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

FORM 10-Q

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

for the quarterly period ended September 30, 2023

☐ 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 001-39412

FATHOM HOLDINGS INC.

(Exact name of Registrant as specified in its Charter)

North Carolina	82-1518164
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

2000 Regency Parkway Drive, Suite 300, Cary, North Carolina 27518
(Address of principal executive offices) (Zip Code)

(888) 455-6040
(Registrant's telephone number, including area code)

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, No Par Value	FTHM	The NASDAQ Capital Market

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

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

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

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

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

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

As of November 3, 2023, the registrant had 18,174,964 shares common stock outstanding.

FATHOM HOLDINGS INC.
FORM 10-Q
For the Quarterly Period Ended September 30, 2023

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PART I FINANCIAL INFORMATION

ITEM 1. Financial Statements.

FATHOM HOLDINGS INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	September 30, 2023	December 31, 2022
ASSETS	(Unaudited)	
Current assets:		
Cash and cash equivalents	$ 6,616	$ 8,320
Restricted cash	146	60
Accounts receivable	4,124	3,074
Mortgage loans held for sale, at fair value	7,152	3,694
Prepaid and other current assets	3,604	3,668
Total current assets	21,642	18,816
Property and equipment, net	2,460	2,945
Lease right of use assets	4,392	5,508
Intangible assets, net	24,637	27,259
Goodwill	25,607	25,607
Other assets	59	52
Total assets	$ 78,797	$ 80,187
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 3,402	$ 3,343
Accrued and other current liabilities	3,034	3,403
Warehouse lines of credit	6,890	3,580
Lease liability - current portion	1,509	1,609
Long-term debt - current portion	290	564
Total current liabilities	15,125	12,499
Lease liability, net of current portion	4,105	5,241
Long-term debt, net of current portion	3,451	129
Other long-term liabilities	312	297
Total liabilities	22,993	18,166
Commitments and contingencies (Note 18)		
Stockholders' equity:		
Common stock (no par value, shares authorized, 100,000,000; shares issued and outstanding, 18,174,473 and 17,468,562 as of September 30, 2023 and December 31, 2022, respectively)	—	—
Additional paid-in capital	118,951	109,626
Accumulated deficit	(63,147)	(47,605)
Total stockholders' equity	55,804	62,021
Total liabilities and stockholders' equity	$ 78,797	$ 80,187

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

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FATHOM HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)
(in thousands, except share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	**2022**	**2023**	**2022**
Revenue				
Gross commission income	$ 88,247	$ 104,977	$ 256,050	$ 311,074
Other service revenue	5,277	6,287	15,104	18,452
Total revenue	93,524	111,264	271,154	329,526
Operating expenses				
Commission and other agent-related costs	83,770	99,448	241,834	295,237
Operations and support	1,886	2,420	5,404	6,192
Technology and development	1,760	1,456	4,674	3,931
General and administrative	9,793	11,528	29,552	34,669
Marketing	796	1,457	2,439	3,948
Depreciation and amortization	891	852	2,406	2,238
Total operating expenses	98,896	117,161	286,309	346,215
Loss from operations	(5,372)	(5,897)	(15,155)	(16,689)
Other expense (income), net				
Interest expense (income), net	88	(11)	151	4
Other nonoperating expense	18	126	181	800
Other expense (income), net	106	115	332	804
Loss before income taxes	(5,478)	(6,012)	(15,487)	(17,493)
Income tax expense	18	—	55	185
Net loss	$ (5,496)	$ (6,012)	$ (15,542)	$ (17,678)
Net loss per share:				
Basic	$ (0.34)	$ (0.38)	$ (0.97)	$ (1.10)
Diluted	$ (0.34)	$ (0.38)	$ (0.97)	$ (1.10)
Weighted average common shares outstanding:				
Basic	16,074,225	15,804,644	16,036,656	16,054,025
Diluted	16,074,225	15,804,644	16,036,656	16,054,025

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

FATHOM HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT) (UNAUDITED)
(in thousands, except share data)

	Common Stock					
	Number of Outstanding Shares	Par Value	Additional Paid-in Capital	Accumulated Deficit	Total
Balance at June 30, 2023	18,121,402	$ —	$ 115,631	$ (57,651)	$ 57,980
Stock-based compensation, net of forfeitures	53,071	—	3,320	—	3,320
Net loss	—	—	—	(5,496)	(5,496)
Balance at September 30, 2023	18,174,473	$ —	$ 118,951	$ (63,147)	$ 55,804

	Common Stock				
	Number of Outstanding Shares	Par Value	Additional Paid-in Capital	Accumulated Deficit	Total
Balance at June 30, 2022	17,052,263	$ —	$ 104,391	$ (31,645)	$ 72,746
Stock-based compensation, net of forfeitures	22,319	—	1,892	—	1,892
Net loss	—	—	—	(6,012)	(6,012)
Balance at September 30, 2022	17,074,582	$ —	$ 106,283	$ (37,657)	$ 68,626

	Common Stock				
	Number of Outstanding Shares	Par Value	Additional Paid-in Capital	Accumulated Deficit	Total
Balance at December 31, 2022	17,468,562	$ —	$ 109,626	$ (47,605)	$ 62,021
Stock-based compensation, net of forfeitures	705,911	—	9,325	—	9,325
Net loss	—	—		(15,542)	(15,542)
Balance at September 30, 2023	18,174,473	$ —	$ 118,951	$ (63,147)	$ 55,804

	Common Stock				
	Number of Outstanding Shares	Par Value	Additional Paid-in Capital	Accumulated Deficit	Total
Balance at December 31, 2021	16,751,606	$ —	$ 100,129	$ (19,979)	$ 80,150
Issuance of common stock for purchase of business	470,982	—	6,168	—	6,168
Repurchase of common stock	(686,097)	—	(6,045)	—	(6,045)
Stock-based compensation, net of forfeitures	538,091	—	6,031	—	6,031
Net loss	—	—	—	(17,678)	(17,678)
Balance at September 30, 2022	17,074,582	$ —	$ 106,283	$ (37,657)	$ 68,626

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

FATHOM HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)
(in thousands)

	Nine Months Ended September 30,	
	2023	**2022**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (15,542)	$ (17,678)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	4,466	3,785
Non-cash lease expense	1,291	1,565
Deferred financing costs amortization	46	—
Other non-cash	200	—
Gain on sale of mortgages	(2,778)	(3,443)
Stock-based compensation	9,325	6,470
Deferred income taxes	14	—
Change in operating assets and liabilities:		
Accounts receivable	(1,050)	(672)
Derivative assets	—	(241)
Prepaid and other current assets	(136)	(2,128)
Other assets	(7)	43
Accounts payable	59	(382)
Accrued and other current liabilities	(3)	(284)
Operating lease liabilities	(1,412)	(1,540)
Mortgage loans held for sale originations	(111,722)	(205,137)
Proceeds from sale and principal payments on mortgage loans held for sale	111,043	213,172
Net cash used in operating activities	(6,206)	(6,470)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(21)	(981)
Amounts paid for business and asset acquisitions, net of cash acquired	—	(2,479)
Purchase of intangible assets	(1,337)	(2,473)
Net cash used in investing activities	(1,358)	(5,933)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from debt	3,768	554
Principal payments on debt	(566)	(846)
Cash paid for debt issuance costs	(200)	—
Borrowings from warehouse lines of credit	108,398	177,581
Repayment on warehouse lines of credit	(105,088)	(182,080)
Deferred acquisition consideration payments	(366)	—
Repurchase of common stock	—	(6,045)
Net cash provided by (used in) financing activities	5,946	(10,836)
Net decrease in cash, cash equivalents, and restricted cash	(1,618)	(23,239)
Cash, cash equivalents, and restricted cash at beginning of period	8,380	37,921
Cash, cash equivalents, and restricted cash at end of period	$ 6,762	$ 14,682
Supplemental disclosure of cash and non-cash transactions:		
Cash paid for interest	$ 188	$ 23
Income taxes paid	50	111
Amounts due to sellers	—	1,100
Capitalized stock-based compensation	—	—
Right of use assets obtained in exchange for new lease liabilities	175	2,219
Issuance of common stock for purchase of business	—	6,168
Reconciliation of cash and restricted cash:		
Cash and cash equivalents	$ 6,616	$ 14,543
Restricted cash	146	139
Total cash, cash equivalents, and restricted cash shown in statement of cash flows	$ 6,762	$ 14,682

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

FATHOM HOLDINGS INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Organization, Consolidation and Presentation of Financial Statements

Fathom Holdings Inc. ("Fathom", "Fathom Holdings," and collectively with its consolidated subsidiaries and affiliates, the "Company") is a national, technology-driven, real estate services platform integrating residential brokerage, mortgage, title, insurance services and supporting software called intelliAgent. The Company's brands include Fathom Realty, Dagley Insurance, Encompass Lending, intelliAgent, LiveBy, Real Results, Verus Title and Cornerstone.

The unaudited interim consolidated financial statements include the accounts of Fathom Holdings' wholly owned subsidiaries. All transactions and accounts between and among its subsidiaries have been eliminated. All adjustments and disclosures necessary for a fair presentation of these unaudited interim consolidated financial statements have been included.

The accompanying unaudited interim consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") as determined by the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") for interim financial information. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, the unaudited interim consolidated financial statements reflect all adjustments, which include only normal recurring adjustments necessary for the fair statement of the balances and results of operations for the periods presented. These financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes thereto for the year ended December 31, 2022 included in the Company's Annual Report on Form 10-K filed with the Security and Exchange Commission ("SEC") on March 30, 2023 (the "Form 10-K"). The results of operations for any interim periods are not necessarily indicative of the results that may be expected for the entire fiscal year or any other interim period.

In January and February 2022, the Company acquired Cornerstone Financial ("Cornerstone") and iPro realty Network ("iPro"), respectively, in separate transactions accounted for as business combinations. Cornerstone is a real estate mortgage business that has helped expand in the Washington DC and surrounding markets. The acquisition of iPro, a real estate brokerage business, has helped expand the Company's reach in the Utah real estate market.

Certain prior period amounts have been revised to conform to the current presentation. These changes have no impact on our previously reported consolidated balance sheets or statements of operations.

The Company has evaluated the impact of events that have occurred subsequent to September 30, 2023, through the date the consolidated financial statements were filed with the SEC. Based on this evaluation the Company has determined that there are no material subsequent events that would require recognition or disclosure.

Note 2. Risks and Uncertainties

Certain Significant Risks and Business Uncertainties — The Company is subject to the risks and challenges associated with companies at a similar stage of development. These include dependence on key individuals, successful development and marketing of its offerings, and competition with larger companies with greater financial, technical, and marketing resources. Furthermore, during the period required to achieve higher revenue in order to become consistently profitable, the Company may require additional funds that might not be readily available or might not be on terms that are acceptable to the Company.

Liquidity — The Company has a history of negative cash flows from operations and operating losses. The Company generated net losses of approximately $15.5 million and $17.7 million for the nine months ended September 30, 2023 and 2022, respectively. Additionally, the Company anticipates further expenditures associated with the process of expanding its business organically and via acquisitions. The Company received net proceeds of $3.3 million in April 2023 from the issuance of convertible notes. The Company had cash and cash equivalents of $6.6 million and $8.3 million as of September 30, 2023 and December 31, 2022, respectively. Management believes that existing cash along with its planned budget, which includes an increase in agent fees implemented in January 2023, growth from increasing attach rates across the Company's businesses from internal referrals, reduction of certain expenses given initiatives implemented in early 2023, and the expected ability to achieve sales volumes necessary to cover forecasted expenses, provide sufficient funding to continue as a going concern for a period of at least one year from the date of the issuance of these consolidated financial statements.

FATHOM HOLDINGS INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

COVID-19 Risks, Impacts and Uncertainties - In December 2019, a novel strain of coronavirus, COVID-19, was identified in Wuhan, China. This new coronavirus caused a global health emergency and was declared a pandemic by the World Health Organization (WHO) in March 2020 ("COVID-19" or the "Pandemic"). In May 2023, the WHO declared that COVID-19 was no longer a global health emergency.

For the nine months ended September 30, 2023 and the year ended December 31, 2022, due in part to the widespread availability of multiple COVID-19 vaccines, the effects of COVID-19 on business worldwide lessened. However, any lingering impact from COVID-19, as well as the recent increases in interest rates and inflationary pressure in the U.S. and world economies, is not fully known and cannot be estimated as the U.S. and global economies continue to react.

Use of Estimates — The preparation of the unaudited interim consolidated financial statements, in conformity with GAAP, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company regularly evaluates estimates and assumptions, including those related to doubtful accounts, legal contingencies, income taxes, deferred tax asset valuation allowances, stock-based compensation, goodwill, estimated lives of intangible assets, and intangible asset impairment. The Company bases its estimates and assumptions on current facts, historical experience and various other factors that it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities and the accrual of costs and expenses that are not readily apparent from other sources. The actual results experienced by the Company might differ materially and adversely from the Company's estimates. To the extent there are material differences between the estimates and the actual results, future results of operations will be affected.

Note 3. Recent Accounting Pronouncements

In June 2016, the FASB issued Accounting Standards Update ("ASU") 2016-13, *Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments,* which changes the impairment model for most financial assets and certain other instruments. For receivables, loans and other instruments, entities will be required to use a new forward-looking "expected loss" model that generally will result in the earlier recognition of allowance for losses. In addition, an entity will have enhanced disclosure requirements about allowances and credit quality indicators. The new standard is effective for the Company for fiscal years beginning after December 15, 2022. The Company adopted the standard on January 1, 2023, and the impact of the new standard on its consolidated financial statements was immaterial.

In August 2020, the FASB issued ASU No. 2020-06 *Debt — Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40)*. The objective of the amendments in this ASU is to address issues identified as a result of the complexity associated with applying GAAP for certain financial instruments with characteristics of liabilities and equity. The amendments in this ASU reduce the number of accounting models for convertible debt instruments and redeemable convertible preference shares. For convertible instruments with conversion features that are not required to be accounted for as derivatives under Topic 815, Derivatives and Hedging, or that do not result in substantial premiums accounted for as paid-in capital, the embedded conversion features no longer are separated from the host contract. The amendments in the ASU are effective for fiscal years beginning after December 15, 2023, including interim periods therein. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company adopted the standard during the quarter ended June 30, 2023, and the impact of the new standard on its consolidated financial statements was immaterial.

Note 4. Acquisitions

The Company completed two acquisitions in the nine months ended September 30, 2022, both accounted for as business combinations. On January 24, 2022, the Company acquired Cornerstone, a real estate mortgage business in the Washington DC and surrounding markets, for approximately $4.7 million. The purchase price was comprised of $1.1 million in cash consideration and 267,470 shares of common stock with an acquisition date fair value of $3.6 million. Approximately $0.6 million of the cash consideration was due within one year of the acquisition date. The Company has since renegotiated the timing of these payments. As of September 30, 2023, approximately $270,000 remained due to this seller which will be paid in monthly increments of $26,666 through August 30, 2024. On February 8, 2022, the Company acquired iPro, a real estate brokerage business in the Utah real estate market, for total consideration of approximately $4.2 million. The purchase price included cash consideration of approximately $1.8 million and 167,824 shares of common stock with an acquisition date fair value of $2.3 million. Approximately $0.1 million of the cash consideration was due within one year of the acquisition date and was paid by the Company in April 2023. Assets acquired and liabilities assumed in the individual acquisitions were recorded on the Company's condensed consolidated balance sheet at their estimated fair values as of the respective dates of acquisition, including mortgage loans held for sale of approximately \$3.5 million, lease right of use assets and lease liabilities of approximately \$0.6 million, accrued liabilities of approximately \$0.4 million and warehouse lines of credit of approximately \$3.4 million. The Company recorded finite-lived intangible assets of approximately \$3.6 million and goodwill of approximately \$4.9 million, prior to the updates to fair values noted below. None of the goodwill relating to the Cornerstone acquisition is deductible for income tax purposes. Goodwill in the amount of approximately \$1.4 million relating to the iPro acquisition is deductible for income tax purposes.

The Company updated the fair value estimates used in the purchase price allocation related to the Cornerstone and iPro acquisitions during the period from acquisition through December 31, 2022, resulting in an increase of \$0.5 million in the fair value of assumed finite lived intangible assets, an increase of \$0.3 million in other assets, a \$0.5 million decrease in goodwill, and a \$0.1 increase in deferred tax liabilities.

Pro forma information has not been included as it is impracticable to obtain the information due to the lack of availability of historical GAAP financial data. The results of operations of these businesses do not have a material effect on the Company's consolidated results of operations. There were no acquisition related costs incurred during the nine months ended September 30, 2023 and there were \$60,000 of such costs during the nine months ended September 30, 2022 included in general and administrative expense.

Note 5. Intangible Assets, Net

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

	September 30, 2023		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Value
Trade names	$ 7,956	$ (1,859)	$ 6,097
Software development	13,686	(4,864)	8,822
Customer relationships	8,180	(2,921)	5,259
Agent relationships	5,856	(1,616)	4,240
Know-how	430	(211)	219
	$ 36,108	$ (11,471)	$ 24,637

	December 31, 2022		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Value
Trade names	$ 7,956	$ (1,262)	$ 6,694
Software development	12,348	(3,029)	9,319
Customer relationships	8,180	(2,085)	6,095
Agent relationships	5,856	(988)	4,868
Know-how	430	(147)	283
	$ 34,770	$ (7,511)	$ 27,259

Estimated future amortization of intangible assets as of September 30, 2023 was as follows (amounts in thousands):

Years Ending December 31,		
2023 (remaining)	$	1,361
2024		5,329
2025		5,077
2026		4,441
2027		3,441
Thereafter		4,988
Total	$	24,637

The aggregate amortization expense for intangible assets was $1.3 million and $1.2 million, of which $0.7 million and $0.5 million was included in technology and development expense for the three months ended September 30, 2023 and 2022, respectively.

The aggregate amortization expense for intangible assets was $4.0 million and $3.4 million, of which $2.1 million and $1.6 million was included in technology and development expense for the nine months ended September 30, 2023 and 2022, respectively.

Note 6. Goodwill

The carrying amount of goodwill by reportable segment as of September 30, 2023 and December 31, 2022 were as follows (amounts in thousands):

	Real Estate Brokerage		Mortgage		Technology		Other (a)		Total	
Balance at September 30, 2023 and December 31, 2022	$	2,690	$	10,428	$	4,168	$	8,321	$	25,607

(a) Other comprises goodwill not assigned to a reportable segment.

The Company has a risk of future impairment to the extent that individual reporting unit performance does not meet projections. Additionally, if current assumptions and estimates, including projected revenues and income growth rates, terminal growth rates, competitive and consumer trends, market-based discount rates, and other market factors, are not met, or if valuation factors outside of the Company's control change unfavorably, the estimated fair value of goodwill could be adversely affected, leading to a potential impairment in the future. For the nine months ended September 30, 2023, no events occurred that indicated it was more likely than not that goodwill was impaired. The Company plans to conduct an annual goodwill impairment test in the fourth quarter of 2023.

Note 7. Accrued and Other Current Liabilities

Accrued and other current liabilities consisted of the following (amounts in thousands):

	September 30, 2023		December 31, 2022	
Deferred annual fee	$	1,217	$	1,100
Due to sellers		491		857
Accrued compensation		825		884
Other accrued liabilities		501		562
Total accrued and other current liabilities	$	3,034	$	3,403

Note 8. Warehouse Lines of Credit

Encompass Lending Group ("Encompass"), a wholly owned subsidiary of the Company, utilizes line of credit facilities as a means of temporarily financing mortgage loans pending their sale. The underlying warehouse lines of credit agreements, as described below, contain financial and other debt covenants.

Encompass maintains a master loan warehouse agreement with a bank whereby Encompass borrows funds to finance the origination or purchase of eligible loans. Interest on funds borrowed is equal to the greater of 5.00% or the 30-Day Secured Overnight Financing Rate (SOFR) plus 2.625%. The agreement expires in July 2024. The maximum funding available under these loans at September 30, 2023 was $7.5 million and December 31, 2022 was $15.0 million. At September 30, 2023 and December 31, 2022, the outstanding balance on this warehouse line was approximately $4.5 million and $1.7 million, respectively. As of September 30, 2023, Encompass was in compliance with the debt covenants under this facility.

Encompass maintains a mortgage participation purchase agreement with a bank whereby Encompass borrows funds to finance the origination or purchase of eligible loans. Interest on funds borrowed is equal to the greater of 3.61% or the 1-month Term SOFR plus 2.11%. The agreement expires in December 2023.The maximum funding available under these loans at September 30, 2023 was $7.5 million and December 31, 2022 was $25.0 million. At September 30, 2023 and December 31, 2022, the outstanding balance on this warehouse line was approximately $2.4 million and $0.8 million, respectively. As of September 30, 2023, Encompass was not in compliance with certain of these debt covenants under this facility related to earnings, but it has received a waiver.

Encompass also had a warehousing credit and security agreement with a bank whereby Encompass borrowed funds to finance the origination of eligible mortgage loans. The agreement expired in September 2023 for the facility in the amount of $7.5 million and there was no outstanding balance as of September 30, 2023. Encompass was in compliance at the time of expiration of the agreement.

Encompass maintains a warehousing credit and security agreement with a bank whereby Encompass borrows funds to finance the origination of eligible mortgage loans. Interest on funds borrowed is equal to the greater of 5.75% or the 1-month CME Term SOFR plus 2.00%. The agreement expires in August 2024. The maximum funding available under these loans at September 30, 2023 was $10 million. At September 30, 2023, there was no outstanding balance on this warehouse line. As of September 30, 2023, Encompass was in compliance with debt covenants under this facility.

Note 9. Debt

Total debt consisted of the following (amounts in thousands):

	September 30, 2023	December 31, 2022
3.75% Small Business Administration installment loan due May 2050	$ 127	$ 151
Notes payable:		
Convertible note payable, less unamortized costs of $154	3,346	—
Director and officer (D&O) insurance policy promissory note[1]	268	246
Executive and officer (E&O) insurance policy promissory note	—	296
Total debt	3,741	693
Long-term debt, current portion	290	564
Long-term debt, net of current portion	$ 3,451	$ 129

(1) The September 2023 D&O note carries a 6.85% interest rate and is payable quarterly with the last quarterly payment due in July 2024. The December 2022 D&O note carried a 6.0% interest rate and final payment was made in April 2023.

. On April 13, 2023, the Company entered into a securities purchase agreement (the "Purchase Agreement") with an accredited investor (the "Holder") and issued a Senior Secured Convertible Promissory Note in the principal amount of $3,500,000 (the "Note"), in a private placement (the "Offering"). The Company paid a placement agent fee in the amount of $175,000 in connection with the Offering. The cash proceeds disbursed to the Company from the issuance of the Note were $3,300,000, after deducting the placement agent fee and approximately $25,000 in purchaser expenses.

The Company shall pay interest to the Holder quarterly in cash on the principal amount of this Note at a rate which fluctuates every calendar month, and is equal to (i) the monthly average Secured Overnight Financing Rate (SOFR) plus (ii) 5%, per annum (which interest rate may be increased as provided by the Purchase Agreement); provided, however, that in no event will the rate of interest for any month be less than 8% per annum. Interest shall be due and payable on the last calendar day of each quarter and on the maturity date, April 12, 2025 (the "Fixed Interest Payment Date"); provided, however, notwithstanding anything to the contrary provided in the Purchase Agreement or the Note, interest accrued but not yet paid will be due and payable upon any conversion, prepayment, and/or acceleration whether as a result of an Event of Default, as defined, or otherwise with respect to the principal amount being so converted, prepaid and/or accelerated.

In connection with the Offering, the Company also entered into a Security Agreement pursuant to which the Note is secured by all the Company's existing and future assets.

All or any portion of the principal amount of the Note, plus accrued and unpaid interest and any late charges thereon, is convertible at any time, in whole or in part, at the Investor's option, into shares of the Company's common stock at an initial fixed conversion price of $6.00 per share, subject to certain customary adjustments. The Note imposes penalties on the Company for any failure to timely deliver any shares of the Company's common stock issuable upon conversion. The Note may not be converted by the Investor into shares of common stock if such conversion would result in the Investor and its affiliates owning an aggregate of in excess of 4.99% of the then-outstanding shares of the Company's common stock, provided that upon 61 days' notice, such ownership limitation may be adjusted by the Investor, but in any case, to no greater than 9.99%.

Note 10. Fair Value Measurements

FASB ASC 820, *Fair Value Measurement* ("ASC 820"), defines fair value as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the reporting date. The methodology establishes consistency and comparability by providing a fair value hierarchy that prioritizes the inputs to valuation techniques into three broad levels, which are described below:

- Level 1 inputs are quoted market prices in active markets for identical assets or liabilities (these are observable market inputs).
- Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability (includes quoted market prices for similar assets or identical or similar assets in markets in which there are few transactions, prices that are not current or prices that vary substantially).
- Level 3 inputs are unobservable inputs that reflect the entity's own assumptions in pricing the asset or liability (used when little or no market data is available).

A description of the valuation methodologies used for assets and liabilities measured at fair value, as well as the general classification of such instruments pursuant to the valuation hierarchy, is set forth below.

In general, fair value is based upon quoted market prices, where evaluated. If such quoted market prices are not available, fair value is based upon internally developed models that primarily use, as inputs, observable market-based parameters. Valuation adjustments may be made to ensure the financial instruments are recorded at fair value.

While management believes the Company's valuation methodologies are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine fair value of certain financial instruments could result in a different estimate of fair value at the reporting date.

Mortgage loans held for sale – The fair value of mortgage loans held for sale is determined, when possible, using quoted secondary-market prices or purchaser commitments. If no such quoted price exists, the fair value of a loan is determined using quoted prices for a similar asset or assets, adjusted for the specific attributes of that loan, which would be used by other market participants. The loans are considered Level 2 on the fair value hierarchy.

Derivative financial instruments – Derivative financial instruments are reported at fair value. Fair value is determined using a pricing model with inputs that are unobservable in the market or cannot be derived principally from or corroborated by observable market data. These instruments are Level 3 on the fair value hierarchy.

The fair value determination of each derivative financial instrument categorized as Level 3 required one or more of the following unobservable inputs:

- Agreed prices from Interest Rate Lock Commitments (“IRLC”);
- Trading prices for derivative instruments; and
- Closing prices at September 30, 2023 and December 31, 2022 for derivative instruments.

The following are the major categories of assets and liabilities measured at fair value on a recurring basis as of September 30, 2023 and December 31, 2022 (amounts in thousands):

	September 30, 2023			
	Level 1	Level 2	Level 3	Total
Mortgage loans held for sale	$ —	$ 7,152	$ —	$ 7,152
Derivative assets (included in prepaids and other current assets)	—	—	87	87
	$ —	$ 7,152	$ 87	$ 7,239

	December 31, 2022			
	Level 1	Level 2	Level 3	Total
Mortgage loans held for sale	$ —	$ 3,694	$ —	$ 3,694
Derivative assets (included in prepaids and other current assets)	—	—	7	7
	$ —	$ 3,694	$ 7	$ 3,701

The Company enters into IRLCs to originate residential mortgage loans held for sale, at specified interest rates and within a specific period of time (generally between 30 and 90 days), with customers who have applied for a loan and meet certain credit and underwriting criteria. These IRLCs meet the definition of a derivative and are reflected on the consolidated balance sheets at fair value with changes in fair value recognized in other service revenue on the consolidated statements of operations. Unrealized gains and losses on the IRLCs, reflected as derivative assets and derivative liabilities, respectively, are measured based on the fair value of the underlying mortgage loan, quoted agency mortgage-backed security (“MBS”) prices, estimates of the fair value of the mortgage servicing rights and the probability that the mortgage loan will fund within the terms of the IRLC, net of commission expense and broker fees. The fair value of the forward loan sales commitment and mandatory delivery commitments being used to hedge the IRLCs and mortgage loans held for sale not committed to purchasers are based on quoted agency MBS prices.

Note 11. Leases

Operating Leases

The Company has operating leases primarily consisting of office space with remaining lease terms of less than one year to six years, subject to certain renewal options as applicable.

Leases with an initial term of twelve months or less are not recorded on the balance sheet, and the Company does not separate lease and non-lease components of contracts. There are no material residual guarantees associated with any of the Company’s leases, and there are no significant restrictions or covenants included in the Company’s lease agreements. Certain leases include variable payments related to common area maintenance and property taxes, which are billed by the landlord, as is customary with these types of charges for office space.

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Our lease agreements generally do not provide an implicit borrowing rate. Therefore, the Company used a benchmark approach to derive an appropriate imputed discount rate. The Company benchmarked itself against other companies of similar credit ratings and comparable quality and derived an imputed rate, which was used in a portfolio approach to discount its real estate lease liabilities. The Company used estimated incremental borrowing rates for all active leases.

The table below presents certain information related to lease costs for the Company's operating leases (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Operating lease expense	$ 402	$ 479	$ 1,308	$ 1,188
Short-term lease expense	206	96	508	216
Total lease cost	$ 608	$ 575	$ 1,816	$ 1,404

The following table presents the weighted average remaining lease term and the weighted average discount rate related to operating leases:

	September 30, 2023	December 31, 2022
Weighted average remaining lease term (in years) - operating leases	4.1	4.7
Weighted average discount rate - operating leases	6.26 %	6.19 %

The following table presents the maturities of lease liabilities (amounts in thousands):

Years Ended December 31,	Operating Leases
2023 (remaining)	$ 483
2024	1,713
2025	1,424
2026	1,067
2027	970
2028 and thereafter	710
Total minimum lease payments	6,367
Less effects of discounting	(753)
Present value of future minimum lease payments	$ 5,614

Note 12. Shareholders' Equity

On March 10, 2022, the Company's Board of Directors authorized an expenditure of up to $10.0 million for the repurchase of shares of the Company's common stock. The share repurchase program does not have a fixed expiration. Under the program, repurchases can be made from time-to-time using a variety of methods, including open market transactions, privately negotiated transactions or by other means, including through the use of trading plans intended to qualify under Rule 10b5-1 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The actual timing and amount of future repurchases are subject to business and market conditions, corporate and regulatory requirements, stock price, acquisition opportunities and other factors. The repurchase program does not obligate the Company to acquire any particular number of shares and may be suspended or discontinued at any time at the Company's discretion. During the year ended December 31, 2022, the Company reacquired 686,097 shares for approximately $6.0 million. As of September 30, 2023, the Company had approximately $4.0 million remaining under the share repurchase authorization.

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During the nine months ended September 30, 2022, the Company issued shares of common stock as part of the purchase consideration in connection with the acquisitions of iPro and Cornerstone. Refer to Note 4 for additional information about these acquisitions and the shares of common stock issued.

The Company has an outstanding equity-classified warrant issued to an underwriter in August 2020 (the “Underwriter Warrant”) to purchase240,100 shares of common stock. The Underwriter Warrant is exercisable at a per share exercise price of $11.00 and is exercisable at any time through August 4, 2025. As of September 30, 2023,no portion of the Underwriter Warrant has been exercised or expired.

Note 13. Stock-based Compensation

The Company’s 2019 Omnibus Stock Incentive Plan (the “2019 Plan”) provides for granting stock options, restricted stock awards, and restricted stock units to employees, directors, contractors and consultants of the Company. On August 28, 2023, the Company’s shareholders approved an amendment to the 2019 Plan that increased the share reserve of the 2019 Plan by 1,700,000 shares from4,060,778 shares to5,760,778 shares. As of September 30, 2023, there were approximately1,033,690 shares available for future grants under the 2019 Plan.

Restricted Stock Awards

Following is the restricted stock award activity for the three and nine months ended September 30, 2023:

	Shares	Weighted Average Grant Date Fair Value
Nonvested at December 31, 2022	1,375,145	$ 14.23
Granted	651,618	4.32
Released	(2,866)	6.55
Forfeited	(49,069)	12.77
Nonvested at March 31, 2023	1,974,828	10.98
Granted	61,514	4.51
Released	(27,464)	6.06
Forfeited	(29,300)	14.36
Nonvested at June 30, 2023	1,979,578	$ 10.83
Granted	68,761	4.33
Released	(42,794)	6.81
Forfeited	(23,948)	14.62
Nonvested at September 30, 2023	1,981,597	$ 10.65

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Restricted Stock Unit Awards

During 2022, the Company commenced granting restricted stock units to employees and agents.

Following is the restricted stock unit award activity for the three and nine months ended September 30, 2023:

	Shares	Weighted Average Grant Date Fair Value
Nonvested at December 31, 2022	392,564	$ 6.58
Granted	894,891	4.28
Released	—	—
Forfeited	(12,852)	6.05
Nonvested at March 31 2023	1,274,603	$ 4.97
Granted	88,481	4.53
Released	(17,080)	7.84
Forfeited	(45,510)	5.45
Nonvested at June 30, 2023	1,300,494	$ 5.07
Granted	750,921	5.25
Released	(9,405)	5.30
Forfeited	(64,024)	5.10
Nonvested at September 30, 2023	1,977,986	$ 5.13

Stock Option Awards

There were no stock option awards granted during the nine-month period ended September 30, 2023.

Stock-based Compensation expense

Stock-based compensation expense related to all awards issued under the Company's stock compensation plans for the three and nine months ended September 30, 2023 and 2022 was as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Commission and other agent-related cost	$ 903	$ 476	$ 2,971	$ 2,102
Operations and support	155	509	391	949
Technology and development	55	125	127	203
General and administrative	2,124	932	5,525	3,010
Marketing	83	81	311	206
Total stock-based compensation	$ 3,320	$ 2,123	$ 9,325	$ 6,470

The Company capitalized $0.4 million of stock-based compensation expense associated with the cost of developing software for internal use during the three and nine months ended September 30, 2023.

The Company capitalized approximately $0.1 million of stock-based compensation expense associated with the cost of developing software for internal use during each of the three and nine months ended September 30, 2022.

At September 30, 2023, the total unrecognized compensation cost related to nonvested restricted stock awards was $6.4 million, which is expected to be recognized over a period of approximately 0.7 years.

At September 30, 2023, the total unrecognized compensation related to nonvested restricted stock units was $7.2 million which the Company expects to recognize over a period of approximately 1.2 years.

At September 30, 2023, the stock options granted were fully expensed.

Note 14. Related Party Transactions

We lease office space from entities affiliated with certain of our employees. We paid $0.1 million and $0.1 million in total rent expense under these leases for each of the three months ended September 30, 2023 and 2022, respectively, and we paid $0.3 million and $0.1 million in total rent expense under these leases for each of the nine months ended September 30, 2023 and 2022, respectively.

Marketing expense for each of the three-month periods ended September 30, 2023 and 2022 includes approximately $0.1 million paid to related parties in exchange for the Company receiving marketing services.

Marketing expense for the nine months ended September 30, 2023 and 2022 includes approximately $0.3 million and $0.4 million, respectively, paid to related parties in exchange for the Company receiving marketing services.

Note 15. Net Loss per Share Attributable to Common Stock

Basic loss per share of common stock is computed by dividing net loss attributable to common stockholders by the weighted average number of shares of common stock outstanding for the period. Diluted loss per share is calculated by adjusting the weighted-average number of shares outstanding for the dilutive effect of common stock equivalents outstanding for the period, determined using the treasury-stock method. Diluted loss per share excludes, when applicable, the potential impact of stock options, unvested shares of restricted stock awards, and common stock warrants because their effect would be anti-dilutive due to net loss.

The calculation of basic and diluted net loss per share attributable to common stock was as follows (amounts in thousands except share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Numerator:				
Net loss attributable to common stock—basic and diluted	$ (5,496)	$ (6,012)	$ (15,542)	$ (17,678)
Denominator:				
Weighted-average basic and diluted shares outstanding	16,074,225	15,804,644	16,036,656	16,054,025
Net loss per share attributable to common stock—basic and diluted	$ (0.34)	$ (0.38)	$ (0.97)	$ (1.10)

The following outstanding shares of common stock equivalents were excluded from the computation of the diluted net loss per share attributable to common stock for the periods presented because their effect would have been anti-dilutive:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Stock options	147,707	147,707	147,707	147,707
Non-vested restricted stock awards	1,981,597	1,186,136	1,981,597	1,186,136
Non-vested restricted stock units	1,977,986	—	1,977,986	—
Common stock warrants	240,100	240,100	240,100	240,100
Convertible debt	583,333	—	583,333	—

Note 16. Income Taxes

In determining the quarterly provision for income taxes, the Company used the annual effective tax rate applied to year-to-date income. The Company's annual estimated effective tax rate differs from the statutory rate primarily as a result of state taxes, permanent differences, and changes in the Company's valuation allowance. The income tax effects of unusual or infrequent items including a change in the valuation allowance as a result of a change in judgment regarding the realizability of deferred tax assets are excluded from the estimated annual effective tax rate and are required to be discretely recognized in the interim period they occur.

The Company has historically maintained a valuation allowance against deferred tax assets and reported only minimal current state tax expense. For the three and nine months ended September 30, 2023, the Company recorded income tax expense of approximately $0.02 million and $0.06 million, respectively. For the three and nine months ended September 30, 2022, the Company recorded income tax expense of approximately $0 and $0.2 million, respectively. The Company expects to maintain a valuation allowance on current year remaining net deferred tax assets by year-end due to historical operating losses, but records a net deferred tax liability when reversals of deferred tax liabilities that relate to indefinite-live intangible assets may not be used in realizing deferred tax assets.

The Company applies the standards on uncertainty in income taxes contained in ASC Topic 740, Accounting for Income Taxes. The application of this interpretation did not have any impact on the Company's consolidated financial statements, as the Company did not have any significant unrecognized tax benefits during the nine months ended September 30, 2023 and the year ended December 31, 2022. Currently, the statute of limitations remains open subsequent to and including the year ended December 31, 2019.

Note 17. Segment Reporting

The Company identifies an operating segment as a component: (i) that engages in business activities from which it may earn revenues and incur expenses; (ii) that has available discrete financial information; and (iii) whose operating results are regularly reviewed by the Chief Operating Decision Maker ("CODM") to allocate resources and to assess the operating results and financial performance of each operating segment.

Our Chief Operating Decision Maker makes operating decisions and assesses performance based on the services of identified operating segments and has identifiedthree reportable segments: Real Estate Brokerage; Mortgage; and Technology. Through its Real Estate Brokerage segment, the Company provides real estate brokerage services. Through its Mortgage segment, the Company provides residential loan origination and underwriting services. Through its Technology segment, the Company provides SaaS solutions and data mining for third party customers and continues to develop its intelliAgent platform for current use by the Company's real estate agents.

Revenue and Adjusted EBITDA are the primary measures used by the CODM to evaluate financial performance of the reportable segments and to allocate resources. Adjusted EBITDA represents the revenues of the operating segment less operating expenses directly attributable to the respective operating segment. Adjusted EBITDA is defined by us as net income (loss), excluding other income and expense, costs related to acquisitions, income taxes, depreciation and amortization, and stock-based compensation expense. In particular, the Company believes the exclusion of non-cash stock-based compensation expense related to restricted stock awards, restricted stock units, and stock options and transaction-related costs provides a useful supplemental measure in evaluating the performance of our operations and provides better transparency into our results of operations. The Company's presentation of Adjusted EBITDA might not be comparable to similar measures used by other companies.

The Company does not allocate assets to its reportable segments as they are not included in the review performed by the CODM for purposes of assessing segment performance and allocating resources. The balance sheet is managed on a consolidated basis and is not used in the context of segment reporting.

Key operating data for the reportable segments for the three and nine months ended September 30, 2023 and 2022 are set forth in the tables below (amounts in thousands):

	Revenue			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Real Estate Brokerage	$ 88,247	$ 104,977	$ 256,050	$ 311,074
Mortgage	1,921	2,839	5,404	8,345
Technology	836	702	2,385	2,003
Corporate and other services (a)	2,520	2,746	7,315	8,104
Total revenue	$ 93,524	$ 111,264	$ 271,154	$ 329,526

	Adjusted EBITDA			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Real Estate Brokerage	$ 1,582	$ 576	$ 5,450	$ 3,311
Mortgage	(293)	(406)	(1,097)	(1,726)
Technology	(514)	(372)	(1,144)	(1,091)
Total Segment Adjusted EBITDA	775	(202)	3,209	494
Corporate and other services (a)	(1,028)	(2,123)	(4,373)	(6,801)
Total Company Adjusted EBITDA	(253)	(2,325)	(1,164)	(6,307)
Depreciation and amortization	1,599	1,436	4,466	3,839
Other expense (income), net	106	115	332	804
Income tax expense	18	—	55	185
Stock based compensation	3,320	2,123	9,325	6,470
Other non-cash items and transaction costs	200	13	200	73
Net loss	$ (5,496)	$ (6,012)	$ (15,542)	$ (17,678)

(a) Transactions between segments are eliminated in consolidation. Such amounts are eliminated through the Corporate and other services line.

Note 18. Commitments and Contingencies

From time to time the Company is involved in litigation, claims, and other proceedings arising in the ordinary course of business. Such litigation and other proceedings may include, but are not limited to, actions relating to employment law and misclassification of employees versus independent contractors, intellectual property, commercial or contractual claims, brokerage or real estate disputes, or other consumer protection statutes, ordinary-course brokerage disputes like the failure to disclose property defects, commission disputes, and various liabilities based upon conduct of individuals or entities outside of the Company's control, including agents and third party contractor agents. Litigation and other disputes are inherently unpredictable and subject to substantial uncertainties and unfavorable resolutions could occur. As of September 30, 2023, there was no material litigation against the Company that had a reasonable possibility of loss.

In conducting its operations, the Company routinely holds customers' assets in escrow, pending completion of real estate transactions, and is responsible for the proper disposition of these balances for its customers. Certain of these amounts are maintained in segregated bank accounts and have not been included in the accompanying consolidated balance sheets, consistent with GAAP and industry practice. The balance amounted to $0.8 million and $1.8 million at September 30, 2023 and December 31, 2022, respectively.

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Encompass Net Worth Requirements

In order to maintain approval from the U.S. Department of Housing and Urban Development to operate as a Title II non-supervised mortgagee, our indirect subsidiary Encompass is required as of December 31 to have adjusted net worth of $1,000,000 and must maintain liquid assets (cash, cash equivalents, or readily convertible instruments) of 20% of the required net worth. As of December 31, 2022, Encompass had adjusted net worth of approximately $3.5 million and liquid assets of $3.9 million.

Commitments to Extend Credit

Encompass enters into IRLCs with borrowers who have applied for residential mortgage loans and have met certain credit and underwriting criteria. These commitments expose Encompass to market risk if interest rates change and the underlying loan is not economically hedged or committed to a purchaser. Encompass is also exposed to credit loss if the loan is originated and not sold to a purchaser and the mortgagor does not perform. The collateral upon extension of credit is typically a first deed of trust in the mortgagor’s residential property. Commitments to originate loans do not necessarily reflect future cash requirements as commitments are expected to expire without being drawn upon.

Regulatory Commitments

Encompass is subject to periodic audits and examinations, both formal and informal in nature, from various federal and state agencies, including those made as part of the regulatory oversight of mortgage origination, servicing and financing activities. Such audits and examinations could result in additional actions, penalties or fines by state or federal government bodies, regulators or the courts.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

The Company's consolidated operating results are affected by a wide variety of factors that could materially and adversely affect revenues and profitability, including the risk factors described in our most recent Annual Report on Form 10-K, as amended (the "Form 10-K"), and the risk factors described in this quarterly report. As a result of these and other factors, the Company may experience material fluctuations in future operating results on a quarterly or annual basis, which could materially and adversely affect its business, consolidated financial condition, liquidity, operating results, and common stock prices. Furthermore, this quarterly report, the Form 10-K and other documents filed by the Company with the Securities and Exchange Commission ("SEC") contain certain forward-looking statements under the Private Securities Litigation Reform Act of 1995 ("Forward-Looking Statements") with respect to the business of the Company. Forward-Looking Statements are necessarily subject to risks and uncertainties, many of which are outside our control, that could cause actual results to differ materially from these statements. Forward-Looking Statements can be identified by such words as "anticipate," "believe," "goals," "estimate," "expect," "intend," "may," "might," "plan," "predict," "project," "target," "potential," "will," "would," "could," "should," "continue," "forecast" and similar references to future periods. All statements other than statements of historical facts included in this report regarding our strategies, prospects, financial condition, operations, costs, plans and objectives and inflation are Forward-Looking Statements. These Forward-Looking Statements are subject to certain risks and uncertainties, including those detailed in the Form 10-K and in the risk factors described in this quarterly report, which could cause actual results to differ materially from these Forward-Looking Statements. Except as required by law, the Company undertakes no obligation to publicly release the results of any revisions to these Forward-Looking Statements which may be necessary to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. Any Forward-Looking Statement made by the Company is based only on information currently available to us and speaks only as of the date on which it is made.

The terms the "Company," "Fathom," "we," "us," and "our" as used in this report refer to Fathom Holdings Inc. and its consolidated subsidiaries unless otherwise specified.

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

The information in this Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") should be read in conjunction with the Company's consolidated financial statements and the related notes set forth in Item 1 of Part I of this Quarterly Report on Form 10-Q, our MD&A set forth in the Form 10-K, and our audited consolidated financial statements and related notes set forth in the Form 10-K. See Part II, Item 1A, "Risk Factors," below, and "Special Note Regarding Forward-Looking Information," above, and the information referenced therein, for a description of risks that we face and important factors that we believe could cause actual results to differ materially from those in our forward-looking statements. All statements herein regarding potential risks constitute forward-looking statements. When we cross-reference to a "Note," we are referring to our "Notes to Unaudited Condensed Consolidated Financial Statements," unless the context indicates otherwise. All amounts noted within the tables are in thousands except per share amounts or where otherwise noted and percentages are approximate due to rounding.

Overview

Fathom Holdings Inc. (the "Company", "Corporate", "Our", "We"), headquartered in Cary, North Carolina, is a national, technology-driven, end to end real estate services company integrating residential brokerage, mortgage, title, insurance and SaaS offerings for brokers and agents. The Company's brands include Fathom Realty, Dagley Insurance, Encompass Lending, intelliAgent, LiveBy, Real Results, Verus Title and Cornerstone. Our primary operation, Fathom Realty (as defined below), operates as a real estate brokerage company, working with real estate agents to help individuals purchase and sell residential and commercial properties, primarily in the South, Atlantic, Southwest, and Western parts of the United States, with the intention of expanding into all states.

Fathom Realty Holdings, LLC, a Texas limited liability company ("Fathom Realty"), is a wholly owned subsidiary of Fathom Holdings Inc. Fathom Realty owns 100% of 39 subsidiaries, each an LLC representing the state in which the entity operates (e.g. Fathom Realty NJ, LLC).

Corporate Developments During 2022 and 2023

In January 2022, the Company completed its acquisition of Cornerstone Financial ("Cornerstone"). The acquisition of Cornerstone, a real estate mortgage business, has helped us to expand our reach in the DC and surrounding markets.

In February 2022, the Company completed its acquisition of iPro Realty Network ("iPro"). The acquisition of iPro, a real estate brokerage business, has helped us to expand our reach in the Utah real estate market.

Rising Interest Rates, COVID-19, and Other Risks

Our business is dependent on the economic conditions within the markets in which we operate. Changes in these conditions can have a positive or negative impact on our business. The economic conditions influencing the housing markets primarily include economic growth, interest rates, unemployment, consumer confidence, mortgage availability, and supply and demand.

In periods of economic growth, demand typically increases resulting in increasing home sales transactions and home sales prices. Similarly, a decline in economic growth, increasing interest rates and declining consumer confidence generally decreases demand. These are the trends we are currently facing. Additionally, industry litigation, and regulations imposed by local, state, and federal government agencies can also negatively impact the housing markets in which we operate. Finally, national and global events, including pandemics such as COVID-19, geopolitical instability, that impact economic conditions and financial markets, including interest rates, can adversely impact the housing market.

Beginning in the second quarter of 2022, several economic factors began to adversely impact the residential real estate market, including higher mortgage interest rates, lower consumer sentiment, increased inflation, and declining financial market conditions. This shift in the macroeconomic backdrop had an adverse impact on consumer demand for our services, as consumers weighed the financial implications of selling or purchasing a home and taking out a mortgage. As previously reported, our growth slowed beginning in the third quarter of 2022. Our mortgage business also experienced significant declines in loan volumes beginning in the second quarter of 2022, particularly from refinancing prior mortgages.

In response to these macroeconomic and consumer demand developments, we took action to adjust our operations and manage our business towards longer-term profitability despite these adverse macroeconomic factors. We achieved our goal of reaching total company Adjusted EBITDA breakeven in the second quarter of 2023 although it turned marginally negative again in the third quarter of 2023. Looking ahead, we remain focused on generating positive operating cash flow even in today's market environment. We continue to identify opportunities to streamline our overhead and, as of December 31, 2022, had already reduced expenses by approximately $3.0 million per quarter. During the third quarter, we continued to see the benefits from the cost-reduction measures we've already implemented. We will continue to further right-size the Company's expenses, including implementing management salary reductions for a combined expected savings of approximately $1.2 million per quarter going forward. We believe that these cost reduction initiatives, combined with the increase in agent transaction fees that became effective in January 2023, have positioned our business for profitable growth in the future.

For the nine months ended September 30, 2023 and the year ended December 31, 2022, due in part to the widespread availability of multiple COVID-19 vaccines, the effects of the COVID-19 on business worldwide lessened. However, the continuing impact from COVID-19, as well as the recent increases in interest rates and inflationary pressure in the U.S. and world economies, is not fully known and cannot be estimated as the U.S. and global economies continue to react.

On October 31, 2023, a federal jury in Missouri found that The National Association of Realtors ("NAR") and certain companies conspired to artificially inflate brokerage commissions, which is in violation of federal antitrust law. The judgement was appealed on October 31, 2023, while the plaintiffs have now sued a number of other companies, although not us yet. Due to this litigation, there may be rule changes for the NAR, such as increased disclosure of commission offers from sellers' agents to buyers' agents, but the direct and indirect effects, if any, of the judgement upon the real estate industry are not yet entirely clear. There could also be further changes in real estate industry practices. All of this has prompted discussion of changes to rules established by local or state real estate boards or multiple listing services. All of this may require changes to many brokers' business models, including changes in agent and broker compensation. For example, many of our competitors may need to develop mechanisms and a plan that enables buyers and sellers to negotiate commissions. In contrast, our flat fee per real estate transaction model has always enabled our agents to negotiate their own fees. We have never interfered with our agents' ability to negotiate commissions and have no direct incentive to do so , because their commission have no impact on our operating net income. Our flat fee per real estate transaction model enables our agents to freely settle their transaction commissions at their own discretion. The Company will continue to monitor ongoing and similar antitrust litigation against our competitors, however, as our agent compensation model fully supports commission negotiation, we do not expect the need to have to change our compensation model in a manner that would adversely affect our financial condition and results of operations. However, the litigation and its ramifications could cause unforeseen turmoil in our industry, the impacts of which could have a negative effect on us as an industry participant.

Real Estate Agents

Due to our low-overhead business model, which leverages our proprietary technology, we can offer our agents the ability to keep significantly more of their commissions compared to traditional real estate brokerage firms. We believe we offer our agents some of the best technology, training, and support available in the industry. We believe our business model and our focus on treating our agents well will attract more agents and higher-producing agents.

As of September 30, 2023 and September 30, 2022, we had approximately 11,333 and 9,991 agent licenses, respectively. These figures represent growth of approximately 13.4% year-over-year.

Reportable Segments

Our Chief Operating Decision Maker makes operating decisions and assesses performance based on the services of identified operating segments and has identified three reportable segments: Real Estate Brokerage; Mortgage; and Technology. Through its Real Estate Brokerage segment, the Company provides real estate brokerage services. Through its Mortgage segment, the Company provides residential loan origination and underwriting services. Through its Technology segment, the Company provides SaaS solutions and data mining for third party customers and continues to develop its intelliAgent platform for current use by the Company's real estate agents.

Components of Our Results of Operations

Revenue

Our revenue primarily consists of commissions generated from real estate brokerage services. We also have other service revenue, including mortgage lending, title insurance, home and other insurance, and SaaS revenues.

Gross commission income

We recognize commission-based revenue on the closing of a transaction, less the amount of any closing-cost reductions. Revenue is affected by the number of real estate transactions we close, the mix of transactions, home sale prices, and commission rates.

Other Services Revenue

Mortgage Lending

We recognize revenue streams for our mortgage lending services business which are primarily comprised of loans sold, origination and other fees.

The gain on sale of mortgage loans represents the difference between the net sales proceeds and the carrying value of the mortgage loans sold and includes the servicing rights release premiums.

Servicing rights release premiums represent one-time fee revenues earned for transferring the risk and rewards of ownership of servicing rights to third parties.

Retail origination fees are principally revenues earned from loan originations and recorded in the statement of operations in other service revenue. Direct loan origination costs and expenses associated with the loans are charged to expenses when the loans are sold. Interest income is interest earned on originated loans prior to the sale of the asset.

Insurance Agency Service Revenues

The revenue streams for the Company's home and other insurance agency services business are primarily comprised of new and renewal commissions paid by insurance carriers. The transaction price is set as the estimated commissions to be received over the term of the policy based upon an estimate of premiums placed, policy changes and cancellations, net of restraint. The commissions are earned at the point in time upon effective date of the associated policies when control of the policy transfers to the client.

The Company is also eligible for certain contingent commissions from insurers based on the attainment of specific metrics (i.e., volume growth, loss ratios) related to underlying polices placed. Revenue for contingent commissions is estimated based on historical and current evidence of achievement towards each insurer's annual respective metrics and is recorded as the underlying policies that contribute to the achievement are placed. Due to the uncertainty of the amount of contingent consideration that will be received, the estimated revenue is constrained to an amount that is probable to not have a significant negative adjustment. Contingent consideration is generally received in the first quarter of the subsequent year.

Title Service Revenues

Title services revenue includes fees charged for title search and examination, property settlement and title insurance services provided in association with property acquisitions and refinance transactions.

SaaS Revenues

The Company generates revenue from subscription and services related to the use of the LiveBy platform. The SaaS contracts are generally annual contracts paid monthly in advance of service and cancellable upon 30 days' notice after the first year. The Company's subscription arrangements do not provide customers with the right to take possession of the software supporting the platform. Subscription revenue, which includes support, is recognized on a straight-line basis over the non-cancellable contractual term of the arrangement, generally beginning on the date that the Company's service is made available to the customer and is recorded as other service revenue in the statement of operations.

Operating Expenses

Commission and other agent-related costs

Commission and other agent-related costs consists primarily of agent commissions, less fees paid to us by our agents, order fulfillment, share-based compensation for agents, title searches, and direct cost to fulfill the services provided. We expect commission and other agent-related costs to continue to rise over the longer term in proportion to the expected growth in our operations.

Operations and support

Operations and support consist primarily of direct cost to fulfill the services from our mortgage lending, title services, insurance services and other services provided. We expect operations and support to continue to rise over the longer term in proportion to the expected growth in our operations.

Technology and development

Technology and development expenses primarily include personnel costs, including base pay, bonuses, benefits, and share based compensation, related to ongoing development and maintenance of our proprietary software for use by our agents, customers, and support staff. Technology and development expenses also include amortization of capitalized software and development costs, data licenses, other software, and equipment costs, as well as infrastructure and operational expenses, such as, for data centers, communication, and hosted services.

General and administrative

General and administrative expenses consist primarily of personnel costs, including base pay, bonuses, benefits, and share based compensation, and fees for professional services. Professional services principally consist of external legal, audit, and tax services. We anticipate general and administrative expenses as a percentage of revenue to decrease over time, if and as we are able to increase revenue.

Marketing

Marketing expenses consist primarily of expenses for online and traditional advertising, as well as costs for marketing and promotional materials. Advertising costs are expensed as they are incurred. We expect marketing expenses to increase in absolute dollars as we continue to expand our advertising programs, including promotion of our recently acquired business lines and we anticipate marketing expenses as a percentage of revenue to decrease over time, if and as we are able to increase revenue.

Depreciation and amortization

Depreciation and amortization represent the depreciation charged on our fixed assets and intangible assets other than capitalized software. Depreciation expense is recorded on a straight-line method, based on estimated useful lives of five years for computer hardware, seven years for furniture and equipment and seven years for vehicles. Leasehold improvements are depreciated over the lesser of the life of the lease term or the useful life of the improvements. Amortization expense consists of amortization recorded on acquisition-related intangible assets, excluding purchased software. Customer relationships are amortized on an accelerated basis, which coincides with the period of economic benefit we expect to receive. All other finite-lived intangibles are amortized on a straight-line basis over the term of the expected benefit. Purchased software and capitalized software development costs are amortized on a straight-line basis over the term of the expected benefit and the respective amortization expense is included in technology and development expense. In accordance with U.S. Generally Accepted Accounting Principles ("GAAP"), we do not amortize goodwill.

Income Taxes

U.S. federal and state income tax benefits for a portion of historical net losses has been recognized in the period ended December 31, 2022. Previously the tax benefits had not been recognized due to our uncertainty of realizing a benefit from those items. As a result of certain acquisitions in prior years, we realized a portion of the pre-existing deferred tax assets due to the reversal of taxable temporary differences. As of December 31, 2022, we had federal net operating loss carryforwards of approximately $40.8 million and state net operating loss carryforwards of approximately $20.8 million. We have not recorded any U.S. federal or state tax benefits for the net losses incurred during the nine months ended September 30, 2023 due to our uncertainty of realizing a benefit from those items. The federal net operating losses carry forward indefinitely. State net operating losses will begin to expire, if not utilized, in 2032. Utilization of the net operating loss carryforwards may be subject to an annual limitation according to Section 382 of the Internal Revenue Code of 1986 as amended, and similar state law provisions.

Results of Operations

Comparison of the Three Months Ended September 30, 2023 and 2022 (dollar amounts in thousands)

Revenue

	Three Months Ended September 30,		Change	
	2023	2022	Dollars	Percentage
Gross commission income	$ 88,247	$ 104,977	$ (16,730)	(16) %
Other service revenue	5,277	6,287	(1,010)	(16) %
Total revenue	$ 93,524	$ 111,264	$ (17,740)	(16) %

For the three months ended September 30, 2023, gross commission income decreased by approximately $16.7 million, or 16%, as compared with the three months ended September 30, 2022. This decrease was primarily attributable to a 14.7% decrease in transaction volume; 10,303 real estate transactions during the three months ended September 30, 2023 compared to 12,077 transactions during the three months ended September 30, 2022. Our transaction volume decreased primarily due to rising interest rates. However, the negative impact of rising interest rates on transaction volume was lessened due to the 13.4% expansion in our agent base. During the three months ended September 30, 2023, average revenue per transaction was $8,565, a 1.5% decrease compared to $8,692 during the three months ended September 30, 2022 primarily attributable to an approximate 1.7% decrease in the average price of the homes we sold.

For the three months ended September 30, 2023, other service revenue decreased by approximately $1.0 million or 16%, as compared with the three months ended September 30, 2022. This decrease was primarily attributable to a decrease in mortgage loans and title service transaction volume, which was primarily attributable to rising interest rates.

Operating Expenses

	Three Months Ended September 30,		Change	
	2023	2022	Dollars	Percentage
Commission and other agent-related costs	$ 83,770	$ 99,448	$ (15,678)	(16) %
Operations and support	1,886	2,420	(534)	(22) %
Technology and development	1,760	1,456	304	21 %
General and administrative	9,793	11,528	(1,735)	(15) %
Marketing	796	1,457	(661)	(45) %
Depreciation and amortization	891	852	39	5 %
Total operating expenses	$ 98,896	$ 117,161	$ (18,265)	(16) %

For the three months ended September 30, 2023, commission and other agent-related costs decreased by approximately $15.9 million, or 16%, as compared with the three months ended September 30, 2022. Commission and other agent-related costs primarily includes costs related to agent commissions, net of fees paid to us by our agents. These costs generally correlate with recognized revenues. As such, the decrease in commission and other agent-related costs compared to the same period in 2022 was primarily attributable to a decrease in agent commissions paid due to lower transaction volume mainly due to rising interest rates. The lift expected from our increasing the fees we charged to agents thereby lowering our payout in commission costs starting in January 2023, was partially offset by an increase in non-cash stock compensation costs paid to agents.

For the three months ended September 30, 2023, operations and support expenses were $1.9 million, a decrease of approximately $0.5 million, 22%, as compared with the three months ended September 30, 2022. This decrease was primarily attributable to strategic decreases in headcount in our mortgage, insurance and title businesses.

For the three months ended September 30, 2023, technology and development expenses increased by approximately $0.3 million, or 21%, as compared with the three months ending September 30, 2022. The increase was attributable to our ongoing investment in the intelliAgent platform and our LiveBy business, and to an higher amortization related to capitalized technology development costs.

For the three months ended September 30, 2023, general and administrative expenses decreased by approximately $1.7 million, or 15%, as compared with the three months ended September 30, 2022. This decrease was primarily attributable to strategic decreases in headcount throughout our businesses.

For the three months ended September 30, 2023, marketing expenses decreased by approximately $0.7 million, or 45%, as compared with the three months ended September 30, 2022. The decrease in marketing expenses is primarily related to leveraging internal resources and optimizing advertising expenditure.

For the three months ended September 30, 2023, depreciation and amortization expenses remained relatively constant.

Income Taxes

The Company recorded income tax expense of approximately $0.02 million and of $0 for the three months ended September 30, 2023 and 2022, respectively. This tax expense is primarily the result of current state income tax liabilities and deferred tax expense related to deferred tax liabilities that can not be fully offset by deferred tax assets.

Comparison of the Nine Months Ended September 30, 2023 and 2022 (dollar amounts in thousands)

Revenue

	Nine Months Ended September 30,		Change	
	2023	2022	Dollars	Percentage
Gross commission income	$ 256,050	$ 311,074	$ (55,024)	(18) %
Other service revenue	15,104	18,452	(3,348)	(18) %
Total revenue	$ 271,154	$ 329,526	$ (58,372)	(18) %

For the nine months ended September 30, 2023, gross commission income decreased by approximately $55.0 million or 18%, as compared with the nine months ended September 30, 2022. This decrease was primarily attributable to a 15.8% decrease in transaction volume; approximately 29,835 real estate transactions occurred during the nine months ended September 30, 2023 compared to approximately 35,464 transactions during the nine months ended September 30, 2022. Our transaction volume decreased primarily due to rising interest rates. However, the negative impact of rising interest rates on transaction volume was lessened due to the 13.4% expansion in our agent base. During the nine months ended September 30, 2023, average revenue per transaction was $8,582, a 2.3% decrease compared to $8,771 during the nine months ended September 30, 2022, primarily attributable to an approximate 3.51% decrease in the average price of the homes we sold.

For the nine months ended September 30, 2023, other service revenue decreased by approximately $3.3 million or 18%, as compared with the nine months ended September 30, 2022. This decrease was primarily attributable to a decrease in mortgage loans and title service transaction volume, which was primarily attributable to rising interest rates.

Operating Expenses

	Nine Months Ended September 30,		Change	
	2023	2022	Dollars	Percentage
Commission and other agent-related costs	241,834	$ 295,237	$ (53,403)	(18) %
Operations and support	5,404	6,192	(788)	(13) %
Technology and development	4,674	3,931	743	19 %
General and administrative	29,552	34,669	(5,117)	(15) %
Marketing	2,439	3,948	(1,509)	(38) %
Depreciation and amortization	2,406	2,238	168	8 %
Total operating expenses	$ 286,309	$ 346,215	$ (59,906)	(17) %

For the nine months ended September 30, 2023, commission and other agent-related costs decreased by approximately $53.6 million, or 18%, as compared with the nine months ended September 30, 2022. Commission and other agent-related costs primarily includes costs related to agent commissions, net of fees paid to us by our agents. These costs generally correlate with recognized revenues. As such, the decrease in commission and other agent-related costs compared to the same period in 2022 was primarily attributable to a decrease in agent commissions paid due to lower transaction volume mainly due to rising interest rates. The lift expected from our increasing the fees we charged to agents thereby lowering our payout in commission costs starting in January 2023, was partially offset by an increase in non-cash stock compensation costs paid to agents.

For the nine months ended September 30, 2023, operations and support expenses were $5.4 million, a decrease of approximately $0.8 million, or 13%, as compared with the nine months ended September 30, 2022. This decrease was primarily attributable to strategic decreases in headcount in our mortgage, insurance and title businesses in the first three months of this year.

For the nine months ended September 30, 2023, technology and development expenses increased by approximately $0.7 million, or 19%, as compared with the nine months ending September 30, 2022. The increase was attributable to our ongoing investment in the intelliAgent platform and our LiveBy business.

For the nine months ended September 30, 2023, general and administrative expenses decreased by approximately $5.1 million, or 15%, as compared with the nine months ended September 30, 2022. This decrease was primarily attributable to strategic decreases in headcount throughout our businesses and to salary reductions at the business unit and corporate executive management levels.

For the nine months ended September 30, 2023, marketing expenses decreased by approximately $1.5 million, or 38%, as compared with the nine months ended September 30, 2022. The decrease in marketing expenses is primarily related to leveraging internal resources and optimizing advertising expenditures.

For the nine months ended September 30, 2023, depreciation and amortization expenses increased by approximately $0.2 million, or 8%, as compared with the nine months ended September 30, 2022. The increase in depreciation and amortization expense is due to the amortization of the intangible assets (other than capitalized and purchased software for which amortization is included in technology and development expense) acquired in connection with the acquisition of Cornerstone and iPro in the first quarter of 2022.

Income Taxes

The Company recorded income tax expense of approximately $0.06 million and $0.2 million for the nine months ended September 30, 2023 and 2022, respectively. This tax expense is primarily the result of current state income tax liabilities and deferred tax expense related to deferred tax liabilities that can not be fully offset by deferred tax assets.

Liquidity and Capital Resources (dollar amounts in thousands)

Capital Resources

	September 30, 2023	December 31, 2022	Change: Dollars	Change: Percentage
Current assets	$ 21,642	$ 18,816	$ 2,826	15 %
Current liabilities	15,125	12,499	2,626	21 %
Net working capital	$ 6,517	$ 6,317	$ 200	3 %

To date, our principal sources of liquidity have been the net proceeds we received through public offerings and private sales of our common stock, as well as proceeds from loans. As of September 30, 2023, our cash and cash equivalents totaled approximately $6.7 million, which represented a decrease of approximately $1.7 million compared to December 31, 2022. As of September 30, 2023, we had net working capital of approximately $6.5 million, which represented an increase of $0.2 million compared to December 31, 2022.

On April 13, 2023, we entered into a securities purchase agreement (the “Purchase Agreement”) with an accredited investor (the “Holder”) and issued a Senior Secured Convertible Promissory Note in principal amount of $3,500,000 (the

"Note"), in a private placement (the "Offering"). The cash proceeds disbursed to the Company from the issuance of the Note were $3,300,000, after deducting the placement agent fee and purchaser expenses.

We anticipate that our existing balances of cash and cash equivalents and future expected cash flows generated from our operations will be sufficient to satisfy our operating requirements for at least the next twelve months from the date of the issuance of the unaudited interim consolidated financial statements.

Our future capital requirements depend on many factors, including any future acquisitions, our level of investment in technology, and our rate of growth into new markets. Our capital requirements might also be affected by factors which we cannot control such as the residential real estate market, litigation, interest rates, and other monetary and fiscal policy changes, any of which could adversely affect the manner in which we currently operate. Additionally, as the impact of national and other world events, such as the crisis in Ukraine, on the economy and our operations evolves, we will continuously assess our liquidity needs. In the event of a sustained market deterioration, we may need or seek advantageously to obtain additional funding through equity or debt financing, which might not be available on favorable terms or at all and could hinder our business and dilute our existing shareholders.

Cash Flows

Comparison of the Nine Months Ended September 30, 2023 and 2022 (dollar amounts in thousands)

	Nine Months Ended September 30,		Change	
	2023	2022	Dollars	Percentage
Net cash (used in) provided by operating activities	$ (6,206)	$ (6,470)	$ 264	4 %
Net cash used in investing activities	$ (1,358)	$ (5,933)	$ 4,575	77 %
Net cash provided by (used in) financing activities	$ 5,946	$ (10,836)	$ 16,782	155 %

Cash Flows from Operating Activities

Net cash used in operating activities for the nine months ended September 30, 2023 consisted of a net loss of $15.5 million, non-cash charges excluding lease related expenses of $11.3 million, including $9.3 million of stock-based compensation expense and $4.5 million of depreciation and amortization, partially offset by $2.8 million in gains on the sales of mortgages. Changes in assets and liabilities were primarily driven by $111.7 million in mortgage loan originations; partially offset by $111.0 million in proceeds from the sales and principal payments on mortgage loans held for sale, as well as, a $1.1 million increase in accounts receivable

Net cash used in operating activities for the nine months ended September 30, 2022 consisted of a net loss of $17.7 million, non-cash charges of $11.9 million, including $6.5 million of stock-based compensation expense and $3.8 million of depreciation and amortization, and $1.6 million in lease expense, partially offset by $3.8 million in gains on the sales of mortgages. Changes in assets and liabilities were primarily driven by a $8.0 million net decrease in proceeds from the sales and principal payments on mortgage loans held for sale, partially offset by a $2.1 million increase in prepaids and other current assets, $0.7 million increase in accounts receivable and a $2.2 million combined decrease in operating lease liabilities, accounts payable, accrued and other current liabilities.

Cash Flows from Investing Activities

Net cash used in investing activities for the nine months ended September 30, 2023 primarily consisted of $1.3 million for purchases of intangible assets related to technology development.

Net cash used in investing activities for the nine months ended September 30, 2022 consisted of $2.5 million for the business acquisitions, net of cash acquired, $1.0 million for purchases of property and equipment, and $2.5 million for purchases of intangible assets.

Cash Flows from Financing Activities

Net cash provided by financing activities for the nine months ended September 30, 2023 consisted primarily of the change of $3.3 million on our warehouse lines of credit and the $3.8 million in the debt proceeds, net of $0.6 million in principal payments on debt, $0.4 million in deferred acquisition consideration payments, and $0.2 million in debt issuance costs.

Net cash used in financing activities for the nine months ended September 30, 2022 consisted primarily of the change of $5.5 million on our warehouse lines of credit, net of the effect of the Cornerstone acquisition, $6.0 million in repurchase of common stock, and $0.8 million in principal payments on debt.

NON-GAAP FINANCIAL MEASURE

To supplement our consolidated financial statements, which are prepared and presented in accordance with GAAP, we use Adjusted EBITDA, a non-GAAP financial measure, to understand and evaluate our core operating performance. This non-GAAP financial measure, which may be different than similarly titled measures used by other companies, is presented to enhance investors' overall understanding of our financial performance and should not be considered a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP.

We define the non-GAAP financial measure of Adjusted EBITDA as net income (loss), excluding other expense, income tax benefit, depreciation and amortization, stock-based compensation expense, and other non-cash items and transaction costs.

We believe that Adjusted EBITDA provides useful information about our financial performance, enhances the overall understanding of our past performance and future prospects, and allows for greater transparency with respect to a key metric used by our management for financial and operational decision-making. We believe that Adjusted EBITDA helps identify underlying trends in our business that otherwise could be masked by the effect of the expenses that we exclude in Adjusted EBITDA. In particular, we believe the exclusion of share-based compensation expense and transaction-related costs associated with our acquisition activity provides a useful supplemental measure in evaluating the performance of our operations and provides better transparency into our results of operations. Adjusted EBITDA also excludes other income and expense, net which primarily includes typically nonrecurring expense items, such as, minor legal settlement claims, severance costs, professional fees related to investigating potential financing opportunities, if applicable, and other non-cash items representing reserves on certain agent fee collections.

We are presenting the non-GAAP measure of Adjusted EBITDA to assist investors in seeing our financial performance through the eyes of management, and because we believe this measure provides an additional tool for investors to use in comparing our core financial performance over multiple periods with other companies in our industry.

Adjusted EBITDA should not be considered in isolation from, or as a substitute for, financial information prepared in accordance with GAAP. There are a number of limitations related to the use of Adjusted EBITDA compared to net income (loss), the closest comparable GAAP measure. Some of these limitations are that:

- Adjusted EBITDA excludes stock-based compensation expense related to restricted stock awards, restricted stock units, and stock options, which have been, and will continue to be for the foreseeable future, significant recurring expenses in our business and an important part of our compensation strategy;

- Adjusted EBITDA excludes transaction-related costs primarily consisting of professional fees and any other costs incurred directly related to acquisition activity, which is an ongoing part of our growth strategy and therefore likely to occur; and

- Adjusted EBITDA excludes certain recurring, non-cash charges such as depreciation and amortization of property and equipment and capitalized software costs, however, the assets being depreciated and amortized may have to be replaced in the future.

The following table presents a reconciliation of Adjusted EBITDA to net income (loss), the most comparable GAAP financial measure, for each of the periods presented (amount in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net loss	$ (5,496)	$ (6,012)	$ (15,542)	$ (17,678)
Other expense (income), net	106	115	332	804
Income tax expense	18	—	55	185
Depreciation and amortization	1,599	1,436	4,466	3,839
Other non-cash items and transaction costs	200	13	200	73
Stock based compensation	3,320	2,123	9,325	6,470
Adjusted EBITDA	$ (253)	$ (2,325)	$ (1,164)	$ (6,307)

Critical Accounting Policies and Estimates

The condensed consolidated financial statements should be read in conjunction with the consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2022, which provides a description of our critical accounting policies. There were no changes to critical accounting policies or estimates as reflected in our 2022 Annual Report. For additional information regarding our critical accounting policies and estimates, see the Critical Accounting Policies and Estimates section of MD&A included in our 2022 Annual Report.

Recent Accounting Standards

For information on recent accounting standards, see Note 3 to our consolidated financial statements above.

JOBS Act Transition Period

In April 2012, the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”) was enacted. Section 107 of the JOBS Act provides that an “emerging growth company” can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933 (the “Securities Act”) for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

Subject to certain conditions, as an emerging growth company, we may rely on certain other exemptions and reduced reporting requirements under the JOBS Act. Certain of these exemptions are, including without limitation, from the requirements of (i) providing an auditor’s attestation report on our system of internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act; and (ii) complying with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements, known as the auditor discussion and analysis. We will remain an emerging growth company until the earlier to occur of (1) the last day of the fiscal year (a) following the fifth anniversary of the completion of our IPO in 2020, (b) in which we have total annual gross revenues of at least $1.07 billion, or (c) in which we are deemed to be a “large accelerated filer” under the rules of the U.S. Securities and Exchange Commission, which means the market value of our common stock that is held by non-affiliates exceeds $700 million as of the prior June 30th, and (2) the date on which we have issued more than $1.0 billion in non-convertible debt during the prior three-year period.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

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

Item 4. Controls and Procedures.

(a) Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer, and our President and Chief Financial Officer, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of the period covered by this report. In designing and evaluating our disclosure controls and procedures, management recognizes that any disclosure controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Based on their evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of September 30, 2023, our disclosure controls and procedures were effective at the reasonable assurance level in ensuring that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms.

(b) Changes in Internal Control Over Financial Reporting

Under the supervision and with the participation of our management, including our Chief Executive Officer, and our President and Chief Financial Officer, we conducted an evaluation of any changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during our most recently completed fiscal quarter.

We are in the process of implementing new accounting systems. We have updated and continue to update our processes related to internal control over financial reporting, as necessary, to accommodate applicable changes in our business processes resulting from the implementation of the new accounting systems.

There were no changes, other than described above, in our internal control over financial reporting identified in management's evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the period covered by this Quarterly Report on Form 10-Q that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings.

We are not involved in any litigation that we believe could have a material adverse effect on our financial position or results of operations. There is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of our executive officers, threatened against or affecting our Company or our officers or directors in their capacities as such that has a reasonable possibility of loss.

Item 1A. Risk Factors.

In addition to the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the risk factors and other cautionary statements described in Part I. Item 1A. Risk Factors included in our most recent Annual Report on Form 10-K, as filed with the SEC on March 30, 2023 (“2022 10-K”), which could materially affect our businesses, financial condition, or future results. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition, or future results. Except for such additional information and the updated risk factor set forth below, we believe there have been no other material changes in our risk factors from those disclosed in our 2022 10-K.

Adverse outcomes in litigation and regulatory actions against other companies and agents in our industry could adversely impact our financial results.

Adverse outcomes in legal and regulatory actions against other companies, brokers, and agents in the residential and commercial real estate industry may adversely impact the financial condition of the Company and our real estate brokers and agents when those matters relate to business practices shared by the Company, our real estate brokers and agents, or our industry at large. Such matters may include, without limitation, RESPA, Telephone Consumer Protection Act of 1991 and state consumer protection law, antitrust and anticompetition, and worker classification claims. Additionally, if plaintiffs or regulatory bodies are successful in such actions, this may increase the likelihood that similar claims are made against the Company and/or our real estate brokers and agents which claims could result in significant liability and be adverse to our financial results if we or our brokers and agents are unable to distinguish or defend our business practices.

As an example, in the matter of Burnett v. National Association of Realtors (U.S. District Court for the Western District of Missouri), a federal jury found that NAR and certain other remaining brokerage defendants liable for $1.8 billion in damages on claims that these companies conspired to artificially inflate brokerage commissions, which is in violation of federal antitrust law (the “Burnett Ruling”). The verdict was appealed on October 31, 2023. Additionally, certain other brokerage defendants settled with the plaintiffs, including both monetary and non-monetary settlement terms. That same day, NAR, EXP World Holdings, Inc., Compass, Inc., Redfin Corporation, Weichert Realtors, United Real Estate, Howard Hann Real Estate Services, and Douglas Elliman, Inc. were named as defendants in Gibson v. National Association of Realtors (U.S. District Court for the Western District of Missouri), alleging a similar fact pattern and antitrust violations.

Due to the Burnett Ruling, there may be rule changes for the NAR, such as increased disclosure of commission offers from sellers’ agents to buyers’ agents, but the direct and indirect effects, if any, of the settlement upon the real estate industry are not yet entirely clear. There could also be further changes in real estate industry practices. All of this has prompted discussion of regulatory changes to rules established by local or state real estate boards or multiple listing services and may require changes to brokers’ business models, including changes in agent and broker compensation.

Although, our flat fee per real estate transaction model has always enabled our agents to negotiate their own fees, and we have never interfered with our agents' ability to negotiate commissions as doing so would have no impact on our operating net income in any meaningful changes in industry operations or structure, as a result of any of the foregoing could have an effect on our agent retention or recruitment, or home sale volumes in general, which would have a material adverse effect on our operations, revenues, earnings and financial results.

Item 2. Unregistered Sales of Equity Securities, Use of Proceeds, and Issuer Repurchases of Equity Securities.

Sales of Unregistered Sales

None.

Issuer Repurchases of Equity Securities

On March 10, 2022, the Company's board of directors authorized an expenditure of up to $10.0 million for the repurchase of shares of the Company's common stock in open market transactions effected through a broker-dealer at prevailing market prices, in block trades, or in privately negotiated transactions. The Company may also repurchase shares of its common stock pursuant to a trading plan meeting the requirements of Rule 10b5-1 under the Exchange Act which would permit shares of the Company's common stock to be repurchased when the Company might otherwise be precluded from doing so by law. The share repurchase authorization does not have a fixed expiration. The stock repurchase program does not obligate the Company to repurchase any particular amount of common stock, and it could be modified, suspended or discontinued at any time. The timing and amount of repurchases will be determined by the Company's management based on a variety of factors such as the market price of the Company's common stock, the Company's liquidity requirements, and overall market conditions. The stock repurchase program will be subject to applicable legal requirements, including federal and state securities laws.

There were no equity repurchases for the three months ended September 30, 2023. The approximate dollar value of shares that may yet be purchased pursuant to the repurchase program is $4.0 million. Management has no plans to repurchase additional shares at this time.

Item 6. Exhibits.

Exhibit Number	Description
10.1	Third Amendment to the Company's 2019 Omnibus Stock Incentive Plan (incorporated by reference to Exhibit 10.1 to the Form 8-K filed on August 28, 2023).
31.1+	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2+	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1+†	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101**	Interactive data files pursuant to Rule 405 of Regulation S-T: (i) Consolidated Balance Sheets as of September 30, 2023 and December 31, 2022; (ii) Consolidated Statements of Operations (Unaudited) for the Three and Nine Months Ended September 30, 2023 and 2022; (iii) Consolidated Statements of Cash Flows (Unaudited) for the Nine Months Ended September 30, 2023 and 2022; (iv) Consolidated Statements of Changes in Stockholders' Equity (Unaudited) for the Nine Months Ended September 30, 2023 and 2022; and (v) Notes to Unaudited Financial Statements
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

\+ Filed herewith.

† This certification is being furnished solely to accompany this Quarterly Report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

** In accordance with Rule 406T of Regulation S-T, the XBRL-related information in Exhibit 101 to this Quarterly Report on Form 10 Q is deemed not filed or part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act, is deemed not filed for purposes of section 18 of the Exchange Act, and otherwise is not subject to liability under these sections.

SIGNATURES

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

		FATHOM HOLDINGS INC.
Date: November 9, 2023	By:	/s/ Marco Fregenal
		Marco Fregenal
		President and Chief Financial Officer (Principal Financial and Accounting Officer)

EXHIBIT 31.1

**CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE
SARBANES-OXLEY ACT OF 2002**

I, Joshua Harley, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Fathom 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

November 9, 2023

By: /s/ Joshua Harley
Joshua Harley
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

**CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE
SARBANES-OXLEY ACT OF 2002**

I, Marco Fregenal, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Fathom 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

November 9, 2023

By: /s/ Marco Fregenal
Marco Fregenal
President and Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

EXHIBIT 32.1

CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER AND THE PRINCIPAL FINANCIAL OFFICER
PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Fathom Holdings Inc. (the “Company”) on Form 10-Q for the quarter ended September 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Joshua Harley, Chief Executive Officer of the Company, and Marco Fregenal, President and Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2023

By: /s/ Joshua Harley
Joshua Harley
Chief Executive Officer
(Principal Executive Officer)

By: /s/ Marco Fregenal
Marco Fregenal
President and Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

The foregoing certifications are not deemed filed with the Securities and Exchange Commission for purposes of section 18 of the Securities Exchange Act of 1934, as amended (Exchange Act), and are not to be incorporated by reference into any filing of Fathom Holdings Inc. under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof, regardless of any general incorporation language in such filing.