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

FORM 10-K

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE FISCAL YEAR ENDED AUGUST 31, 2019
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: **000-55418**

KUSHCO HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Nevada	**46-5268202**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

6261 Katella Avenue, Suite 250, Cypress, CA 90630
(Address of principal executive offices, including zip code)

(714) 462-4603
(Registrant's telephone number, including area code)

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

Title of each class	**Trading Symbol**	**Name of each exchange on which registered**
Common Stock, par value $0.001 per share	KSHB	OTCQX

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES☐ NO ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES☐ NO ☒

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T 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

The aggregate market value of the voting and non-voting common equity held by non-affiliates on February 28, 2019 was approximately $429,262,171.

As of November 7, 2019, there were 107,360,577 shares of our common stock issued and outstanding.

KUSHCO HOLDINGS, INC.
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FOR THE FISCAL YEAR ENDED AUGUST 31, 2019
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FORWARD-LOOKING STATEMENTS

For purposes of this report, unless otherwise indicated or the context otherwise requires, all references herein to "KushCo", "the Company", "we," "us," and "our," refer to KushCo Holdings, Inc., a Nevada corporation, and its subsidiaries.

Forward-Looking Statements

This Annual Report on Form 10-K contains statements that are not statements of historical fact and are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The forward-looking statements are principally, but not exclusively, contained in "Item 1: Business" and "Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations." Forward-looking statements include, but are not limited to, statements about management's confidence or expectations, and our plans, objectives, expectations and intentions that are not historical facts. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "could," "would," "expects," "plans," "anticipates," "believes," "goals," "sees," "estimates," "projects," "predicts," "intends," "think," "potential," "objectives," "optimistic," "strategy," and similar expressions intended to identify forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. We discuss many of these risks and uncertainties in detail under the heading "Item 1A. Risk Factors" beginning on page 11 of this Annual Report on Form 10-K. You should carefully review all of these factors, as well as other risks described in our public filings, and you should be aware that there may be other factors, including factors of which we are not currently aware, that could cause these differences. Given these risks and uncertainties, you should not place undue reliance on any forward-looking statements. In addition, the forward-looking statements in this Annual Report on Form 10-K are made as of the date of this report, and we do not undertake, and expressly disclaims any duty, to update such statements, whether as a result of new information, new developments or otherwise, except to the extent that disclosure may be required by law.

PART I

Item 1. Business

Company and Product Overview

KushCo Holdings, Inc. (formerly known as Kush Bottles, Inc.) markets and sells a wide variety of complementary products and services to customers operating in the regulated medical and recreational cannabis and cannabidiol (CBD) industries. These products and services include compliant, sustainable and custom packaging products, vape hardware, hydrocarbons and solvents, natural products, stainless steel tanks, custom branded anti-counterfeit and authentication labels, processing supplies, accessories, branding solutions, and retail services focused on CBD mass distribution, industry education and compliance. As a leader in custom and child-resistant packaging, biodegradable offerings, exclusive vape products, and unique product and service offerings, such as our stainless steel tanks and custom branded anti-counterfeit and authentication labels, we combine creativity with compliance to provide the right solutions for our customers. The ability to source and deliver almost anything a customer needs makes us a one-stop-shop solutions provider. We also provide custom branding on packaging products, which allows our customers to turn their packaging into an effective marketing tool. Our core products sold are in accordance with Title 16 of the Code of Federal Regulations Part 1700 of the Poison Prevention Packaging Act. The testing standards for certification meet the stringent requirements as set by the Consumer Product Safety Commission ("CPSC"). By offering a product mix that is compliant with CPSC, we are able to give peace of mind to our customers and reduce liability on their end.

Our products primarily consist of bottles, jars, bags, tubes, containers, vape cartridges, vape batteries and accessories, labels and processing supplies, hydrocarbons, solvents, natural products, stainless steel tanks, and custom branded anti-counterfeit and authentication labels. We maintain relationships with a broad range of manufacturers, which enables us to source a plethora of products in a cost-effective manner and pass such cost savings to our customers. That allows us to offer quick solutions to our customers and ensure that their products will be of superior grade and made with environmentally safe materials. In addition to a complete product line, we have sophisticated labeling and customization capabilities, which allow us to add significant value to our customers' packaging design processes. Our products are utilized by local urban farmers, green house growers, processors, brand owners, and medical and recreational cannabis dispensaries.

Our services primarily consist of CBD mass distribution services through our partnerships with leading consumer packaged goods (CPG) sales agencies, as well as full spectrum creative, marketing, and branding services through our wholly owned subsidiary The Hybrid Creative.

Bottles. Our pop top bottles meet all of the child resistant requirements as set by the CPSC. The pop-top bottle is unique to the cannabis packaging world because instead of a traditional push and turn bottle, the pop-top requires a squeeze motion that actually pops the attached top up and open. We carry the bottles in various sizes and colors.

Bags. We provide an array of packaging solutions in the form of a bag. The selection of bags we provide includes child resistant exit bags, traditional paper exit bags, and a vast selection of food grade safe foil barrier bags. All bags are available in stock designs and are fully customizable.

Tubes. We offer a complete line of tubes in two standard sizes, each available in a wide variety of colors. We believe that we are one of the largest suppliers of tubes to the cannabis and CBD industries in the United States. Our focus and investments are made to ensure that we are able to meet the increasing trend towards impermeable casing, substantially extending shelf life for pre-packaging. The tubes have a positive seal for enhanced freshness and are odor tight for secure storage and content privacy. All tubes are made with food grade, BPA-free, polypropylene in compliance with FDA regulation. We maintain several unique designs in this market that combine tube and closure elements into a single piece that we believe is innovative both in appearance and functionality. We believe that our ability to provide creative package designs, combined with a complementary line of closures, makes us a preferred supplier for many customers in our target market.

Containers. We provide a diverse selection of smaller sized containers composed of either polystyrene, silicone-lined polystyrene or glass. Our silicone-lined polystyrene containers offer durability and convenience by combining the ease of a non-stick silicone lined with the rigidity and clarity of a polystyrene outer layer.

Vape Hardware. We offer a wide selection of vaporizer cartridges in a variety of form factors (510 thread cartridge, pod systems, disposables, etc.) with reservoir materials including polyamide 12 or glass, internal materials consisting of brass or stainless steel, and porous ceramic heating core technology. We also offer a wide selection of batteries to accommodate the cartridges. Battery form factors include button-less inhalation activated batteries and push-button batteries with adjustable voltage settings. All vaporizer cartridges, batteries, and disposable units can be customized for clients, including adjusting colors/finishes, materials, and adding logos and branding per clients' request. We deliver the vaporizer products directly to clients, unassembled and empty, where the product is subsequently filled and assembled at the client's place of business by their qualified staff.

Natural Products: We are a distribution platform for products manufactured by Abstrax Tech. Abstrax Tech specializes in botanically derived terpene blends, terpene isolates, water-soluble terpene blends, and diluents, with all products consisting of ingredients from non-cannabis sources. These products are utilized by our customers for a wide variety of applications. These products are ordered through us and drop shipped to our customers by the vendor, where they are then incorporated into finished products by the customer.

Hydrocarbons and Solvents. We provide ultra-pure hydrocarbons and solvents, including but not limited to isobutane, n-butane, propane, ethanol, pre-mixes, custom blends, and dry ice. These substances are essential in the extraction process which produces products that supply the vaping and concentrate sector of the market. We ship these products to customers from nine distribution hubs and strategic vendor partnerships in key markets across the country under a Hazardous Materials ("HAZMAT") and Occupational Safety and Health Administration ("OSHA") compliant structure.

Stainless Steel Tanks. We believe we are the only cannabis industry supplier to offer stainless steel tanks, which have been shown through independent studies to be significantly cleaner than traditional carbon steel tanks, which often leave a trail of contaminants in the cannabis or CBD oil. Our new stainless steel tanks are available in standard LP239 cylinder sizes and are resistant to rust and degradation, are less brittle compared to carbon steel tanks, do not react from exposure to air or moisture, and are pre-cleaned before being filled, providing a cleaner vessel during the extraction process and resulting in a higher quality end product.

Branding Solutions. Our wholly-owned subsidiary, The Hybrid Creative, is a full-spectrum creative agency based in Santa Rosa, California. It serves both cannabis and non-cannabis clients across the U.S., Canada and Europe. The Hybrid Creative's services include brand strategy, design and marketing, web application development and e-commerce solutions.

Retail Services. Our retail services division focuses on industry education and compliance, as well as building distribution networks of compliant hemp-derived CBD brands across conventional retail channels. Through strategic partnerships with best-in-class sales agencies, this division provides comprehensive retail solutions to leading CBD brands. We believe our partnerships with leading CPG sales agencies is the first large scale go-to-market operation focused on helping compliant CBD brands achieve mass distribution across all consumer channels in legal U.S markets.

Custom Branded Anti-counterfeit and Authentication Labels. Through our exclusive distribution agreement with De La Rue, a global leader in anti-counterfeiting and authentication solutions, we also provide custom branded anti-counterfeit security labels. These labels provide unique IDs to support product serialization and a digital verification system to enable authentication throughout the regulated cannabis supply chain. Our offering provides companies with enhanced packaging, with the most secure visual authentication technology using 3D photopolymer images, unique serialization, e-verification, label tracking, and data capturing capabilities.

Our Corporate History and Background

KushCo Holdings, Inc. ("KushCo") was incorporated in the state of Nevada on February 26, 2014. We specialize in the wholesale distribution of packaging supplies and customized branding solutions, as well as the delivery of services, for the cannabis and CBD industries. Our wholly owned subsidiary Kim International Corporation ("KIM"), a California corporation**,** was originally incorporated as Hy Gro Economics Corporation ("Hy Gro") on December 2, 2010. On October 30, 2012, Hy Gro amended its articles of incorporation to reflect a name change to KIM International Corporation.

On April 10, 2015, we entered into an equity purchase agreement to acquire all of the issued and outstanding membership interests in Dank Bottles, LLC ("Dank"), a Colorado limited liability company. In exchange for the purchased interests, the Company paid cash consideration of $373,725 and issued 3,500,000 shares of common stock to the sellers of Dank.

On May 1, 2017 we and KBCMP, Inc., our newly formed wholly-owned subsidiary ("Merger Sub"), entered into an Agreement of Merger (the "Merger Agreement") with Lancer West Enterprises, Inc., a California corporation and Walnut Ventures, a California corporation, pursuant to which each of Lancer West Enterprises, Inc. and Walnut Ventures were merged with and into Merger Sub, with Merger Sub as the surviving corporation, resulting in our indirect acquisition of CMP Wellness, LLC ("CMP"), a California limited liability company. Prior to the merger, CMP was owned 100% by Lancer West Enterprises, Inc. and Walnut Ventures. The membership interest in CMP was the sole asset of each of Lancer West Enterprises, Inc. and Walnut Ventures. As a result, CMP became an indirect wholly-owned subsidiary of us. CMP is a distributor of vaporizers, cartridges and accessories.

On May 2, 2018, we and KCH Energy, LLC, a wholly-owned subsidiary of the Company ("KCH"), completed our acquisition of Summit Innovations, LLC ("Summit"), a leading distributor of hydrocarbon gases to the legal cannabis industry. Pursuant to the terms of the Agreement and Plan of Merger with Summit, Summit merged with and into KCH, with KCH as the surviving entity.

On July 11, 2018, we entered into a Membership Interest Purchase Agreement with the members of Zack Darling Creative Associates, LLC ("ZDCA"), parent of wholly-owned subsidiary, Hybrid Creative, LLC ("Hybrid"), a specialist design agency, whereby we purchased the entire issued membership interest of ZDCA. Following the acquisition, ZDCA operates as a wholly-owned subsidiary of ours, with Hybrid continuing to operate as wholly-owned subsidiary of ZDCA.

Recapitalization

On March 4, 2014, the stockholders of KIM exchanged all 10,000 of their common shares of KIM for 32,400,000 common shares of KushCo. The operations of KIM became the operations of KushCo after the share exchange and accordingly, the transaction is accounted for as a recapitalization of KIM, whereby the historical financial statements of KIM are presented as the historical financial statements of the combined entity.

Subsequent to the share exchange, the members of KIM owned 32,400,000 of shares of our common stock, effectively obtaining operational and management control of KushCo. KushCo had no operations prior to the share exchange. As a result of the recapitalization, KIM was the acquiring entity in accordance with ASC 805, Business Combinations. The accumulated losses of KIM were carried forward after the completion of the share exchange. Operations prior to the share exchange were those of KIM.

Marketing and Sales Channels

We sell primarily into the business-to-business market, which includes legally operating medical and adult-use dispensaries, growers, processors, brand owners, producers, distributors, and retailers in states with cannabis and CBD programs. We reach our large and diversified customer base through our direct sales force, our user-friendly website, and the strategic use of re-distributors. Our sales, fulfillment and support staff meet with customers to understand their needs and improve our product offerings and services. We are able to dedicate certain sales and marketing efforts to particular products, customers or geographic regions, when applicable, which enables us to develop expertise that is highly valued by our customers. In addition, inside and outside sales representatives, marketing managers, and executives oversee the marketing and sales efforts. Operational personnel work closely with sales personnel and customer service representatives to satisfy customers' needs through the distribution of high-quality products, on-time deliveries, value-added regulatory insight, and customized branding solutions and other services.

Our marketing activities include brand and logo development, advertising, websites, public relations, newsletters, catalogs and brochures, and all other points of contact with customers and prospective customers. We have ongoing campaigns in each of these areas, which are detailed below.

Branding. We believe that we have built one of the strongest and most recognizable brands in the cannabis and CBD industries. We recognized early on the importance of creating a strong, identifiable and lasting brand that would separate our Company from the competition, and resonate with customers. Our logo, our name, the style of our ads, and all collateral material reflect our "brand image."

Advertising. We run ads periodically in certain trade publications and on specific websites that reach our target audience. We believe providing ongoing exposure of our brand and product offering enhances the value of our corporate brand.

Public Relations. We have an active public relations program, which has helped build the KushCo brand and position our Company not only as a leader in the industry, but as the company with expertise in compliance issues and depth of understanding into state and local regulations governing the cannabis and CBD industries. This expertise is provided to our business-to-business customers to help them stay compliant and operate within all applicable rules. We believe that we have enjoyed great success in our public relations campaigns, and have appeared in numerous newspaper articles, online videos, digital media outlets, and television reports.

Email Marketing. We maintain a list of our customers and prospects, and we email to them regularly. These campaigns may be seasonally based (such as holiday specials) or may be "news" based to act as a vehicle to communicate important information. Staying in touch with our customers and our prospects is another key component in our marketing program.

Collateral. We have designed brochures, sales sheets, and catalogs that we use in our sales and marketing programs. These professionally designed and quality-printed pieces have been created using the KushCo brand guidelines, and help promote our Company while serving as useful sales tools.

Sales. We have a team of sales professionals that drive our revenues. These dedicated individuals maintain contact with existing clients and secure on-going orders, as well as have frequent communications with prospective customers. Our sales team is anchored by Territory Sales Managers (TSMs) that are strategically placed in the field. Each TSM is based in the region which they service. We believe this "boots on the ground" approach allows KushCo to develop deep relationships with the key players in each major market. While the TSMs are out building relationships in the field, they are supported by a Sales Support Specialist (SSS) in our nearest geographical distribution center. The SSS is responsible for prospecting new leads, coordinating site visits for the TSM, processing routine orders, and managing custom projects for clients. We believe this hands-on approach is vital in a new emerging market where value-add can be provided through educational and evangelical sales messaging.

Competition. We face competition from dozens of competitors of varying sizes and geographic reach who produce and sell products similar to ours. Our sales could be reduced significantly if our competitors develop and market products and services that are more effective, more convenient, or are less expensive than our products and services. We believe that we have differentiated ourselves from competitors due to several factors. We have built what we consider to be one of the strongest brands in the industry. We have a physical presence in key states such as California, Washington, Nevada, Michigan, Colorado and Massachusetts which enable us to meet our customers' demands at a speed that surpasses the competition. We believe we have the highest quality and largest variety of products and services that meet the certification standards for child-resistance as well as our customers' needs, given our status as a one-stop-shop solutions provider delivering a valuable product and service ecosystem. We believe we offer the best customized branded packaging solutions in the market. Additionally, we believe our size and customer relationships give us significant insight and expertise in our industry. As a result, we have become more than just a supplier to our customers – we have become a trusted partner, with insight and recommendations that help our customers' businesses grow and thrive. In addition to many short-term competitive advantages, KushCo is committed to continue building its suite of proprietary and innovative products that are exclusive to the company using intellectual property, branding, trademarks, or joint ventures. We currently have three granted patents and several pending patent applications, as well as numerous trademarks.

Customers

We service customers across several industries including all areas of the legal cannabis and CBD supply chains from growers and processors to brand owners, distributors, and retailers. As the industry matures, the size of our largest customers has increased by overall spend as well as the number of items purchased. We believe this trend is likely to continue and will benefit our "one-stop-shop" strategy for our customers' ancillary needs.

Our larger customers are purchasing an ever-increasing variety of products, reflecting our success in cross-selling additional SKUs. Our ability to cross-sell allows us to secure improved pricing as a result of our increased scale and purchasing power.

We have experienced growth in our large customer base as well as growth in the number of larger customers purchasing $500,000 or more per year. The table below shows our revenue for the years ended August 31, 2019 and 2018 from adult recreational use states in the U.S., medical use only states in the U.S., Canada and all other countries.

Shipping State / Province	2019 Revenue	% of 2019 Revenue	2018 Revenue	% of 2018 Revenue
CA	$ 73,655	49.4%	$ 25,815	49.6%
WA	11,543	7.7	7,023	13.5
CO	10,891	7.3	5,498	10.6
OR	8,391	5.6	3,055	5.9
NV	6,601	4.4	3,082	5.9
MA	4,850	3.3	615	1.2
MI	4,013	2.7	1,011	1.9
ME	1,543	1.0	356	0.7
Other Rec States	2,420	1.6	768	1.5
Rec State Total	123,907	83.2	47,223	90.7
Medical Only States	21,998	14.8	3,732	7.2
Canada	2,473	1.7	840	1.6
Other Countries	576	0.4	280	0.5
Total	$ 148,954	100.0%	$ 52,075	100.0%

The table below breaks down full year 2019 and 2018 revenue by product category.

PRODUCT CATEGORY	2019 Revenue	% of 2019 Revenue	2018 Revenue	% of 2018 Revenue
Vape	$ 102,727	69.0%	$ 28,214	54.2%
Packaging	24,799	16.6	18,288	35.1
Energy and Natural Products	17,887	12.0	2,367	4.5
Papers & Supplies	3,541	2.4	3,206	6.2
	$ 148,954	100.0%	$ 52,075	100.0%

Customer Concentration

We had two customers which accounted for approximately 14% and 10% of revenue, respectively, for the fiscal year ended August 31, 2019.

Sources and Availability of Products

We purchase products and raw materials from different suppliers from time to time on a non-exclusive basis. We purchase all products and raw materials from suppliers by purchase order and do not enter into long-term or medium-term agreements with our suppliers to maintain any particular levels of supply capacity. Our purchase orders are executed on a "spot" basis and contain market pricing, shipment and delivery terms and conditions only. We believe that we have maintained strong relationships with our suppliers. We expect that such relationships will continue into the foreseeable future, but we can provide no assurances that these relationships will continue. Based on our experience, we believe that adequate quantities of the raw materials which are used to manufacture our products (i.e. plastic resins) will continue to be available at market prices, but we can provide no assurances as to such availability or the prices for such materials.

Research and Development Activities

During the fiscal years ended August 31, 2019 and 2018, our research and development activities included the development of a new child-resistant tube and various other products. Expenses incurred with research and development during the fiscal years ended August 31, 2019 and 2018 were not material. Our costs to develop products have been financed by internal cash flows and not been borne directly by our customers.

Segments

We operate as one operating segment. As defined in ASC Topic 280, *Segment Reporting,* operating segments are components of an enterprise for which separate financial information is evaluated regularly by the chief operating decision maker, who is the chief executive officer, in deciding how to allocate resources and assess performance. Over the past few years, we have completed a number of acquisitions. These acquisitions have allowed us to expand our offerings, presence and reach in the cannabis industry. While we have offerings in multiple geographic locations for our products for the cannabis industry, as a result of these acquisitions, our business operates in one reportable segment because the majority of our offerings operate similarly, and our chief operating decision maker evaluates financial information and resources and assesses the performance of these resources on a consolidated basis. Since we operate in one reportable segment, all required financial segment information can be found in the consolidated financial statements.

Employees

As of the date of this filing, we have 217 full-time employees. Our employees work at our facilities located across the U.S. Our relations with employees remain satisfactory and there have been no significant work stoppages or other labor disputes.

Environmental Matters and Government Regulation

The Food and Drug Administration ("FDA") regulates the material content of direct-contact food and drug packages, including certain packages we sell pursuant to the Federal Food, Drug and Cosmetics Act. Certain of our products are also regulated by the Consumer Product Safety Commission ("CPSC") pursuant to various federal laws, including the Consumer Product Safety Act and the Poison Prevention Packaging Act. Both the FDA and the CPSC can require the manufacturer of defective products to repurchase or recall such products and may also impose fines or penalties on the manufacturer. Similar laws exist in some states, cities and other countries in which we sell our products. We use FDA approved resins and pigments in our products that directly contact food and drug products, and our products are in material compliance with all applicable requirements.

The plastics industry, including us, is subject to existing and potential federal, state, local and foreign legislation designed to reduce solid waste by requiring, among other things, plastics to be degradable in landfills, minimum levels of recycled content, various recycling requirements, disposal fees, and limits on the use of plastic products. In particular, certain states have enacted legislation requiring products packaged in plastic containers to comply with standards intended to encourage recycling and increased use of recycled materials. In addition, various consumer and special interest groups have lobbied from time to time for the implementation of these and other similar measures. We believe that the legislation promulgated to date and such initiatives to date have not had a material adverse effect on us. There can be no assurance that any such future legislative or regulatory efforts or future initiatives would not have a material adverse effect on us.

Thirty-three states and the District of Columbia currently have laws legalizing marijuana in some form. We do not believe that federal or any state laws prohibit us from selling our packaging products to cannabis growers and dispensers. See, however, the risk factors in Item 1A - Risk Factors under the captions "Cannabis remains illegal under federal law, and therefore, strict enforcement of federal laws regarding cannabis would likely result in our inability and the inability of our customers to execute our respective business plans," "States which have not approved any legal sale of marijuana may seek to overturn laws legalizing cannabis use in neighboring states, which if successful, could result in legal action against such neighboring states and have a significant negative effect on our business," and "We and our customers may have difficulty accessing the services of financial institutions and related financial services, which may make it difficult to sell our products and services."

Emerging Growth Company

We qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards. As a result, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

Circumstances could cause us to lose emerging growth company status. We will qualify as an emerging growth company until the earliest of:

- The last day of our first fiscal year during which we have total annual gross revenues of $1 billion or more;
- The last day of our fiscal year following the fifth anniversary of the date of our initial public offering;
- The date on which we have issued more than $1 billion in non-convertible debt during the prior three-year period; or
- The date on which we qualify as a "large accelerated filer" under the Exchange Act (qualifying as a large accelerated filer means, among other things, having a public float in excess of $700 million).

Recent Developments

On September 26, 2019, the Company entered into purchase agreements with accredited investors pursuant to which the Company issued and sold an aggregate of 17,197,570 units (the "Units"), with each unit consisting of one share of common stock, par value $0.001 per share (the "Common Stock") and a warrant to purchase half a share of Common Stock (each a "Warrant" and collectively, the "Warrants"), in a registered direct offering (the "September 2019 Offering"). The purchase price for a Unit was $1.75. The closing of the September 2019 Offering occurred on September 30, 2019 and resulted in aggregate gross proceeds of approximately $30.1 million. The aggregate net proceeds from the September 2019 Offering, after deducting the placement agent fees and other offering expenses, was approximately $27.6 million. Subject to certain ownership limitations, the Warrants were immediately exercisable at an exercise price equal to $2.25 per share of Common Stock. The Warrants are exercisable for five years from the date of issuance.

Corporate and Available Information

Our principal corporate offices are located at 6261 Katella Avenue, Suite 250, Cypress, California 90630 and our telephone number is (714) 243-4311. Our internet address is www.kushco.com. We make available on our website, free of charge, our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission, or the SEC. Our SEC reports can be accessed through the Investor Relations section of our website.

Item 1A. Risk Factors

Risks Related to Our Business

We may need additional capital in the future, which could dilute the ownership of current shareholders and we may be unable to secure additional funding in the future or to obtain such funding on favorable terms.

Historically, we have raised equity capital to support and expand our operations. To the extent that we raise additional equity capital, existing shareholders will experience a dilution in the voting power and ownership of their common stock, and earnings per share, if any, would be negatively impacted. Our inability to raise additional capital to finance our operations could materially limit our growth. Any reductions in our available borrowing capacity under our revolving credit facility (the "Monroe Revolving Credit Facility") with Monroe Capital Management Advisors, LLC ("Monroe"), or our inability to renew or replace the Monroe Revolving Credit Facility or the senior note (the "New Senior Note") to HB Sub Fund II LLC ("HB Sub Fund"), when required or when business conditions warrant, could have a material adverse effect on our business, financial condition and results of operations. Further, any additional borrowings made by us to finance operations could make us more vulnerable to a downturn in economic conditions, or increases in interest rates on borrowings that are subject to interest rate fluctuations. The amount and timing of such additional financing needs will vary based on among other things, timing of new product launches, investments and/or acquisitions, and the amount of cash flow from our operations. If our resources are insufficient to satisfy our cash requirements, we may seek to issue additional equity or debt securities or to obtain additional financing. If our cash flow from operations is insufficient to meet our debt service requirements, we could be required to sell additional equity securities, refinance our obligations, or dispose of assets in order to meet these requirements. There can be no assurance that any financing will be available to us when needed or will be available on terms acceptable to us. Our failure to obtain sufficient financing on favorable terms and conditions could have a material adverse effect on our growth prospects and our business, financial condition and results of operations.

Even if we obtain more customers, there is no assurance that we will make a profit.

Even if we obtain more customers, there is no guarantee that we will be able to generate a profit. Because we are a small company and have limited capital, we must limit our products and services. Further, we are subject to raw material pricing which can erode the profitability of our products and put additional negative pressure on profitability. If we cannot operate profitably, we may have to suspend or cease operations.

Cannabis remains illegal under federal law, and therefore, strict enforcement of federal laws regarding cannabis would likely result in our inability and the inability of our customers to execute our respective business plans.

Cannabis is a Schedule I controlled substance under the Controlled Substances Act of 1970 (the "CSA"). Even in those jurisdictions in which the manufacture and use of medical cannabis has been legalized at the state level, the possession, use and cultivation all remain violations of federal law that are punishable by imprisonment, substantial fines and forfeiture. Moreover, individuals and entities may violate federal law if they intentionally aid and abet another in violating these federal controlled substance laws, or conspire with another to violate them. The U.S. Supreme Court has ruled in *United States v. Oakland Cannabis Buyers' Coop.* and *Gonzales v. Raich* that it is the federal government that has the right to regulate and criminalize the sale, possession and use of cannabis, even for medical purposes. We would likely be unable to execute our business plan if the federal government were to strictly enforce federal law regarding cannabis.

In January 2018, the Department of Justice (the "DOJ") rescinded certain memoranda, including the so-called "Cole Memo" issued on August 29, 2013 under the Obama Administration, which had characterized enforcement of federal cannabis prohibitions under the CSA to prosecute those complying with state regulatory systems allowing the use, manufacture and distribution of medical cannabis as an inefficient use of federal investigative and prosecutorial resources when state regulatory and enforcement efforts are effective with respect to enumerated federal enforcement priorities under the CSA. The impact of the DOJ's rescission of the Cole Memo and related memoranda is unclear, but may result in the DOJ increasing its enforcement actions against the state-regulated cannabis industry generally.

Congress previously enacted an omnibus spending bill that includes a provision prohibiting the DOJ (which includes the Drug Enforcement Agency (the "DEA")) from using funds appropriated by that bill to prevent states from implementing their medical-use cannabis laws. This provision, however, expired on December 7, 2018, and must be renewed by Congress. In *USA vs. McIntosh*, the U.S. Court of Appeals for the Ninth Circuit held that this provision prohibits the DOJ from spending funds from relevant appropriations acts to prosecute individuals who engage in conduct permitted by state medical-use cannabis laws and who strictly comply with such laws. However, the Ninth Circuit's opinion, which only applies to the states of Alaska, Arizona, California, Hawaii, and Idaho, also held that persons who do not strictly comply with all state laws and regulations regarding the distribution, possession and cultivation of medical-use cannabis have engaged in conduct that is unauthorized, and in such instances the DOJ may prosecute those individuals.

Additionally, financial transactions involving proceeds generated by cannabis-related conduct can form the basis for prosecution under the federal money laundering statutes, unlicensed money transmitter statutes and the Bank Secrecy Act. The penalties for violation of these laws include imprisonment, substantial fines and forfeiture. Prior to the DOJ's rescission of the "Cole Memo", supplemental guidance from the DOJ issued under the Obama administration directed federal prosecutors to consider the federal enforcement priorities enumerated in the "Cole Memo" when determining whether to charge institutions or individuals with any of the financial crimes described above based upon cannabis-related activity. With the rescission of the "Cole Memo," there is increased uncertainty and added risk that federal law enforcement authorities could seek to pursue money laundering charges against entities or individuals engaged in supporting the cannabis industry.

Federal prosecutors have significant discretion and no assurance can be given that the federal prosecutor in each judicial district where we operate will not choose to strictly enforce the federal laws governing cannabis production or distribution. Any change in the federal government's enforcement posture with respect to state-licensed cultivation of cannabis, including the enforcement postures of individual federal prosecutors in judicial districts where we operate, would result in our inability to execute our business plan, and we would likely suffer significant losses, which would adversely affect the trading price of our securities. We have not requested or obtained any opinion of counsel or ruling from any authority to determine if our operations are in compliance with or violate any state or federal laws or whether we are assisting others to violate a state or federal law. In the event that our operations are deemed to violate any laws or if we are deemed to be assisting others to violate a state or federal law, any resulting liability could cause us to modify or cease our operations.

The federal and state regulatory landscape regarding products containing CBD is uncertain and evolving, and new or changing laws or regulations relating to industrial hemp and industrial hemp-derived products could have a material adverse effect on our business, financial condition and results of operations.

We facilitate the sale and distribution of products containing cannabidiol derived from industrial hemp ("CBD"), a form of cannabis. The Agriculture Improvement Act of 2018 (the "2018 Farm Bill"), which was signed into law by President Trump on December 20, 2018, removed the classification of industrial hemp (defined in the 2018 Farm Bill as Cannabis sativa L. with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis), which includes industrial hemp-based CBD, as a controlled substance under the Controlled Substances Act ("CSA"). The declassification of industrial hemp opened the path for broad commercial cultivation of the crop and, among other things, the use of its byproducts in consumer goods, including CBD.

Although industrial hemp has been removed from the list of "controlled substances" under the CSA, some states still classify industrial hemp and its byproducts as a controlled substance under applicable state criminal laws, making the possession, sale, and distribution of any such products illegal under such state laws. Although many states are implementing changes to their criminal laws in response to the 2018 Farm Bill, there can be no assurance that every state will follow suit. As a result, applicable state and local laws or regulations regarding industrial hemp-based CBD and products containing industrial hemp-based CBD could restrict any CBD brokerage services we offer in the future or impose additional compliance costs on us or our customers. Violations of applicable laws, or allegations of such violations, could disrupt our business and result in a material adverse effect on our operations.

FDA regulation regarding the sale or distribution of products containing CBD could make it difficult for our customers to operate their business, increase their operating costs, and pose additional operational, logistical and security challenges, which in turn could have a material adverse effect on our business, financial condition and results of operations.

The United States Food and Drug Commission ("FDA") has the authority to regulate the production and sale of hemp pursuant to the United States Federal Food, Drug, and Cosmetic Act (the "FDCA"), section 351 of the Public Health Service Act (addressing the regulation of biological products). Shortly after the 2018 Farm Bill became law, the FDA issued a statement that any cannabis product, whether derived from industrial hemp or otherwise, marketed with a disease claim (e.g., a claim of therapeutic benefit or disease prevention) must be approved by the FDA for its intended use through one of the drug approval pathways prior to it being introduced into interstate commerce, and that introducing food, beverages, and dietary supplements with added CBD (or THC), regardless of source, into interstate commerce is currently illegal under the FDCA. The FDA has since indicated that it would issue regulations regarding the addition of food, beverages, and dietary supplements containing CBD, and conducted a public hearing on May 31, 2019 to obtain scientific data and information about the safety, manufacturing, product quality, marketing, labeling, and sale of products containing cannabis or cannabis-derived compounds.

Any regulations that the FDA issues in the future relating to the sale of food, beverages, and dietary supplements containing CBD in interstate commerce could make it difficult for our customers to operate their business, increase their operating costs, and pose additional operational, logistical and security challenges, which in turn could have a material adverse effect on our business, financial condition and results of operations.

If commercial cultivation of industrial hemp is deemed to be a violation of federal law, we may be subject to federal enforcement actions, which could adversely affect our business and harm our reputation and brand.

The 2018 Farm Bill empowers the United States Department of Agriculture (the "USDA") to implement a program to certify state and Indian tribe permitting for the commercial cultivation of industrial hemp. On October 29, 2019, the USDA released the text of its interim final rule for regulations establishing such a program, which include specific requirements about permitting of cultivators, testing of cultivated hemp, and land maintenance, among other things (the "Interim Rules"). Such Interim Rules became effective on November 1, 2019 by their terms; however, the USDA has invited public comment on the Interim Rules, in anticipation of final rules to be implemented by the USDA in the future (the "Final Rules").

Until commercial cultivators of industrial hemp receive permits for production under applicable state and Indian tribe laws that are implemented pursuant to the Interim Rules, any production of industrial hemp by such persons may be deemed to be in violation of federal law. In addition, any Final Rules implemented by the USDA may be different from the Interim Rules, making industrial hemp more difficult to cultivate and produce in compliance therewith.

We risk becoming subject to adverse publicity and costly federal enforcement actions should we decide to facilitate the sale and distribution of products containing industrial hemp-based CBD in the United States that is not grown in full compliance with the Interim Rules or the Final Rules (as applicable) and applicable state and/or Indian tribe permitting rules implemented pursuant to the Interim Rules or the Final Rules (as applicable). In addition, we risk that industrial hemp-based CBD products that we distribute do not fully comply with such Interim Rules or the Final Rules (as applicable), and state or Indian tribe permitting rules, despite the representations of the producers of such products. We may be required to expend significant resources in defending our company from actions resulting therefrom, which could adversely affect our business and results of operations and divert the attention of management. We may also incur the risk of sustaining considerable damage to our reputation and brand should we become party to federal enforcement actions resulting from the sale and distribution of products containing industrial hemp-based CBD that do not fully comply with the Interim Rules or the Final Rules (as applicable) and applicable state and/or Indian tribe permitting rules implemented pursuant to the Interim Rules or the Final Rules (as applicable).

States which have not approved any legal sale of marijuana may seek to overturn laws legalizing cannabis use in neighboring states, which if successful, could result in legal action against such neighboring states and have a significant negative effect on our business.

Due to variations in state law among states sharing borders, certain states which have not approved any legal sale of marijuana may seek to overturn laws legalizing cannabis use in neighboring states. For example, in December 2014, the attorneys general of Nebraska and Oklahoma filed a complaint with the U.S. Supreme Court against the state of Colorado arguing that the Supremacy Clause (Article VI of the Constitution) prohibits Colorado from passing laws that conflict with federal anti-drug laws and that Colorado's laws are increasing marijuana trafficking in neighboring states that maintain marijuana bans, thereby putting pressure on such neighboring states' criminal justice systems. In March 2016 the Supreme Court, voting 6-2, declined to hear this case, but there is no assurance that it will do so in the future. Additionally, nothing prevents these or other attorneys general from using the same or similar cause of action for a lawsuit in a lower federal or other court.

Previously, the Supreme Court has held that drug prohibition is a valid exercise of federal authority under the commerce clause; however, it has also held that an individual state itself is not required to adopt or enforce federal laws with which it disagrees. If the Supreme Court rules that a legal cannabis state's legislation is unconstitutional, that could result in legal action against other states with laws legalizing medical and/or recreational cannabis use. Successful prosecution of such legal actions by non-marijuana states could have significant negative effects on our business.

We and our customers may have difficulty accessing the service of banks, which may make it difficult to sell our products and services.

Financial transactions involving proceeds generated by cannabis-related conduct can form the basis for prosecution under the federal money laundering statutes, unlicensed money transmitter statute and the U.S. Bank Secrecy Act. Guidance issued by the Financial Crimes Enforcement Network, or FinCen, a division of the U.S. Department of the Treasury, clarifies how financial institutions can provide services to cannabis-related businesses consistent with their obligations under the Bank Secrecy Act. Furthermore, supplemental guidance from the DOJ directs federal prosecutors to consider the federal enforcement priorities enumerated in the Cole Memo when determining whether to charge institutions or individuals with any of the financial crimes described above based upon cannabis-related activity. Nevertheless, banks remain hesitant to offer banking services to cannabis-related businesses. Consequently, those businesses involved in the cannabis industry continue to encounter difficulty establishing banking relationships. Our inability to maintain our current bank accounts would make it difficult for us to operate our business, increase our operating costs, and pose additional operational, logistical and security challenges and could result in our inability to implement our business plan.

We are subject to certain federal regulations relating to cash reporting.

The Bank Secrecy Act, enforced by FinCEN, requires us to report currency transactions in excess of $10,000, including identification of the customer by name and social security number, to the IRS. This regulation also requires us to report certain suspicious activity, including any transaction that exceeds $5,000 that we know, suspect or have reason to believe involves funds from illegal activity or is designed to evade federal regulations or reporting requirements and to verify sources of funds. Substantial penalties can be imposed against us if we fail to comply with this regulation. If we fail to comply with these laws and regulations, the imposition of a substantial penalty could have a material adverse effect on our business, financial condition and results of operations.

Our inability to effectively manage our growth could harm our business and materially and adversely affect our operating results and financial condition.

Our strategy envisions growing our business. We are actively expanding our product, sales, administrative and marketing operations. Any growth in or expansion of our business is likely to continue to place a strain on our management and administrative resources, infrastructure and systems. As with other growing businesses, we expect that we will need to further refine and expand our business development capabilities, our systems and processes and our access to financing sources. We also continue to hire, train, supervise, and manage a significant number of new employees. These processes are time consuming and expensive, will increase management responsibilities and will divert management attention. We cannot assure that we will be able to:

- expand our products effectively or efficiently or in a timely manner;
- allocate our human resources optimally;
- meet our capital needs;
- identify and hire qualified employees or retain valued employees; or
- effectively incorporate the components of any business or product line that we may acquire in our effort to achieve growth.

Our inability or failure to manage our growth and expansion effectively could harm our business and materially and adversely affect our operating results and financial condition.

If we do not successfully generate additional products and services, or if such products and services are developed but not successfully commercialized, we could lose revenue opportunities.

Our future success depends, in part, on our ability to expand our product and service offerings. To that end we have engaged in the process of identifying new product opportunities to provide additional products and related services to our customers. The processes of identifying and commercializing new products is complex and uncertain, and if we fail to accurately predict customers' changing needs and emerging trends, our business could be harmed. We have already and may have to continue to commit significant resources to commercializing new products before knowing whether our investments will result in products the market will accept. Furthermore, we may not execute successfully on commercializing those products because of errors in product planning or timing, technical hurdles that we fail to overcome in a timely fashion, or a lack of appropriate resources. This could result in competitors providing those solutions before we do and a reduction in net sales and earnings.

The success of new products depends on several factors, including proper new product definition, timely completion, and introduction of these products, differentiation of new products from those of our competitors, and market acceptance of these products. There can be no assurance that we will successfully identify additional new product opportunities, develop and bring new products to market in a timely manner, or achieve market acceptance of our products or that products and technologies developed by others will not render our products or technologies obsolete or noncompetitive.

Our future success depends on our ability to grow and expand our customer base. Our failure to achieve such growth or expansion could materially harm our business.

To date, our revenue growth has been derived from the sale of our products. Our success and the planned growth and expansion of our business depend on us achieving greater and broader acceptance of our products and expanding our customer base. There can be no assurance that customers will purchase our products or that we will continue to expand our customer base. If we are unable to effectively market or expand our product offerings, we will be unable to grow and expand our business or implement our business strategy. This could materially impair our ability to increase sales and revenue and materially and adversely affect our margins, which could harm our business and cause our stock price to decline.

Our suppliers could fail to fulfill our orders for parts used to assemble our products, which would disrupt our business, increase our costs, harm our reputation, and potentially cause us to lose our market.

We depend on third party suppliers around the world, including in China, for materials used to assemble our products. These suppliers could fail to produce products to our specifications or in a workmanlike manner and may not deliver the material or products on a timely basis. Our suppliers may also have to obtain inventories of the necessary parts and tools for production. Any change in our suppliers' approach to resolving production issues could disrupt our ability to fulfill orders and could also disrupt our business due to delays in finding new suppliers, providing specifications and testing initial production. Such disruptions in our business and/or delays in fulfilling orders could harm our reputation and could potentially cause us to lose our market.

If significant tariffs or other restrictions are placed on our goods imported into the United States from China or any related counter-measures are taken by China, or if such tariffs are increased, our revenue, financial condition, and results of operations may be materially harmed.

If significant tariffs or other restrictions are placed on goods imported into the United States from China or any related counter-measures are taken by China, our revenue and results of operations may be materially harmed. The Trump Administration has signaled that it may alter trade terms between China and the United States, including by limiting trade with China and/or imposing tariffs on imports from China. Between July and September 2018, the U.S. Trade Representative imposed additional duties, ranging from 10% to 25% on a variety of goods imported from China that will potentially be subjected to a 10% tariff until 2019, when the tariffs will increase to 25%. These tariffs apply primarily to our vaporizer and vaporizer accessory products, and as a result, the cost of our products may increase. In addition, any such additional tariffs may also make our products more expensive for consumers, which may reduce consumer demand. We may need to offset the financial impact by, among other things, moving our product manufacturing to other locations where feasible, modifying other business practices or raising prices. If we are not successful in offsetting the impact of any such tariffs, our revenue, gross margins, and operating results may be adversely affected.

Our inability to effectively protect our intellectual property would adversely affect our ability to compete effectively, our revenue, our financial condition, and our results of operations.

We may be unable to obtain intellectual property rights to effectively protect our branding, products, and other intangible assets. Our ability to compete effectively may be affected by the nature and breadth of our intellectual property rights. While we intend to defend against any threats to our intellectual property rights, there can be no assurance that any such actions will adequately protect our interests. If we are unable to secure intellectual property rights to effectively protect our branding, products, and other intangible assets, our revenue and earnings, financial condition, or results of operations could be adversely affected.

We also rely on non-disclosure and non-competition agreements to protect portions of our intellectual property portfolio. There can be no assurance that these agreements will not be breached, that we will have adequate remedies for any breach, that third parties will not otherwise gain access to our trade secrets or proprietary knowledge, or that third parties will not independently develop competitive products with similar intellectual property.

If we fail to retain key personnel and hire, train and retain qualified employees, we may not be able to compete effectively, which could result in reduced revenue or increased costs.

Our success is highly dependent on the continued services of key management and technical personnel. Our management and other employees may voluntarily terminate their employment at any time upon short notice. The loss of the services of any member of the senior management team, including our Chairman and Chief Executive Officer, Nick Kovacevich; our Chief Financial Officer, Christopher Tedford; our Chief Revenue Officer, Jason Vegotsky, our Chief Operating Officer, Rodrigo de Oliveira; or any of the managerial or technical staff may significantly delay or prevent the achievement of product development, our growth strategies and other business objectives. Our future success will also depend on our ability to identify, recruit and retain additional qualified technical and managerial personnel. We operate in several geographic locations where labor markets are particularly competitive, where demand for personnel with these skills is extremely high and is likely to remain high. As a result, competition for qualified personnel is intense, particularly in the areas of general management, finance, engineering and science, and the process of hiring suitably qualified personnel is often lengthy and expensive, and may become more expensive in the future. If we are unable to hire and retain a sufficient number of qualified employees, our ability to conduct and expand our business could be seriously reduced.

We face risks associated with strategic acquisitions.

As an important part of our business strategy, we have strategically acquired several businesses, and plan to continue strategic acquisitions, some of which may be material. These acquisitions may involve a number of financial, accounting, managerial, operational, legal, compliance and other risks and challenges, including the following, any of which could adversely affect our results of operations:

- Any acquired business could under-perform relative to our expectations and the price that we paid for it, or not perform in accordance with our anticipated timetable;
- We may incur or assume significant debt in connection with our acquisitions;
- Acquisitions could cause our results of operations to differ from our own or the investment community's expectations in any given period, or over the long term; and
- Acquisitions could create demands on our management that we may be unable to effectively address, or for which we may incur additional costs.

Additionally, following any business acquisition, we could experience difficulty in integrating personnel, operations, financial and other systems, and in retaining key employees and customers.

We may record goodwill and other intangible assets on our consolidated balance sheet in connection with our acquisitions. If we are not able to realize the value of these assets, we may be required to incur charges relating to the impairment of these assets, which could materially impact our results of operations.

The Financing Agreement for the Monroe Revolving Credit Facility and New Senior Note each contains financial and operating covenants that may restrict our business and financing activities.

The Financing Agreement and the New Senior Note each restricts, among other things, our ability to:

- make investment in or merge with or acquire all or substantially all of the assets or capital stock of another party;
- incur, assume, guarantee or cancel certain indebtedness;
- enter into certain transactions with related parties;
- incur or assume any liens upon or with respect to any of our properties;
- make certain change in business objectives, purposes of operations;
- sell, transfer, issue, convey, assign or otherwise dispose of assets or properties, subject to certain exceptions.

The financial and operating restrictions and covenants in the Financing Agreement and the New Senior Note, as well as any future financing agreements that we may enter into, may restrict our ability to finance our operations, engage in business activities or expand or fully pursue our business strategies. Our ability to comply with these covenants may be affected by events beyond our control and we may not be able to meet those covenants. A breach of any of the covenants under the Financing Agreement and the New Senior Note, or either lender declaring that a material adverse event has occurred, could result in a default under the Financing Agreement and the New Senior Note, respectively, which could cause all of the outstanding indebtedness under the Monroe Revolving Credit Facility and the New Senior Note, as applicable, to become immediately due and payable.

Increases in interest rates would increase the cost of servicing our debt and could reduce our profitability.

A significant portion of our outstanding debt, including amounts under the Monroe Revolving Credit Facility, bears interest at variable rates and expose us to interest rate risk. As a result, increases in interest rates would increase the cost of servicing our debt and could materially reduce our profitability and cash flows.

Uncertainty relating to the LIBOR calculation process and potential phasing out of LIBOR after 2021 may adversely affect the market value of our current or future debt obligations, including under the Monroe Revolving Credit Facility.

On July 27, 2017, the U.K. Financial Conduct Authority announced that it intends to stop persuading or compelling banks to submit LIBOR rates after 2021. As a result, LIBOR may be discontinued by 2021. While there is no consensus on what rate or rates may become accepted alternatives to LIBOR, the Alternative Reference Rates Committee, a steering committee comprised of U.S. financial market participants, selected and the Federal Reserve Bank of New York started in May 2018 to publish the Secured Overnight Finance Rate ("SOFR") as an alternative to LIBOR. SOFR is a broad measure of the cost of borrowing cash in the overnight U.S. treasury repo market. At this time, it is impossible to predict whether the SOFR or another reference rate will become an accepted alternative to LIBOR. The manner and impact of this transition may materially adversely affect the trading market for LIBOR-based securities, as well as the applicable interest rate on and the amount of interest paid on our current or future debt obligations, including the Monroe Revolving Credit Facility.

If product liability lawsuits are successfully brought against us, we will incur substantial liabilities.

We face an inherent risk of product liability. For example, we could be sued if any product we sell allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability and a breach of warranties. Claims could also be asserted under state consumer protection acts.

Furthermore, vaporizer products and other similar consumption product manufacturers, suppliers, distributors, and sellers have recently become subject to litigation. While we have not been a party to any product liability litigation and do not ourselves manufacture any products, several lawsuits have been brought against other manufacturers and sellers of smokeless products for injuries to health allegedly caused by use of smokeless products. We may be subject to similar claims in the future relating to vaporizer products that we sell. We may also be named as a defendant in product liability litigation against one of our suppliers by association, including in class action lawsuits. In addition, we may see increasing litigation over our vaporizer products or the regulation of our products as the regulatory regimes surrounding these products develop. If such lawsuits are filed against us in the future, we could incur substantial costs, including costs to defend the cases and possible damages awards.

If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit sales of our products. If we are unable to successfully defend future lawsuits against us, we could face at least the following potential consequences:

- decreased demand for our products;
- injury to our reputation;
- costs to defend the related litigation;
- a diversion of management's time and our resources;
- substantial monetary awards to users of our products;
- product recalls or withdrawals;
- loss of revenue; and
- a decline in our stock price.

In addition, while we continue to take what we believe are appropriate precautions, we may be unable to avoid significant liability if any product liability lawsuit is brought against us.

We are subject to cyber-security risks, including those related to customer, employee, vendor or other company data and including in connection with integration of acquired businesses and operations.

We use information technologies to securely manage operations and various business functions. We rely on various technologies, some of which are managed by third parties, to process, transmit and store electronic information, and to manage or support a variety of business processes and activities, including reporting on our business and interacting with customers, vendors and employees. In addition, we collect and store certain data, including proprietary business information, and may have access to confidential or personal information that is subject to privacy and security laws, regulations and customer-imposed controls. Our systems are subject to repeated attempts by third parties to access information or to disrupt our systems. Despite our security design and controls, and those of our third-party providers, we may become subject to system damage, disruptions or shutdowns due to any number of causes, including cyber-attacks, breaches, employee error or malfeasance, power outages, computer viruses, telecommunication or utility failures, systems failures, service providers, natural disasters or other catastrophic events. It is possible for such vulnerabilities to remain undetected for an extended period. We may face other challenges and risks as we upgrade and standardize our information technology systems as part of our integration of acquired businesses and operations. We have contingency plans in place to prevent or mitigate the impact of these events, however, these events could result in operational disruptions or the misappropriation of sensitive data, and depending on their nature and scope, could lead to the compromise of confidential information, improper use of our systems and networks, manipulation and destruction of data, defective products, production downtimes and operational disruptions and exposure to liability. Such disruptions or misappropriations and the resulting repercussions, including reputational damage and legal claims or proceedings, may adversely affect our results of operations, cash flows and financial condition, and the trading price of our common stock.

This risk is enhanced in certain jurisdictions with stringent data privacy laws and, as we expand our products, offerings, and operations domestically and internationally, we may become subject to amended or additional laws that impose substantial additional obligations related to data privacy. For example, California recently adopted the California Consumer Privacy Act of 2018 ("CCPA"), which provides new data privacy rights for consumers and new operational requirements for businesses. The CCPA includes a statutory damages framework and private rights of action against businesses that fail to comply with certain CCPA terms or implement reasonable security procedures and practices to prevent data breaches. The CCPA goes into effect in January 2020.

There is uncertainty related to the regulation of vaporization products and certain other consumption accessories. Increased regulatory compliance burdens and recent temporary bans on the sales of certain cannabis vaporization products could have a material adverse impact on our business development efforts and our operations.

There is uncertainty regarding whether and in what circumstances federal, state, or local regulatory authorities will seek to develop and enforce regulations relative to vaporizer hardware and accessories that can be used to vaporize cannabis and/or tobacco. Further, it remains to be seen whether current or future regulations relating to tobacco vaporization products would also apply to cannabis vaporization products and related consumption accessories.

There has been increasing activity on the federal, state, and local levels with respect to scrutiny of vaporizer products. Federal, state, and local governmental bodies across the United States have indicated that vaporization products and certain other consumption accessories may become subject to new laws and regulations at the state and local levels. As of the date of this Annual Report on Form 10-K, Massachusetts, Oregon, and Washington have temporarily banned all or certain types of cannabis vaporization products, and several other states and municipalities are considering implementing similar restrictions.

In September 2019, the Trump Administration announced a plan to ban the sale of most flavored e-cigarettes nationwide. At the state level, over 25 states have implemented statewide regulations that prohibit vaping in public places. In January 2015, the California Department of Health declared electronic cigarettes and certain other vaporizer products a health threat that should be strictly regulated like tobacco products, and in September 2019, California's governor issued an executive order on vaping, focused on enforcement and disclosure. In addition, some cities have also implemented more restrictive measures than their state counterparts, such as San Francisco, which in June 2019, approved a new ban on the sale of flavored nicotine products, including vaping liquids and menthol cigarettes.

The application of any new laws or regulations, including bans on sale, that may be adopted and/or maintained, at a federal, state, or local level, directly or indirectly implicating cannabis vaporization products or consumption accessories could limit our ability to sell such products, result in additional compliance expenses, and require us to change our labeling and methods of distribution, any of which could have a material adverse effect on our business, results of operations and financial condition.

The scientific community has not yet extensively studied the long-term health effects of the use of vaporizer products.

Cannabis vaporizers and related products were recently developed and therefore the scientific community has not had a sufficient period of time to study the long-term health effects of their use. If the scientific community were to determine conclusively that use of any or all of these products poses long-term health risks, market demand for these products and their use could materially decline. Such a determination could also lead to litigation and significant regulation. Loss of demand for our product, product liability claims, and increased regulation stemming from unfavorable scientific studies on these products could have a material adverse effect on our business, results of operations, and financial condition.

Our operating results, including net sales, gross margin and net income (loss), as well as our stock price have varied in the past, and our future operating results will continue to be subject to quarterly and annual fluctuations based upon numerous factors, including those discussed in this Item 1A and throughout this report. Our stock price will continue to be subject to daily variations as well. Our future operating results and stock price may not follow any past trends or meet our guidance and expectations.

Our net sales and operating results, net income (loss) and operating expenses, and our stock price have varied in the past and may vary significantly from quarter to quarter and from year to year in the future. We believe a number of factors, many of which are outside of our control, could cause these variations and make them difficult to predict, including:

- fluctuations in demand for our products or downturns in the industries that we serve;
- the ability of our suppliers, both internal and external, to produce and deliver products including sole or limited source components, in a timely manner, in the quantity, quality and prices desired;
- the timing of receipt of bookings and the timing of and our ability to ultimately convert bookings to net sales;
- rescheduling of shipments or cancellation of orders by our customers;
- fluctuations in our product mix;
- the ability of our customers' other suppliers to provide sufficient material to support our customers' products;
- currency fluctuations and stability, in particular the, the Chinese RMB and the U.S. dollar as compared to other currencies;
- introductions of new products and product enhancements by our competitors, entry of new competitors into our markets, pricing pressures and other competitive factors;
- our ability to develop, introduce, manufacture and ship new and enhanced products in a timely manner without defects;
- our ability to manage our manufacturing capacity across our diverse product lines and that of our suppliers, including our ability to successfully expand our manufacturing capacity in various locations around the world;
- our ability to successfully and fully integrate acquisitions, such as the historical CMP Wellness businesses, into our operations and management;
- our ability to successfully internally transfer products as part of our integration efforts;
- our reliance on contract manufacturing;
- our customers' ability to manage their susceptibility to adverse economic conditions;
- the rate of market acceptance of our new products;
- the ability of our customers to pay for our products;
- expenses associated with acquisition-related activities;
- access to applicable credit markets by us and our customers;
- our ability to control expenses;
- potential excess and/or obsolescence of our inventory;
- impairment of goodwill, intangible assets and other long-lived assets;
- our ability to meet our expectations and forecasts and those of public market analysts and investors;
- our ability and the ability of our contractual counterparts to comply with the terms of our contracts;
- damage to our reputation as a result of coverage in social media, Internet blogs or other media outlets;
- managing our internal and third-party sales representatives and distributors, including compliance with all applicable laws;
- costs, expenses and damages arising from litigation;
- individual employees intentionally or negligently failing to comply with our internal controls; and
- distraction of management related to acquisition, integration or divestment activities.

Our expenses for any given quarter are typically based on expected sales and if sales are below expectations in any given quarter, the adverse impact of the shortfall on our operating results may be magnified by our inability to adjust spending quickly enough to compensate for the shortfall. We also base our inventory levels on our forecasted product mix for the quarter. If the actual product mix varies significantly from our forecast, we may not be able to fill some orders during that quarter, which would result in delays in the shipment of our products. Accordingly, variations in timing of sales, particularly for our higher priced, higher margin products, can cause significant fluctuations in quarterly operating results.

Due to these and other factors, such as varying product mix, quarter-to-quarter and year-to-year comparisons of our historical operating results may not be meaningful. You should not rely on our results for any quarter or year as an indication of our future performance. Our operating results in future quarters and years may be below public market analysts' or investors' expectations, which would likely cause the price of our stock to fall. In addition, over the past several years, U.S. and global equity markets have experienced significant price and volume fluctuations that have affected the stock prices of many companies involved in the cannabis industry as well as in and outside our industry. There has not always been a direct correlation between this volatility and the performance of particular companies subject to these stock price fluctuations. These factors, as well as general economic and political conditions may have a material adverse effect on the market price of our stock in the future.

Charges to earnings resulting from the application of the acquisition method of accounting to the various acquisitions may adversely affect our results of operations.

In accordance with generally accepted accounting principles, we have accounted for acquisitions using the acquisition method of accounting. Under the acquisition method of accounting, we allocated the total purchase price of an acquired company's net tangible and identifiable intangible assets based upon their estimated fair values at the acquisition date. The excess of the purchase price over net tangible and identifiable intangible assets was recorded as goodwill. We have incurred and will continue to incur additional depreciation and amortization expense over the useful lives of certain of the net tangible and intangible assets acquired in connection with the acquisition. In addition, to the extent the value of goodwill or intangible assets with indefinite lives becomes impaired, we may be required to incur material charges relating to the impairment of those assets. These depreciation, amortization and potential impairment charges could have a material impact on our results of operations.

If our goodwill or intangible assets become impaired, we may be required to record a significant charge to earnings and our ability to borrow under our asset-based Monroe Revolving Credit Facility may be significantly impaired.

Under accounting principles generally accepted in the United States, we review our intangible assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Goodwill is required to be tested for impairment at least annually. Factors that may be considered in determining whether a change in circumstances indicating that the carrying value of our goodwill or other intangible assets may not be recoverable include declines in our stock price and market capitalization or future cash flows projections. A decline in our stock price, or any other adverse change in market conditions, particularly if such change has the effect of changing one of the critical assumptions or estimates we used to calculate the estimated fair value of our reporting units, could result in a change to the estimation of fair value that could result in an impairment charge. Any such material charges, whether related to goodwill or purchased intangible assets, may have a material negative impact on our financial and operating results. In addition, under our asset-based Monroe Revolving Credit Facility, our lenders have the ability to impose additional reserves, which would reduce our ability to borrow and access to capital to operate our business.

Risks Related to Ownership of our Capital Stock

The trading market for our common stock is limited.

We are quoted on the OTCQX under the trading symbol “KSHB” and are not traded or listed on any securities exchange. The OTCQX is regarded as a junior trading venue. This may result in limited shareholder interest and hence lower prices for our common stock than might otherwise be obtained. In addition, it may be difficult for our shareholders to sell their shares without depressing the market price for our shares or at all. As a result of these and other factors, our shareholders may not be able to sell their shares. Further, an inactive market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to enter into strategic partnerships or acquire companies or products by using our shares of common stock as consideration. If an active market for our common stock does not develop or is not sustained, it may be difficult for our shareholders to sell shares of our common stock.

Our principal stockholders, executive officers, and directors own a significant percentage of our common stock and will be able to exert a significant control over matters submitted to the stockholders for approval.

Our officers and directors, and stockholders who own more than 5% of our common stock, collectively beneficially own a significant percentage of our common stock. This significant concentration of share ownership may adversely affect the trading price for our common stock because investors often perceive disadvantages in owning stock in companies with controlling stockholders. These stockholders, if they acted together, could significantly influence all matters requiring approval by the stockholders, including the election of directors. The interests of these stockholders may not always coincide with the interests of other stockholders.

We do not intend to pay dividends on our common stock and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

We have never declared or paid any cash dividend on our common stock and do not currently intend to do so for the foreseeable future. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. Additionally, for so long as any loans under the Monroe Revolving Credit Facility or the New Senior Note remain outstanding, we would be required to obtain the prior written consent of Monroe or HB Sub Fund, II LLC ("HB Sub Fund"), as applicable, prior to declaring or paying any cash dividend or cash distribution on any of our capital stock. Therefore, the success of an investment in shares of our common stock will depend upon any future appreciation in their value. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

Your percentage ownership will be diluted in the future.

Your percentage ownership will be diluted in the future because of equity awards that we expect will be granted to our directors, officers and employees, as well as shares of common stock, or securities convertible into common stock, we issue in connection with future capital raising or strategic transactions. Our 2016 Stock Incentive Plan provides for the grant of equity-based awards to our directors, officers and consultants. The issuance of any shares of our stock would dilute the proportionate ownership and voting power of existing security holders.

Substantial sales of common stock have and may continue to occur, or may be anticipated, which have and could continue to cause our stock price to decline.

We expect that we will seek to raise additional capital from time to time in the future, which may involve the issuance of additional shares of common stock, or securities convertible into common stock. On June 12, 2018, January 18, 2019 and September 30, 2019, we completed registered direct offerings of an aggregate 31,173,760 shares of common stock and warrants to purchase 15,586,880 shares of common stock, and on August 21, 2019, we issued warrants to purchase 1,150,000 shares of common stock in connection with establishment of the Monroe Revolving Credit Facility. The purchasers of the shares of common stock and warrants to purchase shares of common stock from these transactions may sell significant quantities of our common stock in the market, which may cause a decline in the price of our common stock. Further, we cannot predict the effect, if any, that any additional market sales of common stock, or anticipation of such sales, or the availability of those shares of common stock for sale will have on the market price of our common stock. Any future sales of significant amounts of our common stock, or the perception in the market that this will occur, may result in a decline in the price of our common stock.

If we fail to establish or maintain effective internal controls over financial reporting, we may be unable to accurately report our financial results or prevent fraud, and investor confidence and the market price of our common stock may, therefore, be adversely impacted.

Our reporting obligations as a public company place a significant strain on our management, operational and financial resources, and systems for the foreseeable future. Annually, we are required to prepare a management report on our internal controls over financial reporting containing our management's assessment of the effectiveness of our internal control over financial reporting. Management concluded that our internal controls over financial reporting were not effective as of August 31, 2019. At such time as we no longer qualify as an emerging growth company, our independent registered public accounting firm will be required to attest to provide an attestation report on our internal control over financial reporting. Under such circumstances, even if our management concludes that our internal controls over financial reporting are effective, our independent registered public accounting firm may disagree or may issue a report that is qualified if it believes that our controls or the level at which our controls are documented, designed, operated or reviewed are inadequate.

We have concluded that certain of our previously-issued financial statements could not be relied upon and, as a result, we have restated such previously-issued financial statements, which has led and may lead to, among other things, shareholder litigation, loss of investor confidence, negative impact on our stock price, and certain other risks.

As discussed in the Explanatory Note, Note 2, "Restatement" and in Note 18, "Quarterly Information (unaudited)" under Item 8 of the amendment to our Annual Report on Form 10-K for the year ended August 31, 2018, filed with the SEC on April 11, 2019, we concluded that our previously-issued consolidated financial statements for the fiscal years ended August 31, 2018 and 2017, and for each of the interim periods ended May 31, 2017, November 30, 2017, February 28, 2018, and May 31, 2018, should no longer be relied upon. The determination that these financial statements should no longer be relied upon and our decision to restate these financial statements was made following the identification of errors in the accounting of share-settled contingent consideration paid by us in connection with certain acquisitions. We filed restated financial statements with the SEC for all impacted periods on April 11, 2019.

As a result of these misstatements, we have become subject to a number of additional risks and uncertainties, including unanticipated costs for accounting and legal fees in connection with or related to the restatement, including four shareholder derivative litigations, one class-action lawsuit, and a subpoena by the SEC, as previously disclosed on a Current Report on Form 8-K filed with the SEC on July 18, 2019. Any such proceeding could result in substantial defense costs regardless of the outcome of the litigation or investigation. If we do not prevail in any such litigation, we could be required to pay substantial damages or settlement costs. In addition, as a result of these misstatements, we may continue to be at risk for further government investigations, shareholder litigation, and additional accounting and legal fees in connection therewith, as well as loss of investor confidence in us, and a negative impact on our stock price.

We are remediating certain internal controls and procedures, which, if not successful, could result in additional misstatements in our financial statements negatively affecting our results of operations.

We are in the process of implementing certain remediation actions in response to the above-described financial misstatements. See Item 9A. "Controls and Procedures" of this Annual Report on Form 10-K for the year ended August 31, 2019 for a description of these remediation measures. To the extent these steps are not successful, not sufficient to correct our material weaknesses in internal controls over financial reporting, or are not completed in a timely manner, future financial statements may contain material misstatements and we could be required to restate our financial results. Any of these matters could adversely affect our business, reputation, revenues, results of operations, financial condition, and stock price, and limit our ability to access the capital markets through equity or debt issuances.

We are involved in an ongoing SEC investigation, which could divert management's focus, result in substantial investigation expenses, and have an adverse impact on our reputation, financial condition, results of operations, and cash flows.

As previously disclosed on a Current Report on Form 8-K filed with the SEC on July 18, 2019, on July 11, 2019, the Company received a subpoena from the SEC and a letter from the SEC stating that it is conducting an investigation. The subpoena requests information and documents generally related to the Company's restatement of its consolidated financial statements for the fiscal years ended August 31, 2018 and 2017, and for the three months ended November 30, 2018 and 2017. We have incurred significant legal and accounting expenditures in connection with the SEC's investigation. We are unable to predict how long the SEC's investigation will continue or its outcome.

Our recent change in auditing firms may cause additional delays in reporting.

Effective as of August 8, 2019, we changed our independent auditor from RBSM LLP to Marcum LLP. This change in auditors could delay our reports with the SEC. Such delays could result in a loss of investor confidence in the reliability of our financial statements and an adverse reaction in the financial marketplace, which ultimately could adversely impact the market price of our shares, and limit our ability to access the capital markets through equity or debt issuances.

Our obligations to Monroe Capital are secured by a security interest in substantially all of our assets, so if we default on those obligations, Monroe could accelerate the obligations thereunder and exercise remedies including foreclosing on our assets, which would harm our business, financial condition, and results of operations, and could require us to reduce or cease operations.

On August 21, 2019, the Company and its subsidiaries entered into a revolving credit facility (the "Monroe Revolving Credit Facility") with Monroe Capital Management Advisors, LLC ("Monroe"), as collateral agent and administrative agent, and the various lenders party thereto (the "Financing Agreement"). The Financing Agreement provides for a total borrowing commitment of $35 million to be made in the form of revolving loans, subject to a borrowing base, together with the ability by the Company, upon the satisfaction of certain conditions set forth in the Financing Agreement, to increase the size of such commitment to $50 million (the "Monroe Loans"). The Monroe Revolving Credit Facility has a five-year term, maturing on August 21, 2024, and is secured by a first-priority lien on substantially all of the assets of the Company and its subsidiaries. As a result, if we default on our obligations under the Monroe Revolving Credit Facility, or fail to pay the obligations under the Monroe Revolving Credit Facility in full upon maturity, Monroe could foreclose on its security interests and liquidate some or all of these assets, which would harm our business, financial condition, and results of operations, and could require us to reduce or cease operations.

If we default on our obligations to HB Sub Fund, HB Sub Fund could accelerate the obligations thereunder and exercise remedies including rights to collect on those obligations, which would harm our business, financial condition, and results of operations, and could require us to reduce or cease operations.

On April 29, 2019, we entered into a Securities Purchase Agreement with HB Sub Fund, pursuant to which we issued a senior note to HB Sub Fund in the principal amount of $21.3 million (the "Original Note"). On August 21, 2019, we entered into an Exchange Agreement with HB Sub Fund, pursuant to the terms of which we exchanged the Original Note for a new Senior Note on substantially the same terms (the "New Senior Note"). On November 8, 2019, we entered into a Second Exchange Agreement ("Second Exchange Agreement") with HB Sub Fund, pursuant to which we amended the New Senior Note (the "Amended Senior Note"). Pursuant to the terms of the Amended Senior Note, the maturity date of the Amended Senior Note was extended to April 29, 2021 and the aggregate principal amount of the Amended Senior Note was increased to $24.0 million, and the original issue discount was increased to $1.5 million. If we default on our obligations under the Amended Senior Note, or fail to pay the obligations under the Amended Senior Note in full upon maturity, HB Sub Fund could exercise remedies to enforce such obligations, which would harm our business, financial condition, and results of operations, and could require us to reduce or cease operations.

In addition, the Amended Senior Note and its terms are subject to that certain Intercreditor Agreement, by and among the Company, HB Sub Fund, and Monroe, dated August 21, 2019, pursuant to which HB Sub Fund has agreed, among other things, that, upon the occurrence of a default or event of default under the Financing Agreement, HB Sub Fund shall not have the right to seek payment on the Amended Senior Note for a period of up to 45 days.

HB Sub Fund has the right to participate in certain offerings by us of debt or equity, which may limit our ability to complete such financing transactions.

Pursuant to the Amended Senior Note, if we enter into any debt or equity issuance, HB Sub Fund has the right to acquire 100% of any debt issuance and 15% of any equity issuance of the company, subject to certain exceptions. Thus, while other holders of our securities will risk suffering a reduction in percentage ownership in connection with a new issuance of securities by us, HB Sub Fund will, through this participation right, have the opportunity to avoid a reduction in percentage ownership.

The market price of our common stock may be volatile and may be affected by market conditions beyond our control. The market price of our common stock is subject to significant fluctuations in response to, among other factors:

- variations in our operating results and market conditions specific to our business;
- the emergence of new competitors or new technologies;
- operating and market price performance of other companies that investors deem comparable;
- changes in our Board or management;
- sales or purchases of our common stock by insiders;
- commencement of, or involvement in, litigation;
- changes in governmental regulations, in particular with respect to the cannabis industry; and
- general economic conditions and slow or negative growth of related markets.

In addition, if the market for stocks in our industry, or the stock market in general, experiences a loss of investor confidence, the market price of our common stock could decline for reasons unrelated to our business, financial condition, or results of operations. If any of the foregoing occurs, it could cause the price of our common stock to fall and may expose us to lawsuits that, even if unsuccessful, could be costly to defend and a distraction to our Board of Directors and management.

The application of the "penny stock" rules could adversely affect the market price of our common shares and increase your transaction costs to sell those shares.

The SEC has adopted Rule 3a51-1, which establishes the definition of a "penny stock," for the purposes relevant to us, as any equity security that has a market price of less than $5.00 per share or with an exercise price of less than $5.00 per share, subject to certain exceptions. For any transaction involving a penny stock, unless exempt, Rule 15g-9 under the Exchange Act requires: (a) that a broker or dealer approve a person's account for transactions in penny stocks; and (b) the broker or dealer to receive from the investor a written agreement to the transaction, setting forth the identity and quantity of the penny stock to be purchased.

In order to approve a person's account for transactions in penny stocks, the broker or dealer must (i) obtain financial information and investment experience objectives of the person; and (ii) make a reasonable determination that the transactions in penny stocks are suitable for that person and the person has sufficient knowledge and experience in financial matters to be capable of evaluating the risks of transactions in penny stocks.

The broker or dealer must also deliver, prior to any transaction in a penny stock, a disclosure schedule prescribed by the SEC relating to the penny stock market, which, in highlight form sets forth: (A) the basis on which the broker or dealer made the suitability determination and (B) that the broker or dealer received a signed, written agreement from the investor prior to the transaction.

Generally, brokers may be less willing to execute transactions in securities subject to the "penny stock" rules. This may make it more difficult for investors to dispose of our common stock and cause a decline in the market value of our stock.

Since our securities are currently quoted on the OTCQX, our stockholders may face significant restrictions on the resale of our securities due to state "Blue Sky" laws.

Each state has its own securities laws, often called "blue sky" laws, which (i) limit sales of securities to a state's residents unless the securities are registered in that state or qualify for an exemption from registration, and (ii) govern the reporting requirements for broker-dealers doing business directly or indirectly in the state. Before a security is sold in a state, there must be a registration in place to cover the transaction, or the transaction must be exempt from registration. The applicable broker must also be registered in that state. We do not know whether our common stock will be registered or exempt from registration under the laws of any state. Since our common stock is currently quoted on the OTCQX, a determination regarding registration will be made by those broker-dealers, if any, who agree to serve as the market-makers for our common stock. There may be significant state blue sky law restrictions on the ability of investors to sell, and on purchasers to buy, our common stock. Investors should therefore consider the resale market for our common stock to be limited, as they may be unable to resell their common stock without the significant expense of state registration or qualification.

In the past, we have conducted private placements with accredited investors pursuant to Regulation D under the Securities Act. We filed Form Ds relating to such private placements with the SEC, but have not made any notice filings with state securities regulators with respect to private placements conducted prior to June 2018. State securities regulators may assess penalties and fines on us in the future based on our failure to make such notice filings.

Rule 144 contains risks for certain shareholders.

Pursuant to SEC Rule 144 promulgated under the Securities Act, a person who has beneficially owned restricted shares of our common stock for at least six months would be entitled to sell their securities provided that: (i) such person is not deemed to have been one of our affiliates at the time of, or at any time during the three months preceding a sale, (ii) we are subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale and (iii) if the sale occurs prior to satisfaction of a one-year holding period, we have provided the public with current information at the time of sale.

Persons who have beneficially owned restricted shares of our common stock for at least six months but who are our affiliates at the time of, or at any time during the three months preceding a sale, would be subject to additional restrictions, by which such person would be entitled to sell within any three-month period only a number of securities that does not exceed the greater of either of the following:

- 1% of the total number of securities of the same class then outstanding; or
- the average weekly trading volume of such securities during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale;

Provided, in each case, we are subject to the Exchange Act periodic reporting requirements for at least three months before the sale. Such sales by affiliates must also comply with the manner of sale, current public information, and notice provisions of Rule 144.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties

At present, we do not hold title to any real estate property. All of our properties are leased or sub-leased. We do not have any mortgages, liens or encumbrances against any of our properties.

Our corporate headquarters is located in a 23,500 square foot leased office space at 6261 Katella Avenue in Cypress, California and is subject to a lease that expires in September 2025. Our primary distribution center is located in a leased facility at 11958 Monarch Street in Garden Grove, California, and consists of two facilities, one with approximately 28,800 square feet of office, which is subject to a lease that expires on August 1, 2022 and one with approximately 46,000 square feet of primarily warehouse space, which is subject to a lease that expires in August 2023.

We sub-lease a 13,600 square foot facility in Woodinville, Washington, which is utilized as a fulfillment and distribution center for the Pacific Northwest region. The sub-lease expires January 2020. We also sub-lease a 27,200 square foot facility in Denver, Colorado. The sub-lease for this property expires March 31, 2020.

As part of the expansion of our operating footprint, we entered into a lease agreement for a 66,300 square foot warehouse distribution center in Worcester, Massachusetts in April 2018 with a four-year lease term that expires in April 2022. We also entered into a lease for a 40,200 square foot distribution center in Taylor, Michigan in May 2019 with a 5-year lease term expiring in June 2024. We intend to use these facilities to service the Northeast U.S. as state-level legalization occurs in these states. We also established a distribution center in Las Vegas, Nevada pursuant to a lease executed in June 2018, which expires in May 2021. The Las Vegas facility is approximately 12,600 square feet of warehouse and office space.

We believe that our property and equipment is well-maintained, in good operating condition and adequate for our present needs and that suitable additional or alternative space will be available in the future on commercially reasonable terms.

Item 3. Legal Proceedings

We are not currently subject to any material legal proceedings.

Item 4. Mining Safety Disclosures

Not applicable.

PART II

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

Market Information

Our common stock is quoted on the OTCQX, under the symbol "KSHB". Our common stock was initially listed on the OTCQB on December 1, 2015 and transitioned to the OTCQX in May 2019. Any over-the-counter market quotations are based on inter-dealer bid and asked prices, without retail markup, mark-down or commission and may not represent actual transactions.

Holders

As of November 7, 2019, we had approximately 160 holders of record of our common stock.

Dividends

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings for use in the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future.

Equity Compensation Plan Information

Information about our equity compensation plans is incorporated herein by reference to Item 12 of Part III of this Annual Report on Form 10-K.

Recent Sales of Unregistered Securities

During the year ended August 31, 2019, we granted 333,867 unregistered shares of our common stock for services pursuant to contracts, with an aggregate fair market value of approximately $1.9 million.

During the year ended August 31, 2019, we sold 9,076,664 shares of our common stock and warrants exercisable for 3,238,095 shares of common stock, with an exercise price of $5.75 per share, to investors in exchange for aggregate gross proceeds of approximately $41.6 million.

On August 21, 2019, in connection with and as a condition to the consummation of the Monroe Revolving Credit Facility, we issued warrants to purchase up to an aggregate of 500,000 shares of common stock, at an exercise price of $4.25, to institutional investors pursuant to a Subscription Agreement, dated August 21, 2019, by and among the Company and Monroe Capital Management Advisors, LLC.

On August 21, 2019, we entered into a New Senior Note and issued a warrant to purchase up to 650,000 shares of common stock, at an exercise price of $4.25, in connection with the exchange of the Original Note for the New Senior Note pursuant to the Exchange Agreement, dated August 21, 2019, by and between the Company and an institutional investor.

These securities were issued without registration under the Securities Act in reliance on registration exemptions contained in Section 4(a)(2) of the Securities Act and Regulation D as transactions by an issuer not involving any public offering. The recipients of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the share certificates and other instruments issued in such transactions. The sales of these securities were made without general solicitation or advertising.

The Securities Enforcement and Penny Stock Reform Act of 1990

The SEC has adopted Rule 3a51-1, which establishes the definition of a "penny stock," for the purposes relevant to us, as any equity security that has a market price of less than $5.00 per share or with an exercise price of less than $5.00 per share, subject to certain exceptions. For any transaction involving a penny stock, unless exempt, Rule 15g-9 requires:

- that a broker or dealer approve a person's account for transactions in penny stocks,
- the broker or dealer receives from the investor a written agreement to the transaction, setting forth the identity and quantity of the penny stock to be purchased.
- In order to approve a person's account for transactions in penny stocks, the broker or dealer must:
- obtain financial information and investment experience objectives of the person, and
- make a reasonable determination that the transactions in penny stocks are suitable for that person and the person has sufficient knowledge and experience in financial matters to be capable of evaluating the risks of transactions in penny stocks.

The broker or dealer must also deliver, prior to any transaction in a penny stock, a disclosure schedule prescribed by the SEC relating to the penny stock market, which, in highlight form:

- sets forth the basis on which the broker or dealer made the suitability determination and
- that the broker or dealer received a signed, written agreement from the investor prior to the transaction.

Generally, brokers may be less willing to execute transactions in securities subject to the "penny stock" rules. This may make it more difficult for investors to dispose of our common stock and cause a decline in the market value of our stock.

Item 6. Selected Financial Data.

Not applicable.

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

Cautionary Statement Concerning Forward-Looking Statements

The following discussion summarizes the significant factors affecting the operating results, financial condition, liquidity and cash flows of our company as of and for the periods presented below. The following discussion and analysis should be read in conjunction with our consolidated financial statements and the related notes thereto included elsewhere in this Annual Report on Form 10-K. The statements in this discussion regarding industry outlook, our expectations regarding our future performance, liquidity and capital resources and all other non-historical statements in this discussion are forward-looking statements and are based on the current beliefs of our management, as well as assumptions made by, and information currently available to, our management. Actual results could differ materially from those discussed in or implied by forward-looking statements as a result of various factors, including those discussed below and elsewhere in this Annual Report, particularly in the section titled "Risk Factors."

Overview

We provide customizable packaging products, vaporizers, hydrocarbon gases, solvents, accessories and branding solutions primarily for the cannabis industry. Representative examples of our products include pop-top bottles, vaporizer cartridges and accessories, exit/barrier bags, pre-roll tubes, and other small-sized containers. We sell our solutions predominantly to businesses operating in jurisdictions that have some form of cannabis legalization. These businesses include medical and recreational dispensaries, large and small scale processors, and packaging re-distributors.

We believe that we have created one of the largest product libraries in the cannabis industry, allowing us to be a comprehensive solutions provider to our customers. Our extensive knowledge of the regulatory environment applicable to the cannabis industry allows us to quickly adapt to our customers' packaging requirements. We maintain the flexibility to enter the markets of decriminalized regions by establishing re-distributor partnerships or opening new facilities. We also have the flexibility to introduce new products and services to our vast customer network. We have no supplier "take or pay" arrangements. In addition to these factors, we believe that we offer competitive pricing, prompt deliveries, and excellent customer service. We expect continued growth as we take measures to expand into new markets, invest in our systems and personnel, forge strategic alliances and invest in our own molds and intellectual property.

Acquisitions

CMP Wellness LLC

On May 1, 2017 ("Merger Date"), the Company and KBCMP, Inc., a Delaware corporation and newly formed wholly-owned subsidiary of the Company ("Merger Sub"), entered into an Agreement of Merger (the "Merger Agreement") with Lancer West Enterprises, Inc., a California corporation and Walnut Ventures, a California corporation, pursuant to which each of Lancer West Enterprises, Inc. and Walnut Ventures were merged with and into Merger Sub, with Merger Sub as the surviving corporation, resulting in our indirect acquisition of CMP Wellness, LLC ("CMP"), a California limited liability company. Prior to the merger, CMP was owned 100% by Lancer West Enterprises, Inc. and Walnut Ventures. Membership interest in CMP was the sole asset of Lancer West Enterprises, Inc. and Walnut Ventures. As a result, CMP became our wholly-owned subsidiary. CMP is a distributor of vaporizers, cartridges and accessories. Our Board of Directors believed the acquisition of CMP and the product offerings of CMP leveraged our existing product development program and provided us with the possibility of generating near term revenue and operating cash flow, as well as establishing a commercial platform whereby other cannabis industry-support products may be accessed in the future. Going forward, the existing product offering and other product licensing opportunities will be the basis of our long-term product portfolio.

The purchase price for CMP consisted of an aggregate of $1.5 million in cash, unsecured promissory notes in the aggregate principal amount of approximately $0.7 million having a one-year maturity, and an aggregate of 7,800,000 restricted shares of the Company's common stock. The purchase price is subject to customary post-closing adjustments with respect to confirmation of the levels of working capital and cash held by CMP as of the closing. During the one-year period following the closing, the former owners of CMP may become entitled to receive up to an additional approximately $1.9 million in cash, in the aggregate, and approximately 4,740,960 shares of our common stock, in the aggregate, based on the future performance of CMP. On July 16, 2018, the Company issued an aggregate of 3,740,960 shares of common stock associated with the contingent equity consideration in accordance with the terms of the Merger Agreement. On May 9, 2019, the Company issued 500,000 shares of common stock associated with holdback shares in accordance with the terms of the Merger Agreement.

Summit Innovations LLC

On May 2, 2018, we completed the acquisition of Summit, a leading distributor of hydrocarbon gases to the legal cannabis industry. Pursuant to the terms of the Summit Agreement, Summit merged with and into KCH, with KCH as the surviving entity. The consideration paid to the members of Summit at the closing consisted of cash consideration of $0.9 million, net of cash received, and 1,280,000 shares of the Company's common stock. Cash consideration of $0.2 million and 640,000 shares of common stock were held back by us for a period of 15 months for potential post-closing working capital and/or indemnification claims relating to, among other things, breaches of representations, warranties and covenants contained in the Summit Agreement. The former members of Summit were entitled to receive earn-out consideration of up to an additional 1,280,000 shares of common stock, in the aggregate, based on the net revenue performance of the Summit business during a one-year period following the closing date of the acquisition. On August 13, 2019, we issued an aggregate of 1,146,782 shares of common stock associated with the contingent equity consideration and holdback shares in accordance with the terms of the Merger Agreement. As of August 31, 2019, the Company is holding back the remaining 200,000 shares pending resolution of certain claims.

Hybrid Creative LLC

On July 11, 2018, we completed the acquisition of Zack Darling Creative Associates ("ZDCA"), and its wholly-owned subsidiary The Hybrid Creative, LLC ("Hybrid"), which together operated as a marketing and design agency. Pursuant to the terms of the purchase agreement with the members of ZDCA, we purchased the entire issued membership interest of ZDCA for an aggregate of $0.9 million in cash, net of cash received, and an aggregate of 360,000 shares of the Company's common stock. Cash consideration of $0.1 million of the cash consideration and approximately 162,000 shares of common stock from the share consideration were held back by us which were subsequently issued in January 2019. The members were entitled to receive earn-out payments consisting of $0.5 million and up to 212,858 shares of common stock, based on the net revenue performance of the Hybrid business during the period September 1, 2018 through August 31, 2019. As of February 2019, we determined ZDCA would not meet the minimum earnout target threshold. Accordingly, the fair value of the related contingent consideration was adjusted to zero.

Line of Credit and Long-Term Debt

Gerber Revolving Line

On November 16, 2017, the Company and its wholly-owned subsidiary KIM International Corporation ("KIM") as borrowers, and all of the Company's other subsidiaries, as credit parties, entered into a Loan and Security Agreement (the "Loan Agreement") with Gerber Finance Inc., as lender ("Gerber"), effective as of November 6, 2017. The Loan Agreement originally provided a secured revolving credit facility (the "Revolving Line") in an aggregate principal amount of up to $2.0 million at any time outstanding. Under the original terms of the Loan Agreement, the principal amount of loans, plus the face amount of any outstanding letters of credit, at any time outstanding could not exceed up to 85% of the Company's eligible receivables minus reserves. Under the terms of the Loan Agreement, the Company may also request letters of credit from Gerber. The proceeds of the loans under the Loan Agreement will be used for working capital and general corporate purposes. The Revolving Line has a maturity date of November 6, 2019. Borrowings under the Revolving Line accrues interest at a rate based on the prime rate as customarily defined, plus a margin of 3.0%. On March 8, 2018, the Company and KIM entered into a first amendment to the Loan Agreement with Gerber. Pursuant to the first amendment, the aggregate principal amount of the Revolving Line at any time outstanding was increased to $4.0 million and the principal amount of loans, plus the face amount of any outstanding letters of credit, at any time outstanding could not exceed the lesser of (i) 40% of the value of certain inventory and (ii) 50% of certain accounts receivable.

On November 9, 2018, the Company and KIM entered into a second amendment to the Loan Agreement with Gerber. Pursuant to the second amendment, the aggregate principal amount of the Revolving Line at any time outstanding was increased to $8.0 million. Additionally, subject to certain exceptions, the face amount of any outstanding letters of credit, at any time outstanding cannot exceed the lesser of (i) 25% of the value of certain inventory (increasing to 40% upon receipt of certain landlord waivers) and (ii) 50% of certain accounts receivable. In April 2019, the Company obtained a waiver of non-compliance associated with the restatement of our previously filed consolidated financial statements.

On August 21, 2019, the Company used a portion of the loan proceeds under the Monroe Revolving Credit Facility to pay in full all amounts due under the Loan Agreement, and the Company has no further financial obligations under the Loan Agreement.

Monroe Revolving Credit Facility

On August 21, 2019, we entered into a revolving credit facility with an aggregate amount not to exceed $35.0 million outstanding at any time between KushCo and its subsidiaries and Monroe, as collateral agent and administrative agent, and the various lenders party thereto. The credit facility also includes an accordion feature that permits us to increase the available revolving commitments under the Credit Facility by up to an additional $15 million, subject to satisfaction of certain conditions. All amounts advanced under the Monroe Revolving Credit Facility will bear interest at a rate per annum equal to either 5.25% plus the greatest of: (a) 5.50%; (b) the Federal Funds Rate plus 0.50%; (c) the quotient of (i) the LIBOR rate, divided by (ii) the difference of 100 percent minus, for any lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System of the United States (or its successor) for determining reserve requirements of that lender; plus 1.00%; and (d) the Prime Rate; or 8.50% plus the greater of (a) the quotient of (i) the LIBOR rate, divided by (ii) the difference of one minus the stated maximum reserve percentage to be maintained by member banks of the Federal Reserve System for Eurocurrency funding or liabilities; and (b) 1.00%. The Monroe Revolving Credit Facility has a five-year term, maturing on August 21, 2024, and is secured by a first priority lien on substantially all of the assets of the Company and its subsidiaries.

Long-term Debt

On April 29, 2019, we entered into a Securities Purchase Agreement (the "Purchase Agreement") with an institutional investor (the "Investor"), pursuant to which we agreed to issue and sell, and the Investor agreed to purchase, a senior note (the "Original Note") in a private placement offering in the aggregate principal amount of $21.3 million with an original issue discount of $1.3 million, and received net proceeds of $20.0 million. The Original Note is a senior unsecured obligation, and unless earlier redeemed, will mature on October 30, 2020. The Original Note does not bear interest, except upon the occurrence of an event of default.

On August 21, 2019, we entered into an exchange agreement (the "Exchange Agreement") with the Investor in order to amend and waive certain provisions of the Purchase Agreement and the Original Note and exchange the Original Note for (i) a new senior note (the "New Senior Note") for the same aggregate principal amount as the Original Note and (ii) a warrant to purchase up to 650,000 shares of our common stock at an exercise price of $4.25.

Similar to the terms of the Original Note, the New Senior Note matures on October 30, 2020, at which time the Company must pay the Investor an amount in cash representing 120% of all outstanding principal, less original issue discount, plus any accrued and unpaid interest and accrued and unpaid late charges. Similar to the terms of the Original Note, the New Senior Note will not bear interest except upon the occurrence of an event of default.

On November 8, 2019, we entered into a Second Exchange Agreement ("Second Exchange Agreement") with the Investor, pursuant to which we amended the New Senior Note (the "Amended Senior Note"). Pursuant to the terms of the Amended Senior Note, the maturity date of the Amended Senior Note was extended to April 29, 2021 and the aggregate principal amount of the Amended Senior Note was increased to approximately $24.0 million and increase the original issue discount to $1.5 million. Upon maturity, we must pay the Investor an amount in cash representing 120% of all outstanding principal, less original issue discount, plus any accrued and unpaid interest and accrued and unpaid late charges. Similar to the terms of the Original Note, the Amended Senior Note will not bear interest except upon the occurrence of an event of default.

Results of Operations

Comparison of Years Ended August 31, 2019 and August 31, 2018

Revenue

Total revenues increased to $149.0 million for the fiscal year ended August 31, 2019 compared to $52.1 million for the fiscal year ended August 31, 2018, an increase of $96.9 million or 186%. The increase was primarily attributable to significant organic growth across all markets, including in California following the legalization of adult use cannabis sales on January 1, 2018. Furthermore, vaping product related sales remained strong during the year. In addition, we achieved strong growth in custom branded products as customers seek differentiated brand building solutions in line with regulatory requirements.

Gross Profit

Gross profit for the fiscal year ended August 31, 2019 was $24.6 million, or 17% of revenue, compared to $13.3 million, or 26% of revenue, for the fiscal year ended August 31, 2018. The decrease in gross margin percentage is primarily attributable to a shift in sales mix, increased freight-in charges, and product quality costs, along with the recent China trade tariffs that were enacted during the year. Beginning in June 2019, we implemented a tariff supplement fee billed to our customers.

Operating Expense

Our total operating expenses for the fiscal year ended August 31, 2019 increased to $69.8 million, or 47% of total revenue compared to $39.9 million, or 77% of total revenue for the fiscal year ended August 31, 2018, an increase of $29.9 million or 75%. Selling, general and administrative expenses ("SG&A") was $72.8 million, or 49%, for the fiscal year ended August 31, 2019 compared to $25.7 million, or 49%, in the comparable prior year period, an increase of $47.1 million. The increase in SG&A is due to the expansion of the business, primarily attributed to increased compensation cost, insurance, professional fees, freight-out, and facilities costs. For the year ended August 31, 2019 and 2018, operating expenses included a gain of $1.8 million and a loss of $14.1 million, respectively, related to the change in the fair value of contingent consideration. In addition, our operating expenses for the year ended August 31, 2019 included a gain on disposition of assets of $1.3 million.

Other Income (Expense), net

Interest and Other Income (Expense), net for the fiscal year ended August 31, 2019 was income of $5.7 million compared to income of $0.6 million for the fiscal year ended August 31, 2018. The increase in other income is attributed to the gain from the change in fair value of warrant liability of $9.3 million, partially offset by a $0.9 million loss from the change in fair value of an equity investment and additional interest expense related to increased credit line capacity and a long-term note payable which was issued in April 2019.

Income Tax Provision

Our tax expense for the fiscal year ended August 31, 2019 was $0.1 million compared to an income tax benefit in the prior year of $1.6 million. We maintained a valuation allowance against our net deferred tax assets of August 31, 2019 and 2018 excluding a portion relating to indefinite life intangibles. Our current year income tax expense relates to the increase in our deferred tax liability for indefinite-life intangibles. Our prior year income tax benefit is attributable to deferred tax benefits from losses that were realizable against expected future taxable income from the reversal of existing temporary differences.

Net Loss

Our net loss for the fiscal year ended August 31, 2019 was $39.6 million compared to a net loss of $24.3 million for the fiscal year ended August 31, 2018. Basic and diluted loss per share for the year ended August 31, 2019 was $0.47 and $0.57, respectively. Basic and diluted loss per share for the year ended August 31, 2018 was $0.37 and $0.37, respectively.

Liquidity and Capital Resources

At August 31, 2019 and 2018, we had cash of $3.9 million and $13.5 million, respectively and a working capital surplus of $53.3 million and $35.2 million, respectively.

Cash Flows from Operating Activities

Net cash used in operating activities for the fiscal year ended August 31, 2019 was to $70.2 million compared to $29.9 million for the fiscal year ended August 31, 2018. The change is primarily attributed to an increase in net loss of $15.3 million, and a $17.8 million increase in net operating assets and liabilities. The change in operating assets and liabilities is primarily attributable to increases in inventory, including related prepayments, and accounts receivable.

Cash Flows from Investing Activities

Net cash used in investing activities for the fiscal year ended August 31, 2019 was $8.0 million compared to $4.8 million for the fiscal year ended August 31, 2018. The change is primarily attributed to higher levels of equipment purchases, technology investments and leasehold improvements during the current fiscal year.

Cash Flows from Financing Activities

Net cash provided by financing activities for the fiscal year ended August 31, 2019 was $68.7 million compared to $47.3 million for the fiscal year ended August 31, 2018. The increase is primarily attributed to $19.0 million in proceeds from long-term debt compared to the prior year repayment of $1.9 million. In addition, we received $11.3 million of net proceeds from the line of credit compared to $0.9 million in proceeds in the prior year. Further, cash proceeds from the issuance of common stock decreased $8.4 million to $41.0 million for the year ended August 31, 2019 compared to $49.4 million in the comparable 2018 period.

We manage our liquidity and financial position in the context of our overall business strategy. We continually forecast and manage our cash, working capital balances, and capital structure to meet the short-term and long-term obligations of our business while seeking to maintain liquidity and financial flexibility. We have historically funded our operations primarily through the cash flows generated from our operations, borrowings available under our credit facility and from proceeds from the issuance of debt and equity.

We believe that cash generated from our operations, along with the funds available through debt or equity financings, primarily for the purposes of expanding current operations, making capital acquisitions, or consummating strategic transactions are adequate to fund our financial obligations for at least the next twelve months. Additional equity or debt financing may not be available when needed, on terms favorable to us or at all.

Off-Balance Sheet Transactions

We do not currently have, and did not have during the periods presented, any off-balance sheet arrangements, as defined under SEC rules.

Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an on-going basis, we evaluate our estimates, including those related to revenue recognition, accounts receivable reserves, inventory and related reserves, valuations and purchase price allocations related to business combinations, expected cash flows used to evaluate the recoverability of long-lived assets, estimated fair values of long-lived assets used to record impairment charges related to intangible assets and goodwill, amortization periods, accrued expenses, stock-based compensation, contingent liabilities, and recoverability of our net deferred tax assets and any related valuation allowance. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following critical accounting policies affect our more significant judgments and estimates used in the preparation of our consolidated financial statements.

Inventory

Our inventories consist of finished goods and are stated at the lower of cost or net realizable value using the average cost method. As a designer and manufacturer of products for the cannabis industry, we may be exposed to a number of economic and industry factors that could result in portions of our inventory becoming either obsolete or in excess of anticipated usage. These factors include, but are not limited to, our ability to meet changing customer requirements, competitive pressures on products and prices, reliability and replacement of and the availability of products from our suppliers. Our policy is to establish inventory reserves when conditions exist that suggest that our inventory may be in excess of anticipated demand or is obsolete based upon our assumptions about future demand for our products and market conditions. We regularly evaluate our ability to realize the value of our inventory based on a combination of factors including the following: forecasted sales or usage, product end of life dates, estimated current and future market values and new product introductions. Assumptions used in determining our estimates of future product demand may prove to be incorrect, in which case the provision required for excess and obsolete inventory would have to be adjusted in the future. If inventory is determined to be overvalued, we would be required to recognize such costs as cost of goods sold at the time of such determination. Although every effort is made to ensure the accuracy of our forecasts of future product demand, any significant unanticipated changes in demand could have a significant negative impact on the value of our inventory and our reported operating results. Additionally, purchasing requirements and alternative usage avenues are explored within these processes to mitigate inventory exposure. When recorded, our reserves are intended to reduce the carrying value of our inventory to its net realizable value.

Provisions for excess or obsolete inventory are primarily based on our estimates of forecasted net sales. A significant change in the timing or level of demand for our products as compared to forecasted amounts may result in recording additional provisions for excess inventory in the future. We record provisions for excess or obsolete inventory as cost of sales.

Accounts Receivable Reserves

We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. We regularly evaluate the collectability of our trade receivables based on a combination of factors, which may include dialogue with the customer to determine the cause of non-payment, the use of collection agencies, and/or the use of litigation. In the event it is determined that the customer may not be able to meet its full obligation to us, we record a specific allowance to reduce the related receivable to the amount that we expect to recover given all information present. We perform ongoing evaluations of our customers and adjust credit limits based upon payment history and our assessment of the customer's current credit worthiness. We continuously monitor collections from our customers and maintain a provision for estimated credit losses based upon our historical experience and any specific customer collection issues that we have identified. While such credit losses have historically been within our expectations and the provisions established, we cannot guarantee that we will continue to experience the same credit loss rates in the future. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

The sales of products generally do not include a right of return and historically, we have not experienced any significant sales returns. These estimates are based on the historical facts and circumstances regarding sales orders, analysis of credit memo data and other known factors. If the data we use to calculate these estimates do not properly reflect reserve requirements, then a change in the allowances would be made in the period in which such a determination is made and revenues in that period could be adversely affected.

Valuation of Business Combinations

We record tangible and intangible assets acquired and liabilities assumed in recent business combinations under the acquisition method of accounting. Amounts paid for each acquisition are allocated to the assets acquired and liabilities assumed based on their fair values at the dates of acquisition. We then allocate the purchase price in excess of net tangible assets acquired to identifiable intangible assets based on detailed valuations that use information and assumptions provided by management. We also utilize third-party consultants to assist us in estimating the fair value of assets and liabilities. We allocate any excess purchase price over the fair value of the net tangible and intangible assets acquired and liabilities assumed to goodwill.

We use the income approach, the relief from royalty method (a combination of the income and market methods), and the with and without method to determine the fair values of our identifiable intangible assets and goodwill. The use of these various approaches determines fair value by estimating cash flows attributable to domain names, trademarks and non-competition agreements. We base our revenue assumptions on estimates of relevant market sizes, expected market growth rates, expected trends in product introductions by competitors. We base the discount rate used to arrive at a present value as of the date of acquisition on the time value of money and cannabis industry investment risk factors. For the intangible assets we acquired in connection with prior acquisitions, we used risk-adjusted discount rates to discount our projected cash flows, ranging from 19% to 26%. We believe that amounts so determined represent the fair value at the date of acquisition and do not exceed the amount a third party would pay. Domain names represent established relationships with customers, which provides a ready channel for the sale of additional products and services. Trade names represent acquired product names that we intend to continue to utilize.

Contingent Consideration

We estimate and record the acquisition date fair value of contingent consideration as part of purchase price consideration for acquisitions. Additionally, each reporting period, we estimate changes in the fair value of contingent consideration and recognize any change in fair in our consolidated statement of operations. Our estimate of the fair value of contingent consideration requires highly subjective assumptions to be made of future operating results, discount rates and probabilities assigned to various potential operating result scenarios. Future revisions to these assumptions could materially change our estimate of the fair value of contingent consideration and, therefore, materially affect the Company's future financial results. A portion of the contingent consideration liability is to be settled with the issuance of shares of common stock once contingent provisions set forth in respective acquisition agreements have been achieved. Upon achievement of contingent provisions, respective liabilities are relieved and offset by increases to common stock and additional paid in capital in the stockholders' equity section of our consolidated balance sheets.

Goodwill and Intangible Assets

Goodwill and intangible assets that have indefinite useful lives are not amortized but are evaluated for impairment annually or whenever events or changes in circumstances indicate that the carrying value may not be recoverable. We record intangible assets at historical cost. We amortize our intangible assets that have finite lives using either the straight-line method. Amortization is recorded over the estimated useful lives ranging from 4 to 6 years.

The Company evaluates intangible assets and long-lived assets for possible impairment periodically and whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. This includes but is not limited to significant adverse changes in business climate, market conditions, or other events that indicate an asset's carrying amount may not be recoverable. Recoverability of these assets is measured by comparison of the carrying amount of each asset to the future undiscounted cash flows the asset is expected to generate. If the undiscounted cash flows used in the test for recoverability are less than the carrying amount of these assets, the carrying amount of such assets is reduced to fair value. The Company evaluates and tests the recoverability of its goodwill for impairment at least annually during its fourth quarter of each fiscal year or more often if and when circumstances indicate that it is more likely than not goodwill may be impaired.

In January 2017, the FASB issued amended guidance that simplifies the subsequent measurement of goodwill by eliminating Step 2 from the goodwill impairment test. Under the amendments in this update, an entity should perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. The new standard is effective for annual periods, and interim periods within those annual periods, beginning after December 15, 2019, and early adoption is permitted on goodwill impairment tests performed on testing dates after January 1, 2017. We adopted the standard beginning with our fiscal 2017 impairment tests.

In fiscal 2019, we conducted a qualitative assessment of the goodwill during the fourth quarter of fiscal 2019 and concluded that it was more likely than not that the fair value of the reporting unit exceeded its carrying amount. Upon completion of the annual impairment assessment, the Company determined that no goodwill impairment was indicated.

The annual impairment testing process is subjective and requires judgment at many points throughout the analysis. If these estimates or their related assumptions change in the future, we may be required to record impairment charges for these assets not previously recorded. Any loss resulting from an impairment test would be reflected in operating income in our consolidated statements of operations.

Valuation of Long-Lived Assets, Including Finite-Lived Intangibles.

In accordance with FASB ASC Topic 360, *Property, Plant, and Equipment*, we perform an impairment test for finite-lived intangible assets and other long-lived assets, such as property and equipment, whenever events or changes in circumstances indicate that we may not recover the carrying value of such assets.

Revenue Recognition

We adopted ASC Topic 606, *Revenue from Contracts with Customers* ("ASC 606"), using the modified retrospective method. As a practical expedient allowed under ASC 606, we applied the new guidance only to contracts that were not completed as of the date of initial application. We did not record any cumulative effect adjustment to retained earnings as of September 1, 2019 and did not record any material adjustment to gross revenue for the fiscal year ended August 31, 2019 as a result of applying the guidance in ASC 606.

Revenue is recognized when control of promised goods or services is transferred to the customer, or when any performance obligations are satisfied under contract. The amount of revenue recognized reflects the consideration the Company expects to be entitled to in exchange for respective goods or services provided.

The Company applies the following steps to recognize revenue for the sale of products that reflects the consideration to which the Company expects to be entitled to receive in exchange for the promised goods:

- Identify the contract with a customer
- Identify the performance obligations in the contract
- Determine the transaction price
- Allocate the transaction price to the performance obligations in the contract
- Recognize revenue when the Company satisfies a performance obligation

Please see Note 1 to our financial statements in Part II, Item 8 of this Annual Report for a more detailed description of our revenue recognition policy.

Business Combinations

We include the results of operations of the businesses that we acquire as of the respective dates of acquisition. We allocate the fair value of the purchase price of our business acquisitions to the tangible assets acquired, liabilities assumed, and intangible assets acquired, based on their estimated fair values. The excess of the purchase price over the fair values of these identifiable assets and liabilities is recorded as goodwill. Additional information existing as of the acquisition date, but unknown to us at that time, may become known during the remainder of the measurement period, not to exceed 12 months from the acquisition date, which may result in changes to the amounts and allocations recorded.

Stock-Based Compensation

We account for stock-based awards in accordance with ASC Topic 718, *Compensation* ("ASC 718"), which requires fair value measurement and recognition of compensation expense for all share-based payment awards made to employees and directors, including restricted stock awards. We estimate the fair value of stock options using the Black-Scholes option pricing model and for restricted stock using the stock price on the date of the approval of the award. The fair value is then expensed over the requisite service periods of the awards, which is generally the vesting period and the related amount is recognized in the consolidated statements of operations.

Income Taxes

The Company accounts for income taxes under FASB ASC Topic 740, *Accounting for Income Taxes*. As part of the process of preparing the consolidated financial statements, the Company is required to estimate an income tax provision (benefit) in each of the jurisdictions in which it operates. This process involves estimating the current income tax provision (benefit) together with assessing temporary differences resulting from differing treatment of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the consolidated balance sheets.

The Company recorded a valuation allowance to reduce deferred tax assets to an amount that more likely than not will be realized. While future taxable income and ongoing prudent and feasible tax planning strategies have been considered in assessing the need for the valuation allowance, in the event the Company determines it would be able to realize deferred tax assets in the future in excess of the net recorded amount, an adjustment to the valuation allowance for the deferred tax asset would increase income in the period such determination was made. Likewise, should the Company determine it would not be able to realize all or part of the net deferred tax asset in the future, an adjustment to the valuation allowance for the deferred tax asset would be charged to income in the period such determination was made.

During fiscal 2019, the Company maintained a valuation allowance to reduce deferred tax assets to an amount that more likely that not will be realized. The net deferred tax liability for fiscal year 2019 represents the portion of indefinite-life intangibles that could not be used as a future source of taxable income to support the realization of deferred tax assets.

Recent Accounting Pronouncements

See Note 1 of the Notes to Consolidated Financial Statements (Part II, Item 8 of this Form 10-K) for further discussion.

Inflation

We do not believe that inflation has had a material effect on our results of operations in recent years. We cannot assure you that inflation will not adversely affect our business in the future.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

We do not use derivative financial instruments in our investment portfolio and have no foreign exchange contracts. Our financial instruments consist of cash and cash equivalents. We consider investments that, when purchased, have a remaining maturity of ninety (90) days or less to be cash equivalents. We do not believe that a notional or hypothetical 10% change in interest rate percentages would have a material impact on the fair value of our investment portfolio or our interest income.

Item 8. Financial Statements and Supplementary Data

The information required by this item is contained in the consolidated financial statements filed as part of this Annual Report on Form 10-K and are listed under Item 15 of Part IV below.

Item 9. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.

On August 8, 2019, the Company announced the dismissal of RBSM LLP ("RBSM") as its independent registered public accounting firm. The Audit Committee of the Board of Directors of the Company approved the dismissal of RBSM.

The reports of RBSM on the audited consolidated financial statements of the Company for the years ended August 31, 2018 and 2017, did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope, or accounting principles.

During the years ended August 31, 2018 and 2017 and through the dismissal date, there were no disagreements with RBSM on any matter of accounting principles or practices, financial statement disclosures, or auditing scope or procedure, which disagreement(s), if not resolved to the satisfaction of RBSM, would have caused it to make reference thereto in its reports on the audited consolidated financial statements of the Company for such years.

Also, on August 8, 2019, the Audit Committee approved the selection and engagement of Marcum LLP as the Company's new independent registered public accounting firm.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer (who is also the Company's chairman, secretary and principal executive officer), and our chief financial officer (who is also the Company's principal financial and accounting officer) to allow for timely decisions regarding required disclosure. Thus, in accordance with Rules 13a-15(b) under the Exchange Act, we carried out an evaluation, under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, of the effectiveness of our disclosure controls and procedures as of August 31, 2019 which is the end of the period covered by this Form 10-K. Based on the evaluation of these disclosure controls and procedures, and in light of the material weaknesses found in our internal controls over financial reporting, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were not effective. The ineffectiveness of our disclosure controls and procedures was due to material weaknesses identified in our internal control over financial reporting, described below.

Management Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over the Company's financial reporting. In order to evaluate the effectiveness of internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act of 2002, our management, with the participation of our principal executive officer and principal financial and accounting officer have conducted an assessment, including testing, using the criteria in Internal Control – Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") (2013). Our system of internal control over financial reporting is designed 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. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. This assessment included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Based on this evaluation, management concluded that our internal control over financial reporting was not effective as of August 31, 2019.

Remediation of Material Weaknesses in Internal Control Over Financial Reporting

We previously disclosed in the Explanatory Note to our Annual Report on Form 10-K/A for the fiscal year ended August 31, 2018 and in Note 2 titled "Restatement" to the Company's consolidated financial statements included in Part II, Item 8 of this Form 10-K, management, including our Chief Executive Officer and Chief Financial Officer, reassessed the effectiveness of our internal control over financial reporting as of August 31, 2018. Based on this reassessment using the COSO criteria, management concluded that we did not maintain effective internal control over financial reporting as of August 31, 2018 because (1) a material weakness related to the accounting, presentation, and disclosure of share-settled contingent consideration, (2) we had inadequate segregation of duties consistent with control objectives and (3) we had a lack of multiple levels of supervision and review. Management concluded that these deficiencies were material weaknesses as defined in the Securities and Exchange Commission regulations. These material weaknesses resulted in the misstatement of our financial statements and disclosures for the fiscal years ended August 31, 2018 and 2017, and for each of the interim periods ended May 31, 2017, November 30, 2017, February 28, 2018 and May 31, 2018, as more fully discussed in Note 2 titled "Restatement" to the Company's consolidated financial statements included in Part II, Item 8 of this Form 10-K.

We have taken significant steps to enhance our internal control over financial reporting and plan to take additional steps to remediate the material weaknesses. Specifically:

- We appointed additional independent members with public company board experience to our board of directors, such that our board of directors is now composed of a majority of independent directors;
- On March 9, 2018, our board of directors formed an Audit Committee composed entirely of independent directors that, among other things, assists the board of directors in its oversight of the integrity of our financial statements and our financing reporting processes and systems of internal control;
- In November 2018, we hired a Chief Financial Officer with significant sales and distribution experience who will focus on the development of the finance and accounting function;
- We added staff to our finance team, and engaged a third party to assist with the assessment of certain complex transactions under US GAAP;
- In January 2018, we hired a controller with public company experience;
- We have adopted a Code of Business Conduct and Ethics and a whistleblower policy;
- We have engaged a national accounting advisory firm to assist with the design and implementation of our internal control over financial reporting based on the criteria established in Internal Control – Integrated Framework (2013) issued by COSO; and
- In June 2019, we hired a director of internal audit with extensive training and experience associated with COSO and Sarbanes-Oxley Section 404 compliance

Our management will continue to monitor and evaluate the effectiveness of our internal controls and procedures and our internal controls over financial reporting on an ongoing basis and is committed to taking further action and implementing additional enhancements or improvements.

Because of its inherent limitations, internal controls over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

This Annual Report on Form 10-K does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to temporary rules of the SEC that permit the Company to provide only management's report in this annual report.

The remediation efforts set out herein will continue to be implemented in our 2020 fiscal year. We believe that the controls that we will be implementing will improve the effectiveness of our internal control over financial reporting. As we continue to evaluate and work to improve our internal control over financial reporting, we may determine to take additional measures to address the material weakness or determine to supplement or modify certain of the remediation measures described above.

Changes in Internal Control Over Financial Reporting

There were no significant changes in our internal control over financial reporting during the fiscal quarter ended August 31, 2019 that have materially affected, or are reasonably likely to materially affect our internal control over financial reporting.

Item 9B. Other Information.

On November 8, 2019, we entered into the Second Exchange Agreement with HB Sub Fund, pursuant to which we amended the New Senior Note. Pursuant to the terms of the Amended Senior Note, the maturity date of the Amended Senior Note was extended to April 29, 2021 and the aggregate principal amount of the Amended Senior Note was increased to approximately $24.0 million, and the original issue discount was increased to $1.5 million. We also entered into a Limited Consent and First Amendment to Financing Agreement to reflect these developments.

The foregoing descriptions of the Second Exchange Agreement, the Amended Senior Note and the Limited Consent and First Amendment to Financing Agreement are summaries only, do not purport to be complete and are qualified in their entirety by the full text of these documents, copies of which are attached as Exhibits 10.22, 4.11 and 10.23, respectively, and incorporated herein by reference.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Information required by this item will be contained in our Definitive Proxy Statement for our 2020 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the Securities and Exchange Commission within 120 days of August 31, 2019. Such information is incorporated herein by reference.

Item 11. Executive Compensation

Information required by this item will be contained in our Definitive Proxy Statement for our 2020 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the Securities and Exchange Commission within 120 days of August 31, 2019. Such information is incorporated herein by reference.

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

Information required by this item will be contained in our Definitive Proxy Statement for our 2020 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the Securities and Exchange Commission within 120 days of August 31, 2019. Such information is incorporated herein by reference.

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

Information required by this item will be contained in our Definitive Proxy Statement for our 2020 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the Securities and Exchange Commission within 120 days of August 31, 2019. Such information is incorporated herein by reference.

Item 14. Principal Accounting Fees and Services.

Information required by this item will be contained in our Definitive Proxy Statement for our 2020 Annual Meeting of Stockholders, to be filed pursuant to Regulation 14A with the Securities and Exchange Commission within 120 days of August 31, 2019. Such information is incorporated herein by reference.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) Financial Statements and Schedules:

(1) Financial Statements. The Consolidated Financial Statements of KushCo Holdings, Inc. and its subsidiaries filed under this Item 15:

Financial Statement	Page
(i) For the Fiscal Years Ended August 31, 2019 and 2018 of KushCo Holdings, Inc.	
Report of Independent Registered Public Accounting Firm	F-2
Report of Independent Registered Public Accounting Firm	F-3
Consolidated Balance Sheets at August 31, 2019 and 2018	F-4
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Consolidated Statements of Stockholders' Equity for the Years Ended August 31, 2019 and 2018	F-6
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(2) Financial Statement Schedules: None. Financial statement schedules have been omitted since the required information is included in our Consolidated Financial Statements contained in this Annual Item 15.

(3) Exhibits. The exhibits listed in the accompanying Exhibit Index are filed as a part of this Annual Report on Form 10-K.

(b) Exhibits: The exhibits listed in the accompanying Exhibit Index are filed as a part of this Annual Report on Form 10-K.

(c) Separate Financial Statements and Schedules: None

Item 16. Form 10-K Summary

None

KUSHCO HOLDINGS, INC.

Consolidated Financial Statements

August 31, 2019 and 2018

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
KushCo Holdings, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of KushCo Holdings, Inc. (the "Company") as of August 31, 2019, the related consolidated statements of operations, stockholders' equity and cash flows for the year ended August 31, 2019, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of August 31, 2019, and the results of its operations and its cash flows for the year in the period ended August 31, 2019, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

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

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

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

/s/ Marcum LLP

Marcum llp

We have served as the Company's auditor since 2019.

Costa Mesa, California
November 12, 2019

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
KushCo Holdings, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of KushCo Holdings, Inc. (the Company) as of August 31, 2018, and the related consolidated statements of operations, stockholders' equity, and cash flows for the fiscal year ended August 31, 2018, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of August 31, 2018, and the consolidated results of its operations and its cash flows for the year ended August 31, 2018, in conformity with accounting principles generally accepted in the United States of America.

Change in Accounting Principle
As discussed in Note 1 to the consolidated financial statements, the Company changed the manner in which it accounts for outbound shipping and handling costs in fiscal year 2018.

Restatement of Previously Issued Financial Statements
As discussed in Note 2 to the consolidated financial statements, the Company has restated its 2018 consolidated financial statements to correct misstatements.

Basis for Opinion

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

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

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

/s/ RBSM LLP

We have served as the Company's auditor since 2014.

Larkspur, CA
November 28, 2018, except for the effects of the restatement discussed in Note 2 as to which the date is April 11, 2019.

KUSHCO HOLDINGS, INC.
Consolidated Balance Sheets
(Amounts in thousands)

	August 31, 2019	August 31, 2018
ASSETS		
Current assets:		
Cash	$ 3,944	$ 13,467
Accounts receivable, net	25,972	8,601
Inventory	43,768	11,814
Prepaid expenses and other current assets	12,209	13,623
Total current assets	85,893	47,505
Goodwill	52,267	52,267
Intangible assets, net	3,103	4,488
Property and equipment, net	11,054	4,135
Other assets	6,917	250
Total Assets	**$ 159,234**	**$ 108,645**
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 10,907	$ 2,822
Accrued expenses and other current liabilities	9,460	3,071
Contingent consideration payable	--	5,488
Line of credit	12,261	918
Total current liabilities	32,628	12,299
Long-term liabilities:		
Notes payable	18,975	172
Warrant liability	5,444	14,430
Other non-current liabilities	833	106
Total long-term liabilities	25,252	14,708
Total liabilities	57,880	27,007
Commitments and contingencies (Note 17)		
Stockholders' equity		
Preferred stock, $0.001 par value, 10,000 shares authorized, no shares issued and outstanding	--	--
Common stock, $0.001 par value, 265,000 shares authorized, 90,041 and 78,273 shares issued and outstanding, respectively	90	78
Additional paid-in capital	164,258	104,918
Accumulated deficit	(62,994)	(23,358)
Total stockholders' equity	101,354	81,638
Total liabilities and stockholders' equity	**$ 159,234**	**$ 108,645**

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

KUSHCO HOLDINGS, INC.
Consolidated Statements of Operations
(Amounts in thousands, except per share amounts)

	For the year ended August 31,	
	2019	**2018**
Net revenue	$ 148,954	$ 52,075
Cost of goods sold	124,386	38,741
Gross profit	24,568	13,334
Operating expenses:		
Selling, general and administrative	72,787	25,718
Gain on disposition of assets	(1,254)	--
Change in fair value of contingent consideration	(1,780)	14,138
Total operating expenses	69,753	39,856
Loss from operations	(45,185)	(26,522)
Other income (expense):		
Change in fair value of warrant liability	9,294	920
Change in fair value of equity investment	(931)	--
Interest expense	(2,523)	(276)
Other expense, net	(164)	(22)
Total other income	5,676	622
Loss before income taxes	(39,509)	(25,900)
Income tax expense (benefit)	127	(1,563)
Net loss	$ (39,636)	$ (24,337)
Net loss per share		
Basic	$ (0.47)	$ (0.37)
Diluted	$ (0.57)	$ (0.37)
Weighted-average common shares outstanding		
Basic	84,880	65,336
Diluted	84,896	65,336

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

KUSHCO HOLDINGS, INC.
Consolidated Statements of Stockholders' Equity
(Amounts in thousands)

	Common Stock		Additional Paid-in	Retained Earnings (Accumulated	Total Stockholders'
	Shares Issued	Amount	Capital	Deficit)	Equity
Balances at August 31, 2017	**58,607**	**$ 59**	**$ 29,677**	**$ 979**	**$ 30,715**
Stock-based compensation	1,681	2	5,470	--	5,472
Stock sold to investors	13,406	13	35,286	--	35,299
Stock issued for acquisitions	4,579	4	34,485	--	34,489
Net loss	--	--	--	(24,337)	(24,337)
Balances at August 31, 2018	**78,273**	**$ 78**	**$ 104,918**	**$ (23,358)**	**$ 81,638**
Stock-based compensation	882	1	11,997	--	11,998
Stock sold to investors	9,077	9	41,583	--	41,592
Stock issued for acquisitions	1,809	2	3,566	--	3,568
Issuance of warrants	--	-	2,194	--	2,194
Net loss	--	-	--	(39,636)	(39,636)
Balances at August 31, 2019	**90,041**	**$ 90**	**$ 164,258**	**$ (62,994)**	**$ 101,354**

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

KUSHCO HOLDINGS, INC.
Consolidated Statements of Cash Flows
(Amounts in thousands)

	For the Year Ended August 31,	
	2019	**2018**
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (39,636)	$ (24,337)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,501	1,223
Amortization of debt discount	1,243	--
Provision for bad debt	2,628	966
Provision for sales returns	477	--
Provision for inventory reserve	3,026	585
Gain on disposal of assets	(1,254)	--
Change in fair value of equity investment	931	--
Stock-based compensation	13,384	3,586
Change in fair value of warrant liability	(9,294)	(920)
Offering costs allocated to warrant liability	--	1,230
Provision for deferred taxes	97	(1,617)
Change in fair value of contingent consideration	(1,780)	14,138
Changes in operating assets and liabilities:		
Accounts receivable	(20,475)	(7,620)
Inventory	(35,095)	(8,408)
Prepaid expenses and other current assets	120	(10,637)
Other non-current assets	(535)	--
Accounts payable	7,874	615
Accrued expenses and other current liabilities	4,916	1,109
Other non-current liabilities	630	150
Net cash used in operating activities	(70,242)	(29,937)
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of property, equipment, and intangibles	(8,017)	(2,841)
Security deposits	--	(196)
Acquisition of Summit, net of cash received	--	(905)
Acquisition of Hybrid, net of cash received	--	(847)
Net cash used in investing activities	(8,017)	(4,789)
CASH FLOWS FROM FINANCING ACTIVITIES		
Repayment of capital leases	(106)	--
Proceeds from (repayment of) notes payable	19,015	(1,888)
Proceeds from stock option exercises	79	612
Proceeds from issuance of common stock	41,008	49,419
Proceeds from line of credit	140,609	918
Repayments on line of credit	(129,267)	--
Debt issuance costs	(2,602)	--
Payments for contingent consideration	--	(1,785)
Net cash provided by financing activities	68,736	47,276
NET INCREASE (DECREASE) IN CASH	(9,523)	12,550
CASH AT BEGINNING OF YEAR	13,467	917
CASH AT END OF YEAR	$ 3,944	$ 13,467
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION		
CASH PAID FOR:		
Interest	$ 1,149	$ 74
Income taxes	$ 13	$ 330
NON-CASH INVESTING AND FINANCING ACTIVITIES		
Capital leases	$ 240	$ 177
Services prepaid for in common stock	$ 1,987	$ 1,273
Unpaid amounts for purchase of property & equipment	$ 211	$ --
Fair value of shares issued related to acquisition of business	$ 3,568	$ 8,273
Fair value of contingent equity consideration	$ --	$ 4,114
Fair value of shares received from sale of assets	$ 1,791	$ --
Warants issued with financing agreement	$ 2,194	$ --

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

NOTE 1 – NATURE OF BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES

Nature of Business

KushCo Holdings, Inc. ("KushCo" or the "Company") was incorporated in the state of Nevada on February 26, 2014. The Company specializes in marketing and selling customized packaging products, vaporizers, hydrocarbon gases, solvents, accessories and branding solutions to customers operating in the regulated medical and recreational cannabis industries. The Company provides custom branding on packaging products, and its testing standards meet the requirements set by the Consumer Product Safety Commission. The Company's packaging products primarily consist of bottles, bags, tubes and containers. The Company maintains relationships with a broad range of manufacturers and also has sophisticated in-house labeling and customization capabilities. The Company sells a wide selection of vaporizer cartridges with a variety of core materials and heating technologies, as well as a wide selection of batteries to match the cartridges. The Company provides ultra-pure hydrocarbon gases, including isobutene, n-butane, propane, ethanol, pre-mixes, custom blends and other solvents, which are essential in the extraction process. The Company's wholly-owned subsidiary, The Hybrid Creative, LLC, is a full-service creative agency that serves both cannabis and non-cannabis clients across the U.S., Canada and Europe.

The Company's wholly-owned subsidiary Kim International Corporation ("KIM"), a California corporation, was originally incorporated as Hy Gro Economics Corporation ("Hy Gro") on December 2, 2010. On October 30, 2012, Hy Gro amended its articles of incorporation to reflect a name change to KIM International Corporation. On March 4, 2014, the shareholders of KIM exchanged all 10,000 of their common shares for 32,400 common shares of KushCo Holdings, Inc. The operations of KIM became the operations of KushCo after the share exchange and accordingly the transaction is accounted for as a recapitalization of KIM whereby the historical financial statements of KIM are presented as the historical financial statements of the combined entity. KIM was the acquiring entity in accordance with ASC 805, *Business Combinations*. The accumulated losses of KIM were carried forward after the completion of the share exchange. Operations prior to the share exchange were those of KIM.

Acquisition of CMP Wellness, LLC

On May 1, 2017, the Company entered into a merger agreement with Lancer West Enterprises, Inc. a California corporation, Walnut Ventures, a California corporation, Jason Manasse, an individual, and Theodore Nicols, an individual, pursuant to which each of Lancer West Enterprises, Inc. and Walnut Ventures were merged with and into Merger Sub, with Merger Sub as the surviving corporation, resulting in the Company's indirect acquisition of CMP Wellness, LLC, a California limited liability company, which prior to the merger, was owned 100% by Lancer West Enterprises, Inc. and Walnut Ventures. CMP Wellness, LLC is a distributor of vaporizers, cartridges and accessories. See Note 3 for a further description of the CMP Wellness acquisition.

Acquisition of Summit Innovations, LLC

On May 2, 2018, the Company completed its acquisition of Summit Innovations, LLC ("Summit"), a leading distributor of hydrocarbon gases to the legal cannabis industry. Pursuant to the terms of the Agreement and Plan of Merger (the "Merger Agreement"), Summit merged with and into KCH Energy, LLC ("KCH"), a wholly-owned subsidiary of the Company, with KCH as the surviving entity. See Note 4 for a further description of the Summit acquisition.

Registered Offerings

On June 7, 2018, January 15, 2019 and September 26, 2019, the Company entered into securities purchase agreements with certain accredited investors in connection with its registered direct offerings. See Notes 13 and 15 for further description of these transactions.

Acquisition of Hybrid Creative, LLC

On July 11, 2018, the Company completed its acquisition of Hybrid Creative, LLC ("Hybrid"), a specialist design agency. Pursuant to the terms of the Membership Interest Purchase Agreement (Agreement") with the members of Zach Darling Creative Associates, LLC ("ZDCA"), parent of wholly-owned subsidiary, Hybrid, the Company purchased the entire issued member interest of ZDCA. Following the acquisition, ZDCA operates as a wholly-owned subsidiary of the Company, with Hybrid continuing to operate as wholly-owned subsidiary of ZDCA. See Note 5 for a further description of the Hybrid acquisition.

Consolidation of an Entity

In July 2018, the Company invested $1.0 million in the form of a convertible promissory note in a third-party company. The convertible promissory note provides the Company with the option to convert the principal balance of the note, at any time prior to the maturity date, into equity of this entity, representing 100% of the equity interests. As primary beneficiary, the Company consolidated this entity.

Amendments to Articles of Incorporation or Bylaws

On August 29, 2018, KushCo Holdings, Inc. (formerly known as Kush Bottles, Inc.) filed Amended and Restated Articles of Incorporation (the "Amended and Restated Charter") with the Secretary of State for the State of Nevada. The Amended and Restated Charter changed the Company's name from Kush Bottles, Inc. to KushCo Holdings, Inc. The Amended and Restated Charter became effective on September 1, 2018 and was approved by the Company's stockholders at the Company's 2018 Annual Meeting of Stockholders on May 8, 2018.

In June 2019, the Company moved its corporate headquarters from Garden Grove, California to Cypress, California. The address for the Company's new corporate headquarters is 6261 Katella Avenue, Suite 250, Cypress, CA 90630.

Basis of Presentation

The accompanying consolidated financial statements and related notes include the activity of the Company and its wholly-owned subsidiaries, have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). Certain prior year amounts have been reclassified for consistency with the current period presentation. These reclassifications had no effect on previously reported results of operations or retained earnings (accumulated deficit). Significant inter-company transactions and balances have been eliminated in consolidation.

References to amounts in these notes to consolidated financial statements are in thousands, except per share data, unless otherwise specified.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amount of revenues and expenses during the reporting period.

Significant estimates relied upon in preparing these consolidated financial statements include revenue recognition, accounts receivable reserves, inventory and related reserves, valuations and purchase price allocations related to business combinations, expected future cash flows used to evaluate the recoverability of long-lived assets, estimated fair values of long-lived assets used to record impairment charges related to intangible assets and goodwill, amortization periods, accrued expenses, stock-based compensation, and recoverability of the Company's net deferred tax assets and any related valuation allowance.

Although the Company regularly assesses these estimates, actual results could differ materially from these estimates. Changes in estimates are recorded in the period in which they become known. The Company bases its estimates on historical experience and various other assumptions that it believes to be reasonable under the circumstances. Actual results may differ from management's estimates if past experience or other assumptions do not turn out to be substantially accurate.

The Company is subject to a number of risks similar to those of other companies of similar size and having a focus of serving the cannabis industry, including, the development stage of certain products, competition, limited number of suppliers, integration of acquisitions, substantial indebtedness, government regulations, protection of proprietary rights, and dependence on key individuals.

Cash and Cash Equivalents

The Company considers cash and cash equivalents to consist of cash on hand and investments having an original maturity of 90 days or less that are readily convertible into cash. The Company deploys its cash and cash equivalents with financial institutions with highly rated credit and monitors the amount on deposit at the financial institution. The Company has cash deposits held at certain institutions at August 31, 2019 of which $2,630 was in excess of Federal Deposit Insurance Corporation insured limits. There were no cash equivalents outstanding as of August 31, 2019 and 2018.

Accounts Receivable

Trade accounts receivable are carried at their estimated collectible amounts. Trade credit is generally extended on a short-term basis and thus do not bear interest. Trade accounts receivables are periodically evaluated for collectability based on past credit history and their current financial condition.

The Company maintains reserves for uncollectible accounts receivable and potential sales returns. In aggregate, such reserves reduce our gross accounts receivable to its estimated net realizable value. The Company's allowance for doubtful accounts and sales return reserve was $1,058 and $477, respectively as of August 31, 2019 and $1,000 and $0, respectively, as of August 31, 2018.

Inventory

Inventories are stated at the lower of cost or net realizable value using the average cost method. The Company's inventory consists of finished goods of $43,768 and $11,814 as of August 31, 2019 and 2018, respectively. The Company establishes reserves for excess and obsolete inventory, based on prevailing circumstances and judgment based on the Company's experience. The Company's inventory reserve was $2,640 and $585 as of August 31, 2019 and 2018, respectively. The Company also makes prepayments against the future delivery of inventory classified as prepaid inventory. The Company's prepaid inventory was $7,134 and $11,019 and was included in prepaid expenses and other current assets as of August 31, 2019 and 2018, respectively.

Property and Equipment

Property and equipment is recorded at cost less accumulated depreciation. Depreciation is calculated using the straight-line method over the shorter of estimated useful life of the asset or the lease term, after the asset is placed in service. The estimated useful lives of the property and equipment are generally as follows: computer software acquired for internal use, three to seven years; computer equipment, two to three years; leasehold improvements, three to 15 years or term of lease; and furniture and equipment, one to seven years. Gains and losses from the retirement or disposition of property and equipment are included in operations in the period incurred. Maintenance and repairs are expensed as incurred. Gains or losses resulting from the retirement or sale of property and equipment are recorded as operating income or expenses, respectively.

Fair Value of Financial Instruments

The fair value of certain of our financial instruments, including cash, accounts receivable, other current assets, accounts payable and liabilities, capital lease obligations and deferred revenue approximate their fair values because of the short-term maturity of these instruments. The carrying amount of the Company's long-term notes payable approximates its fair value based on interest rates available to the Company for similar debt instruments and similar remaining maturities.

Derivative Financial Instruments

The Company does not use derivative instruments to hedge exposures to cash flow, market, or foreign currency risks. Management evaluates all of the Company's financial instruments, including warrants, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is remeasured at the end of each reporting period.

Concentration of Risk

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents, and accounts receivable. Collateral is not required for accounts receivable. The Company maintains an allowance for its doubtful accounts receivable. This allowance is based upon historical loss patterns, the number of days that billings are past due and an evaluation of the potential risk of loss associated with delinquent accounts. Receivables are written-off and charged against its recorded allowance when the Company has exhausted collection efforts without success. The Company's losses related to collection of trade receivables have consistently been within management's expectations. Due to these factors, no additional credit risk beyond amounts provided for collection losses, which the Company reevaluates on a monthly basis based on specific review of receivable agings and the period that any receivables are beyond the standard payment terms, is believed by management to be probable in the Company's accounts receivable.

The Company purchases products from a small number of suppliers. A change in or loss of these suppliers could cause a delay in filling customer orders and a possible loss of sales, which would adversely affect results of operations; however, management believes that suitable replacement suppliers could be obtained in such an event.

Intangible Assets acquired through Business Combinations

Intangible assets, domain name, trademarks and non-compete agreements that are deemed to have a definite life are amortized over their estimated useful lives and intangible assets with an indefinite life are assessed for impairment at least annually. Quarterly, the Company evaluates the estimated remaining useful life of its intangible assets and whether events or changes in circumstances warrant a revision to the remaining period of amortization.

Impairment Assessment

The Company evaluates intangible assets and long-lived assets for possible impairment periodically and whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. This includes but is not limited to significant adverse changes in business climate, market conditions, or other events that indicate an asset's carrying amount may not be recoverable. Recoverability of these assets is measured by comparison of the carrying amount of each asset to the future undiscounted cash flows the asset is expected to generate. If the undiscounted cash flows used in the test for recoverability are less than the carrying amount of these assets, the carrying amount of such assets is reduced to fair value. The Company evaluates and tests the recoverability of its goodwill for impairment at least annually during its fourth quarter of each fiscal year or more often if and when circumstances indicate that it is more likely than not goodwill may be impaired. There was no impairment of intangible assets, long-lived assets or goodwill during the years ended August 31, 2019 and 2018.

Valuation of Business Combinations and Acquisition of Intangible Assets

The Company records intangible assets acquired in business combinations and acquisitions of intangible assets under the acquisition method of accounting. The Company accounts for acquisitions in accordance with ASC Topic 805, *Business Combinations*. Amounts paid for each acquisition are allocated to the assets acquired and liabilities assumed based on their fair values at the dates of acquisition. The Company then allocates the purchase price in excess of the fair value of the net tangible assets acquired to identifiable intangible assets, including purchased intangibles based on detailed valuations that use information and assumptions provided by management. The Company allocates any excess purchase price over the fair value of the net tangible and intangible assets acquired to goodwill.

The Company uses the income approach, the relief from royalty method (both a market and income method), and the with and without method to determine the fair values of its purchased intangible assets. The Company uses the probability-weighted expected return method (an income approach) to determine the appropriate amount of contingent consideration to include in the purchase price for an acquisition. The Company bases its revenue assumptions on estimates of relevant market sizes, expected market growth rates, expected industry trends and expected product introductions by competitors. For the intangible assets acquired, the Company used risk-adjusted discount rates ranging from 19% to 26% to discount its projected cash flows. The Company believes that the estimated purchased intangible asset amounts so determined represent the fair value at the date of acquisition and do not exceed the amount a third party would pay for the projects.

The Company also used the income approach (probably weighted cash flow), as described above, to determine the estimated fair value of certain identifiable intangibles assets including domain names and tradenames. Tradenames represent acquired product names that the Company intends to continue to utilize. The Company used the with and without method to ascertain the fair value of the non-competition agreement.

The Company estimates and records the acquisition date fair value of contingent consideration as part of purchase price consideration for acquisitions. Additionally, each reporting period, the Company estimates the fair value of contingent consideration and recognizes any changes in the fair value in its consolidated statement of operations. The Company estimates of the fair value of contingent consideration requires subjective assumptions to be made of future operating results, discount rates and probabilities assigned to various potential operating result scenarios. Future revisions to these assumptions could materially change the Company’s estimate of the fair value of contingent consideration and, therefore, materially affect the Company’s future financial results. A portion of the contingent consideration liability is to be settled with the issuance of shares of common stock once contingent provisions set forth in respective acquisition agreements have been achieved. Upon achievement of contingent provisions, respective liabilities are relieved and offset by increases to common stock and additional paid in capital in the Company’s stockholders’ equity.

The Company uses its best estimates and assumptions to accurately assign fair value to the tangible and intangible assets acquired and liabilities assumed at the acquisition date. During the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments to the fair value of certain tangible and intangible assets acquired and liabilities assumed, with the corresponding offset to goodwill.

Net Income (Loss) Per Share

The Company computes net income (loss) per common share under ASC Topic 260, *Earnings per Share* ("ASC 260"). Basic net income (loss) per common share is computed by dividing net earnings by the weighted average number of shares of common stock outstanding during the period. Diluted net income (loss) per common share is computed by dividing net earnings by the sum of (a) the weighted average number of shares of common stock outstanding during the period and (b) the potentially dilutive securities outstanding during the period. Stock options are potentially dilutive securities; and the number of dilutive options is computed using the treasury stock method.

For the year ended August 31, 2019, net loss is adjusted for changes in fair value of warrants recorded as a liability (see Note 13) and weighted average diluted shares includes dilutive warrants.

The following table sets forth the calculation of basic and diluted net income (loss) per common share.

	August 31, 2019	August 31, 2018
Net loss	$ (39,636)	$ (24,337)
Less: Decrease in fair value of warrants	(8,986)	--
Net loss available to common shareholders	$ (48,622)	$ (24,337)
Weighted average common shares outstanding:		
Basic	84,880	65,336
Net effect of dilutive warrants	16	--
Diluted	84,896	65,336
Net loss per common share per share:		
Basic	$ (0.47)	$ (0.37)
Diluted	$ (0.57)	$ (0.37)

For the year ended August 31, 2018, basic and diluted weighted average shares are the same as the Company generated a net loss for the period and potentially dilutive securities are excluded because they have an anti-dilutive impact. The computation of diluted net loss per share for the year ended August 31, 2019 does not include 4,579 options and 2,045 warrants because their inclusion would have an anti-dilutive effect on net loss per share. The computation of diluted net loss per share for the year ended August 31, 2018 does not include 646 options and 822 warrants because their inclusion would have an anti-dilutive effect on net loss per share.

Revenue Recognition

The Company adopted ASC Topic 606, *Revenue from Contracts with Customers* ("ASC 606"), using the modified retrospective method. As a practical expedient allowed under ASC 606, the Company applied the new guidance only to contracts that were not completed as of the date of initial application. The Company did not record any cumulative effect adjustment to retained earnings as of September 1, 2019 and did not record any material adjustment to gross revenue for the fiscal year ended August 31, 2019 as a result of applying the guidance in ASC 606.

The Company markets and sells packaging products, vaporizers, hydrocarbon gases, solvents, accessories and branding solutions to customers operating in the regulated medical and recreational cannabis industries.

The Company expenses fulfillment costs as incurred because the amortization period would be less than one year in accordance with the ASC 606 practical expedient.

In accordance with ASC 606, the Company applies the following steps to recognize revenue for the sale of products that reflects the consideration to which the Company expects to be entitled to receive in exchange for the promised goods:

- Identify the contract with a customer

  A contract with a customer exists when the Company enters into an enforceable contract with a customer. The contract is based on either the acceptance of standard terms, or the execution of terms and conditions contracts. These contracts define each party's rights, payment terms and other contractual terms and conditions of the sale. The Company applies judgment in determining the customer's ability and intention to pay, which is based on a variety of factors including the customer's historical payment experience and, in some circumstances, published credit and financial information pertaining to the customer.

- Identify the performance obligations in the contract

  Performance obligations promised in a contract are identified based on the goods that will be transferred to the customer that are both capable of being distinct and are distinct in the context of the contract, whereby the transfer of the goods is separately identifiable from other promises in the contract. The Company has concluded the sale of finished goods and related shipping and handling are accounted for as a single performance obligation.

· Determine the transaction price

The transaction price is determined based on the consideration to which the Company will be entitled to receive in exchange for transferring goods to the customer. The Company estimates the amount of potential refunds at each reporting period using a portfolio approach of historical data, adjusted for changes in expected customer experience, including seasonality and changes in economic factors.

Discounts provided to customers are accounted for as an element of the transaction price and as a reduction to revenue. Discounts were $822 and $465 for the years ended August 31, 2019 and 2018, respectively.

Revenue is presented net of taxes collected from customers and remitted to governmental authorities.

· Allocate the transaction price to the performance obligations in the contract

The Company's products are sold at their standalone selling price.

· Recognize revenue when the Company satisfies a performance obligation

Revenue is recognized when control of the finished goods is transferred to the customer. Control of the finished goods is transferred at a point in time, upon delivery to the customer. The period of time between the satisfaction of the performance obligation and when payment is due from the customer is not significant. Sales returns are estimated based on historical facts and circumstances.

In the following table, product sales are disaggregated as follows for the years ended August 31, 2019 and 2018:

	August 31, 2019	August 31, 2018
Manufacturing	$ 147,498	$ 51,967
Services	1,456	108
Total Revenue	$ 148,954	$ 52,075

Warranty Costs

The Company has not had any historical warranty related expenditures from the sales of its products, which if incurred would result in the return of any defective products by customers.

Stock-based Compensation

The Company accounts for its stock-based awards in accordance with ASC Topic 718, *Compensation* ("ASC 718"), which requires fair value measurement and recognition of compensation expense for all share-based payment awards made to employees and directors, including restricted stock awards. The Company estimates the fair value of its stock options using the Black-Scholes option pricing model and its restricted stock using the stock price on the date of the approval of the award. The fair value is then expensed over the requisite service periods of the awards, which is generally the vesting period and the related amount is recognized in the consolidated statements of operations.

Advertising

The Company conducts advertising for the promotion of its products and services. In accordance with ASC Topic 720 *Other expenses* ("ASC 720"), advertising costs are charged to operations when incurred. Advertising costs were $1,304 and $753 for the fiscal years ended August 31, 2019 and 2018, respectively.

Income Taxes

The Company accounts for income taxes under FASB ASC Topic 740, *Accounting for Income Taxes* ("ASC 740"). As part of the process of preparing the consolidated financial statements, the Company is required to estimate an income tax provision (benefit) in each of the jurisdictions in which it operates. This process involves estimating the current income tax provision (benefit) together with assessing temporary differences resulting from differing treatment of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the consolidated balance sheets.

The Company recorded a valuation allowance to reduce deferred tax assets to an amount that more likely than not will be realized. While future taxable income and ongoing prudent and feasible tax planning strategies have been considered in assessing the need for the valuation allowance, in the event the Company determines it would be able to realize deferred tax assets in the future in excess of the net recorded amount, an adjustment to the valuation allowance for the deferred tax asset would increase income in the period such determination was made. Likewise, should the Company determine it would not be able to realize all or part of the net deferred tax asset in the future, an adjustment to the valuation allowance for the deferred tax asset would be charged to income in the period such determination was made.

During fiscal 2019, the Company maintained a valuation allowance to reduce deferred tax assets to an amount that more likely than not will be realized. The net deferred tax liability for fiscal year 2019 represents the portion of indefinite-life intangibles that could not be used as a future source of taxable income to support the realization of deferred tax assets.

Segments

The Company only has a single reportable segment. As defined in ASC Topic 280, *Segment Reporting,* operating segments are components of an enterprise for which separate financial information is evaluated regularly by the chief operating decision maker, who is the chief executive officer, in deciding how to allocate resources and assess performance. Over the past few years, the Company has completed a number of acquisitions. These acquisitions have allowed the Company to expand its offerings, presence and reach in the cannabis industry. While the Company has offerings in multiple geographic locations for its products for the cannabis industry, as a result of the Company's acquisitions, the Company's business operates in one operating segment because the majority of the Company's offerings operate similarly, and the Company's chief operating decision maker evaluates the Company's financial information and resources and assesses the performance of these resources on a consolidated basis. Since the Company operates in one reportable segment, all required financial segment information can be found in the consolidated financial statements.

Recent Accounting Pronouncements

Issued but not yet adopted by the Company

Fair Value Measurement (Topic 820), - Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement. In August 2018, the FASB issued Accounting Standards Update ("ASU") No. 2018-13, which makes a number of changes meant to add, modify or remove certain disclosure requirements associated with the movement amongst or hierarchy associated with Level 1, Level 2 and Level 3 fair value measurements. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. Early adoption is permitted upon issuance of the update. The Company does not expect the adoption of this guidance to have a material impact on its consolidated financial statements.

Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. In June 2016, the FASB issued ASU 2016-13, which provides guidance on accounting for credit losses, including trade receivables. The guidance requires the application of a current expected credit loss model, which measure credit losses based on relevant information about past events, including historical experience, current conditions, and reasonable and supportable forecasts. The guidance is effective for annual periods beginning after December 15, 2019. The guidance requires companies to apply the requirements using a modified retrospective approach. The Company is currently evaluating the potential impact of the adoption of this standard on our consolidated financial statements and required disclosures.

Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting. In July 2018, the FASB issued ASU 2018-07, which addresses several aspects of the accounting for nonemployee share-based payment transactions and expands the scope of ASC 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The main provisions of the update change the way nonemployee awards are measured in the financial statements. Under the simplified standards, nonemployee options will be valued once at the date of grant, as compared to at each reporting period end under ASC 505-50. At adoption, all awards without established measurement dates will be revalued one final time, and a cumulative effect adjustment to retained earnings will be recorded as the difference between the pre-adoption value and new value. Companies will be permitted to make elections to establish the expected term and either recognize forfeitures as they occur or apply a forfeiture rate. Compensation expense recognition using a graded vesting schedule will no longer be permitted. This pending content is the result of the FASB's Simplification Initiative, to maintain or improve the usefulness of the information provided to the users of financial statements while reducing cost and complexity in financial reporting. This ASU is effective for fiscal years, and interim periods within those years, beginning after December 15, 2018. Early adoption is permitted, but no earlier than an entity's adoption date of Topic 606. The Company will adopt the ASU effective September 1, 2019 and does not expect this guidance to have a material impact on its consolidated financial statements.

Earnings Per Share (Topic 260). In July 2017, the FASB issued ASU No. 2017-11, Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815): (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Non-controlling Interests with a Scope Exception". The ASU was issued to address the complexity associated with applying GAAP for certain financial instruments with characteristics of liabilities and equity. The ASU, among other things, eliminates the need to consider the effects of down round features when analyzing convertible debt, warrants and other financing instruments. As a result, a freestanding equity-linked financial instrument (or embedded conversion option) no longer would be accounted for as a derivative liability at fair value as a result of the existence of a down round feature. The amendments are effective for fiscal years beginning after December 15, 2018 and should be applied retrospectively. The Company will adopt the ASU effective September 1, 2019 and does not expect this guidance to have a material impact on its consolidated financial statements.

Leases (ASC 842). In February 2016, the FASB issued ASU No. 2016-02 to increase transparency and comparability among organizations by requiring lessees to (i) recognize right-of-use ("ROU") assets and lease liabilities on the consolidated balance sheet to represent the right to use the leased asset for the lease term and the obligation to make lease payments and (ii) disclose key information about leasing arrangements. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the consolidated income statement. ASU 2016-02 is effective for annual periods beginning after December 15, 2018, including interim periods within those annual periods, with early adoption permitted. ASU 2016-02 is effective for the Company in the first quarter of fiscal 2020. The Company is currently in the process of evaluating the potential impact of adoption of this updated authoritative guidance on the consolidated financial statements.

NOTE 2 – FISCAL 2018 RESTATEMENT

In connection with the preparation of the Company's unaudited condensed consolidated interim financial statements as of and for the fiscal quarter ended February 28, 2019, the Company identified inadvertent errors in the accounting for certain shared-settled contingent consideration obligations relating to the Company's acquisition of CMP Wellness in May 2017, Summit Innovations in May 2018, and Hybrid Creative in July 2018. In connection with those acquisitions, contingent equity consideration relating to certain earn-out arrangements were accounted for as equity. Upon further evaluation, the Company determined that the share-settled contingent consideration should have been accounted for as liabilities with fair value changes recorded in the Company's consolidated statements of operations.

Accordingly, on April 11, 2019, the Company filed Amendment No. 1 to its Annual Report on Form 10-K/A (the "Amended 10-K"), which restated the Company's previously issued audited consolidated financial statements as of and for the fiscal years ended August 31, 2018 and 2017 and unaudited condensed consolidated interim financial statements as of and for the periods ended May 31, 2017, November 31, 2017, February 28, 2018, and May 31, 2018.

NOTE 3 – ACQUISITION OF CMP WELLNESS

On May 1, 2017 ("Merger Date"), the Company and KBCMP, Inc., a Delaware corporation and newly formed wholly-owned subsidiary of the Company ("Merger Sub"), entered into an Agreement of Merger (the "Merger Agreement") with Lancer West Enterprises, Inc., a California corporation and Walnut Ventures, a California corporation, pursuant to which each of Lancer West Enterprises, Inc. and Walnut Ventures were merged with and into Merger Sub, with Merger Sub as the surviving corporation, resulting in the Company's indirect acquisition of CMP Wellness, LLC, a California limited liability company, which prior to the merger, was owned 100% by Lancer West Enterprises, Inc. and Walnut Ventures. Membership interest in CMP was the sole and only asset of Lancer West Enterprises, Inc. and Walnut Ventures ("CMP Wellness" or "CMP"). As a result, CMP Wellness became a wholly-owned subsidiary of the Company. CMP Wellness is a distributor of vaporizers, cartridges and accessories.

The acquisition consideration consisted of a fixed cash payment of $1,500, unsecured promissory notes in the aggregate principal amount of approximately $771, having a one-year maturity, and an aggregate of 7,800 restricted shares of the Company's common stock. During the one-year period following the closing, the two sellers of CMP were entitled to receive up to an additional $1,905 in cash, in the aggregate, and 4,741 shares of common stock of the Company, in the aggregate, based on the gross profit generated by the CMP product line for the period from May 1, 2017 to April 30, 2018. Per the terms of the Merger Agreement, post-closing adjustments to CMP's working capital is directly offset to the unsecured promissory notes payable. Management has estimated that the post-closing working capital adjustments amounted to $104, which resulted in a decrease of the unsecured promissory notes payable from $771 to $667. In accordance with ASC 805, management evaluated the estimated fair value of the contingent consideration based a probability-weighted assessment of the occurrence of CMP reaching certain gross profit earnout targets. The Company initially recorded a contingent liability for the contingent cash consideration of $1,735 and the fair value of the contingent equity consideration of $10,764. Based on information obtained during the fourth fiscal quarter of 2017, the Company revised its estimate of the contingent cash consideration from $1,735 to $1,905, and its estimate of the contingent equity consideration from $10,764 to $11,683.

On July 16, 2018, the Company issued an aggregate of 3,741 shares of common stock associated with the contingent equity consideration in accordance with the terms of the Merger Agreement. On May 9, 2019, the Company issued 500 shares of common stock associated with holdback shares in accordance with the terms of the Merger Agreement.

NOTE 4 – ACQUISITION OF SUMMIT INNOVATIONS, LLC

On May 2, 2018, the Company completed its acquisition of Summit, a leading distributor of hydrocarbon gases to the legal cannabis industry. Pursuant to the terms of the Merger Agreement with Summit, Summit merged with and into KCH, a wholly-owned subsidiary of the Company, with KCH as the surviving entity.

The acquisition was accounted for using the acquisition method of accounting in accordance with ASC 805. The fixed purchase consideration paid to the Members of Summit at the closing included the cash consideration, consisting of an aggregate of $905 in cash, net of cash received, $188 in cash held back and the share consideration, consisting of an aggregate of 1,280 shares common stock. The Company held back approximately 640 shares of common stock from the share consideration for a period of 15 months for potential post-closing working capital and/or indemnification claims relating to, among other things, breaches of representations, warranties and covenants contained in the Merger Agreement. The Members may become entitled to receive contingent equity consideration of up to an additional 1,280 shares of common stock, in the aggregate, based on the net revenue performance of the Summit business during a one-year period following the closing.

Fair value of consideration transferred (based on the May 2, 2018 closing price of $5.59) was as follows:

	May 2, 2018 (As initially reported)	Measurement Period Adjustments [1]	August 31, 2018 (As adjusted)
Cash	$ 945	$ (40)	$ 905
Cash held back	500	(312)	188
Fair value of common shares issued to Summit members	3,578	--	3,578
Fair value common shares held back	3,578	(762)	2,816
Fair value contingent consideration payable in common shares	7,155	-	7,155
Total	$ 15,756	$ (1,114)	$ 14,642

(1) As of August 31, 2018, the Company recorded measurement period adjustments to decrease cash held back from $500 to $188, to decrease cash, net of cash acquired, from $945 to $905, and to decrease the fair value of shares held back from $3,578 to $2,816.

The following table summarizes the allocation of the purchase price to the assets acquired and liabilities assumed:

	May 2, 2018 (As initially reported)	Measurement Period Adjustments [1]	August 31, 2018 (As adjusted)
Accounts receivable, net of allowance	$ 471	$ (253)	$ 218
Prepaid expenses and other current assets	87	--	87
Inventory	237	--	237
Property and equipment, net	649	--	649
Accounts payable	(1,377)	103	(1,274)
Accrued expenses and other current liabilities	(358)	--	(358)
Notes payable	(987)	--	(987)
Total identifiable net assets	(1,278)	(150)	(1,428)
Non-compete	--	620	620
Goodwill	17,034	(1,584)	15,450
Total fair value of consideration	$ 15,756	$ (1,114)	$ 14,642

(1) As of August 31, 2018, the Company recorded measurement period adjustments to allocate $620 to the non-compete, decrease accounts receivable, net of allowance, from $471 to $218 and decrease accounts payable from $1,377 to $1,274.

As discussed in Note 2, in connection with the Company's initial acquisition accounting, the Company inadvertently classified the contingent equity consideration as equity. Given that the earnout arrangements allow for a variable number of shares to be issued depending on how the Summit business performs against the revenue target, the Company should have classified the contingent equity consideration as a liability until the contingency is resolved. Accordingly, the Company has recorded the changes in the fair value of its contingent consideration within its statements of operations.

The following unaudited pro forma financial data assumes the acquisition had occurred at September 1, 2016. Pro forma results have been prepared by adjusting the Company's historical results to include Summit's results of operations. The unaudited pro forma results presented do not necessarily reflect the results of operations that would have resulted had the acquisition been completed at September 1, 2016, nor do they indicate the results of operations in future periods. Additionally, the unaudited pro forma results do not include the impact of possible business model changes, nor do they consider any potential impacts of current market conditions or revenues, reduction of expenses, asset dispositions, or other factors. The impact of these items could alter the following pro forma results:

	Year Ended August 31, 2018	Year Ended August 31, 2017
	Unaudited	Unaudited
Total revenues	$ 56,950	$ 19,018
Net loss	$ (26,086)	$ 1,458
Loss per share:		
Basic	$ (0.40)	$ (0.03)
Diluted	$ (0.40)	$ (0.02)

On August 13, 2019, the Company issued an aggregate of 1,147 shares of common stock associated with the contingent equity consideration and holdback shares in accordance with the terms of the Merger Agreement. As of August 31, 2019, the Company is holding back the remaining 200 shares pending resolution of certain claims.

NOTE 5 – ACQUISITION OF THE HYBRID CREATIVE, LLC

On July 11, 2018, the Company completed its acquisition of Hybrid, a marketing and design agency. Pursuant to the terms of the Agreement with the members of ZDCA, parent of wholly-owned subsidiary, Hybrid, the Company purchased the entire issued member interest of ZDCA. Following the acquisition, ZDCA operates as a wholly-owned subsidiary of the Company, with Hybrid continuing to operate as wholly-owned subsidiary of ZDCA.

The acquisition was accounted for using the acquisition method of accounting in accordance with ASC 805. The fixed consideration paid to the Members of Hybrid at the closing included the cash consideration, consisting of an aggregate of $847 in cash, net of cash received, $82 in cash held back and the share consideration, consisting of an aggregate of 360 shares common stock. The Company held back 162 shares of common stock from the share consideration until January 1, 2019 in connection with certain representations and warranties. The Members may become entitled to receive cash contingent consideration of up to $485, and up to 213 common shares of equity consideration, based primarily on the net revenue performance of the Hybrid business during the period September 1, 2018 through August 31, 2019.

The total purchase price (based on the $5.22 July 11, 2018 closing price) was as follows:

	August 31, 2018
Cash	$ 847
Cash held back	82
Fair value of common shares issued to Hybrid members	1,879
Fair value of contingent cash consideration	450
Estimated fair value of contingent equity consideration	920
Total estimated acquisition consideration	$ 4,178

The following table summarizes the allocation of the purchase price to the assets acquired and liabilities assumed:

	August 31, 2018
Accounts receivable, net of allowance	$ 33
Prepaid expenses and other assets	6
Accounts payable	(86)
Accrued expenses and other current liabilities	(278)
Notes payable	(235)
Total identifiable net assets	(560)
Non-compete	910
Goodwill	3,828
Total fair value of consideration	$ 4,178

As discussed in Note 2, in connection with the Company's initial acquisition accounting, the Company inadvertently classified the contingent equity consideration as equity. Given that the earnout arrangements allow for a variable number of shares to be issued depending on how the Hybrid business performs against the revenue target, the Company should have classified the contingent equity consideration as a liability until the contingency is resolved. Accordingly, the Company has recorded the changes in the fair value of its contingent consideration within its statements of operations.

The following unaudited pro forma financial data assumes the acquisition had occurred at September 1, 2016. Pro forma results have been prepared by adjusting the Company's historical results to include Hybrid's results of operations. The unaudited pro forma results presented do not necessarily reflect the results of operations that would have resulted had the acquisition been completed at September 1, 2016, nor do they indicate the results of operations in future periods. Additionally, the unaudited pro forma results do not include the impact of possible business model changes, nor do they consider any potential impacts of current market conditions or revenues, reduction of expenses, asset dispositions, or other factors. The impact of these items could alter the following pro forma results:

	Year Ended August 31, 2018	Year Ended August 31, 2017
	Unaudited	Unaudited
Total revenues	$ 53,069	$ 19,922
Net loss	$ (24,865)	$ 1,624
Loss per share:		
Basic	$ (0.38)	$ 0.03
Diluted	$ (0.38)	$ 0.03

On February 8, 2019, the Company issued an aggregate of 162 shares of common stock associated with the holdback shares in accordance with the terms of the Membership Interest Purchase Agreement.

As of February 28, 2019, the Company concluded that ZDCA would not meet the minimum earnout target threshold. Accordingly, the fair value of the related contingent consideration was adjusted to zero.

NOTE 6 – CONCENTRATIONS OF RISK

Supplier Concentrations

The Company purchases inventory from various suppliers and manufacturers. For the year ended August 31, 2019, one vendor accounted for approximately 40% of total inventory purchases. For the year ended August 31, 2018, two vendors accounted for approximately 56% of total inventory purchases.

Customer Concentrations

The Company has a concentration of credit risk with its accounts receivable balance. For the fiscal year ended August 31, 2019, two customers represented approximately 14% and 10% of revenue, respectively, and approximately 18% and 1% of accounts receivable, respectively, at August 31, 2019. No customer accounted for 10% or more of the Company's net revenues for the fiscal year ended August 31, 2018.

NOTE 7 – SALE OF RUB

On September 21, 2018, Smoke Cartel, Inc. ("Smoke Cartel") and the Company entered into an agreement to sell a web domain and inventory related to the Company's Rolluh-Bowl ("RUB") product line. The Company received 1,410 shares of Smoke Cartel common stock as part of the consideration for this transaction. The fair value of its equity investment as of September 21, 2018 was based upon the closing stock price of Smoke Cartel.

The following sets forth the calculation of the gain on disposition of assets upon completion of the sale:

Fair value of Smoke Cartel as of September 21, 2018	$ 1,791
RUB web domain and inventory sold	(537)
Gain on disposition of assets	$ 1,254

As of August 31, 2019, the fair value of the shares of Smoke Cartel were $592 and is recorded in Other assets on the Company's consolidated balance sheet.

NOTE 8 – RELATED-PARTY TRANSACTIONS

The Company leased certain California and Colorado facilities from related parties. As of August 31, 2019, the Company no longer leases these facilities. During the years ended August 31, 2019 and 2018, total rent payments of $35 and $215, respectively, were made to these related parties.

The Company sells certain products and supplies to two related parties. Sales recognized during the years ended August 31, 2019 and 2018 from the related parties totaled $1,224 and $254, respectively. Total accounts receivable from related parties as of August 31, 2019 was $465. Further, the Company rents certain warehouse equipment from a related party. During the years ended August 31, 2019 and 2018, total payments of $285 and $72, respectively, were made to the related party.

NOTE 9 – PROPERTY AND EQUIPMENT

The major classes of fixed assets consist of the following:

	August 31, 2019	August 31, 2018
Machinery and equipment	$ 4,430	$ 2,938
Vehicles	603	381
Office Equipment	3,232	385
Leasehold improvements	3,296	1,319
Construction in progress	1,930	--
	13,491	5,023
Accumulated Depreciation	(2,437)	(888)
	$ 11,054	$ 4,135

Depreciation expense was $1,549 and $401 for the years ended August 31, 2019 and 2018, respectively.

NOTE 10 – INTANGIBLE ASSETS AND GOODWILL

Intangible assets consist of the following as of August 31, 2019 and 2018:

		As of August 31, 2019			As of August 31, 2018		
Description	**Weighted Average Estimated Useful Life**	**Gross Carrying Value**	**Accumulated Amortization**	**Net Amount**	**Gross Carrying Value**	**Accumulated Amortization**	**Net Amount**
Domain name	5 years	$ --	$ --	$ --	$ 599	$ (166)	$ 433
Trade name	6 years	2,600	(1,011)	1,589	2,600	(578)	2,022
Non-compete agreement	4 years	2,370	(856)	1,514	2,370	(337)	2,033
		$ 4,970	$ (1,867)	$ 3,103	$ 5,569	$ (1,081)	$ 4,488

Amortization expense was $952 and $822 for the years ended August 31, 2019 and 2018, respectively.

The estimated remaining amortization expense for each of the five succeeding fiscal years:

Year ended August 31,	
2020	$ 947
2021	881
2022	747
2023	528
	$ 3,103

The following table summarizes the carrying amount of goodwill as of August 31, 2019 and 2018:

	Acquisition Date	
Dank Bottles	November 2015	$ 2,377
CMP Wellness	May 2017	30,612
Summit	May 2018	15,450
Hybrid	August 2018	3,828
		$ 52,267

NOTE 11 – ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	August 31, 2019	**August 31, 2018**
Customer deposits	$ 2,992	$ 769
Accrued compensation	3,485	993
Sales tax payable	1,047	432
Other accrued expenses	1,936	877
	$ 9,460	$ 3,071

NOTE 12 – DEBT

Gerber Revolving Line

On November 16, 2017, the Company and its wholly-owned subsidiary KIM International Corporation ("KIM") as borrowers, and all of the Company's other subsidiaries, as credit parties, entered into a Loan and Security Agreement (the "Loan Agreement") with Gerber Finance Inc., as lender ("Gerber"), effective as of November 6, 2017. The Loan Agreement originally provided a secured revolving credit facility (the "Revolving Line") in an aggregate principal amount of up to $2.0 million at any time outstanding. Under the original terms of the Loan Agreement, the principal amount of loans, plus the face amount of any outstanding letters of credit, at any time outstanding could not exceed up to 85% of the Company's eligible receivables minus reserves. Under the terms of the Loan Agreement, the Company may also request letters of credit from Gerber. The proceeds of the loans under the Loan Agreement will be used for working capital and general corporate purposes. The Revolving Line has a maturity date of November 6, 2019. Borrowings under the Revolving Line accrues interest at a rate based on the prime rate as customarily defined, plus a margin of 3.0%. On March 8, 2018, the Company and KIM entered into a first amendment to the Loan Agreement with Gerber. Pursuant to the first amendment, the aggregate principal amount of the Revolving Line at any time outstanding was increased to $4.0 million and the principal amount of loans, plus the face amount of any outstanding letters of credit, at any time outstanding could not exceed the lesser of (i) 40% of the value of certain inventory and (ii) 50% of certain accounts receivable.

On November 9, 2018, the Company and KIM entered into a second amendment to the Loan Agreement with Gerber. Pursuant to the second amendment, the aggregate principal amount of the Revolving Line at any time outstanding was increased to $8.0 million. Additionally, subject to certain exceptions, the face amount of any outstanding letters of credit, at any time outstanding cannot exceed the lesser of (i) 25% of the value of certain inventory (increasing to 40% upon receipt of certain landlord waivers) and (ii) 50% of certain accounts receivable. In April 2019, the Company obtained a waiver of non-compliance with certain covenant violations associated with the restatements described in Note 2. Interest expense during the year ended August 31, 2019 and 2018 was $1,108 and $224, respectively. The Gerber Revolving Line was terminated and repaid in full on August 21, 2019.

Monroe Revolving Credit Facility

On August 21, 2019, the Company entered into a secured asset based Revolving Credit Facility ("Monroe Revolving Credit Facility") with an aggregate amount not to exceed $35.0 million outstanding at any time between the Company and its subsidiaries (collectively, the "Borrowers") and Monroe Capital Management Advisors, LLC, as collateral agent and administrative agent (the "Agent"), and the various lenders party thereto. The credit facility also includes an accordion feature that permits the Borrowers to increase the available revolving commitments under the Credit Facility by up to an additional $15 million, subject to satisfaction of certain conditions.

All amounts advanced under the Monroe Revolving Credit Facility will bear interest at a rate per annum equal to either:

- 5.25% plus the greatest of: (a) 5.50%; (b) the Federal Funds Rate plus 0.50%; (c) the quotient of (i) the LIBOR rate, divided by (ii) the difference of 100 percent minus, for any lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System of the United States (or its successor) for determining reserve requirements of that lender; plus 1.00%; and (d) the Prime Rate; or

- 8.50% plus the greater of (a) the quotient of (i) the LIBOR rate, divided by (ii) the difference of one minus the stated maximum reserve percentage to be maintained by member banks of the Federal Reserve System for Eurocurrency funding or liabilities; and (b) 1.00%.

As of August 31, 2019, the interest rate was 10.7%. The Monroe Revolving Credit Facility has a five-year term, maturing on August 21, 2024, and is secured by a first priority lien on substantially all of the assets of the Company and its subsidiaries.

The Monroe Revolving Credit Facility also contains customary representations and warranties, affirmative and negative covenants, including a financial covenant requiring certain minimum availability, and events of default.

The Company incurred closing costs associated with the Monroe Revolving Credit Facility in the amount of $2,602, which were deferred and amortized over the 5-year term of the Monroe Revolving Credit Facility on a straight-line basis. As of August 31, 2019, unamortized deferred closing costs of $2,585 is included in Other assets.

Principal of $12,261 remained outstanding as of August 31, 2019. Interest expense and amortization of debt discount, associated with the Monroe Revolving Credit Facility during the year ended August 31, 2019 amounted to $44 and $17, respectively.

Monroe Warrants

Further on August 21, 2019, the Company entered into a Monroe Subscription Agreement, pursuant to which the Company issued to the Subscribers (i) a Warrant to purchase up to 500 shares of Common Stock at $0.001 par value per share (the "Monroe Warrants"), at an exercise price of $4.25 per share. The Monroe Warrants have a 5-year term and as such will expire on August 21, 2024. As of August 31, 2019, the Monroe Warrants granted were not exercised.

The Monroe Warrants were classified as equity. The estimated fair value of the Monroe Warrants was $989 as of August 21, 2019 and was computed using the Black-Scholes model.

Long-term Debt

On April 29, 2019, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement") with an institutional investor (the "Investor"), pursuant to which the Company agreed to issue and sell, and the Investor agreed to purchase, a senior note (the "Original Note") in a private placement offering in the aggregate principal amount of $21.3 million with an original issue discount of $1.3 million, and received net proceeds of $20.0 million. The Original Note is a senior unsecured obligation, and unless earlier redeemed, will mature on October 30, 2020. The Original Note does not bear interest, except upon the occurrence of an event of default.

On August 21, 2019, the Company entered into an exchange agreement (the "Exchange Agreement") with the Investor in order to amend and waive certain provisions of the Purchase Agreement and the Original Note and exchange the Original Note for (i) a new senior note (the "New Senior Note") for the same aggregate principal amount as the Original Note and (ii) a warrant to purchase up to 650,000 shares of our common stock at an exercise price of $4.25. The Warrants have an expiration date of August 21, 2024 and have not been exercised. As of August 21, 2019, the Warrants were reclassified from a derivative liability to equity with a corresponding adjustment to additional paid-in capital. The fair value of the Warrants was determined using a Black-Scholes model as of August 21, 2019 and was equal to $792.

Similar to the terms of the Original Note, the New Senior Note matures on October 30, 2020, at which time the Company must pay the Investor an amount in cash representing 120% of all outstanding principal, less original issue discount, plus any accrued and unpaid interest and accrued and unpaid late charges. Similar to the terms of the Original Note, the New Senior Note will not bear interest except upon the occurrence of an event of default.

On November 8, 2019, the Company entered into a Second Exchange Agreement ("Second Exchange Agreement") with the Investor, pursuant to which we amended the New Senior Note (the "Amended Senior Note"). Pursuant to the terms of the Amended Senior Note, the maturity date of the Amended Senior Note was extended to April 29, 2021 andthe aggregate principal amount of the Amended Senior Note was increased to approximately $24.0 million and increase the original issue discount to $1.5 million. Upon maturity, the Company must pay the Investor an amount in cash representing 120% of all outstanding principal, less original issue discount, plus any accrued and unpaid interest and accrued and unpaid late charges. Similar to the terms of the Original Note, the Amended Senior Note will not bear interest except upon the occurrence of an event of default.

Promissory Notes Payable

As partial consideration for the acquisition of CMP, the Company issued the sellers unsecured promissory notes totaling $771. Management estimated the post-closing working capital adjustments amounted to $104, which resulted in a decrease of the unsecured promissory notes payable from $771 to $667. The promissory notes matured on May 1, 2018 and bore interest at an annual rate of 1.15%. The notes were repaid in full as of August 31, 2018.

NOTE 13 – WARRANT LIABILITY

In June 2018, the Company issued 3,750 five-year warrants to investors in a registered direct offering (the "Offering"). Pursuant to ASC Topic 815, the initial fair value of the warrants of $15,350 was recorded as a warrant liability on the issuance date. The estimated fair values of the warrants were computed at issuance using a Black-Scholes option pricing model, with the following assumptions: stock price $5.56 volatility 78.1%, risk-free rate 2.74%, annual dividend yield 0% and expected life 5.0 years.

The estimated fair value of the outstanding warrant liabilities was $5,444 and $14,430 as of August 31, 2019 and 2018, respectively.

Increases or decreases in fair value of the warrant liability are included as a component of total other expense in the accompanying consolidated statements of operations for the respective period. The changes to the liability for warrants resulted in a decrease of $8,986 and $920 in warrant liability and a corresponding gain included in other income for the years ended August 31, 2019 and 2018.

The estimated fair value of the warrants was computed as of August 31, 2019 using the Black Scholes model with the following assumptions: stock price $3.75 volatility 63.7%, risk-free rate 1.41%, annual dividend yield 0% and expected life 3.8 years.

NOTE 14 – FAIR VALUE OF FINANCIAL INSTRUMENTS

Fair value measurements are performed in accordance with the guidance provided by ASC Topic 820, *"Fair Value Measurements and Disclosures."* ASC 820 defines fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Where available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or parameters are not available, valuation models are applied.

ASC 820 establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Assets and liabilities recorded at fair value in the financial statements are categorized based upon the hierarchy of levels of judgment associated with the inputs used to measure their fair value. Hierarchical levels directly related to the amount of subjectivity associated with the inputs to fair valuation of these assets and liabilities, are as follows:

Level 1 – Quoted prices in active markets for identical assets or liabilities that an entity has the ability to access.

Level 2 – Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.

Level 3 – Unobservable inputs that are supportable by little or no market activity and that are significant to the fair value of the asset or liability.

The carrying amounts of the Company's financial instruments, including cash and cash equivalents, equity investments, accounts receivable, accounts payable and accrued liabilities, capital lease obligations and deferred revenue approximate their fair values based on their short-term nature. The carrying amount of the Company's long-term notes payable approximates its fair value based on interest rates available to the Company for similar debt instruments and similar remaining maturities.

The estimated fair value of the contingent consideration related to the Company's business combinations is recorded using significant unobservable measures and other fair value inputs and is therefore classified as a Level 3 financial instrument.

The Company accounts for its investment in Smoke Cartel at fair value. On September 21, 2018, Smoke Cartel and the Company entered into an agreement to sell the RUB web domain and inventory related to this product line and in exchange, received 1,410 shares of Smoke Cartel common stock (see Note 7 above.) The fair value of its investment as of September 21, 2018 and August 31, 2019 was based upon the closing stock price of Smoke Cartel. The investment was classified as a Level 2 financial instrument.

In connection with the Company's registered direct offering in June 2018, the Company issued warrants to purchase shares of its common stock which are accounted for as a warrant liability (see Note 13 above.) The estimated fair value of the derivative is recorded using significant unobservable measures and other fair value inputs and is therefore classified as a Level 3 financial instrument.

In connection with the Company's private placement offering in April 2019, the Company entered into a Purchase Agreement, whereby it granted to the Investor participation rights in future financing transactions up to an aggregate of 15% of such transactions (or, except for certain permitted indebtedness, up to an aggregate of 100% of debt issuances). These participation rights were recorded as a derivative liability with estimated fair value determined using significant unobservable measures and other fair value inputs and is therefore classified as a Level 3 financial instrument.

The following table details the fair value measurement within the fair value hierarchy of the Company's financial instruments, which includes the Level 2 assets and the Level 3 liabilities:

	Fair Value at August 31, 2019			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Equity investment	$ 592	$ --	$ 592	$ --
Total assets	$ 592	$ --	$ 592	$ --
Liabilities:				
Warrant liability	$ 5,444	$ --	$ --	$ 5,444
Total liabilities	$ 5,444	$ --	$ --	$ 5,444

	Fair Value at August 31, 2018			
	Total	**Level 1**	**Level 2**	**Level 3**
Liabilities:				
Contingent consideration payable	$ 5,488	$ --	$ --	$ 5,488
Warrant liability	14,430	--	--	14,430
Total liabilities	$ 19,918	$ --	$ --	$ 19,918

The following table reflects the activity for the Company's investment in Smoke Cartel measured at fair value using Level 2 inputs:

	Investment in Smoke Cartel
As of August 31, 2018	$ --
Acquisition of equity investment	1,791
Adjustments to estimated fair value	(1,199)
As of August 31, 2019	$ 592

The following table reflects the activity for the Company's warrant derivative liability for the June 2018 registered offering measured at fair value using Level 3 inputs:

	Warrant Liability
Balance at August 31, 2017	$ --
Issuance	15,350
Adjustments to estimated fair value	(920)
Balance at August 31, 2018	14,430
Adjustments to estimated fair value	(8,986)
Balance at August 31, 2019	$ 5,444

The following table reflects the activity for the Company's participation rights derivative liability for the April 2019 private debt offering measured at fair value using Level 3 inputs:

	Participation Rights Derivative Liability
As of April 30, 2019	$ 1,100
Adjustments to estimated fair value	(308)
Reclassification to equity	(792)
As of August 31, 2019	$ --

The following table reflects the restated activity for the Company's contingent acquisition liabilities measured at fair value using Level 3 inputs:

	Contingent Consideration Payable
As of August 31, 2017	10,828
Change in Fair Value	14,138
Cash Payment	(1,820)
Settled in shares – CMP	(26,218)
Acquisition of Summit	7,155
Acquisition of Hybrid Creative	1,405
As of August 31, 2018	5,488
Change in Fair Value	(1,780)
Cash Payment	(140)
Settled in shares – Summit and Hybrid	(3,568)
As of August 31, 2019	--

The fair value of the contingent consideration is evaluated each reporting period using projected financial results, discount rates, and key inputs. Projected contingent payment amounts are discounted back to the current period using a discount rate. Financial information is based on the Company's most recent internal operational budgets and forecasts. Changes in projected financial results may result in higher fair value measurements. Increases in discount rates and the time to payment may result in lower fair value measurements. Increases (decreases) in any of those inputs in isolation may result in a significantly lower (higher) fair value measurement.

NOTE 15 – STOCKHOLDERS' EQUITY

Preferred Stock

The authorized preferred stock is 10,000 shares with a par value of $0.001. As of August 31, 2019 and 2018, the Company has no shares of preferred stock issued or outstanding.

Common Stock

The authorized common stock is 265,000 shares with a par value of $0.001. As of August 31, 2019 and 2018, 90,041 and 78,273 shares were issued and outstanding, respectively.

On June 7, 2018, the Company entered into the Purchase Agreement with certain accredited investors pursuant to which the Company agreed to issue and sell an aggregate of 7,500 shares of its common stock, par value $0.001 per share (the "Common Stock") and warrants to purchase 3,750 shares of Common Stock ("Warrants") (collectively, the "Securities"), in the Offering. Subject to certain ownership limitations, the Warrants were immediately exercisable at an exercise price equal to $5.28 per share of Common Stock. The Warrants are exercisable for five years from the date of issuance. The combined per share purchase price for a share of Common Stock and half of a Warrant was $4.80. The closing of the Offering occurred on June 12, 2018 with aggregate gross proceeds of approximately $36.0 million. The aggregate net proceeds from the Offering, after deducting the placement agent fees and other offering expenses, was approximately $33.0 million.

Also, during the year ended August 31, 2018, the Company sold 5,902 shares of its common stock to investors in exchange for cash of $16.4 million.

On January 15, 2019, the Company entered into a securities purchase agreement with certain accredited investors pursuant to which the Company sold an aggregate of 6,476 shares of its common stock and warrants to purchase 3,238 shares of common stock in a registered direct offering. The securities were offered by the Company pursuant to its shelf registration statement on Form S-3. Subject to certain ownership limitations, the warrants became immediately exercisable at an exercise price equal to $5.75 per share of common stock. The warrants are exercisable for five years from the date of issuance. The combined per share purchase price for a share of common stock and a half of a warrant was $5.25. The offering closed on January 18, 2019 with aggregate gross proceeds of approximately $34.0 million. The aggregate net proceeds from the offering, after deducting the placement agent fees and other estimated offering expenses, were approximately $31.2 million.

Further, during the year ended August 31, 2019, the Company sold 2,601 shares of its common stock to investors in exchange for cash of $10.4 million.

On September 26, 2019, the Company entered into purchase agreements with accredited investors pursuant to which the Company issued and sold an aggregate of 17,198 units ("Units"), with each unit consisting of one share of its common stock, par value $0.001 per share (the "Common Stock") and a warrant to purchase half a share of Common Stock (each a Warrant and collectively, the "Warrants") in a registered direct offering (the "September 2019 Offering"). The purchase price for a Unit was $1.75. The closing of the September 2019 Offering occurred on September 30, 2019 and resulted in aggregate gross proceeds of approximately $30.1 million. The aggregate net proceeds from the September 2019 Offering, after deducting the placement agent fees and other offering expenses, was approximately $27.6 million. Subject to certain ownership limitations, the Warrants were immediately exercisable at an exercise price equal to $2.25 per share of Common Stock. The Warrants are exercisable for five years from the date of issuance.

Share-based Compensation

The Company recorded total stock compensation expense of $13,384 and $3,586 for the years ended August 31, 2019 and 2018, respectively, in connection with the issuance of shares of common stock and options to purchase common stock. Stock compensation expense is included in selling, general and administrative expense in the Consolidated Statement of Operations.

Stock Incentive Plan

The Company's 2016 Stock Incentive Plan (the "Plan") was adopted on February 9, 2016. The Plan permits the grant of share options and shares to its employees and directors for up to 18,000 shares of common stock. The Company believes that such awards better align the interests of its employees with those of its shareholders. Option awards are generally granted with an exercise price equal to the market price of the Company's stock at the date of grant; those option awards generally vest based on three years of continuous service and have 10-year contractual terms.

The Company estimates the fair value of share-based compensation utilizing the Black-Scholes option pricing model, which is dependent upon several variables such as the expected option term, expected volatility of its stock price over the expected option term, expected risk-free interest rate over the expected option term, and expected dividend yield rate over the expected option term. The Company believes this valuation methodology is appropriate for estimating the fair value of stock options granted to employees and directors which are subject to ASC 718. These amounts are estimates and thus may not be reflective of actual future results, nor amounts ultimately realized by recipients of these grants. The Company recognizes compensation on a straight-line basis over the requisite service period for each award. The following table summarizes the assumptions the Company utilized to record compensation expense for stock options granted during the years ended August 31, 2019 and 2018:

	August 31, 2019	August 31, 2018
Expected term in years	3.0	3.0
Expected volatility	64% – 87%	64% – 79%
Risk-free interest rate	1.39% – 3.01%	1.70% – 2.94%
Expected dividend yield	0.0%	0.0%

The expected term is based on management judgement and reflects expected exercise patterns. The expected volatility is based on management's analysis of historical volatility. The risk-free interest rate is based on the U.S. Treasury yields with terms equivalent to the expected term of the related option at the time of the grant. While the Company believes these estimates are reasonable, the compensation expense recorded would increase if the expected life was increased, a higher expected volatility was used, or if the expected dividend yield increased.

Stock Options

During the years ended August 31, 2019 and 2018, the Company issued 10,082 and 7,177 stock options, respectively, pursuant to the Company's 2016 Stock Incentive Plan. A summary of the Company's stock option activity during the years ended August 31, 2018 and 2019 is presented below:

	Stock Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Balance Outstanding, August 31, 2017	5,275	$ 1.73	8.0	$ 918
Granted	7,177	4.55		
Exercised	(1,145)	0.52		$ 5,952
Forfeited	(1,939)	2.64		
Balance Outstanding, August 31, 2018	9,368	3.85	9.1	$ 14,463
Granted	10,082	5.50		
Exercised	(502)	1.20		$ 2,576
Forfeited	(4,187)	4.46		
Balance Outstanding, August 31, 2019	14,761	$ 4.89	9.0	$ 3,192
Vested and expected to vest at August 31, 2019	12,286	$ 4.81	8.9	$ 3,110
Exercisable, August 31, 2019	3,515	$ 3.64	8.2	$ 2,818

Stock compensation expense related to stock options was $9,995 and $2,084 for the years ended August 2019 and 2018, respectively. The weighted-average grant-date fair value of options granted during the years ended August 31, 2019 and 2018, was $2.73 and $2.85, respectively.

As of August 31, 2019, there was $38,712 of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under the Plan. The expense is expected to be recognized over a weighted-average period of 2.2 years.

Restricted Stock

During the year ended August 31, 2019, the Company issued 350 shares of restricted common stock to consultants in exchange for services for a total of $1,908. During the year ended August 31, 2018, the Company issued 500 shares of restricted common stock to consultants in exchange for services for a total of $4,859.

Stock compensation expense related to restricted stock awards was $3,389 and $1,502, respectively, for the years ended August 31, 2019 and 2018.

As of August 31, 2019, $2,464 of total unrecognized compensation costs related to restricted stock awards is expected to be recognized over a weighted average period of 1.9 years.

NOTE 16 – INCOME TAXES

For financial reporting purposes, income before income taxes for fiscal 2019 and 2018 includes the following components:

	For the Year Ended August 31,	
	2019	**2018**
Loss before income taxes	$ (39,509)	$ (25,900)

The components of the provision for income taxes for fiscal 2019 and 2018 are as follows:

	For the Year Ended August 31,	
	2019	**2018**
Current		
Federal tax	$ --	$ --
State tax	17	5
Foreign tax	13	--
Total	$ 30	$ 5
Deferred		
Federal tax	29	(1,190)
State tax	68	(378)
Total	97	(1,568)
Total tax provision	$ 127	$ (1,563)

The income tax benefit differs from the amount computed by applying the federal income tax rate to net earnings before income taxes. The provision for income tax consists of the following:

	For the Year Ended August 31,	
	2019	**2018**
Federal income tax/benefit attributable to:		
Income tax provision at statutory rate	$ (8,297)	$ (6,561)
State taxes, net of federal benefit	(2,310)	302
Change in fair value of warrants	(1,952)	233
Stock-based and other compensation	1,338	342
Change in Contingent Consideration Payable	(374)	3,581
Warrants	--	327
Impact of the Tax Cuts and Jobs Act	--	(430)
Other	(64)	(52)
Less: Change in valuation of allowance	11,786	695
Income tax expense (benefit)	$ 127	$ (1,563)

On December 22, 2017, the Tax Cuts and Jobs Act (the "Tax Act") was enacted into law, which significantly changed existing U.S. tax law and included provisions that affected our business such as reducing the U.S. federal statutory rate. The Company's U.S. federal income statutory rate for the year ended August 31, 2019 was 21.0% compared to a blended rate of 25.3% in the prior year which represented a blending of the 35.0% statutory rate under prior law and the new 21.0% statutory rate effective January 1, 2018, prorated based on the number of days during the Company's current fiscal year that each rate was effective.

Beginning in fiscal year 2019, the Company was subject to additional provisions of the Tax Act, including limitations on the deductibility of interest expense and on the utilization of net operating loss carryforwards, among other things.

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

	For the Year Ended August 31,	
	2019	**2018**
Deferred tax assets		
Net operating loss carry-forwards	$ 9,451	$ 1,563
Stock-based compensation	2,519	144
Inventory	1,671	--
Other	871	
	14,512	1,707
Valuation allowance	(12,854)	(694)
	1,658	1,013
Deferred tax liabilities		
Depreciation, amortization and other	(1,755)	(1,013)
	(1,755)	(1,013)
Net deferred tax asset (liability)	$ (97)	$ --

During fiscal years 2019 and 2018, the Company maintained a valuation allowance to reduce deferred tax assets to an amount that more likely that not will be realized. The net deferred tax liability for fiscal year 2019 represents the portion of indefinite-life intangibles that could not be used as a future source of taxable income to support the realization of deferred tax assets and is included in Long-term liabilities.

As of August 31, 2019, the Company had federal net operating loss ("NOL") carryforwards of approximately $34.1 million, of which approximately $6.5 million expire in 2038, and the remainder do not expire. As of August 31, 2019, the Company had state net operating loss carryforwards of approximately $2.5 million which expire between 2028 and 2038. The Company has not completed the evaluation of NOL utilization limitations under Internal Revenue Code, as amended (the "Code") Section 382, change of ownership rules. If a change in ownership were to occur, the NOL's would be limited as to the amount that could be utilized each year, based on the Code.

The Company includes interest and penalties arising from the underpayment of income taxes in the statements of operations in the provision for income taxes. As of August 31, 2019 and 2018, the Company had no accrued interest or penalties related to uncertain tax positions. As of August 31, 2019, the tax years beginning with the year ended August 31, 2017 remain subject to examination by the Internal Revenue Service.

NOTE 17 – COMMITMENTS AND CONTINGENCIES

Leases

The Company leases its facilities and offices under operating leases which expire on various dates through 2025. Rent expense related to these leases is recognized on a straight-line basis over the lease terms. Rent expense for the years ended August 31, 2019 and 2018 was $2,852 and $1,180, respectively.

Minimum future commitments under non-cancelable operating leases and other obligations were as follows:

Year ended August 31,	
2020	$ 2,225
2021	2,320
2022	2,139
2023	1,509
2024	616
Thereafter	500
	$ 9,309

Other Commitments

In the ordinary course of business, the Company may enter into contractual purchase obligations and other agreements that are legally binding and specify certain minimum payment terms. The Company had no such agreements as of August 31, 2019.

Litigation

The Company may be subject to legal proceedings and claims which arise in the ordinary course of its business. Although occasional adverse decisions or settlements may occur, the Company believes that the final disposition of such matters should not have a material adverse effect on its financial position, results of operations or liquidity.

During the second half of fiscal 2019, lawsuits have been filed in California federal and state court by various purported shareholders against, variously, the Company, each of the current members of the Company's Board of Directors, and certain of our current and former officers, alleging, among other things, federal securities law violations and/or related breaches of fiduciary duties in connection with the Company's April 2019 restatement of certain prior period financial statements. In general, the lawsuits assert the same or similar allegations, including that defendants artificially inflated the Company's securities prices by knowingly making materially false and misleading statements and omissions to the investing public about the Company's financial statements, business, operations, management, and internal controls.

May v. KushCo Holdings, Inc., et al. Filed April 30, 2019. Case No. 8:19-cv-00798-JLS-KES, U.S. District Court for the Central District of California. This putative shareholder class action against the Company and certain of its current and former officers alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder, and seeks unspecified compensatory damages and other relief on behalf of a class of purchasers of the Company's securities between July 13, 2017 and April 9, 2019, inclusive. In July 2019, purported Company shareholders filed motions for appointment of lead counsel and lead plaintiffs. In September 2019, the Court appointed co-lead plaintiffs and co-lead counsel for the plaintiffs. The lead plaintiffs' amended complaint is currently due in November 2019, and the defendants' responses to the complaint are currently due in January 2020. The Company intends to vigorously defend itself against these claims.

Salsberg v. Kovacevich, et al. Filed May 24, 2019. Case No. 8:19-cv-00998-JLS-KES, U.S. District Court for the Central District of California and *Neysmith v. Baum, et al.* Filed May 31, 2019. Case No. 8:19-cv-01070-JLS-KES, U.S. District Court for the Central District of California. This purported shareholder derivative action against certain current and former directors and officers alleges, among other things, breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The Company is named as a nominal defendant and the plaintiff seeks, among other things, corporate governance reforms, and disgorgement of profits, benefits, and compensation obtained by the defendants from the alleged conduct, to be paid to the Company. In September 2019, the Court consolidated these cases. The parties are expected to stipulate to a date by which the defendants must respond to the complaint. No trial date has been set.

Savage vs. Kovacevich, et al. Filed June 14, 2019. Case No. 30-2019-01077191-CU-MC-NJC, Superior Court of California, County of Orange. This purported shareholder derivative action against certain current and former directors and officers alleges, among other things, breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The Company is named as a nominal defendant and the plaintiff seeks, among other things, corporate governance reforms, and unspecified damages and restitution from the defendants, to be paid to the Company. In August 2019, the Court ordered a stay of this action pursuant to a stipulation of the parties pending resolution of the *May v. KushCo* federal class action.

NOTE 18 – SUBSEQUENT EVENT

Management has evaluated subsequent events through November 12, 2019, the date which the consolidated financial statements were issued. Except as discussed in Notes 12 and 15, there are no items that would impact the accounting for events or transactions in the current period or require additional disclosures.

SIGNATURES

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

Date: November 12, 2019

By: /s/ Nicholas Kovacevich
Nicholas Kovacevich
Chairman and Chief Executive Officer

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

Signature	Title	Date
/s/ Nicholas Kovacevich Nicholas Kovacevich	Chairman and Chief Executive Officer (principal executive officer)	November 12, 2019
/s/ Christopher Tedford Christopher Tedford	Chief Financial Officer (principal financial and accounting officer)	November 12, 2019
/s/ Eric Baum Eric Baum	Director	November 12, 2019
/s/ Barbara Goodstein Barbara Goodstein	Director	November 12, 2019
/s/ Dallas Imbimbo Dallas Imbimbo	Director	November 12, 2019
/s/ Donald Hunter Donald Hunter	Director	November 12, 2019

EXHIBIT INDEX

The following exhibits are filed as part of this Annual Report on Form 10-K. Where such filing is made by incorporation by reference to a previously filed document, such document is identified.

Exhibit Number	Description of Exhibit
2.1†	Merger Agreement dated as of May 1, 2017 by and among KushCo Holdings, Inc., KBCMP, Inc., Lancer West Enterprises, Inc., Walnut Ventures, Jason Manasse, and Theodore Nicols (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K (File No. 000-55418), filed May 4, 2017).
2.2†	Agreement and Plan of Merger, dated as of April 10, 2018, by and among KushCo Holdings, Inc., KCH Energy, LLC, Summit Innovations, LLC and Mark Driver (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K (File No. 000-55418), filed April 10, 2018).
2.3	Amendment to Agreement and Plan of Merger, dated as of May 2, 2018, by and among KushCo Holdings, Inc., KCH Energy, LLC, Summit Innovations, LLC and Mark Driver (incorporated by reference to Exhibit 2.2 to the Current Report on Form 8-K (File No. 000-55418), filed May 3, 2018).
3.1	Amended and Restated Articles of Incorporation of KushCo Holdings, Inc. filed with the Secretary of State of Nevada on August 29, 2018 (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 000-55418), filed September 4, 2018).
3.2	Bylaws of KushCo Holdings, Inc. (incorporated by reference to Exhibit 3.3 to the Form 10-12G/A, (File No. 000-55418), filed May 29, 2015).
4.1*	Description of Registrant's Securities.
4.2	Form of Warrant dated as of June 12, 2018 (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 000-55418), filed June 8, 2018).
4.3	Form of Warrant dated as of January 18, 2019 (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 000-55418), filed January 16, 2019).
4.4	Form of indenture for senior debt securities and the related form of senior debt security (incorporated by reference to Exhibit 4.1 to the Form S-3 (File No. 333-231019), filed April 25, 2019).
4.5	Form of indenture for subordinated debt securities and the related form of subordinated debt security (incorporated by reference to Exhibit 4.2 to the Form S-3 (File No. 333-231019), filed April 25, 2019).
4.6	Form of Monroe Warrant, dated as of August 21, 2019 (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 000-55418), filed August 22,2019).
4.7	Registration Rights Agreement, dated as of August 21, 2019, by and among KushCo Holdings, Inc. and the investors listed therein (incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K (File No. 000-55418), filed August 22,2019).
4.8	Senior Note to HB Sub Fund II LLC, dated as of August 21, 2019 (incorporated by reference to Exhibit 4.3 to the Current Report on Form 8-K (File No. 000-55418), filed August 22,2019).
4.9	Warrant to HB Sub Fund II LLC, dated as of August 21, 2019 (incorporated by reference to Exhibit 4.4 to the Current Report on Form 8-K (File No. 000-55418), filed August 22,2019).
4.10	Form of Warrant, dated as of September 30, 2019 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 000-55418), filed September 26, 2019).

Exhibit Number	Description of Exhibit
4.11*	Senior Note to HB Sub Fund II LLC, dated as of November 8, 2019.
10.1#	Offer Letter, dated as of July 3, 2017, by and between KushCo Holdings, Inc. and Jim McCormick (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed August 3, 2017).
10.2#	KushCo Holdings, Inc. 2016 Stock Incentive Plan, as amended (incorporated by reference to Exhibit 10.7 to the Quarterly Report on Form 10-Q (File No. 000-55418), filed April 15,2019).
10.3	Asset Purchase Agreement, dated as of September 21, 2018, by and among KushCo Holdings, Inc. and Smoke Cartel, Inc. (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed September 26,2018).
10.4	Lease, dated as of February 9, 2017, by and between KIM International Corporation and ZUREIT Holdings, Ltd. (incorporated by reference to Exhibit 10.13 to the Annual Report on Form 10-K (File No. 000-55418), file November 29,2018).
10.5	Lease, dated as of April 12, 2018, by and between KIM International Corporation and ZUREIT Holdings, Ltd. (incorporated by reference to Exhibit 10.14 to the Annual Report on Form 10-K (File No. 000-55418), file November 29,2018).
10.6#	Amended and Restated Offer Letter by and between KushCo Holdings, Inc. and Jason Vegotsky, dated as of November 21, 2018 (incorporated by reference to Exhibit 10.15 to the Annual Report on Form 10-K (File No. 000-55418), file November 29,2018).
10.7#	Offer Letter by and between KushCo Holdings, Inc. and Christopher Tedford, dated as of November 8, 2018 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed November 21, 2018).
10.8	Form of Securities Purchase Agreement, dated as of January 18, 2019, by and among KushCo Holdings, Inc. and the purchasers named therein (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed January 16, 2019).
10.9	Placement Agency Agreement, dated as of January 15, 2019, by and between KushCo Holdings, Inc. and Alliance Global Partners (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-55418), filed January 16, 2019).
10.10#	Severance Agreement, dated as of February 22, 2019, by and between KushCo Holdings, Inc. and Jim McCormick (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed February 28, 2019).
10.11#	Offer Letter, dated as of February 27, 2019, by and between KushCo Holdings, Inc. and Rodrigo de Oliveira (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed March 5, 2019).
10.13#	Offer Letter, dated as of February 27, 2019, by and between KushCo Holdings, Inc. and Jason Vegotsky (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-55418), filed March 5, 2019).
10.14#	Amendment to Offer Letter, dated as of February 27, 2019, by and between KushCo Holdings, Inc. and Christopher Tedford (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K (File No. 000-55418), filed March 5, 2019).
10.15	Securities Purchase Agreement, dated as of April 29, 2019, between KushCo Holdings, Inc. and HB Sub Fund II LLC (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed April 30, 2019).
10.16#	Amendment to Offer Letter by and between Rodrigo de Oliveira and KushCo Holdings, Inc., dated as of June 7, 2019 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed June 11, 2019).

Exhibit Number	Description of Exhibit
10.17	Financing Agreement, dated as of August 21, 2019, by and among Kim International Corporation and each of its parent and subsidiaries listed as a borrower, as Borrowers, each subsidiary of Borrowers listed as a guarantor, as Guarantors, the lenders from time to time a party thereto, as Lenders, and Monroe Capital Management Advisors, LLC, as Administrative Agent and Collateral Agent (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed August 22, 2019).
10.18	Subscription Agreement, dated as of August 21, 2019, by and among KushCo Holdings, Inc. and the subscribers listed therein (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-55418), filed August 22, 2019).
10.19	Exchange Agreement, dated as of August 21, 2019, by and among KushCo Holdings, Inc. and HB Sub Fund II LLC (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K (File No. 000-55418), filed August 22, 2019).
10.20	Form of Securities Purchase Agreement, dated as of September 26, 2019, by and among KushCo Holdings, Inc. and the purchasers named therein (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 000-55418), filed September 26, 2019).
10.21	Placement Agency Agreement, dated as of September 26, 2019, by and among KushCo Holdings, Inc., Jefferies LCC and A.G.P./Alliance Global Partners (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 000-55418), filed September 26, 2019).
10.22*	Second Exchange Agreement, dated as of November 8, 2019, by and between KushCo Holdings, Inc. and HB Sub Fund II LLC
10.23*	Limited Consent and First Amendment to Financing Agreement, dated as of November 8, 2019, by and among KushCo Holdings, Inc., certain of its subsidiaries and Monroe Capital Management Advisors, LLC
14.1	KushCo Holdings, Inc. Code of Business Conduct and Ethics (incorporated by reference to Exhibit 14.1 to the Current Report on Form 8-K (File No. 000-555418), filed March 13,2018).
18.1	Preferability Letter of RBSM LLP, dated November 28, 2018 (incorporated by reference to Exhibit 18.1 to the Annual Report on Form 10-K (File No. 000-55418), filed November 29, 2018).
21.1*	Subsidiaries of the Registrant
23.1*	Consent of Independent Registered Public Accounting Firm
23.2*	Consent of Independent Registered Public Accounting Firm
31.1*	Certification of principal executive officer pursuant to Rules 13a-15(e) and 15d-15(e), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of principal financial and accounting officer pursuant to Rules 13a-15(e) and 15d-15(e), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
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
32.2**	Certification of principal financial and accounting officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	XBRL Instance Document.
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	XBRL Taxonomy Extension Labels Linkbase Document.
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.

The foregoing descriptions of the Second Exchange Agreement, the Amended Senior Note and the Limited Consent and First Amendment to Financing Agreement are summaries only, do not purport to be complete and are qualified in their entirety by the full text of these documents, copies of which are attached as Exhibits 10.22, 10.23 and 10.24, respectively, and incorporated herein by reference.

* Filed herewith.

** This certification shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that section, nor shall it be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934.

Management contract or compensatory plan or arrangement.

† The schedules and exhibits to this agreement have been omitted. A copy of any omitted schedule or exhibit will be furnished to the SEC supplementally upon request.

Exhibit 4.1

DESCRIPTION OF SECURITIES

The summary of the general terms and provisions of the capital stock of KushCo Holdings, Inc. (the "***Company***") set forth below does not purport to be complete and is subject to and qualified by reference to the relevant provisions of the Company's Amended and Restated Articles of Incorporation (as amended, the " ***Articles of Incorporation***"), the Bylaws ("***Bylaws***," and together with the Articles of Incorporation, the "***Charter Documents***"), and the laws of the State of Nevada. Copies of the Charter Documents have been filed with the Securities and Exchange Commission.

Capital Stock

Our authorized capital stock consists of 265,000,000 shares of common stock, par value $0.001 per share ("***Common Stock***"), and 10,000,000 shares of preferred stock, par value $0.001 per share ("***Preferred Stock***").

Voting Rights

Each holder of Common Stock is entitled to one vote for each share of Common Stock held on all matters submitted to a vote of the stockholders, including the election of directors. Except as otherwise provided by law or our Charter Documents, all matters other than the election of directors submitted to the stockholders at any meeting shall be decided by the vote of the holders of a majority of the stock having voting power present in person or represented by proxy. Directors are elected by a plurality of the votes cast at the meeting. Our Charter Documents do not provide for cumulative voting rights. Because of this, the holders of a majority of the shares of Common Stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.

Dividends

Subject to preferences that may be applicable to any then outstanding Preferred Stock, the holders of our outstanding shares of Common Stock are entitled to receive dividends, if any, as may be declared by our board of directors at any regular or special meeting. At present, we have no plans to issue dividends.

Liquidation

In the event of our liquidation, dissolution or winding up, holders of Common Stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities, subject to the satisfaction of any liquidation preference granted to the holders of any outstanding shares of Preferred Stock.

Other Rights and Preferences

Holders of our Common Stock have no preemptive, conversion or subscription rights, and there are no redemption or sinking fund provisions applicable to our Common Stock. The rights, preferences and privileges of the holders of Common Stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of our Preferred Stock that we may designate and issue in the future.

Anti-Takeover Effects of Nevada Law and Our Charter Documents

Some provisions of Nevada law, our Charter Documents contain provisions that could make the following transactions more difficult: an acquisition of us by means of a tender offer; an acquisition of us by means of a proxy contest or otherwise; or the removal of our incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interests, including transactions which provide for payment of a premium over the market price for our shares.

These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of the increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

Undesignated Preferred Stock

The ability of our board of directors, without action by the stockholders, to issue up to 10,000,000 shares of undesignated Preferred Stock with voting or other rights or preferences as designated by our board of directors could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

Stockholder Meetings

Our Bylaws provide that a special meeting of stockholders may be called only by our president, the majority of the board of directors, or by the stockholders holding shares in the aggregate entitled to cast not less than a majority of the votes at any such meeting.

Stockholder Action by Written Consent

Our Bylaws allow for any action which may be taken at any annual or special meeting of the stockholders to be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Removal of Directors

Our Bylaws provide that any or all of our directors may be removed without cause if such removal is approved by the affirmative vote of a majority of the outstanding shares entitled to vote.

Stockholders Not Entitled to Cumulative Voting

Our Articles of Incorporation does not permit stockholders to cumulate their votes in the election of directors. Accordingly, the holders of a majority of the outstanding shares of our Common Stock entitled to vote in any election of directors can elect all of the directors standing for election, if they choose, other than any directors that holders of our Preferred Stock may be entitled to elect.

Nevada Business Combination Statutes

The "business combination" provisions of Sections 78.411 to 78.444, inclusive, of the Nevada Revised Statutes generally prohibit a Nevada corporation with at least 200 stockholders from engaging in various "combination" transactions with any interested stockholder for a period of two years after the date of the transaction in which the person became an interested stockholder, unless the transaction is approved by the board of directors prior to the date the interested stockholder obtained such status or the combination is approved by the board of directors and thereafter is approved at a meeting of the stockholders by the affirmative vote of stockholders representing at least 60% of the outstanding voting power held by disinterested stockholders, and extends beyond the expiration of the two-year period, unless:

- the combination was approved by the board of directors prior to the person becoming an interested stockholder or the transaction by which the person first became an interested stockholder was approved by the board of directors before the person became an interested stockholder or the combination is later approved by a majority of the voting power held by disinterested stockholders; or

- if the consideration to be paid by the interested stockholder is at least equal to the highest of: (a) the highest price per share paid by the interested stockholder within the two years immediately preceding the date of the announcement of the combination or in the transaction in which it became an interested stockholder, whichever is higher, (b) the market value per share of Common Stock on the date of announcement of the combination and the date the interested stockholder acquired the shares, whichever is higher, or (c) for holders of Preferred Stock, the highest liquidation value of the Preferred Stock, if it is higher.

A "combination" is generally defined to include mergers or consolidations or any sale, lease exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, with an "interested stockholder" having: (a) an aggregate market value equal to 5% or more of the aggregate market value of the assets of the corporation, (b) an aggregate market value equal to 5% or more of the aggregate market value of all outstanding shares of the corporation, (c) 10% or more of the earning power or net income of the corporation, and (d) certain other transactions with an interested stockholder or an affiliate or associate of an interested stockholder.

In general, an "interested stockholder" is a person who, together with affiliates and associates, owns (or within two years, did own) 10% or more of a corporation's voting stock. The statute could prohibit or delay mergers or other takeover or change in control attempts and, accordingly, may discourage attempts to acquire us even though such a transaction may offer our stockholders the opportunity to sell their stock at a price above the prevailing market price.

Nevada Control Share Acquisition Statutes

The "control share" provisions of Sections 78.378 to 78.3793, inclusive, of the Nevada Revised Statutes apply to "issuing corporations" that are Nevada corporations with at least 200 stockholders, including at least 100 stockholders of record who are Nevada residents, and that conduct business directly or indirectly in Nevada. The control share statute prohibits an acquirer, under certain circumstances, from voting its shares of a target corporation's stock after crossing certain ownership threshold percentages, unless the acquirer obtains approval of the target corporation's disinterested stockholders. The statute specifies three thresholds: one-fifth or more but less than one-third, one-third but less than a majority, and a majority or more, of the outstanding voting power. Generally, once an acquirer crosses one of the above thresholds, those shares in an offer or acquisition and acquired within 90 days thereof become "control shares" and such control shares are deprived of the right to vote until disinterested stockholders restore the right. These provisions also provide that if control shares are accorded full voting rights and the acquiring person has acquired a majority or more of all voting power, all other stockholders who do not vote in favor of authorizing voting rights to the control shares are entitled to demand payment for the fair value of their shares in accordance with statutory procedures established for dissenters' rights.

A corporation may elect to not be governed by, or "opt out" of, the control share provisions by making an election in its articles of incorporation or Bylaws, provided that the opt-out election must be in place on the 10th day following the date an acquiring person has acquired a controlling interest, that is, crossing any of the three thresholds described above. We have not opted out of the control share statutes, and will be subject to these statutes if we are an "issuing corporation" as defined in such statutes.

The effect of the Nevada control share statutes is that the acquiring person, and those acting in association with the acquiring person, will obtain only such voting rights in the control shares as are conferred by a resolution of the stockholders at an annual or special meeting. The Nevada control share law, if applicable, could have the effect of discouraging takeovers of the Company.

Amendment of Charter Provisions

The amendment of any of the above provisions would require approval by holders of at least a majority of the total voting power of all of our outstanding voting stock.

The provisions of Nevada law, our Charter Documents could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our Common Stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in the composition of our board and management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID"). PURSUANT TO TREASURY REGULATION §1.1275-3(b)(1), THE CHIEF FINANCIAL OFFICER, A REPRESENTATIVE OF THE COMPANY HEREOF WILL, BEGINNING TEN DAYS AFTER THE ISSUANCE DATE OF THIS NOTE, PROMPTLY MAKE AVAILABLE TO THE HOLDER UPON REQUEST THE INFORMATION DESCRIBED IN TREASURY REGULATION §1.1275-3(b)(1)(i). THE CHIEF FINANCIAL OFFICER MAY BE REACHED AT THE FOLLOWING ADDRESS: 11958 MONARCH STREET, GARDEN GROVE, CA 92841.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBJECT TO THAT CERTAIN CONSENT AND INTERCREDITOR AGREEMENT (AS AMENDED, RESTATED, AMENDED AND RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "INTERCREDITOR AGREEMENT"), DATED AS OF AUGUST 21, 2019 BY AND AMONG MONROE CAPITAL MANAGEMENT ADVISORS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND EACH OF THE INVESTORS LISTED ON THE SCHEDULE OF INVESTORS ATTACHED THERETO, AND ACKNOWLEDGED BY THE COMPANY AND CERTAIN OF ITS SUBSIDIARIES PARTY THERETO; AND THE HOLDER (AS DEFINED BELOW), BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE INTERCREDITOR AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT AND THIS NOTE, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

KushCo Holdings, Inc.

Senior Note

Issuance Date: April 30, 2019
First Exchange Date: August 21, 2019
Second Exchange Date: November 8, 2019

Original Principal Amount: U.S. $23,962,500

FOR VALUE RECEIVED, KushCo Holdings, Inc., a Nevada corporation (the "**Company**"), hereby promises to pay to the order of HB Sub Fund II LLC or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "**Principal**") when due, whether upon the Maturity Date or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and, upon any Event of Default that is continuing, to pay interest ("**Interest**") on any outstanding Principal at the Default Rate (as defined below) from the date set forth above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon the Maturity Date or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Note (including all Senior Notes issued in exchange, transfer or replacement hereof, this "**Note**") is the only Senior Note issued pursuant to that certain Second Exchange Agreement, dated November 8, 2019 (the "**Second Exchange Date**"), by and between the Company and the Holder (the "**Second Exchange Agreement**"), in exchange, in part, for that certain Senior Note (the "**First Exchange Note**"), with an initial aggregate principal amount of $21,300,000, issued pursuant to that certain Exchange Agreement, dated August 21, 2019 (the "**First Exchange Date**"), by and between the Company and the Holder (the "**First Exchange Agreement**"), which First Exchange Note was issued in exchange, in part, for that certain Senior Note, with an initial aggregate principal amount of $21,300,000 (the "**Original Note**") issued pursuant to that certain Securities Purchase Agreement, dated as of April 30, 2019 (the "**Subscription Date**"), by and among the Company and the investors (the "**Buyers**") referred to therein, as amended from time to time (collectively, the "**Notes**", and such other Senior Notes issued pursuant to the Securities Purchase Agreement or otherwise in exchange, transfer or replacement therefor, if any, collectively, the "**Other Notes**"). Certain capitalized terms used herein are defined in Section 24.

1. PAYMENTS OF PRINCIPAL . On the Maturity Date, the Company shall pay to the Holder an amount in cash representing 120% of the sum of (a) the product of (i) the Applicable Percentage and (ii) $22.5 million, and (B) all accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 17(c)) on the Principal then outstanding hereunder and Interest thereon. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any.

2. INTEREST; INTEREST RATE.

(a) This Note was issued with original issue discount as described in the Securities Purchase Agreement. This Note shall not bear Interest except upon the occurrence (and during the continuance) of an Event of Default (as defined below), in which case this Note shall bear interest at a rate of eighteen percent (18.0%) per annum (the "**Default Rate**"). In the event that such Event of Default is subsequently cured or waived in accordance with the terms of this Note (and no other Event of Default then exists (including, without limitation, for the Company's failure to pay such Interest at the Default Rate on the applicable Interest Date)), Interest hereunder shall cease to accrue as of the calendar day immediately following the date of such cure or waiver; provided that the Interest as calculated and unpaid during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure or waiver of such Event of Default. To the extent any accrued and unpaid Interest remains outstanding on the First Exchange Note as of the Second Exchange Date, this Note shall as of the Second Exchange Date have an identical amount of accrued and unpaid Interest outstanding hereunder; provided, however, Holder hereby acknowledges and agrees that, to the actual knowledge of the Holder as of the Second Exchange Date, no Interest has accrued on the First Exchange Note as of the Second Exchange Date.

(b) Interest on this Note shall (i) commence accruing upon the occurrence of an Event of Default, (ii) be computed on the basis of a 360-day year and twelve 30-day months, (iii) be payable in arrears on each Interest Date in accordance with the terms of this Note and (iv) if unpaid on an Interest Date, shall compound on such Interest Date. Interest shall be paid on such Interest Date in cash. Prior to the payment of Interest on an Interest Date, Interest on this Note shall be payable upon any redemption in accordance with Section 7 or any required payment upon any Bankruptcy Event of Default (as defined below).

3. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (iii), (iv) and (v) shall constitute a "**Bankruptcy Event of Default**":

(i) the Company's or any Subsidiary's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's or any Subsidiary's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least three (3) Trading Days;

(ii) the redemption of, or acceleration prior to maturity of, at least (x) $2,000,000 of Indebtedness (as defined in the Securities Purchase Agreement) individually or (y) $5,000,000 of Indebtedness, in the aggregate, in either case, of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(iii) bankruptcy, insolvency, reorganization, moratorium or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within forty-five (45) days of their initiation;

(iv) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(v) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of forty-five (45) consecutive days;

(vi) a final judgment or judgments for the payment of money in excess of either (x) $2,000,000, individually, or (y) $5,000,000, in the aggregate, in either case, are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the amounts set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(vii) the Company and/or any Subsidiary, individually or in the aggregate, either fails to pay, when due, or within any applicable waiver or grace period, any payment with respect to any Indebtedness in excess of (x) $2,000,000, individually, or (y) $5,000,00, in the aggregate, in either case, due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Company and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP);

(viii) other than as specifically set forth in another clause of this Section 3(a), the Company or any Subsidiary breaches any representation, warranty, covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of ten (10) consecutive Trading Days;

(ix) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of clauses (a), (b), (d), (e) or (n) of Section 9 of this Note;

(x) any Change of Control occurs;

(xi) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within one (1) Business Day deliver written notice thereof via facsimile and overnight courier (an "**Event of Default Notice**") to the Holder. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default (such earlier date, the "**Event of Default Right Commencement Date**") and ending (such ending date, the "**Event of Default Right Expiration Date**", and each such period, an "**Event of Default Redemption Right Period**") on the twentieth (20^{th}) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder's receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of Default Right Expiration Date) all or any portion of this Note by delivering written notice thereof (the "**Event of Default Redemption Notice**") to the Company, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 3(b) shall be redeemed by the Company at a price in cash equal to the product of (i) the Outstanding Amount multiplied by (ii) the Redemption Premium (the "**Event of Default Redemption Price**"). Redemptions required by this Section 3(b) shall be made in accordance with the provisions of Section 7. To the extent redemptions required by this Section 3(b) are deemed or determined by a court of competent jurisdiction to be prepayments of the Note by the Company, such redemptions shall be deemed to be voluntary prepayments.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash equal to the Event of Default Redemption Price, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other Person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

4. RIGHTS UPON FUNDAMENTAL TRANSACTION. The Company shall not enter into or be party to a Fundamental Transaction unless the Successor Entity assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 4 pursuant to written agreements in form and substance satisfactory to the Required Holders (as defined in the Securities Purchase Agreement) and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes, including, without limitation, having a principal amount and interest rate equal to the principal amounts and the interest rates of the Notes held by such holder and having similar ranking to the Notes, and satisfactory to the Required Holders. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note with the same effect as if such Successor Entity had been named as the Company herein. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions.

5. REDEMPTIONS AT THE COMPANY'S ELECTION

(a) Company Optional Redemption. At any time after the Issuance Date, so long as no Event of Default has occurred or is continuing, the Company shall have the right to redeem all, or any portion, of the Outstanding Amount then remaining under this Note (the "**Company Optional Redemption Amount**") on the Company Optional Redemption Date (each as defined below) (a "**Company Optional Redemption**"). The portion of this Note subject to redemption pursuant to this Section 5(a) shall be redeemed by the Company in cash at a price (the "**Company Optional Redemption Price**") equal to the applicable Company Optional Redemption Percentage of the sum of (A) the product of (x) the Applicable Percentage and (y) $22.5 million, (B) accrued and unpaid Interest with respect to such portion of the Principal of this Note to be redeemed in such Company Optional Redemption and (C) accrued and unpaid Late Charges with respect to such Principal and Interest. The Company may exercise its right to require redemption under this Section 5(a) by delivering a written notice thereof by facsimile or electronic mail and overnight courier to all, but not less than all, of the holders of Notes (the "**Company Optional Redemption Notice**" and the date all of the holders of Notes received such notice is referred to as the "**Company Optional Redemption Notice Date**"). The Company may deliver no more than three (3) Company Optional Redemption Notices hereunder and such Company Optional Redemption Notices shall be irrevocable. Each Company Optional Redemption Notice shall (x) state the date on which the Company Optional Redemption shall occur (the "**Company Optional Redemption Date**") which date shall not be less than five (5) Trading Days nor more than twenty (20) Trading Days following the Company Optional Redemption Notice Date, (y) certify that no Event of Default has occurred or is continuing and (z) state the Company Optional Redemption Price of the Notes which is being redeemed in such Company Optional Redemption from the Holder and all of the other holders of the Notes pursuant to this Section 5(a) (and analogous provisions under the Other Notes) on the Company Optional Redemption Date (including, without limitation, the amount of Principal and, if any, Interest and/or, Late Charges, and any calculations with respect thereto). Notwithstanding anything herein to the contrary, (i) if no Event of Default has occurred as of the Company Optional Redemption Notice Date but an Event of Default occurs at any time prior to the Company Optional Redemption Date, (A) the Company shall provide the Holder a subsequent notice to that effect and (B) unless the Holder waives the Event of Default, the Company Optional Redemption shall be cancelled and the applicable Company Optional Redemption Notice shall be null and void and not counted towards the maximum allowable notices as provided above. In the event of the Company's redemption of any portion of this Note under this Section 5(a), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 5(a) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

(b) Pro Rata Redemption Requirement. If the Company elects to cause a Company Optional Redemption of this Note pursuant to Section 5(a), then it must simultaneously take the same action with respect to all of the Other Notes.

6. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement) or its Bylaws (as defined in the Securities Purchase Agreement), or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out the provisions of this Note and take such actions as may be required to protect the rights of the Holder of this Note.

7. REDEMPTIONS.

(a) Mechanics. The Company shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice. The Company shall deliver the applicable Company Optional Redemption Price to the Holder in cash on the applicable Company Optional Redemption Date. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Outstanding Amount of this Note, at the request of the Holder, and upon surrender of this Note to the Company by the Holder, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Outstanding Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Outstanding Amount, and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 12(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 7, if applicable) minus (2) the Principal portion of the Outstanding Amount submitted for redemption. The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Outstanding Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 3(c) or Section 4 (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to the Holder by facsimile or electronic mail a copy of such notice. If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

8. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law and as expressly provided in this Note.

9. COVENANTS. Until all of the Notes have been prepaid, redeemed or otherwise satisfied in accordance with their terms, except as may be approved in advance in writing, by the Required Holders:

(a) Rank. All payments due under this Note (a) shall rank *pari passu* with all Other Notes and (b) shall be senior to all other Indebtedness of the Company and its Subsidiaries (other than Permitted Senior Indebtedness and other Permitted Indebtedness secured by a Permitted Lien).

(b) Incurrence of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than (i) the Indebtedness evidenced by this Note and the Other Notes and (ii) other Permitted Indebtedness).

(c) Existence of Liens. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, "**Liens**") other than Permitted Liens.

(d) Restricted Payments. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other than the Notes or Permitted Senior Indebtedness) whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness if at the time such payment is due or is otherwise made or, after giving effect to such payment, (i) an event constituting an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing or (iii) at any time the Company is (or is reasonably likely to become in any 91 day period, in the reasonable judgment of the Holder) Insolvent (as defined in the Securities Purchase Agreement).

(e) Restriction on Redemption and Cash Dividends. Except as permitted under Section 4(l) of the Securities Purchase Agreement, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or cash distribution on any of its capital stock.

(f) Restriction on Transfer of Assets. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, sub licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business consistent with its past practice or required by the terms of the Intercreditor Agreement, (ii) sales of inventory and product in the ordinary course of business, (iii) sales, leases, licenses, sub-licenses assignments, transfers, conveyances and other dispositions of assets or rights by the Company and its Subsidiaries that are not both material to and necessary for the Company's primary lines of business, or (iv) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of assets or rights by the Company and its Subsidiaries to joint ventures, *provided* that (x) with respect to any joint venture, other than the Equipment Financing JV (as defined in the Securities Purchase Agreement), the Company beneficially owns at least 50% of the equity interests in each such joint venture and (y) the fair market value of the assets or rights being conveyed to all such joint ventures (including the Equipment Financing JV) does not exceed, in the aggregate, $10,000,000; *provided*, *further that*, in the case of assets being conveyed, directly or indirectly, to the Equipment Financing JV or any of its direct or indirect subsidiaries or affiliates, such assets do not exceed in the aggregate $5,000,000.

(g) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of its Subsidiaries to mature or accelerate prior to the 91st calendar day after the Maturity Date (other than Permitted Purchase Money Indebtedness in an aggregate amount not to exceed $100,000 and capital leases consisting of Permitted Indebtedness in an aggregate amount not to exceed $100,000).

(h) Change in Nature of Business. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the Subscription Date or any business related or incidental thereto. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, modify its or their corporate structure or purpose in any manner that is adverse to the Holder.

(i) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the nature of the business conducted by it makes such qualification necessary, except in each case where the failure to be so qualified could not be reasonably expected to have a Material Adverse Effect.

(j) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or material to the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except in each case where the failure to maintain could not be reasonably expected to have a Material Adverse Effect.

(k) Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take all action necessary or advisable to maintain all of the Intellectual Property Rights (as defined in the Securities Purchase Agreement) of the Company and/or any of its Subsidiaries that are necessary to the conduct of its business as now conducted, except in each case where the failure to maintain could not reasonably be expected to have a Material Adverse Effect.

(l) Maintenance of Insurance. The Company shall maintain, and cause each of its Subsidiaries to maintain, insurance with insurance companies or associations with recognized financial responsibility in such amounts and covering such risks, consistent with past practices, as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged.

(m) Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except (i) in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof; (ii) transactions between the Company and/or any of its Subsidiaries, on the one hand, and the Company and/or any other Subsidiary, on the other hand; (iii) sales of equity interests of the Parent to Affiliates of the Parent and the granting of registration and other customary rights in connection therewith, and (iv) reasonable and customary director and officer compensation (including bonuses and stock option programs), benefits and indemnification arrangements, in each case approved by the Board of Directors (or a committee thereof) of the Company and/or such Subsidiary, as applicable; provided, that nothing in this Note shall in any way limit or restrict the Company's ability to provide services to the Equipment Financing JV and/or any of its subsidiaries, so long as such services are provided on arm's length terms and for fair value, as determined in the reasonable business judgment of the Company.

(n) Restricted Issuances. The Company shall not, directly or indirectly, issue (i) any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(o) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, and has provided notice to the Company of such belief, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note of such breach. In connection with such investigation, the Independent Investigator may, during normal business hours and upon reasonable notice, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its legal advisors and accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

10. AMENDING THE TERMS OF THIS NOTE. The prior written consent of the Holder shall be required for any change, waiver or amendment to this Note.

11. TRANSFER. This Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 2(g) of the Securities Purchase Agreement.

12. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 12(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 12(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that following redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 12(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 12(a) or Section 12(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have a second exchange date, as indicated on the face of such new Note, which is the same as the Second Exchange Date of this Note, (v) shall have a first exchange date, as indicated on the face of such new Note, which is the same as the First Exchange Date of this Note, (vi) shall have the same rights and conditions as this Note, and (vii) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

13. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, redemptions and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. Subject to applicable restrictions pertaining to confidentiality and applicable law, and executed of a customary non-disclosure agreement by the Holder, the Company shall provide all information and documentation to the Holder that is reasonably requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note.

14. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note (excluding, for such purpose, any legal proceeding or action to the extent no payment default or other Event of Default has occurred hereunder) or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

15. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

16. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

17. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Note shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Note, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18.0%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

18. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

19. WAIVER OF NOTICE. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Purchase Agreement.

20. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, enforcement, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

21. JUDGMENT CURRENCY.

(a) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Note or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 21 referred to as the "**Judgment Currency**") an amount due in U.S. dollars under this Note, the conversion shall be made at the Exchange Rate prevailing on the Business Day immediately preceding:

(i) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(ii) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 21(a)(ii) being hereinafter referred to as the "**Judgment Conversion Date**").

(b) If in the case of any proceeding in the court of any jurisdiction referred to in Section 21(a)(ii) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(c) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Note.

22. SEVERABILITY. If any provision of this Note is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Note so long as this Note as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

23. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the Securities Purchase Agreement, nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

24. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

(a) "**1934 Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(b) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(c) "**Applicable Percentage**" means, as applicable: (i) with respect to any given Company Optional Redemption, the quotient of (x) the aggregate Principal of this Note to be redeemed as of the Company Optional Redemption Date, divided by (y) the aggregate Principal of this Note as of the Second Exchange Date or (ii) with respect to the aggregate amount of Principal required to be paid hereunder at the Maturity Date, the quotient of (x) the aggregate Principal of this Note outstanding at the Maturity Date, divided by (y) the aggregate Principal of this Note as of the Second Exchange Date.

(d) "**Bankruptcy Proceeding**" means, with respect to any Person, (i) the occurrence of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of such Person in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Person or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by such Person in furtherance of any such action or the taking of any action by any Person to commence a UCC foreclosure sale or any other similar action under federal, state or foreign law or (ii) the entry by a court of (A) a decree, order, judgment or other similar document in respect of such Person of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (B) a decree, order, judgment or other similar document adjudging such Person as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of such Person under any applicable federal, state or foreign law or (C) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Person or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days.

(e) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

(f) "**Change of Control**" means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly-owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the shares of Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

(g) "**Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Notes pursuant to the terms of the Securities Purchase Agreement.

(h) "**Company Optional Redemption Percentage**" means, for any given Company Optional Redemption Date, the applicable percentage opposite the period (each, a "**Company Optional Redemption Period**") in which such Company Optional Redemption Date occurs in the table below:

Company Optional Redemption Period	Company Optional Redemption Percentage
Prior to July 30, 2019	106.5%
From July 30, 2019 through, and including, October 30, 2019	112%
From October 30, 2019 through, and including, February 28, 2020	115%
From February 28, 2020 through, and including, the Maturity Date	120%

(i) "**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X)(other than the Equipment Financing JV or one or more of the Equipment Financing JV's direct or indirect subsidiaries) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Note calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company or (C) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(j) "**GAAP**" means United States generally accepted accounting principles, consistently applied.

(k) "**Group**" means a "group" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(l) "**Indebtedness**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(m) "**Interest Date**" means, with respect to any given calendar month, the first Trading Day of such calendar month.

(n) "**Maturity Date**" shall mean April 29, 2021; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or an Event of Default Redemption Notice is delivered prior to the Maturity Date.

(o) "**Outstanding Amount**" means the sum of (A) the portion of the Principal to be redeemed or otherwise with respect to which this determination is being made, (B) accrued and unpaid Interest with respect to such Principal and (C) accrued and unpaid Late Charges with respect to such Principal and Interest.

(p) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market (as defined in the Securities Purchase Agreement), or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(q) "**Permitted Indebtedness**" means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness set forth on Schedule 3 to the First Exchange Agreement, as in effect as of the First Exchange Date (including, without limitation, without any increase in principal, shortening of maturity date or other amendment, waiver or modification thereof adverse to the Holder in any respect), (iii) unsecured Indebtedness incurred by the Company that is made expressly subordinate in right of payment to the Indebtedness evidenced by this Note, both (x) as reflected in a written subordination and intercreditor agreement, by and among the holders of Notes and such Indebtedness, acceptable to the Holder and approved by the Holder in writing, and (y) which do not mature prior to the 91st calendar day after the Maturity Date, (iv) Indebtedness secured by Permitted Liens or unsecured but as described in clauses (iv) and (v) of the definition of Permitted Liens ("**Permitted Purchase Money Indebtedness**"); (v) Permitted Senior Indebtedness; (vi) any of the following Indebtedness, in an aggregate amount not to exceed $4,750,000: (A) Indebtedness permitted under clause (d) of the definition of "Permitted Indebtedness" under the Senior Secured Financing Agreement as in effect on the First Exchange Date, relating to "Permitted Intercompany Investments" (as defined therein as of the First Exchange Date); (B) Indebtedness permitted under clause (h) of the definition of "Permitted Indebtedness" under the Senior Secured Financing Agreement as in effect on the First Exchange Date, relating to, among other things, cash management obligations and credit cards; (C) Indebtedness permitted under clause (j) of the definition of "Permitted Indebtedness" under the Senior Secured Financing Agreement as in effect on the First Exchange Date, relating to the letters of credit issued in the ordinary course of business; and (D) Indebtedness permitted under clause (r) of the definition of "Permitted Indebtedness" under the Senior Secured Financing Agreement as in effect on the First Exchange Date, relating to other unsecured Indebtedness; (vii) Indebtedness, in an aggregate amount not to exceed $3,000,000, permitted under subsection (l) of the definition of "Permitted Indebtedness" under the Senior Secured Financing Agreement as in effect on the First Exchange Date, relating to previously existing Indebtedness of a Person whose assets or equity interests are acquired by the Company and/or any of its subsidiaries.

(r) "**Permitted Liens**" means (i) any Lien for taxes not yet overdue or delinquent or that is being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law, (iii) any Lien created by operation of law, such as materialmen's liens, mechanics' liens, landlords' liens, and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens (A) upon or in any equipment acquired or held by the Company or any of its Subsidiaries to secure the purchase price of such equipment or Indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, or (B) existing on such equipment at the time of its acquisition, provided that (x) the Lien is confined solely to the equipment so acquired and improvements thereon, and (y) the proceeds of such equipment, in either case, with respect to Indebtedness in an aggregate amount not to exceed $3,000,000 and (z) the maturity date of such Indebtedness is at least ninety-one (91) calendar days after the Maturity Date, (v) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clause (iv) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase, (vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods, (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 3(a)(vi), (viii) pledges or deposits securing obligations under worker's compensation, unemployment insurance, social security or public liability laws or similar legislation; (ix) pledges or deposits securing bids, tenders, contracts (other than contracts for the payment of money) or leases made in the ordinary course of business; (x) deposits securing public or statutory obligations; (xi) deposits of money securing, or in lieu of, surety, appeal or customs bonds in proceedings; (xii) zoning restrictions, easements, licenses, or other restrictions on the use of real property or other minor irregularities in title (including leasehold title) thereto, so long as the same do not materially impair the use, value, or marketability of such real estate; (xiii) Liens securing the Permitted Senior Indebtedness; (xiv) the California franchise tax Lien with respect to KIM International Corporation in the amount of $2,646.96; (xv) Liens on cash or cash equivalents securing reimbursement obligations under letters of credit permitted by clause (vi)(C) of the definition of Permitted Indebtedness in an aggregate amount not to exceed 105% of the amount of all such letters of credit outstanding at such time; (xvi) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed $250,000; (xvii) Liens solely on any cash earnest money deposits made in connection with any letter of intent or purchase agreement with respect to an acquisition; and (xviii) non-exclusive licenses of intellectual property rights in the ordinary course of business.

(s) "**Permitted Senior Indebtedness**" means principal of (and premium, if any), interest on, and all fees and other amounts (including, without limitation, any reasonable out-of-pocket costs, enforcement expenses (including reasonable out-of-pocket legal fees and disbursements), collateral protection expenses and other reimbursement or indemnity obligations relating thereto) payable by Company and/or its Subsidiaries under or in connection with the Senior Secured Financing Agreement (including any refinancing or replacement thereof, collectively, the "**Current Facility**"); provided, however, that (i) the aggregate outstanding principal amount of the Current Facility shall not at any time exceed $35 million, (ii) the sum of outstanding principal and available borrowings under the Current Facility, in the aggregate, for any given time shall not exceed the sum of (A) 90% of the aggregate amount of all accounts receivable of the Company and its Subsidiaries then outstanding and (B) 90% of the value of inventory of the Company and its Subsidiaries as of such given time, in each case as determined in accordance with GAAP, consistently applied in accordance with past practices; (iii) margins applicable to the interest rates with respect to the Current Facility shall not be increased by more than 275 basis points from the interest rate margins as set forth in the Senior Secured Financing Agreement as in effect on the First Exchange Date, except in connection with the imposition of a default rate of interest in accordance with the terms of Senior Secured Financing Agreement as of the First Exchange Date; (iv) the Unused Line Fee (as defined in the Senior Secured Financing Agreement as of the First Exchange Date) shall not be increased by more than 50 basis points in excess of the rate as set forth in the Senior Secured Financing Agreement as in effect on the First Exchange Date; (v) recurring fees (including any loan servicing fee) with respect to the Current Facility shall not be increased by more than $150,000 in the aggregate for any year in excess of the amounts as set forth in the Senior Secured Financing Agreement as in effect on the First Exchange Date (but excluding the Unused Line Fee (as defined in the Senior Secured Financing Agreement as of the First Exchange Date); (vi) any one-time amendment, consent or waiver fee shall not exceed $150,000 for any amendment or consent and, in the case of any waiver, $150,000 for each default or event of default being waived (and any such fees, in the aggregate, together with any other fees pursuant to clause (v) above, shall not exceed $1,000,000 in any twelve calendar month period); (vii) no such Indebtedness is convertible or exchangeable, as applicable, into any securities of the Company or any of its Subsidiaries (and no securities of the Company or any of its Subsidiaries have been issued (or are required to be issued pursuant to any agreement) to any Person in connection therewith), except that the Company may, in its sole discretion, issue warrants to purchase any class or series of its capital stock in connection with the issuance of such Indebtedness provided that the Company concurrently issues warrants to the Holder on the same terms, and with the same proportion of aggregate exercise price of such warrants to the aggregate original principal amount, as provided in the Subsequent Placement; and (viii) the maturity date of the Current Facility shall not be prior to the 91st calendar day after the Maturity Date.

(t) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or and any Governmental Entity (as defined in the Securities Purchase Agreement) or any department or agency thereof.

(u) "**Prime Rate**" means the "prime rate" which from time to time published in the "Money Rates" column of*The Wall Street Journal* (Eastern Edition, New York Metro); provided, however, if the Money Rates column of *The Wall Street Journal* (Eastern Edition, New York Metro) ceases to be published or otherwise does not designate a "prime rate" as of a Business Day, Holder has the right to obtain such information from a similar business publication of its selection.

(v) "**Redemption Notices**" means, collectively, the Event of Default Redemption Notices and the Company Optional Redemption Notices, and each of the foregoing, individually, a "**Redemption Notice**."

(w) "**Redemption Premium**" means 135%.

(x) "**Redemption Prices**" means, collectively, Event of Default Redemption Prices, and the Company Optional Redemption Prices, and each of the foregoing, individually, a "**Redemption Price**."

(y) "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended from time to time.

(z) "**Senior Secured Financing Agreement**" means that certain Financing Agreement, dated August 21, 2019 (as amended, supplemented or otherwise modified from time to time), by and among the Company, each subsidiary of the Company party thereto, the lenders from time to time party hereto, Monroe Capital Management Advisors, LLC, a Delaware limited liability company ("**Monroe**"), as collateral agent for the Lenders, and Monroe, as administrative agent for the Lenders.

(aa) "**Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(bb) "**Subscription Date**" means April 30, 2019.

(cc) "**Subsidiaries**" shall have the meaning as set forth in the Securities Purchase Agreement.

(dd) "**Successor Entity**" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(ee) "**Trading Day**" means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market (as defined in the Securities Purchase Agreement), or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

25. DISCLOSURE. At any time from and after the Issuance Date, upon receipt or delivery by the Company of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries. If the Company or any of its Subsidiaries provides material non-public information to the Holder that is not simultaneously filed in a Current Report on Form 8-K and the Holder has not agreed to receive such material non-public information, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality to the Company, any of its Subsidiaries or any of their respective officers, directors, employees, Affiliates or agents with respect to, or a duty to any of the foregoing not to trade on the basis of, such material non-public information. Nothing contained in this Section 25 shall limit any obligations of the Company, or any rights of the Holder, under the Securities Purchase Agreement.

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Second Exchange Date set out above.

KUSHCO HOLDINGS, INC.

By: /s/ Nicholas Kovacevich
Name: Nicholas Kovacevich
Title: Chairman and Chief Executive Officer

Exhibit 10.22

EXECUTION COPY

SECOND EXCHANGE AGREEMENT

This Second Exchange Agreement (the "**Agreement**") is entered into as of the 8th day of November, 2019, by and among KushCo Holdings, Inc., a Nevada corporation with offices located at 6261 Katella Avenue, Suite 250, Cypress, CA 90630 (the " **Company**") and the investor signatory hereto (the "**Holder**"), with reference to the following facts:

A. Prior to the date hereof, pursuant to that Securities Purchase Agreement, dated as of April 29, 2019, by and between the Company and the investors party thereto (as the same has been amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the "**Securities Purchase Agreement**"), the Company issued a senior note (as the same has been amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the "**Original Note**" and together with the Securities Purchase Agreement, the "**Existing Note Documents**") to the Holder, as the initial holder. Capitalized terms used but not otherwise defined herein shall have the meanings as set forth in the Securities Purchase Agreement (as amended hereby) or, as the context may require, the Original Note.

B. Prior to the date hereof, pursuant to that certain Exchange Agreement, dated August 21, 2019 (the "**First Exchange Agreement**"), the Company exchanged the Original Note for a new senior note (the "**Existing Note**") and a warrant to purchase Common Stock of the Company (the "**Existing Warrant**").

C. As of the date of this Agreement, the Holder is the holder of the Existing Note issued under the First Exchange Agreement and has not assigned, transferred or exchanged the Existing Note.

D. The Company and the Holder desire to amend and waive certain provisions of the Existing Note Documents and exchange (the "**Exchange**" or the "**Transaction**") the Existing Note, on the basis and subject to the terms and conditions set forth in this Agreement, for a new senior note in such aggregate principal amount as set forth on the signature page of the Holder attached hereto, in the form attached hereto as **Exhibit A** (the "**New Note**").

E. The New Note and this Agreement and such other documents and certificates related thereto are collectively referred to herein as the "**Exchange Documents**".

F. The Exchange is being made in reliance upon the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1933, as amended (the "**Securities Act**").

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. **Exchange**. On the Closing Date (as defined below), subject to the terms and conditions of this Agreement, pursuant to Section 3(a)(9) of the Securities Act, the Holder shall convey, assign and transfer the Existing Note to the Company in exchange for which the Company shall issue the New Note to the Holder. On the Closing Date, in exchange for the Existing Note, the Company shall deliver or cause to be delivered to the Holder (or its designee) the New Note at the address for delivery set forth on the signature page of the Holder attached hereto. Immediately following the delivery of the New Note to the Holder (or its designee), the Holder shall relinquish all rights, title and interest in the Existing Note (including any claims the Holder may have against the Company related thereto) and assign the same to the Company, and the Existing Note shall be deemed canceled.

2. **Ratifications; Incorporation of Terms under Transaction Documents**.

(a) Ratifications. Except as otherwise expressly provided herein, the Securities Purchase Agreement and each other Transaction Document, is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the date hereof: (i) all references in the Securities Purchase Agreement to "this Agreement", "hereto", "hereof", "hereunder" or words of like import referring to the Securities Purchase Agreement shall mean the Securities Purchase Agreement as amended by this Agreement, and (ii) all references in the other Transaction Documents to the "Securities Purchase Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Securities Purchase Agreement shall mean the Securities Purchase Agreement as amended by this Agreement.

(b) Amendments and Incorporation of Terms under Transaction Documents. Effective as of the date hereof, the Securities Purchase Agreement and each of the other Transaction Documents are hereby amended as follows (and any such agreements, covenants and related provisions therein shall be deemed incorporated by reference herein, *mutatis mutandis*, as amended as such):

(i) The defined term "Notes" is hereby amended to mean the New Note (as defined herein).

(ii) The defined term "Transaction Documents" is hereby amended to include this Agreement and the other Exchange Documents.

(c) Amendment of First Exchange Agreement; Acknowledgement. Effective as of the Closing Date, Section 17 of the First Exchange Agreement is hereby amended to replace "New Note" with New Note (as defined herein). The Company hereby acknowledges and agrees that, after giving effect to the foregoing amendment, the MFN Termination Date (as defined in the First Exchange Agreement) shall not occur until such dates as no New Note (as defined herein) remains outstanding.

3. [Intentionally Omitted]

4. **Company Representations and Warranties.** As of the date hereof and as of the Closing Date (as defined below):

4.1. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which the character of the properties owned or leased by it or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement, " **Material Adverse Effect**" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company and its Subsidiaries, taken as a whole, (ii) the transactions contemplated hereby or in any of the other Exchange Documents or any other agreements or instruments to be entered into in connection herewith or therewith or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Exchange Documents (as defined below). Other than the Persons (as defined below) set forth on Schedule 4.1, the Company has no Subsidiaries.

4.2. Authorization and Binding Obligation. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement, the New Note and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by the Exchange Documents and to consummate the Transaction (including, without limitation, the issuance of the New Note in accordance with the terms hereof and thereof). As of the Closing Date, the execution and delivery of the Exchange Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the New Note will have been duly authorized by the Company's Board of Directors (or a duly authorized committee thereof) and no further filing, consent, or authorization will be required by the Company, its Board of Directors or its shareholders (other than such filings as may be required by any federal or state securities laws, rules or regulations). This Agreement has been and, as of the Closing Date, the other Exchange Documents to which the Company is a party will have been, duly executed and delivered by the Company, and constitute or will constitute, as applicable, the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities laws.

4.3. No Conflict. The execution, delivery and performance of the Exchange Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the New Note) will not (i) result in a violation of the Articles of Incorporation (as defined below) or any other organizational documents of the Company or any of its Subsidiaries, any capital stock of the Company or any of its Subsidiaries or Bylaws (as defined below) of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party and the receipt by the Company of the Required Consents (as defined below), or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws and regulations and the rules and regulations of the OTCQX (the "**Principal Market**") and including all applicable federal laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected except, in the case of clause (ii) or (iii) above, to the extent such violations that would not reasonably be expected to have a Material Adverse Effect.

4.4. No Consents. Except as set forth on Schedule 4.4 (the "**Required Consents**"), neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than such filings as may be required by any federal or state securities laws, rules or regulations), any Governmental Entity or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Exchange Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the Closing Date, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Exchange Documents.

4.5. Securities Law Exemptions. Assuming the accuracy of the representations and warranties of the Holder contained herein, the offer and issuance by the Company of the New Note is exempt from registration under the Securities Act pursuant to the exemption provided by Section 3(a)(9) thereof.

4.6. Status of Existing Note; Issuance of New Note.

(a) The Company has no knowledge that the Existing Note is subject to dispute and to the knowledge of the Company there is no action based on the Existing Note that is currently pending in any court or other legal venue and to the knowledge of the Company no judgments based upon the Existing Note have been previously entered in any legal proceeding. The Company has not received any written notice from the Holder or any other person challenging or disputing the Existing Note, or any portion thereof, and prior to the Exchange, the Company is unconditionally obligated to pay the entire aggregate principal amount outstanding under the Existing Note (and any accrued and unpaid interest thereunder) without defense, counterclaim or offset. Upon the Exchange, the Company is unconditionally obligated to pay the entire aggregate principal amount outstanding under the New Note (and any accrued and unpaid interest thereunder) without defense, counterclaim or offset.

(b) As of the Closing Date, the issuance of the New Note will be duly authorized and upon issuance in accordance with the terms of the Exchange Documents shall be validly issued, fully paid and non-assessable and free from all Liens (as defined in the New Note). By virtue of Section 3(a)(9) under the Securities Act, the New Note will have a Rule 144 holding period that will be deemed to have commenced as of the Closing Date (as defined in the Securities Purchase Agreement), the date of the original issuance of the Original Note to the Holder. At any time on and after the date hereof, assuming (i) the Holder is not an affiliate of the Company and (ii) at such time of determination the Company has not failed to satisfy the requirements of Rule 144(c)(1), including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c) (a "**Current Public Information Failure**"), the New Note shall not be required to bear any restrictive legend and shall be freely transferable by the Holder pursuant to and in accordance with Rule 144 of the Securities Act ("**Rule 144**").

4.7. Transfer Taxes. On the Closing Date, all share transfer or other taxes (other than income or similar taxes) that are required to be paid in connection with the issuance of the New Note to be issued to the Holder hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

4.8. Conduct of Business; Regulatory Permits. Neither the Company nor any of its Subsidiaries is in material violation of any term of or in default under its Articles of Incorporation, any certificate of designation, preferences or rights of any other outstanding series of preferred stock of the Company or any of its Subsidiaries or Bylaws or their organizational charter, certificate of formation, memorandum of association, articles of association, Articles of Incorporation or certificate of incorporation or bylaws, respectively. Neither the Company nor any of its Subsidiaries is in material violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, except as set forth in the SEC Documents, the Company is not in material violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that could reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future. Except as set forth in SEC Documents, during the two years prior to the date hereof, (i) the Common Stock has been listed or designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the Securities and Exchange Commission ("**SEC**") or the Principal Market and (iii) the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit. There is no agreement, commitment, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is a party which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted other than such effects, individually or in the aggregate, which have not had and would not reasonably be expected to have a Material Adverse Effect on the Company or any of its Subsidiaries.

4.9. Transactions With Affiliates. Except as set forth in the SEC Documents or as set forth on Schedule 4.9, none of the officers or directors of the Company or its Subsidiaries and, to the knowledge of the Company, none of the employees of the Company or its Subsidiaries is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors) required to be disclosed under Item 404 of Regulation S-K under the Exchange Act.

4.10. Equity Capitalization.

(a) Definitions:

(i) "**Common Stock**" means (x) the Company's shares of common stock, $0.0001 par value per share, and (y) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(ii) "**Preferred Stock**" means (x) the Company's blank check preferred stock, $0.0001 par value per share, the terms of which may be designated by the board of directors of the Company in a certificate of designations and (y) any capital stock into which such preferred stock shall have been changed or any share capital resulting from a reclassification of such preferred stock (other than a conversion of such preferred stock into Common Stock in accordance with the terms of such certificate of designations).

(b) Authorized and Outstanding Capital Stock. As of the date hereof, the authorized capital stock of the Company consists of (A) 265,000,000 shares of Common Stock, of which 107,360,577 are issued and outstanding and 31,752,472 shares are reserved for issuance pursuant to Convertible Securities (as defined below) exercisable or exchangeable for, or convertible into, shares of Common Stock and (B) 10,000,000 shares of Preferred Stock, none of which are issued and outstanding. No shares of Common Stock are held in the treasury of the Company.

(c) Valid Issuance; Available Shares; Affiliates . All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued, fully paid and nonassessable. The SEC Documents accurately set forth, as of the dates referred to therein, the number of shares of Common Stock that are (A) reserved for issuance pursuant to Convertible Securities (as defined below) and (B) that are, as of the date referred to therein, owned by Persons who are "affiliates" (as defined in Rule 405 of the Securities Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. "**Convertible Securities**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

(d) Existing Securities; Obligations. Except as disclosed in the SEC Documents or on Schedule 4.10: (A) none of the Company's or any Subsidiary's shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the Securities Act; (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and (F) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the New Note.

(e) Organizational Documents. True, correct and complete copies of the Company's Articles of Incorporation, as amended and as in effect on the date hereof (the "**Articles of Incorporation**"), and the Company's Bylaws, as in effect on the date hereof (the "**Bylaws**"), and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto, are set forth in, or filed as exhibits to, the SEC Documents, or otherwise set forth on Schedule 4.10.

4.11. Indebtedness and Other Contracts. Except as disclosed in the SEC Documents or on Schedule 4.11, neither the Company nor any of its Subsidiaries, (i) has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound (other than the Senior Secured Documents to be entered into immediately after consummating the Exchange), (ii) is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument would reasonably be expected to result in a Material Adverse Effect, (iii) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect (other than the Notes and the Securities Purchase Agreement), or (iv) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Prior to the date hereof, the Company has repaid, in full, all of the outstanding obligations under the Current Facility (as defined in the Original Note) and no outstanding disputes exist between the lenders under the Current Facility and the Company or any of its Subsidiaries.

4.12. Litigation. Except as set forth in the SEC Documents, there is no action, claim, suit, investigation or proceeding before any Governmental Entity pending or, to the knowledge of the Company, threatened against the Company or its Subsidiaries wherein an unfavorable decision, ruling or finding would reasonably be expected to, individually or in the aggregate, (i) materially adversely affect the validity or enforceability of, or the authority or ability of the Company to perform its obligations under, the Exchange Documents or (ii) have a Material Adverse Effect. The Company is not a party to or subject to the provisions of any injunction, judgment, decree or order of any court, regulatory body, administrative agency or other governmental agency or body that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.13. No Consideration Paid. No consideration, commission or other remuneration has been paid by the Holder to the Company, its Subsidiaries or any of their agents or affiliates in connection with the Exchange.

4.14. Disclosure. Except as disclosed in the Cleansing Filing, the Company confirms that neither it nor any other Person acting on its behalf has provided the Holder or its agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Exchange Documents and any matters disclosed in the Cleansing Filing (as defined below). The Company understands and confirms that the Holder will rely on the foregoing representations in effecting transactions in securities of the Company.

5. Holder's Representations and Warranties. As a material inducement to the Company to enter into this Agreement and consummate the Exchange, the Holder hereby represents and warrants with and to the Company, as of the date hereof and as of the Closing Date, as follows:

5.1 Reliance on Exemptions. The Holder understands that the New Note is being offered and exchanged in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Holder's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Holder set forth herein and in the other Exchange Documents in order to determine the availability of such exemptions and the eligibility of the Holder to acquire the New Note.

5.2 No Governmental Review. The Holder understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the New Note or the fairness or suitability of the investment in the New Note nor have such authorities passed upon or endorsed the merits of the offering of the New Note.

5.3 Validity; Enforcement. This Agreement and the other Exchange Documents to which the Holder is a party have been duly and validly authorized, executed and delivered on behalf of the Holder and shall constitute the legal, valid and binding obligations of the Holder enforceable against the Holder in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

5.4 No Conflicts. The execution, delivery and performance by the Holder of this Agreement and the other Exchange Documents to which the Holder is a party, and the consummation by the Holder of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Holder or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Holder is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Holder, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Holder to perform its obligations hereunder.

5.5 Investment Risk; Sophistication. The Holder is acquiring the New Note hereunder in the ordinary course of its business. The Holder has such knowledge, sophistication, and experience in business and financial matters so as to be capable of evaluation of the merits and risks of the prospective investment in the New Note, and has so evaluated the merits and risk of such investment. The Holder is an "accredited investor" as defined in Regulation D under the Securities Act.

5.6 Ownership of Existing Note. The Holder owns the Existing Note free and clear of any Liens (other than the obligations pursuant to this Agreement, the Transaction Documents and applicable securities laws) and has the requisite power and authority to enter into and perform its obligations under this Agreement and each of the other Exchange Documents to which it is a party and to consummate the Transaction.

5.7 Transfer or Resale. The Holder understands that: (i) the New Note has not been and is not being registered under the Securities Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) the Holder shall have delivered to the Company (if requested by the Company) an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such New Note to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) the Holder provides the Company with reasonable assurance that such New Note can be sold, assigned or transferred pursuant to Rule 144; (ii) any sale of the New Note made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the New Note under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC promulgated thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the New Note under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the New Note may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the New Note and such pledge of New Note shall not be deemed to be a transfer, sale or assignment of the New Note hereunder, and the Holder effecting a pledge of New Note shall not be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Exchange Document, including, without limitation, this Section 5.7.

6. Closing; Conditions. Subject to the conditions set forth below, the Exchange shall take place at the offices of Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178, on the Business Day immediately following such date as the Company shall have satisfied all conditions to closing below, or at such other time and place as the Company and the Holder mutually agree (the "**Closing**" and the "**Closing Date**").

6.1. Condition's to Holder's Obligations. The obligation of the Holder to consummate the Exchange is subject to the fulfillment, to the Holder's reasonable satisfaction, prior to or at the Closing, of each of the following conditions (unless waived by the Holder in writing, prior to the Closing):

(a) Representations and Warranties; Covenants. The representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are accurate in all respects) on the date hereof and on and as of the Closing Date as if made on and as of such date (except for representations and warranties that speak as of a specific date, which are accurate in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are accurate in all respects) as of such specified date). The Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

(b) Issuance of New Note. At the Closing, the Company shall issue the New Note to the Holder.

(c) No Actions. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

(d) Proceedings and Documents. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Holder, and the Holder shall have received all such counterpart originals or certified or other copies of such documents as they may reasonably request.

(e) No Event of Default. After giving effect to the Exchange, no Event of Default (as defined in the New Note) or event that with the passage of time or giving of notice would constitute an Event of Default shall have occurred and be continuing.

(f) Consents. The Company shall have obtained all governmental, regulatory or third party consents and approvals (or waiver of such consents or approvals), if any, necessary for the Exchange, including without limitation, those required by the Principal Market, if any, and the Required Consents.

(g) Listing. The Common Stock (A) shall be designated for quotation or listed (as applicable) on the Principal Market and (B) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market.

(h) Fees. The Company shall have paid, in full, to Kelley Drye & Warren LLP the Company Expense Amount and all outstanding invoices delivered by Kelley Drye & Warren LLP to the Company prior to the date hereof.

6.2. Condition's to the Company's Obligations. The obligation of the Company to consummate the Exchange is subject to the fulfillment, to the Company's reasonable satisfaction, prior to or at the Closing, of each of the following conditions (unless waived by the Company in writing, prior to the Closing):

(a) Representations and Warranties. The representations and warranties of the Holder contained in this Agreement shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which are accurate in all respects) on the date hereof and on and as of the Closing Date as if made on and as of such date (except for representations and warranties that speak as of a specific date, which are accurate in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which are accurate in all respects) as of such specified date).

(b) No Actions. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit, or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

(c) Proceedings and Documents. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Company and the Company shall have received all such counterpart originals or certified or other copies of such documents as the Company may reasonably request.

7. **No Integration**. None of the Company, its Subsidiaries, any of their affiliates, or any Person acting on their behalf shall, directly or indirectly, make any offers or sales of any security (as defined in the Securities Act) or solicit any offers to buy any security or take any other actions, under circumstances that would require registration of the New Note under the Securities Act or cause this offering of the New Note to be integrated with such offering or any prior offerings by the Company for purposes of Regulation D under the Securities Act.

8. **Fees**. At the closing, the Company shall pay Kelley Drye & Warren, LLP (counsel to the Holder) a non-accountable amount of $15,000 for the costs and expenses incurred by it in connection with preparing and negotiating this Agreement and the New Note (the "**Counsel Expense Amount**").

9. **Holding Period**. For the purposes of Rule 144, the Company acknowledges that the holding period of the New Note may be tacked onto both the holding period of the Existing Note and the holding period of the Original Note, and the Company agrees not to take a position contrary to this Section 10. The Company acknowledges and agrees that assuming (a) the Holder is not an affiliate of the Company and (b) at such time of determination no Current Public Information Failure exists, the New Note shall not be required to bear any restrictive legend and shall be freely transferable by the Holder pursuant to and in accordance with Rule 144.

10. **Blue Sky**. The Company shall make all filings and reports relating to the Exchange required under applicable securities or "Blue Sky" laws of the states of the United States following the date hereof, if any.

11. **Disclosure of Transaction**.

(a) On or before the earlier to occur of (i) 5:00 p.m., New York time, on November 10, 2019 and (ii) the time of filing of the Company's Annual Report on Form 10-K for the fiscal year ended August 31, 2019 (the "**10-K Filing**"), the Company shall file a Current Report on Form 8-K (including all attachments, the "**8-K Filing**") describing, or include in the 10-K Filing, as applicable, all the material terms of the transactions contemplated by the Exchange Documents in the form required by the Exchange Act and attaching this Agreement and the forms of the New Note (such applicable 10-K Filing and/or 8-K Filing, the "**Cleansing Filing**"). From and after the filing of the Cleansing Filing, the Company shall have disclosed all material, non-public information (if any) provided to the Holder by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Exchange Documents. In addition, effective upon the filing of the Cleansing Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and the Holder or any of its affiliates, on the other hand, relating to the transactions contemplated by the Exchange Documents, shall terminate.

(b) Except as may be required by the Securities Purchase Agreement or the New Note, the Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide the Holder with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof without the express prior written consent of the Holder (which may be granted or withheld in the Holder's sole discretion). To the extent that the Company delivers any material, non-public information to the Holder without the Holder's consent, other than as required by the Securities Purchase Agreement or the New Note, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality with respect to such material, non-public information. Subject to the foregoing, neither the Company, its Subsidiaries nor the Holder shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, the Company shall be entitled, without the prior approval of the Holder, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the Cleansing Filing and (ii) as is required by applicable law and regulations. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that the Holder shall not have (unless expressly agreed to by the Holder after the date hereof in a written definitive and binding agreement executed by the Company and the Holder), any duty of confidentiality with respect to any material, non-public information regarding the Company or any of its Subsidiaries.

12. **Notices to Holder**. All notices to Holder pursuant to the Securities Purchase Agreement or the New Note shall be delivered in accordance with the notice instructions set forth on the signature page of the Holder attached hereto (or such other instructions delivered in writing to the Company by the Holder from time to time).

13. **Termination**. If the Transaction is not consummated on or prior to November 15, 2019, the Holder may terminate this Agreement by written notice to the Company and this Agreement shall thereafter be null and void, *ab initio.*

14. **Independent Nature of Holder's Obligations and Rights**. The obligations of the Holder under this Agreement are several and not joint with the obligations of any other holder of securities of the Company (each, an "**Other Holder**"), and the Holder shall not be responsible in any way for the performance of the obligations of any Other Holder under any other agreement by and between the Company and any Other Holder (each, an "**Other Agreement**"). Nothing contained herein or in any Other Agreement, and no action taken by the Holder pursuant hereto, shall be deemed to constitute the Holder and Other Holders as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holder and Other Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or any Other Agreement and the Company acknowledges that, to the best of its knowledge, the Holder and the Other Holders are not acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or any Other Agreement. The Company and the Holder confirm that the Holder has independently participated in the negotiation of the transactions contemplated hereby with the advice of its own counsel and advisors. The Holder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement, and it shall not be necessary for any Other Holder to be joined as an additional party in any proceeding for such purpose.

15. **Miscellaneous Provisions**. Section 9 of the Securities Purchase Agreement (as amended hereby) is hereby incorporated by reference herein, *mutatis mutandis*.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the Holder and the Company have executed this Agreement as of the date first set forth on the first page of this Agreement.

COMPANY:

KUSHCO HOLDINGS, INC.

By: /s/ Nicholas Kovacevich
Name: Nicholas Kovacevich
Title: Chairman and Chief Executive Officer

IN WITNESS WHEREOF, the Holder and the Company have executed this Agreement as of the date first set forth on the first page of this Agreement.

Principal Amount of Existing Note:

$21,300,000

Principal Amount of New Note:

$23,962,500

HOLDER:

HB SUB FUND II LLC

By: /s/ George Antonopoulos
Name: George Antonopoulos
Title: Authorized Signatory

Address for Notices:

Please deliver any notices other than Pre-Notices to:

777 Third Avenue, 30th Floor
New York, NY 10017
Attention: Yoav Roth
Facsimile: (212) 571-1279
E-mail: investments@hudsonbaycapital.com
Residence: Cayman Islands

Please deliver any Pre-Notice to:

777 Third Ave., 30th Floor
New York, NY 10017
Facsimile: (646) 214-7946
Attention: Scott Black
General Counsel and Chief Compliance Officer

with a copy (for information purposes only) to:

Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178
Telephone: 212-808-7540
Facsimile: (212) 808-7897
Attention: Michael Adelstein, Esq.
Email: madelstein@kelleydrye.com

SCHEDULES TO EXCHANGE AGREEMENT

SCHEDULE 4.1

Subsidiaries

Entity Name	*Jurisdiction of Organization*	*Authorized Interests*	*Outstanding Interests*
Kush Energy, LLC	Colorado	Membership interests	100% of membership interests held by KushCo Holdings, Inc.
Kush Supply Co. LLC	Nevada	Membership interests	100% of membership interests held by KushCo Holdings, Inc.
Celeritas Industries, LLC	Nevada	Membership interests	100% of membership interests held by KushCo Holdings, Inc.
Zack Darling Creative Associates, LLC	California	Membership interests	100% of membership interests held by KushCo Holdings, Inc.
The Hybrid Creative LLC	California	Membership interests	100% of membership interests held by Zack Darling Creative Associates, LLC
Koleto Innovations LLC	Nevada	Membership interests	100% of membership interests held by KushCo Holdings, Inc.
KIM International Corporation	California	10,000,000 shares of a single class of stock, no par value specified	10,000 shares of stock (all held by KushCo Holdings, Inc.)
KCH Distribution Inc.	British Columbia	1 common share	1 share of common stock (all held by KushCo Holdings, Inc.).

SCHEDULE 4.4

Required Consents

None

SCHEDULE 4.9

Transactions with Affiliates

The Company and its subsidiaries provide customary compensation for the benefit of present and/or former directors, officers, and employees (including bonuses and stock option programs), as well as customary benefits and indemnification arrangements.

SCHEDULE 4.10

Equity Capitalization

Preemptive Rights

- Pursuant to the "Purchase Rights" set forth in Section 4(a) of the Existing Warrant, Holder is entitled to receive, on an as-converted basis, options, convertible securities, and rights to purchase stock, warrants, securities or other property that are otherwise issued to the record holders of any class of Common Stock of the Company on a *pro rata* basis
- Pursuant to the "Purchase Rights" set forth in Section 4(a) of those certain Warrants to Purchase Common Stock dated as of the date hereof and issued by the Company to certain affiliates and related funds of Monroe Capital Management Advisors, LLC (the "**Specified Warrants**"), the holder thereof is entitled to receive, on an as-converted basis, options, convertible securities, and rights to purchase stock, warrants, securities or other property that are otherwise issued to the record holders of any class of Common Stock of the Company on a *pro rata* basis
- Pursuant to the Securities Purchase Agreement, Holder is entitled to participation rights for any "Subsequent Placement" (as defined therein) under specified circumstances
- Pursuant to the New Note, the Holder has the right to receive warrants under specified circumstances under the definition of "Permitted Senior Indebtedness" (as defined therein)

Convertible or Exchangeable Securities

- Outstanding options to purchase 12,662,000 shares of common stock of KushCo Holdings, Inc.
- Outstanding warrants (excluding the Existing Warrant and the Specified Warrants (defined above) copies of which have been provided to Holder) to purchase 6,988,000 shares of common stock of KushCo Holdings, Inc.

SCHEDULE 4.11

Other Indebtedness

- Indebtedness incurred pursuant to the "Senior Secured Financing Agreement" (as defined in the New Note)
- The New Note

Exhibit 10.23

Execution Version

LIMITED CONSENT AND FIRST AMENDMENT TO FINANCING AGREEMENT

LIMITED CONSENT AND FIRST AMENDMENT TO FINANCING AGREEMENT, dated as of November 8, 2019 (this "Consent"), to the Financing Agreement, dated as of August 21, 2019 (the "Financing Agreement"), by, among others, **KUSHCO HOLDINGS, INC.**, a Nevada corporation, as parent (the "Parent") and certain subsidiaries of the Parent party thereto (collectively, the "Loan Parties" and each, a "Loan Party"), each lender from time to time party thereto (collectively, the "Lenders" and individually, a "Lender") and **MONROE CAPITAL MANAGEMENT ADVISORS, LLC**, a Delaware limited liability company ("Monroe"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Monroe, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

WHEREAS, the Parent is party to the Parent Note which has a maturity date of October 30, 2020;

WHEREAS, the Parent desires to enter into the Second Exchange Agreement (substantially in the form attached as Exhibit A) with the holder of the Parent Note and exchange the existing Parent Note with new note substantially in the form attached as Exhibit B (such note, the "Exchanged Note" and such transaction, the "HB Note Exchange"), which will among other things, extend the maturity date of the Parent Note to April 29, 2021 and increase the principal amount of the Parent Note to $23,962,500;

WHEREAS, the Loan Parties have requested that the Agents and the Lenders consent to the HB Note Exchange; and

WHEREAS, the Lenders are willing to consent to such request subject to the terms and conditions set forth herein, and the Loan Parties, the Agents and the Lenders wish to amend certain terms and provisions of the Financing Agreement as hereafter set forth.

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions**. Except as otherwise defined in this Consent, capitalized terms in this Consent have the meanings ascribed to such terms in the Financing Agreement.

2. **Consent**.

(a) Pursuant to the request by the Loan Parties, but subject to the terms and conditions set forth herein, and in reliance upon the representations and warranties of the Loan Parties described herein and in the Financing Agreement, the Agent and the Lenders hereby consent to the HB Note Exchange.

(b) The consent set forth in this Section 2 shall be limited precisely as written. This consent shall not operate as a consent for any other purpose or a waiver of any Default or Event of Default which may now exist or be hereafter arising, shall not constitute a continuing waiver of any provision of the Agreement or any other Loan Document, or otherwise impair any right, power or remedy of Agent or any Lender under the Financing Agreement or any other Loan Document, which terms and conditions shall continue in full force and effect.

3. **Amendments**.

(a) Existing Definitions. The following definitions in Section 1.01 of the Financing Agreement are hereby amended and restated in their entirety to read as follows:

(i) ""Parent Note" means any senior note issued under the Parent SPA and any other note of the Parent issued in exchange therefor from time to time (including the notes issued in exchange pursuant to the Parent Indebtedness Second Exchange Agreement)."

(ii) Clause (k) of the definition of "Permitted Indebtedness" is hereby amended and restated in its entirety to read as follows:

"(k) (x) Parent Indebtedness in an aggregate principal amount not to exceed $23,962,500 plus any paid-in-kind or capitalized interest thereon and (y) any Permitted Refinancing Indebtedness issued in replacement thereof;"

(b) New Definitions. Section 1.01 of the Financing Agreement is hereby amended by adding the following definition, in appropriate alphabetical order:

(i) ""Parent Indebtedness Second Exchange Agreement" means the Second Exchange Agreement, dated as of November 8, 2019, by and between the Parent and the investor signatory thereto."

4. **Representations and Warranties**. Each Loan Party hereby represents and warrants to the Agents and the Lenders as follows:

(a) Representations and Warranties; No Event of Default. The representations and warranties made to any Secured Party contained herein, in Article VI of the Financing Agreement and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the date hereof are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date), and no Default or Event of Default has occurred and is continuing or would result from this Consent becoming effective as of the date hereof in accordance with its terms.

(b) Organization, Good Standing, Etc. Each Loan Party (i) is a corporation, limited liability company or limited partnership duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to conduct its business as now conducted and as presently contemplated, and to execute and deliver this Consent, and to consummate the transactions contemplated hereby and by the Financing Agreement, as amended hereby, and (iii) is duly qualified to do business in, and is in good standing in each jurisdiction where the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary except (solely for the purposes of this subclause (iii)) where the failure to be so qualified and be in good standing could not reasonably be expected to have a Material Adverse Effect.

(c) Authorization, Etc. The execution, delivery and performance by each Loan Party of this Consent and each other Loan Document to which it is or will be a party, and the performance by it of the Financing Agreement, as amended hereby, (i) have been duly authorized by all necessary action, (ii) do not and will not contravene (A) any of its Governing Documents, (B) any applicable material Requirement of Law or (C) any material Contractual Obligation binding on or otherwise affecting it or any of its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document) upon or with respect to any of its properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties, except, in the case of clauses (ii)(C) and (iv), to the extent where such contravention, default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal could not reasonably be expected to have a Material Adverse Effect.

(d) Enforceability of Loan Documents. Each of this Consent and the Financing Agreement, as amended hereby, is, and each other Loan Document to which any Loan Party is or will be a party, when delivered under the Financing Agreement, as amended hereby, will be, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by principles of equity.

(e) Governmental Approvals. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by any Loan Party of this Consent and any other Loan Document, as amended hereby, to which it is or will be a party.

5. **Conditions Precedent**. This Consent shall become effective, as of the date hereof, only upon satisfaction in full, in a manner satisfactory to the Agents, of the following conditions precedent:

(a) Representations and Warranties. The representations and warranties made to any Secured Party contained herein, in Article VI of the Financing Agreement and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the date hereof shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date).

(b) No Default; Event of Default. No Default or Event of Default shall have occurred and be continuing on the date hereof or result from this Consent becoming effective in accordance with its terms.

(c) Delivery of this Consent. The Agent shall have received, on or before the date hereof, this Consent, duly executed by the Loan Parties, each Agent and each Lender.

(d) Parent Indebtedness. Each condition precedent under the Parent Indebtedness Second Exchange Agreement (as defined in the Financing Agreement after giving effect to this Consent) shall have been (or simultaneously with the effectiveness hereof will be) satisfied, and each of the Exchanged Note, the Parent Indebtedness Second Exchange Agreement and any other document executed in connection therewith, in each case, in form and substance reasonably satisfactory to the Agent shall be in full force and effect. The Agent shall have received executed copies of each of the Exchanged Note, the Parent Indebtedness Second Exchange Agreement and any other document executed in connection therewith.

(e) Payment of Fees, Etc. The Borrowers shall have paid on or before the date hereof all fees, costs, expenses and taxes then payable, if any, pursuant to Section 2.06 or 12.04 of the Financing Agreement.

6. **Continued Effectiveness of the Financing Agreement and Other Loan Documents**. Each Loan Party hereby (a) acknowledges and consents to this Consent, (b) confirms and agrees that the Financing Agreement, as amended hereby, and each other Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the date hereof, all references in any such Loan Document to "the Financing Agreement", the "Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Financing Agreement shall mean the Financing Agreement as amended by this Consent, and (c) confirms and agrees that, to the extent that any such Loan Document purports to assign or pledge to the Collateral Agent, for the benefit of the Agents and the Lenders, or to grant to the Collateral Agent, for the benefit of the Agents and the Lenders, a security interest in or Lien on any Collateral as security for the Obligations of the Loan Parties from time to time existing in respect of the Financing Agreement (as amended hereby) and the other Loan Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects. This Consent does not and shall not affect any of the obligations of the Loan Parties, other than as expressly provided herein, including, without limitation, the Loan Parties' obligations to repay the Loans in accordance with the terms of Financing Agreement, as amended hereby, or the obligations of the Loan Parties under any Loan Document to which they are a party, all of which obligations shall remain in full force and effect. The execution, delivery and effectiveness of this Consent shall not operate as a waiver of any right, power or remedy of any Agent or any Lender under the Financing Agreement or any other Loan Document nor constitute a waiver of any provision of the Financing Agreement or any other Loan Document.

7. **No Novation**. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Financing Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

8. **Release**. Each Loan Party hereby acknowledges and agrees that: (a) neither it nor any of its Subsidiaries has any claim or cause of action against any Agent or any Lender (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the date hereof directly arising out of, connected with or related to this Amendment, the Financing Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of any Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Loan Party in connection therewith, or the making of any Loans or other advances thereunder, or the management of such Loans or other advances or the Collateral thereunder and (b) the Agents and the Lenders have heretofore properly performed and satisfied in a timely manner all of their obligations to the Loan Parties, and all of their Subsidiaries and Affiliates. Notwithstanding the foregoing, the Agents and the Lenders wish (and the Loan Parties agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Consent and other good and valuable consideration, each Loan Party (for itself and its Subsidiaries and Affiliates and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the "Releasors") does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge the Agents and the Lenders, together with their respective Affiliates and Related Funds, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the "Released Parties"), from any and all debts, claims, allegations, obligations, damages, costs, attorneys' fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the date hereof directly arising out of, connected with or related to this Consent, the Financing Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of any Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Loan Party in connection therewith, or the making of any Loans or other advances thereunder, or the management of such Loans or other advances or the Collateral (each, a "Claim"). Each Loan Party represents and warrants that it has no knowledge of any Claim by any Releasor against any Released Party or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a Claim by any Releasor against any Released Party which would not be released hereby.

9. **Headings**. Headings herein are for convenience only and shall not be relied upon in interpreting or enforcing this Consent.

10. **Miscellaneous**. This Consent may be executed in any number of counterparts, all of which taken together shall constitute one and the same amendatory instrument and any of the parties hereto may execute this Consent by signing any such counterpart. Delivery of an executed counterpart of this Consent by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart of this Consent. Each Loan Party hereby acknowledges and agrees that this Consent constitutes a "Loan Document" under the Financing Agreement. Accordingly, it shall be an immediate Event of Default under the Financing Agreement if (i) any representation or warranty made by any Loan Party under or in connection with this Consent shall have been incorrect in any respect when made or deemed made, or (ii) any Loan Party shall fail to perform or observe any term, covenant or agreement contained in this Consent. Any provision of this Consent that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. **This Consent and the rights and obligations of the parties hereunder shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.**

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed and delivered by their officers as of the date first above written.

LOAN PARTIES:

KUSHCO HOLDINGS, INC.

By: /s/ Christopher Tedford
Name: Christopher Tedford
Title: Chief Financial Officer

KIM INTERNATIONAL CORPORATION

By: /s/ Christopher Tedford
Name: Christopher Tedford
Title: Chief Financial Officer

KUSH ENERGY, LLC

By: /s/ Christopher Tedford
Name: Christopher Tedford
Title: Chief Financial Officer

ZACH DARLING CREATIVE ASSOCIATES, LLC

By: /s/ Zach Darling
Name: Zach Darling
Title: Manager

[Signature Page to Limited Consent]

THE HYBRID CREATIVE LLC

By: Zack Darling Creative Associates, LLC,
its manager

By: /s/ Zach Darling
Name: Zach Darling
Title: Manager

KCH DISTRIBUTION INC.

By: /s/ Christopher Tedford
Name: Christopher Tedford
Title: Chief Financial Officer

KUSH SUPPLY CO. LLC

By: KushCo Holdings, Inc,
its Manager

By: /s/ Christopher Tedford
Name: Christopher Tedford
Title: Chief Financial Officer

CELERITAS INDUSTRIES, LLC

By: KushCo Holdings, Inc,
its Manager

By: /s/ Christopher Tedford
Name: Christopher Tedford
Title: Chief Financial Officer

KOLETO INNOVATIONS LLC

By: KushCo Holdings, Inc,
its Manager

By: /s/ Christopher Tedford
Name: Christopher Tedford
Title: Chief Financial Officer

AGENT:

MONROE CAPITAL MANAGEMENT ADVISORS, LLC,
as Administrative Agent and Collateral Agent

By:/s/ Mike Meyer
Name: Mike Meyer
Title: Director

[Signature Page to Limited Consent]

LENDERS:

MONROE PRIVATE CREDIT FUND A LP,

By: **MONROE PRIVATE CREDIT FUND A LLC,**
its general partner

By: /s/ Mike Meyer
Name: Mike Meyer
Title: Director

MONROE CAPITAL PRIVATE CREDIT FUND I LP,

By: **MONROE CAPITAL PRIVATE CREDIT FUND I LLC,**
its general partner

By: /s/ Mike Meyer
Name: Mike Meyer
Title: Director

MONROE CAPITAL PRIVATE CREDIT FUND III LP,

By: **MONROE CAPITAL PRIVATE CREDIT FUND III LLC,**
its general partner

By: /s/ Mike Meyer
Name: Mike Meyer
Title: Director

MONROE CAPITAL PRIVATE CREDIT FUND III (UNLEVERAGED) LP,

By: **MONROE CAPITAL PRIVATE CREDIT FUND III LLC,**
its general partner

By: /s/ Mike Meyer
Name: Mike Meyer
Title: Director

Monroe Capital Fund SV S.a.r.l., acting in respect of its Fund III (Unleveraged) Compartment,

By: Monroe Capital Management Advisors LLC,
as Investment Manager

By: /s/ Mike Meyer
Name: Mike Meyer
Title: Director

Monroe Capital Private Credit Fund III (Lux) Financing Holdco LP,

By: Monroe Capital Private Credit Fund III (Lux) Financing Holdco GP LLC,
its General Partner

By: Monroe Capital Management Advisors LLC, as Manager

By: /s/ Mike Meyer
Name: Mike Meyer
Title: Director

MONROE (NP) U.S. PRIVATE DEBT FUND LP

By: **MONROE (NP) U.S. PRIVATE DEBT FUND GP LTD.,**
its general partner

By: /s/ Mike Meyer
Name: Mike Meyer
Title: Director

EXHIBIT A

Second Exchange Agreement

EXHIBIT B

Exchanged Note

Exhibit 21.1

Subsidiaries of the Registrant

Entity Name	State/Territory of Organization
Kush Energy, LLC	Colorado
Kush Supply Co. LLC	Nevada
Celeritas Industries, LLC	Nevada
Zack Darling Creative Associates, LLC	California
The Hybrid Creative LLC	California
Koleto Innovations LLC	Nevada
KIM International Corporation	California
KCH Distribution Inc.	British Columbia
Summit Innovations, LLC	Colorado

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement of KushCo Holdings, Inc. on Form S-3 (File No. 333-221910, 333-231019, and 333-233829) and Form S-8 (File No. 333-209439, 333-229023, and 333-231020) of our report dated November 12, 2019 with respect to our audit of the consolidated financial statements of KushCo Holdings, Inc. as of August 31, 2019 and for the year ended August 31, 2019, which report is included in this Annual Report on Form 10-K of KushCo Holdings, Inc. for the year ended August 31, 2019.

/s/ Marcum LLP

Marcum LLP
Costa Mesa, CA
November 12, 2019

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-231019 and No. 333-233829) and the Registration Statements on Form S-8 (No. 333-231020, No. 333-229023 and No. 333-209439) of KushCo Holdings, Inc. of our report dated November 28, 2018, except for the effects of the restatement discussed in Note 2 as to which the date is April 11, 2019 with respect to the consolidated balance sheets of KushCo Holdings, Inc., as of August 31, 2018, and the related consolidated statements of operations, stockholders' equity, and cash flows for the year ended August 31, 2018 and the related notes (collectively, the "consolidated financial statements") which appears in this Form 10-K.

/s/ RBSM LLP

RBSM LLP
Larkspur, CA
November 12, 2019

Exhibit 31.1

Certification of Principal Executive Officer Required by
Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended,
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Nicholas Kovacevich, certify that:

1. I have reviewed this Annual Report on Form 10-K of KushCo Holdings, Inc.;

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

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

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

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

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

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

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

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

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

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

Date: November 12, 2019

/s/ Nicholas Kovacevich
Nicholas Kovacevich
Chairman and Chief Executive Officer
(principal executive officer)

Exhibit 31.2

Certification of Principal Financial Officer Required by
Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended,
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Christopher Tedford, certify that:

1. I have reviewed this Annual Report on Form 10-K of KushCo Holdings, Inc.;

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

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

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

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

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

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

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

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

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

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

Date: November 12, 2019

/s/ Christopher Tedford
Christopher Tedford
Chief Financial Officer
(principal accounting and financial officer)

Exhibit 32.1

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

The undersigned officer of KushCo Holdings, Inc. (the "Company") hereby certifies to his knowledge that the Company's Annual Report on Form 10-K for the fiscal year ended August 31, 2019 (the "Report") to which this certification is being furnished as an exhibit, as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company. This certification is provided solely pursuant to 18 U.S.C. Section 1350 and Item 601(b)(32) of Regulation S-K ("Item 601(b)(32)") promulgated under the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act. In accordance with clause (ii) of Item 601(b)(32), this certification (A) shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and (B) shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

Date: November 12, 2019

/s/ Nicholas Kovacevich
Nicholas Kovacevich
Chairman and Chief Executive Officer
(principal executive officer)

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

Exhibit 32.2

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

The undersigned officer of KushCo Holdings, Inc. (the "Company") hereby certifies to his knowledge that the Company's Annual Report on Form 10-K for the fiscal year ended August 31, 2019 (the "Report") to which this certification is being furnished as an exhibit, as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company. This certification is provided solely pursuant to 18 U.S.C. Section 1350 and Item 601(b)(32) of Regulation S-K ("Item 601(b)(32)") promulgated under the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act. In accordance with clause (ii) of Item 601(b)(32), this certification (A) shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and (B) shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

Date: November 12, 2019

/s/ Christopher Tedford
Christopher Tedford
Chief Financial Officer
(principal financial and accounting officer)

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