APPENDIX 4E (RULE 4.3A)
PRELIMINARY FINAL REPORT FOR THE YEAR ENDED 31 DECEMBER 2023

31 DECEMBER 2023 RESULTS FOR ANNOUNCEMENT TO THE MARKET
(All comparisons to year ended 31 December 2022)

	$USD	up/down	% movement
Revenue from ordinary activities	Nil	Nil	Nil
Loss after tax from ordinary activities attributable to members	($35,036,888)	Up	5.9%
Loss after tax attributable to members	($35,036,888)	Up	5.9%

Dividend information

	Amount per security $USD	Franked amount per security $USD	Tax rate for franking credit
Dividend	Nil	Nil	N/A
Previous corresponding dividend	Nil	Nil	N/A

Net tangible asset backing

	31 Dec 2023 $USD	31 Dec 2022 $USD
Net tangible asset per share of common stock	$0.10	$0.16
Net tangible asset per CDI	$0.10	$0.16

- **Annual financial results:**
  This report is based on the accompanying Consolidated Financial Statements for the twelve-month period ended 31 December 2023, which have been audited by Deloitte & Touche LLP with the Independent Auditor’s Report included in the Consolidated Financial Statements.

- **Changes in control over entities:**
  There were no entities over which control has been gained or lost during 2023.

- **Details of dividends and dividend reinvestment plans:**
  No dividends have been declared or proposed.

- **Details of associates or joint ventures:**
  N/A

- **Set of accounting standards used in compiling the report:**
  The audited consolidated financial statement have been prepared in accordance with accounting principles generally accepted in the U.S. (US GAAP) and are denominated in U.S. dollars.

- **Details of audit disputes or audit qualification:**
  None.

A commentary on the results for the period:

The net loss for the twelve-month period ended 31 December 2023 increased to US$35,036,888 compared to US$33,088,205 for the previous corresponding period. The increase was primarily due to a US$2,957,936 increase in interest expense, which resulted from an additional $20,000,000 in borrowings and higher interest rates, as a result of the U.S. Federal Reserve raising interest rates during the twelve-month period ended 31 December 2023. This increase was partially offset by a US$1,535,477 increase in other income. The increase in other income resulted from higher earnings on investments, resulting from rising interest rates, and higher cash balances to invest in marketable securities. The increase in marketable securities resulted from additional borrowings, as discussed above, and the proceeds from a CDI offering in June and July 2023.

The Company had cash, cash equivalents, and marketable securities of US$73,440,580 at 31 December 2023 compared to US$64,515,314 at 31 December 2022.

The Company operated in one segment only during the period and there were no returns to shareholders or share buybacks.

Please refer to our audited consolidated financial statements, with accompanying notes, which are attached hereto.

Annual Meeting of Stockholders:

The Annual General Meeting of stockholders will be held as a virtual meeting on Thursday, 30 May 2024 at 9:00am Australian Eastern Standard Time (Wednesday, 29 May 2024 at 4:00pm U.S. Pacific Daylight Time)

EBR SYSTEMS, INC.

Sunnyvale, California

CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2023 and 2022

EBR SYSTEMS, INC.

TABLE OF CONTENTS

	Page
Independent Auditor's Report	1 - 2
Consolidated Balance Sheets	3
Consolidated Statements of Operations	4
Consolidated Statements of Comprehensive Loss	5
Consolidated Statements of Stockholders' Equity	6
Consolidated Statements of Cash Flows	7
Notes to Consolidated Financial Statements	8 - 27

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INDEPENDENT AUDITOR'S REPORT

To the Audit and Risk Committee of EBR Systems, Inc.

Opinion

We have audited the consolidated financial statements of EBR Systems, Inc. and subsidiaries (the "Company"), which comprise the consolidated balance sheets as of December 31, 2023 and 2022, and the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for the years then ended, and the related notes to the consolidated financial statements (collectively referred to as the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year after the date that the financial statements are available to be issued.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.

- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Deloitte & Touche LLP

February 27, 2024

EBR SYSTEMS, INC.
CONSOLIDATED BALANCE SHEETS

	Notes	December 31, 2023	December 31, 2022
ASSETS			
Current assets			
Cash and cash equivalents	3	$ 14,578,752	$ 15,456,338
Marketable securities	3	57,736,274	48,073,019
Non-trade receivables and unbilled reimbursements, net	5	230,734	443,919
Prepaid expenses		1,446,634	2,004,441
Other current assets		382,522	607,543
Total current assets		74,374,916	66,585,260
Property and equipment, net	5	1,088,771	1,577,044
Right of use operating lease asset	6	1,719,590	1,941,138
Marketable securities	3	1,125,554	985,957
Other assets		589,646	589,624
TOTAL ASSETS		**$ 78,898,477**	**$ 71,679,023**
LIABILITIES AND STOCKHOLDERS' EQUITY			
Current liabilities			
Accounts payable		$ 1,856,134	$ 2,092,474
Accrued expenses and other liabilities	5	4,095,347	3,470,107
Interest payable	7	224,309	99,167
Operating lease liability	6	250,876	216,817
Current portion of notes payable, net	7	21,496	51,590
Total current liabilities		6,448,162	5,930,155
Other liabilities		76,946	482,448
Operating lease liability	6	1,670,230	1,921,106
Notes payable, net	7	39,646,687	19,396,221
Total liabilities		47,842,025	27,729,930
Commitments and contingencies (Note 14)			
STOCKHOLDERS' EQUITY			
Common stock, $0.0001 par value; 600,000,000 shares authorized, 307,020,758 and 270,752,201 shares issued and outstanding at December 31, 2023 and 2022, respectively	9	30,703	27,077
Additional paid-in capital		342,721,880	320,749,696
Accumulated deficit		(312,659,408)	(277,622,520)
Accumulated other comprehensive income		963,277	794,840
Total stockholders' equity		31,056,452	43,949,093
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY		**$ 78,898,477**	**$ 71,679,023**

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

EBR SYSTEMS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

	Notes	Twelve-Months Ended December 31, 2023	2022
Operating expenses:			
Research and development		$ 15,822,355	$ 13,228,782
Sales and marketing		6,894,312	8,107,645
Clinical and regulatory		5,134,460	7,283,693
General and administrative		6,697,820	5,406,095
Total operating expenses		34,548,947	34,026,215
Loss from operations		(34,548,947)	(34,026,215)
Other (expense) / income			
Interest expense	7	(4,483,731)	(1,525,795)
Other income	2	4,000,399	2,464,922
(Loss) / gain on foreign currency	2	(2,984)	483
Total other (expense) / income		(486,316)	939,610
Loss before income tax		(35,035,263)	(33,086,605)
Income tax expense	12	(1,625)	(1,600)
Net loss		$ (35,036,888)	$ (33,088,205)
Net loss per common share:			
Basic and diluted	13	$ (0.12)	$ (0.12)
Weighted-average number of shares outstanding:			
Basic and diluted	13	288,875,373	269,608,916

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

EBR SYSTEMS, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

	Notes	Twelve-Months Ended December 31, 2023	Twelve-Months Ended December 31, 2022
Net loss		$ (35,036,888)	$ (33,088,205)
Other comprehensive income / (loss)			
Change in unrealized gains / (losses) on marketable securities	4	171,135	(118,218)
Foreign currency translation adjustments		(2,698)	(113,750)
Other comprehensive income / (loss)		168,437	(231,968)
Comprehensive loss		$ (34,868,451)	$ (33,320,173)

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

EBR SYSTEMS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

	Notes	Common Stock Shares	Common Stock Par Value	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Equity
Balance at December 31, 2021		267,985,340	$ 26,800	$ 319,378,429	$ (244,534,315)	$ 1,026,808	$ 75,897,722
Exercise of stock options	9	2,766,861	277	421,317	-	-	421,594
Stock-based compensation	11	-	-	869,557	-	-	869,557
Adjustment to common stock issuance costs	9	-	-	80,393	-	-	80,393
Net loss		-	-	-	(33,088,205)	-	(33,088,205)
Other comprehensive loss		-	-	-	-	(231,968)	(231,968)
Balance at December 31, 2022		270,752,201	27,077	320,749,696	(277,622,520)	794,840	43,949,093
Exercise of stock options	9	380,217	38	54,834	-	-	54,872
Stock-based compensation	11	-	-	1,305,811	-	-	1,305,811
Issuance of common stock, net of issuance costs	9	35,888,340	3,588	20,611,539	-	-	20,615,127
Net loss		-	-	-	(35,036,888)	-	(35,036,888)
Other comprehensive income		-	-	-	-	168,437	168,437
Balance at December 31, 2023		307,020,758	$ 30,703	$ 342,721,880	$ (312,659,408)	$ 963,277	$ 31,056,452

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

EBR SYSTEMS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

	Notes	Twelve Months Ended December 31, 2023	2022
Cash flows from operating activities:			
Net loss		$ (35,036,888)	$ (33,088,205)
Adjustment to reconcile net loss to cash used in operating activities:			
Depreciation and amortization	4	752,257	652,432
Amortization of deferred loan costs and discount on notes payable	7	476,037	210,137
Lease amortization	6	413,517	413,518
Stock-based compensation	11	1,305,811	869,557
Provision for doubtful accounts	5	40,485	(3,685)
Accretion of discount on marketable securities	3	(1,344,781)	(559,563)
Changes in operating assets and liabilities:			
Non-trade receivables and unbilled reimbursements		86,837	507,323
Prepaid expenses		556,143	(288,603)
Other assets		206,424	(452,964)
Accounts payable		(86,347)	726,456
Accrued expenses and other liabilities		215,483	1,237,650
Interest payable		126,294	(183,089)
Operating lease liability	6	(408,786)	(396,882)
Net cash used in operating activities		(32,697,514)	(30,355,918)
Cash flows from investing activities:			
Purchase of property and equipment	5	(354,054)	(730,179)
Purchase of marketable securities		(77,461,260)	(50,617,631)
Maturities and sales of marketable securities		69,174,324	2,000,000
Net cash used in investing activities		(8,640,990)	(49,347,810)
Cash flows from financing activities:			
Repayment of notes payable	7	-	(2,400,000)
Proceeds from notes payable	7	20,000,000	20,000,000
Payments of deferred loan costs	7	(204,075)	(794,317)
Proceeds from common stock offering	9	21,615,076	421,594
Payment of common stock offering costs	9	(999,949)	-
Proceeds from exercise of stock options	9	54,872	(213,326)
Net cash provided by financing activities		40,465,924	17,013,951
Effect of exchange rate change on cash		(5,006)	(96,225)
Net change in cash and cash equivalents		(877,586)	(62,786,002)
Cash and cash equivalents, beginning of the period		15,456,338	78,242,340
Cash and cash equivalents, end of the period		$ 14,578,752	$ 15,456,338
Supplemental disclosure of cash flow information			
Cash paid for interest expense		$ 3,881,400	$ 1,498,747
Cash paid for income taxes		$ 775	$ 1,600

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

EBR SYSTEMS, INC.
NOTES TO CONSOLIDATED FINANICAL STATEMENTS

Note 1 - Business and organization

Business overview

EBR Systems, Inc. and subsidiaries (collectively, "EBR", "we", "our" or the "Company") is a United States-based company dedicated to the superior treatment of cardiac rhythm disease by providing physiologically effective stimulation through leadless endocardial pacing. The Company is in the final phase of its U.S. pivotal trial and has already submitted several modules to the Food and Drug Administration ("FDA"). The Company targets final submission in 2024.

The Company completed its initial public offering of CDIs ("CHESS Depositary Interests") and began trading on the Australian Securities Exchange ("ASX") on November 24, 2021 under the symbol "EBR".

The Company operates wholly-owned foreign subsidiary entities in Australia, EBR Systems (AUST) Pty Ltd ("EBR-AU"), and the United Kingdom, EBR Systems (UK) Limited ("EBR-UK"), which establish clinical trials in Australia and the United Kingdom, respectively, and work on intellectual property development. EBR-AU was incorporated on February 23, 2017 and EBR-UK was incorporated on July 31, 2015.

Note 2 - Summary of significant accounting policies

Basis of presentation

These consolidated financial statements include the accounts of EBR Systems, Inc. and its subsidiaries, and are prepared in accordance with U.S. GAAP. The Company has eliminated all intercompany transactions and balances during consolidation.

Use of estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates, judgments, and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates. Significant estimates and assumptions made by management include the estimated lives of long-lived assets, the fair value of stock-based awards issued, clinical trial accrual, and the valuation allowance on deferred taxes.

Fair Value Measurements

The Company measures certain assets and liabilities at fair value, which is defined as the price that would be received from the sale of an asset or paid to transfer a liability on the measurement date in an orderly transaction between market participants in the principal or most advantageous market for the asset or liability. The fair value measurement guidance establishes a fair value hierarchy which requires the Company to maximize the use of observable inputs when measuring fair value. The following levels of inputs may be used to measure fair value:

- Level 1: Valuation techniques in which all significant inputs are unadjusted quoted prices from active markets for assets or liabilities that are identical to the assets or liabilities being measured.
- Level 2: Valuation techniques in which significant inputs include quoted prices from active markets for assets or liabilities that are similar to the assets or liabilities being measured and/or quoted prices for assets or liabilities that are identical or similar to the assets or liabilities being measured from markets that are not active. Also, model-derived valuations in which all significant inputs are observable in active markets are Level 2 valuation techniques.

- Level 3: Valuation techniques in which one or more significant inputs are unobservable. Such inputs reflect our estimate of assumptions that market participants would use to price an asset or liability.

Foreign currency translation

The functional currencies of our foreign subsidiaries are their local currencies. Accordingly, the Company translates the foreign currency financial statements into US Dollars using the reporting period-end or average exchange rates. Assets and liabilities of these subsidiaries were translated at exchange rates as of the balance sheet dates. Expenses are translated at average rates in effect for the periods presented. The cumulative translation adjustment is included in the accumulated other comprehensive income within stockholders' equity. Gains and losses arising from the settlement and remeasurement of monetary assets and liabilities denominated in currencies other than a subsidiary's functional currency are included in "(Loss) / gain on foreign currency" in the period in which they occur.

Employee benefits

The Company maintains an employee retirement/savings plan (the "Retirement Plan") that permits participants to make tax-deferred contributions by salary reductions pursuant to Section 401(k) of the Internal Revenue Code. The Company may make discretionary contributions. For the twelve-month periods ended December 31, 2023 and 2022, the Company did not make any contributions.

Segment information

Operating segments are defined as components of an entity for which discrete financial information is available that is regularly reviewed by the Chief Operating Decision Maker ("CODM") in deciding how to allocate resources to an individual segment and in assessing performance. The Company's Chief Executive Officer is the CODM. The CODM reviews financial information presented on a consolidated basis for purposes of making operating decisions, allocating resources, and evaluating financial performance. As such, management has determined that the Company operates as one operating segment that is focused exclusively on the advancement of the Company's wireless cardiac pacing system. Net assets outside of the U.S. were less than 10% of total net assets as of December 31, 2023 and 2022.

Cash and cash equivalents

Cash and cash equivalents consist of cash and highly liquid investments with original maturities of three months or less that are readily convertible to known amounts of cash. Cash equivalents are reported at fair value.

Marketable securities

Marketable securities, all of which are available-for-sale, consist of U.S. treasury bonds, U.S. government notes, and corporate debt securities. Marketable securities are carried at fair value, with unrealized gains and losses reported as accumulated other comprehensive income, except for losses from impairments which are determined to be other-than-temporary. For the twelve-month periods ended December 31, 2023 and 2022, there were no losses from impairments. Realized gains and losses and declines in value judged to be other-than-temporary are included in the determination of net loss and are included in other income and expense. Interest and dividends on available-for-sale securities are included in other income and expense. See Note 3, "Cash, cash equivalents, and marketable securities" for additional disclosure on marketable securities.

Concentration of credit risk

Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash and cash equivalents. The Company's cash and cash equivalents are primarily held at U.S. financial institutions that management believes are of high credit quality. Such deposits exceed federally insured limits.

Non-trade receivables and unbilled reimbursements

Non-trade receivables are recorded for amounts due to the Company related to reimbursements of clinical trials expenses based upon contracted terms. Unbilled reimbursements represent amounts for services that have been rendered but for which reimbursements have not been billed. See Note 5, "Consolidated balance sheet components" for additional information on non-trade receivables and unbilled reimbursements.

Property and equipment

Property and equipment is carried at acquisition cost less accumulated depreciation. The cost of normal, recurring, or periodic repairs and maintenance activities related to property and equipment are expensed as incurred.

Depreciation is computed using the straight-line method based on the estimated useful lives of the related assets. The estimated useful lives by asset classification are generally as follows:

Equipment	3 - 8 years
Computer software	3 years
Leasehold improvements	Lesser of 15 years or the remainder of the lease

Long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If circumstances require a long-lived asset or asset group be tested for potential impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that carrying value exceeds fair value. Fair value is determined using various valuation techniques, including discounted cash flow models, quoted market values, and third-party independent appraisals, depending on the nature of the asset. For the twelve-month periods ended December 31, 2023 and 2022, the Company did not recognize any impairment charges associated with long-lived assets.

Leases

At the inception of a contract, the Company determines whether the contract is or contains a lease based on all relevant facts and circumstances. Leases with a term greater than 12 months are recognized on the balance sheet date as right of use ("ROU") assets and current and non-current lease liabilities, as applicable. The Company has elected not to recognize on the balance sheet leases with terms of 12 months or less. The Company includes lease option extensions in the assessment of the lease arrangement when it is reasonably certain the option will be exercised.

Lease liabilities and the corresponding right of use assets are recorded based on the present value of lease payments to be made over the lease term. The discount rate used to calculate the present value is the rate implicit in the lease, or if not readily determinable, the Company's incremental borrowing rate. The Company's incremental borrowing rate is the rate of interest that the Company would have to pay to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment. Certain adjustments to the right of use asset may be required for items such as initial direct costs or incentives received.

Lease payments on operating leases are recognized on a straight-line basis over the expected term of the lease. Lease payments on financing leases are recognized using the effective interest method. See Note 6, “Leases” for additional disclosure on leases.

For all asset classes of its leases, the Company has elected to account for the lease and non-lease components together for existing classes of underlying assets.

Revenue Recognition

To date the Company’s sole product is in the late stages of FDA approval, as such no revenue has been recorded from the sale of products. Once the Company receives FDA approval, revenue from product sales will be recognized upon the transfer of control, which is generally upon shipment or delivery, depending on the delivery terms set forth in the customer contract. Provisions for discounts, rebates and sales incentives to customers, and returns and other adjustments will be provided for in the period the related sale is recorded.

Research and development

Research and development costs are expensed when incurred. Research and development costs include costs of other research, engineering, and technical activities to develop a new product or service or make significant improvement to an existing product or manufacturing process.

Stock-based compensation

The Company recognizes stock-based compensation expense related to employees over the requisite service period based on the grant-date fair value of the awards. The fair value of options granted is estimated using the Black-Scholes option valuation model. The Company recognizes the grant-date fair value of an award as compensation expense on a straight-line basis over the requisite service period, which typically corresponds to the vesting period for the award. The Company elects to account for forfeitures as they occur and, upon forfeiture of an award prior to vesting, the Company reverses any previously recognized compensation expense related to that award. See Note 11, “Stock-based compensation” for additional details.

Other Income

The Company periodically receives reimbursements of clinical trial expenses, which are recorded as other income in the accompanying consolidated statements of operations. During the twelve-month periods ended December 31, 2023 and 2022, the Company recorded reimbursements of $57 and $842,551, respectively. During the twelve-month periods ended December 31, 2023 and 2022, the Company received refundable tax incentives from the Australian Taxation Office of $718,902 and $504,207, respectively, which are recorded as other income in the accompanying consolidated statements of operations. The Company earned interest income, including accretion of discount, from investments in marketable securities of $3,281,440 and $1,118,163, which is also included in other income for the twelve-month periods ended December 31, 2023 and 2022, respectively.

Income taxes

The Company accounts for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities reflect the tax effects of net operating losses, tax credits, and temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. These are determined using enacted tax rates in effect for the year in which such temporary differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the period that includes the enactment date.

The Company records deferred tax assets to the extent the Company believes these assets will more likely than not be realized. In making such a determination, we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies and recent financial operations. When we establish or reduce the valuation allowance against our deferred tax assets, our provision for income taxes will increase or decrease, respectively, in the period that determination to change the valuation allowance is made.

We recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefits recognized in the financial statements on a particular tax position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon settlement. The amount of unrecognized tax benefits is adjusted as appropriate for changes in facts and circumstances, such as significant amendments to existing tax law, new regulations or interpretations by the taxing authorities, new information obtained during a tax examination, or resolution of an examination. We recognize both accrued interest and penalties, where appropriate, related to unrecognized tax benefits in the provision for income taxes.

Earnings per share

Basic income or loss per share is determined by dividing net income or loss by the weighted average common shares outstanding during the period. Diluted income or loss per share is determined by dividing net income by diluted weighted average shares outstanding during the period. Diluted weighted average shares reflect the dilutive effect, if any, of potential common shares. To the extent their effect is dilutive, employee equity awards and other commitments to be settled in common stock are included in the calculation of diluted income or loss per share based on the treasury stock method. Potential common shares are excluded from the calculation of dilutive weighted average shares outstanding if their effect would be anti-dilutive at the balance sheet date based on a treasury stock method or due to a net loss.

Recently issued accounting pronouncements

In November 2023, FASB issued Accounting Standards Update ("ASU") 2023-07, *Improvements to Reportable Segment Disclosures.* This ASU improves reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. In addition, the ASU enhances interim disclosure requirements, clarifies circumstances in which an entity can disclose multiple segment measures of profit or loss, provides new segment disclosure requirements for entities with a single reportable segment, and other disclosure requirements. This ASU is effective for fiscal years beginning after December 15, 2023. The Company believes that adoption of ASU 2023-07 will not have a material impact on the Company's consolidated financial statements.

In December 2023, FASB issued ASU 2023-09, *Improvements to Income Tax Disclosures.* The ASU focuses on income tax disclosures around effective tax rates and cash income taxes paid. ASU 2023-09 is effective for public filers for fiscal years beginning after December 15, 2024. The Company believes the adoption of ASU 2023-09 will not have a material impact on the Company's consolidated financial statements.

Note 3 – Cash, cash equivalents, and marketable securities

Cash, cash equivalents, and marketable securities consisted of the following at December 31, 2023 and 2022:

	2023	2022
Cash and cash equivalents:		
Cash	$ 975,310	$ 332,255
Money market funds	11,615,762	15,124,083
US Treasury securities	1,987,680	-
Total cash and cash equivalents	$ 14,578,752	$ 15,456,338
Marketable securities, short-term:		
US Treasury securities	$ 18,991,771	$ 12,341,584
Corporate bonds	14,836,424	10,023,089
Commercial Paper	21,113,569	23,808,415
Asset backed securities	-	1,899,931
US Government Agency bonds	2,794,510	-
Total marketable securities, short-term	$ 57,736,274	$ 48,073,019
Marketable securities, long-term:		
Asset backed securities	$ 1,125,554	$ 985,957
Total marketable securities, long-term	$ 1,125,554	$ 985,957
Total cash, cash equivalents, and marketable securities	$ 73,440,580	$ 64,515,314

During the year ended December 31, 2023 marketable securities were sold or matured for proceeds of $69,174,324 with a realized gain of $276. During the year ended December 31, 2022, marketable securities matured for proceeds of $2,000,000 with no gain or loss realized. See Note 4, "Fair Value Measurements" for additional information regarding the fair value of cash equivalents and marketable securities.

The following tables summarizes the unrealized gains and losses related to the Company's available-for-sale marketable securities, by major security type, as of December 31, 2023 and 2022:

	As of December 31, 2023			
	Amortized Cost	Unrealized Gains	Unrealized (losses)	Fair Value
Marketable securities				
US Treasury securities	$ 18,972,928	$ 18,843	$ -	$ 18,991,771
Corporate bonds	14,811,749	25,601	(926)	14,836,424
Commercial paper	21,101,403	17,445	(5,279)	21,113,569
Asset backed securities	1,126,999	-	(1,445)	1,125,554
US Government Agency bonds	2,796,078	1,297	(2,865)	2,794,510
Total marketable securities	$ 58,809,157	$ 63,186	$ (10,515)	$ 58,861,828

	As of December 31, 2022			
	Amortized Cost	Unrealized Gains	Unrealized (losses)	Fair Value
Marketable securities				
US Treasury securities	$ 12,382,149	$ -	$ (40,565)	$ 12,341,584
Corporate bonds	10,068,768	-	(45,679)	10,023,089
Commercial paper	23,808,415	-	-	23,808,415
Asset backed securities	2,917,862	-	(31,974)	2,885,888
Total marketable securities	$ 49,177,194	$ -	$ (118,218)	$ 49,058,976

The following table shows the unrealized losses and fair values for those marketable securities that were in an unrealized loss position as of December 31, 2023 and 2022, aggregated by major security type and the length of time the marketable securities have been in a continuous loss position:

	As of December 31, 2023					
	In Loss Position for Less Than 12 Months		In Loss Position for 12 Months or Greater		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
Corporate bonds	$ 2,285,253	$ (926)	$ -	$ -	$ 2,285,253	$ (926)
Commercial paper	9,439,882	(5,279)	-	-	9,439,882	(5,279)
Asset backed securities	-	-	1,125,554	(1,445)	1,125,554	(1,445)
US Government Agency bonds	1,506,668	(2,865)	-	-	1,506,668	(2,865)
Total	$ 13,231,803	$ (9,070)	$ 1,125,554	$ (1,445)	$ 14,357,357	$ (10,515)

	As of December 31, 2022					
	In Loss Position for Less Than 12 Months		In Loss Position for 12 Months or Greater		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
US Treasury securities	$ 12,341,584	$ (40,565)	$ -	$ -	$ 12,341,584	$ (40,565)
Corporate bonds	10,023,089	(45,679)	-	-	10,023,089	(45,679)
Asset backed securities	2,885,888	(31,974)	-	-	$ 2,885,888	$ (31,974)
Total	$ 25,250,561	$ (118,218)	$ -	$ -	$ 25,250,561	$ (118,218)

The contractual maturities of the Company's marketable securities as of December 31, 2023 were as follows:

	Fair Value
One year or less	$ 57,736,274
One year to two years	1,125,554
Total	$ 58,861,828

Note 4 – Fair value measurement

Management's assessment of the significance of a particular input to the fair value measurement requires judgement and may affect the valuation of financial assets and liabilities and their placement within the fair value hierarchy, as discussed in Note 2, "Summary of significant accounting policies". At December 31, 2023 and 2022, the fair value measurement of the Company's financial assets measured on a recurring basis were as follows:

	Fair Values as of December 31, 2023			
	Level 1	Level 2	Level 3	Total
Cash equivalents				
Money market funds	$ 11,615,762	$ -	$ -	$ 11,615,762
US Treasury securities	1,987,680	-	-	1,987,680
Marketable securities				
US Treasury securities	-	18,991,771	-	18,991,771
Corporate bonds	-	14,836,424	-	14,836,424
Commercial paper	-	21,113,569	-	21,113,569
Asset backed securities	-	1,125,554		1,125,554
US Government Agency bonds	-	2,794,510	-	2,794,510
Total	$ 13,603,442	$ 58,861,828	$ -	$ 72,465,270

	Fair Values as of December 31, 2022			
	Level 1	Level 2	Level 3	Total
Cash equivalents				
Money market funds	$ 15,124,083	$ -	$ -	$ 15,124,083
Marketable securities				
US Treasury securities	-	12,341,584	-	12,341,584
Corporate bonds	-	10,023,089	-	10,023,089
Commercial paper	-	23,808,415	-	23,808,415
Asset backed securities	-	2,885,888	-	2,885,888
Total	$ 15,124,083	$ 49,058,976	$ -	$ 64,183,059

In the Company's consolidated balance sheets, the carrying values of non-trade receivables, other assets, accounts payable and accrued expenses approximated their fair values due to the nature and relatively short maturities. The fair value of debt approximates its carrying value as it is variable rate debt or has relatively short maturities.

Note 5 – Consolidated balance sheet components

Non-trade receivables and unbilled reimbursements, net

Non-trade receivables and unbilled reimbursements include reimbursement of clinical trial expenses incurred. Non-trade receivables and unbilled reimbursements consisted of the following as of December 31, 2023 and 2022:

	2023	2022
Non-trade receivables	$ 237,128	$ 280,457
Unbilled reimbursements	135,772	265,143
Non-trade receivables and unbilled services	372,900	545,600
Less: allowance for doubtful accounts	(142,166)	(101,681)
Non-trade receivables and unbilled services, net	$ 230,734	$ 443,919

During the twelve-month period ended December 31, 2023, the provision for doubtful accounts totaled $40,485. During the twelve-month period ended December 31, 2022, the benefit from doubtful accounts totaled $3,685.

Property and equipment, net

Property and equipment consisted of the following as of December 31, 2023 and 2022:

	2023	2022
Equipment	$ 3,159,822	$ 2,981,787
Computer software	574,780	572,180
Leasehold improvements	499,148	415,590
Total property and equipment	4,233,750	3,969,557
Less accumulated depreciation and amortization	(3,144,979)	(2,392,513)
Total property and equipment, net	$ 1,088,771	$ 1,577,044

Depreciation and amortization expense on property and equipment was $752,257 and $652,432 for the twelve-month periods ended December 31, 2023 and 2022, respectively.

Accrued expenses and other liabilities

Accrued expenses and other liabilities consisted of the following at December 31, 2023 and 2022:

	2023	2022
Accrued compensation and related liabilities	$ 2,324,040	$ 1,980,453
Accrued development expenses	875,501	697,908
Accrued warranty reserve	826,924	734,400
Accrued other expenses	68,882	57,346
Accrued expenses and other liabilities	$ 4,095,347	$ 3,470,107

Note 6 – Leases

The Company has an operating lease for its corporate headquarters and laboratory space, located in Sunnyvale, California. The lease expires June 30, 2024, with an option to extend the lease an additional sixty-months, which was used in the calculation of the right of use asset and lease liability. The Company held no other lease agreements at December 31, 2023. In January 2024, the Company signed an addendum to the operating lease, extending the expiration of the lease through June 30, 2025. Additionally, the addendum adjusted the monthly rent from $35,606 per month to $50,000 per month.

Amounts reported in the consolidated balance sheet for operating leases in which the Company is the lessee as of December 31, 2023 and 2022, were as follows:

	2023	2022
Right of use asset	$ 1,719,590	$ 1,941,138
Lease liability, current	250,876	216,817
Lease liability, noncurrent	1,670,230	1,921,106
Remaining lease term	5.50 years	6.50 years
Discount rate	10.00%	10.00%

The following table presents the components of lease costs in our statements of operations for the twelve-month periods ended December 31, 2023 and 2022:

	2023	2022
Operating lease costs	$ 413,517	$ 413,518
Variable lease costs	122,664	172,029
Short-term lease costs	-	570
Total lease expense	$ 536,181	$ 586,117

Future lease payments for non-cancellable operating leases as of December 31, 2023, were as follows:

Years Ended December 31,	
2024	$ 421,050
2025	433,682
2026	446,692
2027	460,093
2028	473,896
Thereafter	$ 240,450
Total undiscounted lease payments	2,475,863
Less: effects of discounting	(554,757)
Total operating lease liabilities	$ 1,921,106

Note 7 - Notes payable

At December 31, 2023 and 2022, notes payable consisted of the following:

	2023	2022
Current portion of notes payable	$ 21,496	$ 51,590
Long-term portion of notes payable	41,800,000	20,921,496
Less: unamortized deferred loan costs	(734,579)	(714,968)
Less: unamortized discount	(1,418,734)	(810,307)
Notes payable, net	$ 39,668,183	$ 19,447,811

The following table presents information regarding the Company's notes payable principal repayment obligations as of December 31, 2023:

Years Ended December 31,		
2024	$	21,496
2025		-
2026		-
2027		41,800,000
Total minimum payments	$	41,821,496

Runway Growth Finance Corp

On June 30, 2022, the Company entered into a loan and security agreement with Runway Growth Finance Corp. The debt is secured against substantially all assets of the Company, except for the Company's intellectual property but includes all proceeds from the sale of intellectual property. The loan agreement provides three term loan tranches. The Company received the initial draw of $20,000,000 in June 2022. The Company received positive interim analysis data, sufficient to proceed with the clinical trial and premarket approval submission to the U.S. Food and Drug Administration, which allowed the Company to draw the second tranche of $20,000,000 in June 2023. As of December 31, 2023 and 2022, the outstanding principal balance was $41,800,000 and $20,900,000, respectively. The final tranche provides $10,000,000 and the draw period commences on the date the Company has received approval from the FDA for the WiSE CRT System and ends on June 30, 2024.

Interest on the term loan accrues on the principal amount outstanding at a floating per annum rate equal to the greater of the rate of interest noted in The Wall Street Journal Money Rates section, as the "Prime Rate" or 4.00% plus a margin of 4.9% and is payable monthly in arrears and shall be computed on the basis of a 360-day year for the actual number of days elapsed. The Company is required to make interest only payments from July 2022 to May 2027. The note payable has a maturity date of June 15, 2027, at which time any unpaid interest, outstanding principal balance, and a final payment of 4.5% of the original principal amount borrowed shall be due in full. If the Company repays the loan prior to maturity, the Company will be required to pay a prepayment fee of 2% - 0.5% of the outstanding principal balance. The Company is also required to pay a 3% success fee of the funded principal amount of the term loan at the time of a liquidity event, as defined in the loan and security agreement. The success fee is enforceable within 10 years from the execution date of the agreement.

The Company has accounted for the final payment of $1,800,000 as a discount of the note that will be amortized over the life of the loan using the effective interest method. Amortization of the discount was $291,573 and $89,693 during the twelve-month period ended December 31, 2023 and 2022, respectively. This amount was recorded as additional interest expense in the accompanying consolidated statements of operations. As of December 31, 2023 and 2022, the note has been shown net of unamortized discounts of $1,418,734 and $810,307, respectively.

The Company incurred loan costs of $998,393, which are being amortized over the life of the loan using the effective interest method. Amortization of loan costs was $184,464 and $79,350 for the twelve-month period ended December 31, 2023 and 2022. As of December 31, 2023 and 2022, the note has been shown net of unamortized loan costs of $734,579 and $714,968, respectively.

The Company is subject to customary financial and reporting covenants under the loan and security agreement. As of December 31, 2023, the Company was in compliance with all debt covenants.

Bank of America Leasing & Capital, LLC

In May 2021, the Company entered into an equipment purchase agreement for the purchase of certain software totaling $128,974. The purchase agreement requires 30 equal payments of $4,299 beginning December 1, 2021 through May 1, 2024. At December 31, 2023 and 2022, the outstanding principal balance was $21,496 and $73,086, respectively, of which $21,496 and $51,590 was included in the current portion of notes payable at December 31, 2023 and 2022, respectively.

Silicon Valley Bank – 2020

In March 2020, the Company entered into a loan and security agreement with Silicon Valley Bank and other lenders party thereto. The loan agreement provided for a term loan facility that included three tranches in a principal amount of $3,000,000, which if drawn would result in an aggregate outstanding principal amount of $9,000,000. As of December 31, 2022, the Company had repaid the outstanding principal balance under the loan agreement.

Interest on the term loan accrued on the principal amount outstanding at a floating per annum rate equal to the greater of 7.25% or 2.50% above the Prime Rate and is payable monthly in arrears. The Company was required to make interest only payments from April 2020 to June 2020. Thereafter, thirty monthly principal payments of $200,000 per month plus interest commencing July 2020 and continuing until the maturity of the note in December 2022.

During the twelve-month period ended December 31, 2022, the Company recorded interest expense of $61,424, which is included in the accompanying consolidated statements of operations. Additionally, the Company was required to make a final payment of $420,000 at the time the term loan was paid in full. This amount was recorded as additional interest expense over the life of the term loan. During the twelve-month period ended December 31, 2022, the Company recorded interest expense of $152,727, which is included in the accompanying consolidated statements of operations.

The Company incurred loan costs of $83,114, these costs were amortized over the life of the loan. Amortization of the loan costs was $30,245 during the twelve-month period ended December 31, 2022, which is included in interest expense in the accompanying consolidated statements of operations.

The note payable described above was issued with fully vested detachable warrants, that expire in March 2030. The note has been discounted using the relative fair value approach for the fair value of the warrants and the fair value of the debt. Amortization of the discount was $10,848 in the twelve-month period ended December 31, 2022, which is included in interest expense in the accompanying consolidated statements of operation.

Note 8 – Convertible preferred stock

As of December 31, 2023 and 2022, 10,000,000 shares of convertible preferred stock were authorized, of which no shares were issued or outstanding.

Note 9 – Common stock

Each share of common stock entitles the holder to one vote on all matters submitted to a vote of the Company’s stockholders. Common stockholders are entitled to receive dividends, as may be declared by the Company’s board of directors. As of December 31, 2023 and 2022, no dividends have been declared.

As of December 31, 2023 and 2022, 600,000,000 shares were authorized, of which 307,020,758 shares and 270,752,201 shares, respectively, were outstanding.

The Company completed its initial public offering and began trading on the Australian Securities Exchange ("ASX") on November 24, 2021 under the symbol "EBR". The ASX uses an electronic system called CHESS for the clearance and settlement of trades on the ASX. The State of Delaware does not recognize the CHESS system of holding securities or electronic transfers of legal title to shares. To enable companies to have their securities cleared and settled electronically through CHESS, CHESS depository instruments called CDIs are issued. CDIs are units of beneficial ownership in shares and are traded in a manner similar to shares of Australian companies listed on the ASX. The legal title to the shares are held by a depository, CDN, which is a wholly-owned subsidiary of the ASX, and is an approved general participant of ASX Settlement.

In June 2023, the Company completed an offering of 27,472,527 CDIs representing the same number of common stock at $0.91 Australian dollars per share, for proceeds of $15,604,896, net of $895,314 of related offering costs. In July 2023, the Company issued an additional 8,415,813 CDIs representing the same number of common stock at $0.91 Australian dollars per share, for proceeds of $5,010,231, net of $104,634 of related offering costs.

Additionally, the Company has reserved the following shares of common stock for issuance as of December 31, 2023:

Conversion of Common Stock warrants	19,789,379
2013 Equity Incentive Plan	22,155,837
2021 Equity Incentive Plan	38,280,567
Total shares of Common stock reserved for issuance	80,225,783

Note 10 – Warrants

Equity classified common stock warrants

The Company has issued the following warrants to purchase shares of its common stock, which are outstanding as of December 31, 2023 and 2022. These warrants are exercisable any time at the option of the holder until their expiration date.

	Number of Shares	Weighted average exercise price	Weighted average remaining contractual term
Balance at January 1, 2022	19,811,028	$ 0.58	8.27
Issued	-	-	-
Expired	(21,649)	11.50	-
Balance at December 31, 2022	19,789,379	0.57	7.28
Issued	-	-	-
Expired/forfeited	-	-	-
Balance at December 31, 2023	19,789,379	$ 0.57	6.28

Note 11 – Stock-based compensation

The Company and its stockholders adopted an equity incentive plan (the "2013 Plan") in 2013, which reserved shares of the Company's common stock for the granting of incentive and nonqualified stock options to employees, directors, and consultants. On October 14, 2021, the Company replaced the 2013 Plan with the 2021 Plan, as the 2013 Plan was expiring. Under the 2021 Plan, 38,280,567 shares of common stock are reserved. The Company may grant options to purchase common stock, stock appreciation rights, restricted stock awards and other forms of stock-based compensation. Stock options generally vest over four years and expire no later than 10 years from the date of grant. The Board of Directors has the authority to select the employees to whom options are granted and determine the terms of each option, including i) the number of shares of common stock subject to the option; ii) when the option becomes exercisable; iii) the option exercise price, which must be at least 100% of the fair market value of the common stock as of the date of grant and iv) the duration of the option, which may not exceed 10 years.

As of December 31, 2023, options to purchase a total of 16,058,745 shares of common stock remained outstanding and 22,221,822 shares remain available for grant under the 2021 Plan. As of December 31, 2023, options to purchase a total of 22,155,837 shares of common stock remained outstanding under the 2013 Plan. As of December 31, 2023, no shares of common stock remain available for grant under the 2013 Plan.

Stock option activity for the twelve-month period ended December 31, 2023, was as follows:

	Shares	Weighted Average Exercise Price	Weighted-Average Remaining Contractual Life (in years)
Outstanding at January 1, 2023	32,217,927	$ 0.24	7.15
Granted	9,258,016	0.53	
Cancelled	(2,881,144)	0.28	
Exercised	(380,217)	0.14	
Outstanding at December 31, 2023	38,214,582	$ 0.31	7.09
Vested and expected to vest at December 31, 2023	38,214,582	$ 0.31	7.09
Exercisable at December 31, 2023	25,818,009	$ 0.22	6.21

The fair value of the options granted to employees is estimated on the grant date using the Black-Scholes option valuation model. This valuation model for stock-based compensation expense requires the Company to make assumptions and judgments about the variables used in the calculation, including the expected term (weighted-average period of time that the options granted are expected to be outstanding), the volatility of the Company's common stock, an assumed risk-free interest rate and expected dividends. The Company uses the simplified calculation of expected life and volatility is based on an average of the historical volatilities of the common stock of several publicly traded entities with characteristics similar to those of the Company. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant for periods corresponding with the expected life of the option. The Company uses the straight-line method for expense attribution. The weighted-average grant-date fair values of stock options granted during the twelve-month periods ended December 31, 2023 and 2022, was $0.37 per share and $0.29 per share, respectively.

The following assumptions were used to calculate the grant-date fair value of employee stock options granted during the twelve-month periods ended December 31, 2023 and 2022:

	2023	2022
Expected term (in years)	7.00	7.00
Expected volatility	68.03% - 72.08%	58.38% - 79.90%
Expected dividend yield	0.00%	0.00%
Risk-free interest rate	3.38% - 4.44%	1.94% - 3.49%

The following table presents classification of stock-based compensation expense within the accompanying consolidated statements of operations for the twelve-month periods ended December 31, 2023 and 2022:

	2023	2022
Research and development	$ 390,033	$ 261,577
Sales and marketing	203,812	174,799
Clinical and regulatory	81,741	64,024
General and administrative	630,225	369,157
Total	$ 1,305,811	$ 869,557

At December 31, 2023, there was $3,951,293 of unamortized stock-based compensation cost, respectively, related to unvested stock options which is expected to be recognized over a weighted average period of 3.15 years.

Note 12 – Income taxes

The Company did not record any income tax expense for the twelve-month periods ended December 31, 2023 and 2022. The Company has historically incurred operating losses and maintains a full valuation allowance against its net deferred tax assets.

The components of loss before income taxes are as follows:

	2023	2022
Domestic	$ (34,789,313)	$ (32,645,503)
Foreign	(245,950)	(442,702)
Total	$ (35,035,263)	$ (33,088,205)

The components of income tax expense are as follows:	2023	2022
Current income tax expense:		
Federal	$ -	$ -
State	1,625	1,600
Foreign	-	-
Total current income tax expense	$ 1,625	$ 1,600
Deferred income tax expense:		
Federal	$ -	$ -
State	-	-
Foreign	-	-
Total deferred tax expense	$ -	$ -
Net deferred tax assets	$ 1,625	$ 1,600

The Company's effective tax rate of 0.01% and 0.01% for the twelve-month periods ended December 31, 2023 and 2022, respectively, differs from the statutory U.S. federal rate as follows:

	2023	2022
Statutory tax rate	$ (7,321,441)	$ (6,973,527)
R&D credit generation	(344,374)	(370,183)
State and foreign tax benefit	(3,773,101)	(6,463,619)
Other non-deductible expenses	651,633	1,554,541
Change in valuation allowance	10,788,908	12,254,388
Effective tax rate	$ 1,625	$ 1,600

The tax effects of temporary differences that give rise to significant components of the deferred tax assets are as follows:

	2023	2022
Deferred tax assets:		
Net operating loss	$ 57,255,000	$ 48,332,000
Other accruals	870,000	829,000
Stock based compensation	457,000	249,000
Credit carryforwards	2,473,000	1,967,000
Intangible assets	12,343,000	13,409,000
Research & development capitalization	4,816,000	2,686,000
Fixed assets	39,000	-
Total deferred tax assets	78,253,000	67,472,000
Deferred tax liability		
Fixed assets	-	(9,000)
Total deferred tax liability	-	(9,000)
Net deferred tax asset before valuation allowance	78,253,000	67,463,000
Valuation allowance	(78,253,000)	(67,463,000)
Net deferred tax assets	$ -	$ -

As of December 31, 2023, the Company recorded the portion of its deferred tax assets that was determined to meet the more likely than not threshold. Significant judgment is required in determining the Company's provision for income taxes, recording valuation allowances against deferred tax assets and evaluating the Company's uncertain tax positions. Due to net losses since inception and the uncertainty of realizing the deferred tax assets, the Company has a full valuation allowance against its net deferred tax assets. To the extent that the Company generates positive income and expects, with reasonable certainty, to continue to generate positive income, the Company may release all, or a portion of, the valuation allowance in a future period. This release would result in the recognition of all, or a portion of, the Company's deferred tax assets, resulting in a decrease to income tax expense for the period such release is made. As of December 31, 2023, the Company's valuation allowance was $78,253,000, which increased by approximately $10,790,000 for the twelve-month period ended December 31, 2023.

On August 16, 2022, the United States enacted the Inflation Reduction Act ("IRA"), which introduces, among other items, an excise tax that would impose a 1% surcharge on stock repurchases, net of stock issuances beginning in 2023. Beginning in fiscal 2024, the IRA also introduced a 15% book minimum tax on Companies with average adjusted financial statement earnings that exceed $1 billion. As the Company's average adjusted financial statement earnings do not exceed this threshold, the Company is not an "Applicable Corporation". These provisions are not expected to impact the Company based on the current financial positions.

Net operating loss ("NOL") carryforwards and tax credit carryforwards are subject to review and possible adjustment by the Internal Revenue Service ("IRS") and may become subject to annual limitation due to ownership changes that have occurred previously or that could occur in the future under Section 382 of the Internal Revenue Code, as amended and similar state provisions. These ownership changes may limit the amount of carryforwards that can be utilized annually to offset future taxable income. In general, an ownership change, as defined by Section 382, results from transactions increasing the ownership of certain shareholders or public groups in the stock of a corporation by more than 50% over a three-year period. The Company has not conducted a study to assess whether a change of control has occurred or whether there have been multiple changes of control since inception due to the significant complexity and cost associated with such a study. If the Company has experienced a change of control, as defined by Section 382, at any time since inception, utilization of the net operating loss carryforwards or research and development tax credit carryforwards would be subject to an annual limitation under Section 382, which is determined by first multiplying the value of the Company's stock at the time of the ownership change by the applicable long-term tax-exempt rate, and then could be subject to additional adjustments, as required. Any limitation may result in expiration of a portion of the net operating loss carryforwards or research and development tax credit carryforwards before utilization. Further, until a study is completed, and any limitation is known, no amounts are being presented as an uncertain tax position.

As of December 31, 2023, the Company had federal NOL carryforwards of $191,303,120, available to reduce taxable income, of which $45,622,855 expire beginning 2023 and $145,680,265 do not expire. As of December 31, 2023, the Company had state NOL carryforwards of $173,133,821 available to reduce future state taxable income of which $170,893,173 expire beginning 2028 and $2,240,648 do not expire.

As of December 31, 2023, the Company had federal and state research and development credit carryforwards of $1,810,383 and $1,721,880, respectively. The federal research and development credit carryforwards expire beginning in 2035 and the state credit carryforwards do not expire.

The Company files income tax returns in the U.S. federal jurisdiction and various state and foreign jurisdictions. In the normal course of business, the Company is subject to examination by taxing authorities throughout the world. Due to NOL carryforwards not being utilized, all periods are open to potential examinations.

The Company's policy is to classify interest and penalties related to unrecognized tax benefits, if and when required, as a component of interest expense, in the accompanying consolidated statements of operations. The Company had not recorded any interest or penalties for the twelve-month periods ended December 31, 2023 and 2022.

As of December 31, 2023, the Company's uncertain tax positions totaled $1,059,676, which are netted against the underlying deferred tax assets. The entire balance in uncertain tax positions would cause a decrease in the effective income tax rate upon recognition, but that decrease would be offset by a change in the valuation allowance given the full valuation allowance position of the Company.

The following is a roll-forward of the Company's liability related to uncertain tax positions at December 31, 2023 and 2022:

	2023	2022
Balance at January 1	$ 1,012,850	$ 656,159
Increase for current period tax positions	287,704	309,267
Decrease for release of FIN 48 reserves	(240,878)	-
Increase/(decrease) for prior period tax positions	-	47,424
Balance as December 31	$ 1,059,676	$ 1,012,850

Note 13 – Net loss per share

The following tables sets forth the computation of basic and diluted net loss per share attributable to common stockholders at December 31, 2023 and 2022:

	2023	2022
Numerator – basic & diluted:		
Net loss attributable to common stockholders, basic and diluted	$ (35,036,888)	$ (33,088,205)
Denominator:		
Weighted-average number of shares outstanding, basic and diluted	288,875,373	269,608,916
Net loss per share attributable to common stockholders, basic and diluted	$ (0.12)	$ (0.12)

The following potentially dilutive shares were not included in the calculation of diluted shares outstanding for the periods presented as the effect would have been anti-dilutive at December 31, 2023 and 2022:

	2023	2022
Outstanding warrants	19,789,379	19,789,379
Outstanding stock options	38,214,582	32,217,927
Total dilutive shares	58,003,961	52,007,306

Note 14 – Commitments and contingencies

Purchase commitments

The Company purchases raw materials, manufacturing equipment, and various services from a variety of vendors. During the normal course of business, in order to manage manufacturing lead times and help ensure an adequate supply of certain items, we enter into agreements with suppliers that either allow us to procure goods and services when we choose or that establish purchase requirements over the term of the agreement. In certain instances, our purchase agreements allow us to cancel, reschedule, or adjust our purchase requirements based on our business needs prior to firm orders being placed. Consequently, only a portion of our purchase commitments are firm and noncancelable. As of December 31, 2023, the Company's obligations under such arrangements were approximately $3,500,000.

Contingencies

The Company is party to various legal proceedings from time to time. A liability is accrued when a loss is both probable and can be reasonably estimated. Management believes that the probability of a material loss with respect to any currently pending legal proceeding is remote. However, litigation is inherently uncertain, and it is not possible to definitively predict the ultimate disposition of any of these proceedings. The Company does not believe that there are any pending legal proceedings or other loss contingencies that will, either individually or in the aggregate, have a material adverse impact on the Company's consolidated financial statements.

Note 15 – Subsequent Events

The Company has evaluated subsequent events that have occurred through February 27, 2024, which is the date that the consolidated financial statements were available to be issued and determined that there were no subsequent events or transactions that required recognition or disclosure in the consolidated financial statements except as discussed in Note 6 above.