	2022
Cash provided by (used in):		
Operating activities	$ 18,772	$ 21,822
Investing activities	(44,435)	(17,169)
Financing activities	(2,718)	(65,232)

Operating activities

Cash received from customers generally corresponds to our net revenues as our customers primarily use credit cards to buy from us, causing our receivables from these sales transactions to settle quickly. We have payment terms with our partners that generally extend beyond the amount of time necessary to collect proceeds from our customers.

The $18.8 million of net cash provided by operating activities during the six months ended June 30, 2023 was primarily due to income from operating activities adjusted for non-cash items of $17.5 million and cash provided by changes in operating assets and liabilities of $1.3 million.

The $21.8 million of net cash provided by operating activities during the six months ended June 30, 2022 was primarily due to income from operating activities adjusted for non-cash items of $42.8 million offset by cash used by changes in operating assets and liabilities of $21.0 million.

Investing activities

For the six months ended June 30, 2023, investing activities resulted in a net cash outflow of $44.4 million, primarily due to $22.8 million for purchases of intangible assets, $10.0 million for disbursement for notes receivable and $12.0 million of expenditures for property and equipment.

For the six months ended June 30, 2022, investing activities resulted in a net cash outflow of $17.2 million, primarily due to $11.4 million for purchases of equity securities and $6.4 million of expenditures for property and equipment.

Financing activities

For the six months ended June 30, 2023, financing activities resulted in a net cash outflow of $2.7 million primarily due to $2.1 million for payment of taxes withheld upon vesting of employee stock awards.

For the six months ended June 30, 2022, financing activities resulted in a net cash outflow of $65.2 million primarily due to $60.1 million for repurchases of our common stock and Series A-1 preferred stock under the Repurchase Program and $3.5 million for payment of taxes withheld upon vesting of employee stock awards.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of June 30, 2023 and the effect such obligations and commitments are expected to have on our liquidity and cash flow in future periods (in thousands):

Contractual Obligations	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Operating leases (1)	$ 5,853	$ 3,384	$ 2,261	$ 208	$ —
Loan agreements (2)	46,699	3,665	2,968	2,972	37,094
Total contractual cash obligations	$ 52,552	$ 7,049	$ 5,229	$ 3,180	$ 37,094

(1) Represents the future minimum lease payments under non-cancellable operating leases. For information regarding our operating lease obligations, see Note 8—Leases, in the Notes to Unaudited Consolidated Financial Statements included in Item 1, Part I, Financial Statements (Unaudited) of this Quarterly Report on Form 10-Q.

(2) Represents future interest and principal payments on the financing agreements with Loan Core Capital Funding Corporation LLC. For information regarding our financing agreements, see Note 7—Borrowings, in the Notes to Unaudited Consolidated Financial Statements included in Item 1, Part I, Financial Statements (Unaudited) of this Quarterly Report on Form 10-Q.

Tax contingencies

We are involved in various tax matters, the outcomes of which are uncertain. As of June 30, 2023, accrued tax contingencies were $3.6 million. Changes in state, federal, and foreign tax laws may increase our tax contingencies. The timing of the resolution of income tax contingencies is highly uncertain, and the amounts ultimately paid, if any, upon resolution of issues raised by the taxing authorities may differ from the amounts accrued. It is reasonably possible that within the next 12 months we will receive additional assessments by various tax authorities. These assessments may or may not result in changes to our contingencies related to positions on prior years' tax filings.

Critical Accounting Policies and Estimates

The preparation of our financial statements requires that we make estimates and judgments. We base these on historical experience and on other assumptions that we believe to be reasonable. There have been no material changes to our critical accounting policies and estimates as compared to the critical accounting policies and estimates described in Note 2—Accounting Policies and Supplemental Disclosures, included in Part II, Item 8, Financial Statements and Supplementary Data, of our Annual Report on Form 10-K for the year ended December 31, 2022.

Government Regulation

We are subject to a wide variety of laws, rules, mandates, and regulations, some of which apply or may apply to us as a result of our retail business, and others of which apply to us for other reasons, such as our status as a publicly held company or the places in which we sell certain types or amounts of products. Our retail business is subject to general business regulations and laws, regulations and laws specifically governing the internet, e-commerce, and other services we offer. Existing and future laws and regulations may result in increasing expense and may impede our growth. Applicable and potentially applicable regulations and laws include regulations and laws regarding taxation, privacy, data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, environmental regulation, electronic contracts and other communications, competition, consumer protection, employment, import and export matters, information reporting requirements, access to our services and facilities, the design and operation of websites, health, safety, and sanitation standards, the characteristics and quality of products and services, product labeling and unfair and deceptive trade practices.

Our efforts to expand our retail business outside of the U.S. expose us to foreign and additional U.S. laws and regulations, including but not limited to, laws and regulations relating to taxation, business licensing or certification requirements, advertising practices, online services, the importation of specified or proscribed items, importation quotas, consumer protection, environmental protection, intellectual property rights, consumer and data protection, privacy, encryption, restrictions on pricing or discounts, and the U.S. Foreign Corrupt Practices Act and other applicable U.S. and foreign laws prohibiting corrupt payments to government officials and other third parties.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risk for the effect of interest rate changes, foreign currency fluctuations, and changes in the market values of our securities. Information relating to quantitative and qualitative disclosures about these market risks is set forth below.

Interest Rate Sensitivity

The fair value of our cash and cash equivalents (highly liquid instruments with a remaining maturity of 90 days or less at the date of purchase) would not be significantly affected by either an increase or decrease in interest rates due mainly to the short-term nature of these instruments.

Our loan agreements carry a fixed blended annual interest rate of 4.45%. As a result, we have no direct financial statement risk associated with changes in interest rates.

Foreign Currency Risk

Most of our sales and operating expenses are denominated in U.S. dollars, and therefore, our total revenue and operating expenses are not currently subject to significant foreign currency risk.

Inflation

Increases in commodity and shipping prices and energy and labor costs have resulted in inflationary pressures across various parts of our business and operations, including our partners and supply chain. We continue to monitor the impact of inflation to minimize its effects on our customers. We work with our partners to limit the amount of cost increases that are passed on through higher pricing. If costs borne by ourselves or our partners were to be subject to incremental inflationary pressures, we may not be able to fully offset such higher costs through pricing actions or other cost efficiency measures. Our inability or failure to do so could harm our business, financial condition, and results of operations.

Investment Risk

The fair values of our equity and debt securities may be subject to fluctuations due to volatility of the stock market in general, investment-specific circumstances, and changes in general economic conditions. At June 30, 2023, our recorded value in equity securities in public and private companies was $208.5 million, of which $15,000 relates to publicly traded companies, recorded at fair value, which are subject to market price volatility. At June 30, 2023, $38.4 million of our equity securities and $10.2 million of our debt securities are in private companies, recorded at fair value using Level 3 inputs. Our fair value assessment of private companies includes a review of recent operating results and trends, recent sales/acquisitions of the securities, and other publicly available data. Valuations of private companies are inherently more complex due to the lack of readily available market data. As such, we believe that market sensitivities are not practicable. These investments valued using Level 3 inputs represents 15.8% of assets measured at fair value. See Note 3—Fair Value Measurement for further information. For our equity interest in Medici Ventures, L.P., we record our proportionate share of the entity's reported net income or loss, which reflects the fair value changes of the underlying investments of the entity and any other income or losses of the entity.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

We maintain disclosure controls and procedures, as such term is defined in Rule 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The term disclosure controls and procedures means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation required by the Exchange Act under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Limitations on Disclosure Controls and Procedures

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

Changes in Disclosure Controls and Procedures and Internal Control Over Financial Reporting

There were no changes in either our disclosure controls and procedures or our internal controls over financial reporting that occurred during the quarter ended June 30, 2023, that have materially affected, or are reasonably likely to materially affect, our disclosure controls and procedures or our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, we are involved in, or become subject to litigation or other legal proceedings concerning consumer protection, employment, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. We also prosecute lawsuits to enforce our legal rights. In connection with such litigation or other legal proceedings, we have been in the past and we may be in the future subject to significant damages, associated costs, or equitable remedies relating to the operation of our business. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. For additional details, see the information set forth under Item 1 of Part I, Financial Statements—Note 9—Commitments and Contingencies, subheading Legal Proceedings and Contingencies, contained in the Notes to Unaudited Consolidated Financial Statements of this Quarterly Report on Form 10-Q, which is incorporated by reference in answer to this Item.

ITEM 1A. RISK FACTORS

Any investment in our securities involves a high degree of risk. Please consider the following risk factors carefully. If any one or more of the following risks were to occur, it could have a material adverse effect on our business, prospects, financial condition and results of operations, and the market price of our securities could decrease significantly. Statements below to the effect that an event could or would harm our business (or have an adverse effect on our business or similar statements) mean that the event could or would have a material adverse effect on our business, prospects, financial condition and results of operations, which in turn could or would have a material adverse effect on the market price of our securities. Many of the risks we face involve more than one type of risk. Consequently, you should read all of the risk factors below carefully, the risk factors described in our Form 10-K for the year ended December 31, 2022, and in any reports we file with the SEC after we file this Form 10-Q, before deciding whether to purchase or hold our securities. We have not repeated risk factors contained in our Form 10-K for the year ended December 31, 2022, which are incorporated herein by reference. The occurrence of any of these risks could harm our business, the trading price of our securities could decline, and investors could lose part or all of their investment.

Other than the risk factors set forth below, there are no material changes from the risk factors previously disclosed in Part I - Item 1A - "Risk Factors," of our Annual Report on Form 10-K for the year ended December 31, 2022.

We may be required to recognize losses relating to our equity method investments.

At June 30, 2023, we held equity method investments totaling approximately $208.5 million. The underlying equity interests are in private entities that are in the startup or development stages. Equity method securities are inherently risky because we do not have the ability to influence business decisions, and the markets for the technologies or products these companies are developing are typically in the early stages and may never materialize. Since these investments are in companies that are in the early startup or development stages, even if their technology or products are viable, they may not be able to obtain the capital or resources necessary to successfully bring their technology or products to market. In addition, the valuations of private companies are inherently more complex due to the lack of readily available market data. The fair values of the underlying equity securities may be subject to fluctuations due to investment-specific circumstances such as failing to complete development milestones, achieve financial forecasts, or raise adequate capital, among other items. We have recognized losses related to these equity method securities in the past and may in the future recognize additional losses. Additionally, due to tax law limitations around deductibility of capital and investment losses, we may not be able to recognize a tax benefit on these losses when they occur. Any such loss could be material and could have a material adverse effect on our financial results.

We may not realize the expected benefits of our recent purchase of the Bed Bath & Beyond brand and other intellectual property due to potential risks and uncertainties.

We recently purchased certain assets from Bed Bath & Beyond which we have, and will continue to, use, implement, and integrate these assets with our existing business. Risks and uncertainties associated with these efforts could prevent us from realizing the expected benefits of our recent purchase of the Bed Bath & Beyond brand and other intellectual property. Any of the following potential risks and uncertainties, if they were to occur, could negatively impact our financial results and prevent us from achieving the expected benefits of our purchase:

- unexpected costs associated with the integration, implementation, use, or maintenance of the acquired intellectual property assets;
- brand confusion resulting from our re-branding or damage to our existing brand;
- loss of sales or customers due to confusion resulting from our business re-branding, loyalty program re-branding, or otherwise;
- loss of customer traffic directed from third-party search associated with operating a new website;
- higher than anticipated promotional discounting or marketing costs to acquire customers;
- disruptions to our website or ongoing business;
- diversion of management attention or key personnel attention;
- employee fatigue resulting from implementation efforts that could negatively impact our ability to hire or retain key personnel;
- disruptions or changes to our existing business relationships with suppliers or other third parties resulting from our purchase of these assets;
- costs to defend claims against Bed Bath & Beyond that we do not owe as an asset purchaser, but could be required to pay in order to defend and preserve our rights;
- unexpected economic, political, or regulatory risks; or
- any other unforeseen costs, expenses, losses, disruptions, delays, or negative impacts.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Recent Purchases of Equity Securities

See Note 11—Stockholders' Equity, in the Notes to Unaudited Consolidated Financial Statements included in Item 1, Part I, Financial Statements (Unaudited) of this Quarterly Report on Form 10-Q for information regarding our authorized share repurchase program. There were no repurchases made during the three months ended June 30, 2023. As of June 30, 2023, the approximate dollar value of shares that may yet be purchased under the stock repurchase program is $19.9 million.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

During the three months ended June 30, 2023, no director or officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

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ITEM 6. EXHIBITS

(a)	Exhibit Number	Exhibit Description
	2.1†	Asset Purchase Agreement, dated June 12, 2023, by and among Overstock.com, Inc., Bed Bath & Beyond Inc. and certain subsidiaries of Bed Bath & Beyond Inc., incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on June 13, 2023
	10.1	Overstock.com, Inc. Amended and Restated 2005 Equity Incentive Plan, incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 23, 2023
	31.1*	Exhibit 31.1 Certification of Chief Executive Officer
	31.2*	Exhibit 31.2 Certification of Chief Financial Officer
	32.1**	Exhibit 32.1 Section 1350 Certification of Chief Executive Officer
	32.2**	Exhibit 32.2 Section 1350 Certification of Chief Financial Officer
	101	Attached as Exhibit 101 to this report are the following documents formatted in XBRL (Extensible Business Reporting Language): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Operations, (iii) Consolidated Statements of Comprehensive Income (Loss), (iv) Consolidated Statements of Cash Flows, (v) Consolidated Statements of Stockholders' Equity, and (vi) Notes to Consolidated Financial Statements.
	104	The cover page from the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2023, formatted in Inline XBRL (included as Exhibit 101).

* Filed herewith.
** Furnished herewith.
† Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Reporting Company agrees to furnish supplementally a copy of any omitted schedule to exhibit to the SEC upon request.

SIGNATURE

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

Date:	July 31, 2023	**OVERSTOCK.COM, INC.**
		/s/ ADRIANNE B. LEE
		Adrianne B. Lee Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Jonathan E. Johnson III, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Overstock.com, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2023

/s/ JONATHAN E. JOHNSON III
Jonathan E. Johnson III
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Adrianne B. Lee, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Overstock.com, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2023

/s/ ADRIANNE B. LEE
Adrianne B. Lee
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Jonathan E. Johnson III, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Overstock.com, Inc. on Form 10-Q for the quarter ended June 30, 2023 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Overstock.com, Inc.

Date:	July 31, 2023	/s/ JONATHAN E. JOHNSON III
		Jonathan E. Johnson III
		Chief Executive Officer
		(Principal Executive Officer)

Exhibit 32.2

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

I, Adrianne B. Lee, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Overstock.com, Inc. on Form 10-Q for the quarter ended June 30, 2023 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Overstock.com, Inc.

Date:	July 31, 2023	/s/ ADRIANNE B. LEE
		Adrianne B. Lee Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)