

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2023

or

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

For the transition period from _____ to _____

Commission File Number: 001-37894

FULGENT GENETICS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

4399 Santa Anita Avenue

El Monte, CA

(Address of principal executive offices)

81-2621304

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

91731

(Zip Code)

(626) 350-0537

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	FLGT	The Nasdaq Stock Market (Nasdaq Global Market)

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

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

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

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

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

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

As of August 1, 2023, there were 29,926,846 outstanding shares of the registrant's common stock.

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Item 1. Financial Statements.

FULGENT GENETICS, INC.
Condensed Consolidated Balance Sheets
(in thousands, except par value data)
(unaudited)

	June 30, 2023	December 31, 2022
Assets		
Current assets		
Cash and cash equivalents	\$ 58,348	\$ 79,506
Marketable securities	400,083	446,729
Trade accounts receivable, net of allowance for credit losses of \$33,173 and \$41,205	34,809	52,749
Other current assets	35,049	48,889
Total current assets	528,289	627,873
Marketable securities, long-term	388,383	326,648
Redeemable preferred stock investment	12,842	12,385
Fixed assets, net	87,556	81,353
Intangible assets, net	146,473	150,643
Goodwill	141,970	143,027
Other long-term assets	49,064	44,124
Total assets	\$ 1,354,577	\$ 1,386,053
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable	\$ 20,607	\$ 23,093
Accrued liabilities	22,229	24,981
Contract liabilities	2,601	3,199
Customer deposit	14,460	10,895
Investment margin loan	—	14,999
Notes payable, current portion	4,560	5,639
Other current liabilities	362	5,301
Total current liabilities	64,819	88,107
Unrecognized tax benefits	9,836	9,836
Other long-term liabilities	16,596	18,235
Total liabilities	91,251	116,178
Commitments and contingencies (Note 8)		
Stockholders' equity		
Common stock, \$0.0001 par value per share, 50,000 shares authorized, 31,728 and 31,248 shares issued, respectively, and 29,917 and 29,438 shares outstanding, respectively	3	3
Preferred stock, \$0.0001 par value per share, 1,000 shares authorized, no shares issued or outstanding	—	—
Additional paid-in capital	506,075	486,585
Accumulated other comprehensive loss	(20,746)	(20,903)
Retained earnings	774,431	801,000
Total Fulgent stockholders' equity	1,259,763	1,266,685
Noncontrolling interest	3,563	3,190
Total stockholders' equity	1,263,326	1,269,875
Total liabilities and stockholders' equity	\$ 1,354,577	\$ 1,386,053

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

FULGENT GENETICS, INC.
Condensed Consolidated Statements of Operations
(in thousands, except per share data)
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenue	\$ 67,853	\$ 125,341	\$ 134,021	\$ 445,609
Cost of revenue	47,281	60,065	94,638	137,790
Gross profit	20,572	65,276	39,383	307,819
Operating expenses:				
Research and development	9,692	6,905	19,474	12,894
Selling and marketing	10,723	10,866	20,806	18,806
General and administrative	17,993	30,240	39,795	56,015
Amortization of intangible assets	1,962	1,575	3,930	2,481
Restructuring costs	—	2,896	—	2,896
Total operating expenses	40,370	52,482	84,005	93,092
Operating (loss) income	(19,798)	12,794	(44,622)	214,727
Interest and other income, net	5,098	958	8,873	1,003
(Loss) income before income taxes	(14,700)	13,752	(35,749)	215,730
(Benefit from) provision for income taxes	(3,110)	2,653	(8,310)	51,074
Net (loss) income from consolidated operations	(11,590)	11,099	(27,439)	164,656
Net loss attributable to noncontrolling interests	361	438	870	860
Net (loss) income attributable to Fulgent	\$ (11,229)	\$ 11,537	\$ (26,569)	\$ 165,516
Net (loss) income per common share attributable to Fulgent:				
Basic	\$ (0.38)	\$ 0.38	\$ (0.90)	\$ 5.46
Diluted	\$ (0.38)	\$ 0.37	\$ (0.90)	\$ 5.30
Weighted-average common shares:				
Basic	29,813	30,362	29,675	30,298
Diluted	29,813	31,189	29,675	31,225

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

FULGENT GENETICS, INC.
Condensed Consolidated Statements of Comprehensive Income (Loss)
(in thousands)
(unaudited)

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>2022</u>
Net (loss) income from consolidated operations	\$ (11,590)	\$ 11,099	\$ (27,439)	\$ 164,656
Other comprehensive income (loss):				
Foreign currency translation loss	(1,965)	(1,878)	(1,797)	(1,755)
Net (loss) gain on available-for-sale debt securities, net of tax	(2,132)	(8,468)	3,197	(20,206)
Comprehensive (loss) income from consolidated operations	<u>(15,687)</u>	<u>753</u>	<u>(26,039)</u>	<u>142,695</u>
Net loss attributable to noncontrolling interest	361	438	870	860
Foreign currency translation loss (gain) attributable to noncontrolling interest	547	422	(1,243)	303
Comprehensive loss (gain) attributable to noncontrolling interest	<u>908</u>	<u>860</u>	<u>(373)</u>	<u>1,163</u>
Comprehensive (loss) income attributable to Fulgent	<u>\$ (14,779)</u>	<u>\$ 1,613</u>	<u>\$ (26,412)</u>	<u>\$ 143,858</u>

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

FULGENT GENETICS, INC.
Condensed Consolidated Statements of Stockholders' Equity
(in thousands)
(unaudited)

	<u>Fulgent Stockholders' Equity</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Other Comprehen- sive Loss</u>	<u>Retained Earnings</u>	<u>Fulgent Stockholders' Equity</u>	<u>Noncontrolli- ng Interest</u>	<u>Total Equity</u>
	<u>Shares (1)</u>	<u>Amount</u>						
Balance at December 31, 2022	29,438	\$ 3	\$ 486,585	\$ (20,903)	\$ 801,000	\$ 1,266,685	\$ 3,190	\$ 1,269,875
Equity-based compensation	—	—	10,265	—	—	10,265	—	10,265
Restricted stock awards	280	—	—	—	—	—	—	—
Common stock withholding for employee tax obligations	(26)	—	(869)	—	—	(869)	—	(869)
Other comprehensive income (loss)	—	—	—	3,707	—	3,707	1,790	5,497
Net income (loss)	—	—	—	—	(15,340)	(15,340)	(509)	(15,849)
Balance at March 31, 2023	29,692	3	495,981	(17,196)	785,660	1,264,448	4,471	1,268,919
Equity-based compensation	—	—	10,323	—	—	10,323	—	10,323
Exercise of common stock options	8	—	3	—	—	3	—	3
Restricted stock awards	225	—	—	—	—	—	—	—
Common stock withholding for employee tax obligations	(8)	—	(232)	—	—	(232)	—	(232)
Other comprehensive income (loss)	—	—	—	(3,550)	—	(3,550)	(547)	(4,097)
Net income (loss)	—	—	—	—	(11,229)	(11,229)	(361)	(11,590)
Balance at June 30, 2023	29,917	\$ 3	\$ 506,075	\$ (20,746)	\$ 774,431	\$ 1,259,763	\$ 3,563	\$ 1,263,326

(1) As of June 30, 2023, 371,006 shares of the Company's common stock were not issued and were held back by the Company as partial security for the indemnification obligations in connection with the business combination of Fulgent Pharma Holdings, Inc., or Fulgent Pharma, in 2022.

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

FULGENT GENETICS, INC.
Condensed Consolidated Statements of Stockholders' Equity
(in thousands)
(unaudited)

	<u>Fulgent Stockholders' Equity</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Other Comprehen- sive Loss</u>	<u>Retained Earnings</u>	<u>Fulgent Stockholders ' Equity</u>	<u>Noncontrol- ling Interest</u>	<u>Total Equity</u>
	<u>Shares</u>	<u>Amount</u>						
Balance at December 31, 2021	30,160	\$ 3	\$ 501,908	\$ (759)	\$ 657,597	\$ 1,158,749	\$ 7,131	\$ 1,165,880
Equity-based compensation	—	—	5,616	—	—	5,616	—	5,616
Exercise of common stock options	3	—	16	—	—	16	—	16
Restricted stock awards	172	—	—	—	—	—	—	—
Common stock withholding for employee tax obligations	(8)	—	(494)	—	—	(494)	—	(494)
Other comprehensive income (loss)	—	—	—	(11,734)	—	(11,734)	119	(11,615)
Net income (loss)	—	—	—	—	153,979	153,979	(422)	153,557
Balance at March 31, 2022	30,327	3	507,046	(12,493)	811,576	1,306,132	6,828	1,312,960
Equity-based compensation	—	—	8,030	—	—	8,030	—	8,030
Exercise of common stock options	1	—	3	—	—	3	—	3
Restricted stock awards	161	—	—	—	—	—	—	—
Common stock withholding for employee tax obligations	(8)	—	(436)	—	—	(436)	—	(436)
Repurchase of common stock	(215)	—	(10,577)	—	—	(10,577)	—	(10,577)
Other comprehensive loss	—	—	—	(9,924)	—	(9,924)	(422)	(10,346)
Net income (loss)	—	—	—	—	11,537	11,537	(438)	11,099
Balance at June 30, 2022	30,266	\$ 3	\$ 504,066	\$ (22,417)	\$ 823,113	\$ 1,304,765	\$ 5,968	\$ 1,310,733

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

FULGENT GENETICS, INC.
Condensed Consolidated Statements of Cash Flows
(in thousands)
(unaudited)

	Six Months Ended June 30,	
	2023	2022
Cash flow from operating activities:		
Net (loss) income from consolidated operations	\$ (27,439)	\$ 164,656
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Equity-based compensation	20,588	13,646
Depreciation and amortization	13,191	13,040
Provision for credit losses	(1,984)	18,734
Noncash lease expense	3,268	1,710
Loss on disposal of fixed asset	11	309
Amortization of (discount) premium of marketable securities	(1,192)	3,223
Deferred taxes	(8,418)	(7,639)
Unrecognized tax benefits	—	1,005
Net loss on marketable securities	—	617
Other	20	(17)
Changes in operating assets and liabilities:		
Trade accounts receivable	19,658	1,802
Other current and long-term assets	(3,764)	(1,854)
Accounts payable	(4,447)	(10,258)
Income tax payable	—	1,978
Accrued liabilities and other liabilities	(4,518)	264
Operating lease liabilities	(3,144)	(1,679)
Net cash provided by operating activities	1,830	199,537
Cash flow from investing activities:		
Purchase of marketable securities	(250,537)	(245,488)
Maturities of marketable securities	258,847	70,432
Proceeds from sale of marketable securities	—	133,407
Purchases of fixed assets	(14,178)	(8,618)
Proceeds from sale of fixed assets	418	18
Acquisition of businesses, net of cash acquired	—	(137,755)
Investment in private equity securities	—	(15,000)
Contingent consideration payout related to a business acquisition	—	(10,000)
Net cash used in investing activities	(5,450)	(213,004)
Cash flow from financing activities:		
Repurchase of common stock	—	(10,577)
Common stock withholding for employee tax obligations	(1,101)	(930)
Repayment of notes payable	(799)	(368)
Repayment of investment margin loan	(15,000)	—
Principal paid for finance lease	(463)	(230)
Proceeds from exercise of stock options	3	19
Net cash used in financing activities	(17,360)	(12,086)
Effect of exchange rate changes on cash and cash equivalents	(178)	(561)
Net decrease in cash and cash equivalents	(21,158)	(26,114)
Cash and cash equivalents at beginning of period	79,506	164,894
Cash and cash equivalents at end of period	\$ 58,348	\$ 138,780
Supplemental disclosures of cash flow information:		
Income taxes paid	\$ 2,636	\$ 54,982
Interest Paid	\$ 919	\$ —
Supplemental disclosures of non-cash investing and financing activities:		
Purchases of fixed assets in accounts payable	\$ 3,725	\$ 2,158
Purchases of fixed assets in notes payable	\$ —	\$ 3,833
Operating lease right-of-use assets obtained in exchange for lease liabilities	\$ 2,661	\$ —
Finance lease right-of-use assets reduced due to lease modification and termination	\$ 696	\$ —

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

FULGENT GENETICS, INC.
Notes to the Condensed Consolidated Financial Statements
(unaudited)

Note 1. Overview and Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, or U.S. GAAP. These financial statements include the assets, liabilities, revenues and expenses of all subsidiaries and entities in which the Company has a controlling financial interest or is deemed to be the primary beneficiary. In determining whether the Company is the primary beneficiary of an entity, the Company applies a qualitative approach that determines whether it has both (i) the power to direct the economically significant activities of the entity and (ii) the obligation to absorb losses of, or the right to receive benefits from, the entity that could potentially be significant to that entity. The Company uses the equity method to account for its investments in entities that it does not control, but in which it has the ability to exercise significant influence over operating and financial policies. All intercompany accounts and transactions are eliminated from the accompanying condensed consolidated financial statements.

Nature of the Business

Fulgent Genetics, Inc., together with its subsidiaries and affiliated professional corporations (collectively referred to as the Company, unless otherwise noted or the context otherwise requires), is a technology-based company with a well-established clinical diagnostic business and a therapeutic development business. Its clinical diagnostic business offers molecular diagnostic testing services, comprehensive genetic testing, and high-quality anatomic pathology laboratory services designed to provide physicians and patients with clinically actionable diagnostic information to improve the quality of patient care. Its therapeutic development business is focused on developing drug candidates for treating a broad range of cancers using a novel nanoencapsulation and targeted therapy platform designed to improve the therapeutic window and pharmacokinetic profile of new and existing cancer drugs. The Company aims to transform from a genomic diagnostic business into a fully integrated precision medicine company.

Unaudited Interim Financial Information

The accompanying unaudited interim condensed consolidated financial statements have been prepared on the same basis as the Company's audited consolidated financial statements as of and for the fiscal year ended December 31, 2022, which are included in the Company's annual report on Form 10-K filed with the Securities and Exchange Commission, or SEC, on February 28, 2023, or the 2022 Annual Report, and, in the opinion of management, include all adjustments, which are normal and recurring in nature, necessary for a fair presentation of the Company's financial position and results of operations. Operating results for interim periods are not necessarily indicative of the results that may be expected for a full fiscal year or any other period. The accompanying Condensed Consolidated Balance Sheet as of December 31, 2022 has been derived from the Company's audited consolidated financial statements at that date but does not include all of the disclosures required by U.S. GAAP. As such, the information included in this quarterly report on Form 10-Q should be read in conjunction with the Company's audited consolidated financial statements included in the 2022 Annual Report, including the notes thereto.

Note 2. Summary of Significant Accounting Policies

See the summary of the Company's significant accounting policies set forth in the notes to its consolidated financial statements included in the 2022 Annual Report.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires management to make certain estimates, judgments and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements, as well as the reported amounts of revenue and expenses during the reporting periods. These estimates, judgments and assumptions are based on historical data and experience available at the date of the accompanying condensed consolidated financial statements, as well as various other factors management believes to be reasonable under the circumstances. The Company's estimates and assumptions may evolve as conditions change. Actual results could differ significantly from these estimates.

On an on-going basis, management evaluates its estimates, primarily those related to: (i) revenue recognition criteria, (ii) accounts receivable and allowances for credit losses, (iii) the useful lives of fixed assets and intangible assets, (iv) estimates of tax liabilities, (v) valuation of intangible assets and goodwill at time of acquisition and on a recurring basis, and (vi) valuation of investments.

Trade Accounts Receivable and Allowance for Credit Losses

Trade accounts receivable are stated at the amount the Company expects to collect. The Company maintains an allowance for credit losses for expected uncollectible trade accounts receivable, which is recorded as an offset to trade accounts receivable, and changes in allowance for credit losses are classified as a general and administrative expense in the accompanying Condensed Consolidated Statements of Operations. The Company assesses collectability by reviewing trade accounts receivable on a collective basis where similar risk characteristics exist and on an individual basis when it identifies specific customers that have deterioration in credit quality such that they may no longer share similar risk characteristics with the other receivables. In determining the amount of the allowance for credit losses, the Company uses a probability-of-default and loss given default model, which allows the ability to define a point of default and measure credit losses for receivables that have reached the point of default for purposes of calculating the allowance for credit losses. Loss given default represents the likelihood that a receivable that has reached the point of default will not be collected in full. The Company updates its probability-of-default and loss given default factors annually to incorporate the most recent historical data and adjusts the quantitative portion of the reserve through its qualitative reserve overlay. The Company looks at qualitative factors such as general economic conditions in determining expected credit losses. During the three and six months ended June 30, 2023, the Company recorded an adjustment of \$(2.0) million in provision for credit losses for trade accounts receivable due to decreased allowance for uncollectible accounts. During the three and six months ended June 30, 2022, the Company recorded \$7.2 million and \$18.7 million of provision for credit losses for trade accounts receivable, respectively.

Redeemable Preferred Stock Investment

The redeemable preferred stock investment of \$12.8 million as of June 30, 2023 represents the fair value of redeemable preferred stock of a private company that the Company purchased in July 2021. The investment is classified as available-for-sale debt securities. The fair value of available-for-sale debt security is included in the Condensed Consolidated Statement of Balance Sheets. Unrealized gain (loss) of \$(140,000) and \$457,000 is excluded from earnings and reported in other comprehensive income (loss) in the three and six months ended June 30, 2023, respectively, and unrealized loss of \$5.6 million and \$10.0 million is excluded from earnings and reported in other comprehensive income (loss) in the three and six months ended June 30, 2022, respectively. Since the Company intends on holding the preferred stock, and the preferred stock is not redeemable until July 2027, the investment is recorded as a long-term investment.

Foreign Currency Translation and Foreign Currency Transactions

The Company translates the assets and liabilities of its non-U.S. dollar functional currency subsidiaries into U.S. dollars using exchange rates in effect at the end of each period. Expenses for these subsidiaries are translated using rates that approximate those in effect during the period. Gains and losses from these translations are recognized in foreign currency translation included in accumulated other comprehensive income (loss) in the accompanying Condensed Consolidated Statements of Stockholders' Equity. The Company and its subsidiaries that use the U.S. dollar as their functional currency remeasure monetary assets and liabilities at exchange rates in effect at the end of each period, whereas reagents and supplies, property and nonmonetary assets and liabilities are measured at historical rates. Losses from these remeasurements were \$2.0 million and \$1.8 million in the three and six months ended June 30, 2023, respectively. Loss from these translations were \$1.9 million and \$1.8 million in the three and six months ended June 30, 2022, respectively.

Comprehensive Income (Loss)

Comprehensive income (loss) is comprised of net income (loss) and other comprehensive income (loss). Other comprehensive income (loss) consists of net unrealized gain or loss on available-for-sale debt securities, net of tax, and foreign currency translation adjustments from the Company's subsidiaries not using the U.S. dollar as their functional currency. There were no reclassifications from other comprehensive income (loss) to net loss in the three and six months ended June 30, 2023, and reclassification from other comprehensive income (loss) to net earnings was not significant in the three and six months ended June 30, 2022. The tax effects related to net unrealized loss on available-for-sale debt securities were \$(775,000) and \$1.2 million in the three and six months ended June 30, 2023, respectively. The tax effects related to net unrealized loss on available-for-sale debt securities were \$1.3 million and \$5.8 million in the three and six months ended June 30, 2022, respectively.

Concentration of Customers

In certain periods, a small number of customers have accounted for a significant portion of the Company's revenue. After aggregating customers that are under common control or affiliation, one customer contributed 13% of the Company's revenue in the three months ended June 30, 2023, and no customer contributed more than 10% of the Company's revenue for the six months ended June 30, 2023. Two customers contributed 15% and 12%, respectively, of the Company's revenue for the three months ended June 30, 2022, and one customer contributed 23% of the Company's revenue for the six months ended June 30, 2022. One customer comprised

12% of total accounts receivable as of June 30, 2023, and a different customer comprised 17% of total accounts receivable as of December 31, 2022.

Disaggregation of Revenue

The Company classifies its customers into three payor types: (i) Insurance, including claim reimbursement from the U.S. Health Resources and Services Administration, or HRSA, for uninsured individuals, (ii) Institutional customers, including hospitals, medical institutions, other laboratories, governmental bodies, municipalities and large corporations, or (iii) Patients who pay directly; as the Company believes these classifications best depict how the nature, amount, timing, and uncertainty of its revenue and cash flows are affected by economic factors. The following table summarizes revenue from contracts with customers by payor type for the three and six months ended June 30, 2023 and 2022.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Testing Services by payor				
Insurance	\$ 33,061	\$ 63,790	\$ 67,612	\$ 274,467
Institutional customers	34,082	61,232	65,074	170,700
Patients	710	319	1,335	442
Total Revenue	<u>\$ 67,853</u>	<u>\$ 125,341</u>	<u>\$ 134,021</u>	<u>\$ 445,609</u>

The insurance revenue category above includes zero and \$106.7 million for the three and six months ended June 30, 2022, respectively, for services related to claims covered by the HRSA COVID-19 Uninsured Program. The Company did not recognize any insurance revenue under HRSA COVID-19 Uninsurance Program for three and six months ended June 30, 2023.

There was no material variable consideration recognized in the current period that relates to performance obligations that were completed in the prior period.

Contract Balances

Receivables from contracts with customers - Receivables from contracts with customers are included within trade accounts receivable on the Condensed Consolidated Balance Sheets. Net receivable from Insurance and Institutional customers represented 60% and 40%, respectively, as of June 30, 2023. Net receivable from Insurance and Institutional customers represented 14% and 86%, respectively, as of December 31, 2022.

Contracts assets and liabilities - Contract assets from contracts with customers associated with contract execution and certain costs to fulfill a contract are included in other current assets in the accompanying Condensed Consolidated Balance Sheets. Contract liabilities are recorded when the Company receives payment prior to completing its obligation to transfer goods or services to a customer. Contract liabilities are included in the Condensed Consolidated Balance Sheets. Revenues of \$99,000 and \$4.7 million were recognized for the three months ended June 30, 2023 and 2022, respectively, and \$1.7 million and \$14.4 million were recognized for the six months ended June 30, 2023 and 2022, respectively, related to contract liabilities at the beginning of the respective periods.

Customer Deposit

Customer deposit in the accompanying Condensed Consolidated Balance Sheets consists of payments received from customers in excess of their outstanding trade accounts receivable balances. These deposits will be offset against future testing receivables or refunded to the customers.

Recent Accounting Pronouncements

The Company evaluates all Accounting Standards Updates, or ASUs, issued by the Financial Accounting Standards Board, or FASB, for consideration of their applicability. ASUs not included in the Company's disclosures were assessed and determined to be either not applicable or are not expected to have a material impact on the Company's condensed consolidated financial statements.

Note 3. Equity and Debt Securities

The Company's equity and debt securities consisted of the following:

	June 30, 2023			
	Amortized Cost Basis	Unrealized Gains	Unrealized Losses	Aggregate Fair Value
	(in thousands)			
Equity securities:				
Long-term				
Preferred stock of privately held company	\$ 15,000	—	—	15,000
Total equity securities	15,000	—	—	15,000
Available-for-sale debt securities				
Short-term				
U.S. government debt securities	187,995	—	(3,222)	184,773
Corporate debt securities	98,796	—	(2,607)	96,189
U.S. agency debt securities	71,773	—	(491)	71,282
U.S. treasury bills	40,507	1	(8)	40,500
Money market accounts	23,985	—	—	23,985
Municipal bonds	7,389	—	(50)	7,339
Less: Cash equivalents	(23,985)	—	—	(23,985)
Total debt securities due within 1 year	406,460	1	(6,378)	400,083
After 1 year through 5 years				
U.S. government debt securities	192,123	—	(4,751)	187,372
U.S. agency debt securities	173,528	2	(4,375)	169,155
Corporate debt securities	21,085	—	(1,476)	19,609
Municipal bonds	8,962	1	(134)	8,829
Yankee debt securities	753	—	(84)	669
Redeemable preferred stock investment	20,000	—	(7,158)	12,842
Total debt securities due after 1 year through 5 years	416,451	3	(17,978)	398,476
After 5 years through 10 years				
Municipal bonds	2,793	1	(45)	2,749
Total debt securities due after 5 years through 10 years	2,793	1	(45)	2,749
Total available-for-sale debt securities	825,704	5	(24,401)	801,308
Total equity and debt securities	\$ 840,704	\$ 5	\$ (24,401)	\$ 816,308

	December 31, 2022			
	Amortized Cost Basis	Unrealized Gains	Unrealized Losses	Aggregate Fair Value
	(in thousands)			
Equity securities:				
Long-term				
Preferred stock of privately held company	\$ 15,000	\$ —	\$ —	\$ 15,000
Total equity securities	15,000	—	—	15,000
Available-for-sale debt securities				
Short-term				
U.S. government debt securities	189,333	—	(3,373)	185,960
Corporate debt securities	120,480	—	(2,222)	118,258
U.S. treasury bills	69,991	—	(193)	69,798
U.S. agency debt securities	68,411	—	(342)	68,069
Money market accounts	27,455	—	—	27,455
Municipal bonds	7,371	—	(80)	7,291
Yankee debt securities	2,347	—	(5)	2,342
Less: Cash equivalents	(32,444)	—	—	(32,444)
Total debt securities due within 1 year	452,944	—	(6,215)	446,729
After 1 year through 5 years				
U.S. government debt securities	152,435	2	(6,349)	146,088
U.S. agency debt securities	92,054	—	(3,435)	88,619
Corporate debt securities	80,647	—	(4,756)	75,891
Municipal bonds	12,065	—	(217)	11,848
Yankee debt securities	753	—	(85)	668
Redeemable preferred stock investment	20,000	—	(7,615)	12,385
Total debt securities due after 1 year through 5 years	357,954	2	(22,457)	335,499
After 5 years through 10 years				
Municipal bonds	3,617	—	(83)	3,534
Total debt securities due after 5 years through 10 years	3,617	—	(83)	3,534
Total available-for-sale debt securities	814,515	2	(28,755)	785,762
Total equity and debt securities	\$ 829,515	\$ 2	\$ (28,755)	\$ 800,762

Gross unrealized losses on the Company's equity and debt securities were \$24.4 million and \$28.8 million as of June 30, 2023 and December 31, 2022, respectively. The Company did not recognize any credit losses for its available-for-sale debt securities during the three and six months ended June 30, 2023 and 2022.

Note 4. Fair Value Measurements

The authoritative guidance on fair value measurements establishes a framework with respect to measuring assets and liabilities at fair value on a recurring basis and non-recurring basis. Under the framework, fair value is defined as the exit price, or the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants, as of the measurement date. The framework also establishes a three-tier hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs market participants would use in valuing the asset or liability and are developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's assumptions about the factors market participants would use in valuing the asset or liability and are developed based on the best information available in the circumstances. The hierarchy consists of the following three levels:

- Level 1: Inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity can access at the measurement date.
- Level 2: Inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.
- Level 3: Inputs are unobservable for the asset or liability.

The following tables present information about the Company's financial assets measured at fair value on a recurring basis, based on the above three-tier fair value hierarchy:

	June 30, 2023			
	Total	Level 1	Level 2	Level 3
	(in thousands)			
Equity securities, debt securities and cash equivalents:				
U.S. government debt securities	\$ 372,145	\$ —	\$ 372,145	\$ —
U.S. agency debt securities	240,437	—	240,437	—
Corporate debt securities	115,798	—	115,798	—
U.S. treasury bills	40,500	40,500	—	—
Money market accounts	23,985	23,985	—	—
Municipal bonds	18,917	—	18,917	—
Preferred stock of privately held company	15,000	—	—	15,000
Redeemable preferred stock investment	12,842	—	—	12,842
Yankee debt securities	669	—	669	—
Total equity securities, debt securities and cash equivalents	<u>\$ 840,293</u>	<u>\$ 64,485</u>	<u>\$ 747,966</u>	<u>\$ 27,842</u>

	December 31, 2022			
	Total	Level 1	Level 2	Level 3
	(in thousands)			
Equity securities, debt securities and cash equivalents:				
U.S. government debt securities	\$ 332,048	\$ —	\$ 332,048	\$ —
Corporate debt securities	194,149	—	194,149	—
U.S. agency debt securities	156,688	—	156,688	—
U.S. treasury bills	69,798	69,798	—	—
Money market accounts	27,455	27,455	—	—
Municipal bonds	22,673	—	22,673	—
Preferred stock of privately held company	15,000	—	—	15,000
Redeemable preferred stock investment	12,385	—	—	12,385
Yankee debt securities	3,010	—	3,010	—
Total equity securities, debt securities and cash equivalents	<u>\$ 833,206</u>	<u>\$ 97,253</u>	<u>\$ 708,568</u>	<u>\$ 27,385</u>

The Company's Level 1 assets include U.S. treasury bills and money market instruments and are valued based upon observable market prices. Level 2 assets consist of U.S. government and U.S. agency debt securities, municipal bonds, corporate debt securities and Yankee debt securities. Level 2 securities are valued based upon observable inputs that include reported trades, broker/dealer quotes, bids and offers. As of June 30, 2023, the Company had preferred stock of a privately held company, which was included in other long-term assets in the accompanying Condensed Consolidated Balance Sheets, and redeemable preferred stock of a private company that were measured using unobservable (Level 3) inputs. The fair value of redeemable preferred stock as of June 30, 2023 and December 31, 2022 was based on valuation performed by a third-party valuation company utilizing the guideline public company method under market approach and the discounted cash flow method under income approach. For the value of the investment in private equity securities, the Company elected to measure it at cost minus impairment, as the preferred stock of the privately held company did not have a readily determinable fair value, and no impairment loss was recorded as of June 30, 2023.

There were no transfers between fair value measurement levels during the three months ended June 30, 2023 and 2022.

Note 5. Fixed Assets

Major classes of fixed assets consisted of the following:

	Useful Lives	June 30,	December 31,
		2023	2022
		(in thousands)	
Medical lab equipment	5 months to 12 Years	\$ 54,425	\$ 53,503
Leasehold improvements	Shorter of lease term or estimated useful life	11,674	11,804
Computer software	1 to 5 Years	7,764	6,982
Computer hardware	1 to 5 Years	7,324	6,979
Building	39 Years	6,731	6,731
Aircraft	7 Years	6,400	6,400
Building improvements	6 months to 39 Years	5,878	5,865
Furniture and fixtures	1 to 5 Years	3,847	4,248
Land improvements	5 to 15 Years	904	904
Automobile	3 to 7 Years	216	797
General equipment	3 to 5 Years	44	44
Land		7,500	7,500
Assets not yet placed in service		24,515	12,877
Total		137,222	124,634
Less: Accumulated depreciation		(49,666)	(43,281)
Fixed assets, net		\$ 87,556	\$ 81,353

Depreciation expenses on fixed assets totaled \$4.1 million and \$6.6 million for the three months ended June 30, 2023 and 2022, respectively, and \$8.8 million and \$10.3 million for the six months ended June 30, 2023 and 2022, respectively.

Note 6. Other Significant Balance Sheet Accounts

Other current assets consisted of the following:

	June 30,	December 31,
	2023	2022
	(in thousands)	
Prepaid income taxes	\$ 17,343	\$ 15,434
Prepaid expenses	7,301	6,814
Reagents and supplies	5,531	4,280
Marketable securities interest receivable	3,964	2,525
Other receivable	910	19,836
Total	\$ 35,049	\$ 48,889

Other long-term liabilities primarily include operating and finance lease liabilities, long-term, see Note 9, *Leases*, and notes payable, long-term, see Note 8, *Debt, Commitments and Contingencies*.

Note 7. Reporting Segment and Geographic Information

The Company views its operations and manages its business in one reporting segment. Long-lived assets were primarily located in the United States as of June 30, 2023 and December 31, 2022. Revenue by region during the three and six months ended June 30, 2023 and 2022 were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Revenue:				
United States	\$ 63,051	\$ 122,096	\$ 125,113	\$ 439,286
Foreign	4,802	3,245	8,908	6,323
Total	\$ 67,853	\$ 125,341	\$ 134,021	\$ 445,609

Note 8. Debt, Commitments and Contingencies

Debt

As of June 30, 2023, the Company did not have any outstanding borrowing under its margin account with the custodian of the Company's marketable debt security investment account, Pershing Advisor Solutions, LLC, a BNY Mellon Company. The related interest expenses for the three and six months ended June 30, 2023 were \$136,000 and \$336,000, respectively. The related interest expenses for the three and six months ended June 30, 2022 were \$50,000 and \$79,000, respectively.

Notes payable as of June 30, 2023 consisted of \$3.4 million of notes payable related to an installment sale contract the Company entered in February 2022 for a building and \$4.2 million of notes payable to Xilong Scientific Co., or Xilong Scientific, by Fujian Fujun Gene Biotech Co., Ltd., or FF Gene Biotech. The notes payable related to the installment sale are due in February 2030, and the interest rate is 1.08%. The current portion and noncurrent portion are \$408,000 and \$3.0 million, respectively, and the noncurrent portion is included in the other long-term liabilities in the accompanying Condensed Consolidated Balance Sheets. The notes payable to Xilong Scientific were extended to and are due on December 31, 2023, and the interest rate on the loan is 4.97%. The related interest expenses for the three and six months ended June 30, 2023 were \$70,000 and \$145,000.00, respectively. The related interest expenses for the three and six months ended June 30, 2022 were \$77,000 and \$156,000, respectively.

Operating Leases

See Note 9, *Leases*, for further information.

Purchase Obligations

The Company entered certain noncancelable purchase commitments with its vendors, which primarily consist of services, reagent and supplies, computer software, and medical lab equipment. As of June 30, 2023, the Company had non-cancelable purchase obligations of \$59.5 million, of which \$28.8 million is payable within twelve months, and \$ 30.7 million is payable within the next five years.

Contingencies

From time to time, the Company may be subject to legal proceedings and claims arising in the ordinary course of business. In the opinion of management, the outcome of these matters would not have a material effect on the Company's condensed consolidated financial position, results of operations or cash flows.

The Company has received a Civil Investigative Demand, or CID, issued by the U.S. Department of Justice pursuant to the False Claims Act related to its investigation of allegations of medically unnecessary laboratory testing, improper billing for laboratory testing, and remuneration received or provided in violation of the Anti-Kickback Statute and the Stark Law. Among other things, this CID requests information and records relating to certain of the Company's customers named in the CID, which represent a small portion of the Company's revenues. As previously disclosed in the Company's Exchange Act reports, the SEC is also conducting a non-public formal investigation, which appears to relate to the matters raised in the CID requests and our Exchange Act reports filed for 2018 through 2020. The Company is fully cooperating with the U.S. Department of Justice and the SEC to promptly respond to the requests for information in this CID and investigation and does not presently expect this CID or resulting investigation or the SEC investigation to have a material adverse impact. However, the Company cannot predict when these matters will be resolved, the outcome of these matters, or their potential impact, which may ultimately be greater than what the Company currently expects.

Note 9. Leases

Lessee

The Company is a lessee to various non-cancelable operating leases with varying terms through April 2033 primarily for laboratory and office space and equipment. The Company has options to renew some of these leases after their expirations. On a lease-by-lease basis, the Company considers such options, which may be elected at the Company's sole discretion, in determining the lease term. The Company also has various finance leases for lab equipment with varying terms through December 2026, some of which were acquired in business combinations. The Company does not have any leases with variable lease payments. The Company's operating lease agreements do not contain any residual value guarantees, material restrictive covenants, bargain purchase options, or asset retirement obligations.

The Company's headquarters are located in El Monte, California, which is comprised of various corporate offices and a laboratory certified under the Clinical Laboratory Improvement Amendments of 1988, or CLIA, accredited by the College of American Pathologists, or CAP, and licensed by the State of California Department of Public Health. Other CLIA-certified

laboratories are located in Temple City, California; Irving, Texas; Needham, Massachusetts; Phoenix, Arizona; Alpharetta, Georgia; and New York, New York.

The operating and finance lease right-of-use asset, short-term lease liabilities, and long-term lease liabilities as of June 30, 2023 and December 31, 2022 were as follows:

	<u>June 30,</u> <u>2023</u>	<u>December 31,</u> <u>2022</u>
	(in thousands)	
Operating lease ROU asset, net	\$ 14,058	\$ 14,784
Operating lease liabilities, short term	\$ 5,943	\$ 6,132
Operating lease liabilities, long term	\$ 8,379	\$ 8,795
Finance lease ROU asset, net	\$ 1,582	\$ 2,784
Finance lease liabilities, short term	\$ 535	\$ 943
Finance lease liabilities, long term	\$ 1,030	\$ 1,818

The following were operating and finance lease expenses:

	<u>Three months ended June 30,</u>		<u>Six months ended June 30,</u>	
	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>2022</u>
	(in thousands)			
Operating lease cost	\$ 1,834	\$ 1,366	\$ 3,536	\$ 1,904
Finance lease cost:				
Amortization of ROU assets	243	169	486	265
Interest on lease liabilities	25	21	52	35
Short-term lease cost	506	834	1,007	931
Total lease cost	<u>\$ 2,608</u>	<u>\$ 2,390</u>	<u>\$ 5,081</u>	<u>\$ 3,135</u>

Supplemental information related to operating and finance leases were the following:

	<u>June 30, 2023</u>
Weighted average remaining lease term - operating leases	4.21 years
Weighted average discount rate - operating leases	4.01 %
Weighted average remaining lease term -finance lease	3.11 years
Weighted average discount rate - finance lease	3.81 %

The following is a maturity analysis of operating and finance lease liabilities using undiscounted cash flows on an annual basis with renewal periods included:

	<u>Operating Leases</u>	<u>Finance Lease</u>
	(in thousands)	
Year Ending December 31,		
2023 (remaining 6 months)	\$ 3,408	\$ 243
2024	4,359	580
2025	2,411	468
2026	1,786	366
2027	1,686	—
Thereafter	2,060	—
Total lease payments	15,710	1,657
Less imputed interest	(1,388)	(92)
Total	<u>\$ 14,322</u>	<u>\$ 1,565</u>

Lessor

The Company leases out space in buildings it owns and leases to third-party tenants under noncancelable operating leases. As of June 30, 2023, the remaining lease terms range from 6 months to 18 months, including renewal options and may include rent escalation clauses. Lease income primarily represents fixed lease payments from tenants recognized on a straight-line basis over the application lease term. Variable lease income represents tenant payments for real estate taxes, insurance, and maintenance.

The lease income was included in interest and other income, net, in the accompanying Condensed Consolidated Statements of Operations. Total lease income was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Lease income	\$ 38	\$ 84	\$ 83	\$ 181
Variable lease income	7	11	7	12
Total lease income	<u>\$ 45</u>	<u>\$ 95</u>	<u>\$ 90</u>	<u>\$ 193</u>

Future fixed lease payments from tenants for all noncancelable operating leases as of June 30, 2023 are as follows:

Year Ending December 31,	Lease Payments from Tenants	
	(in thousands)	
2023 (remaining 6 months)	\$	71
2024		91
Total	<u>\$</u>	<u>162</u>

Note 10. Equity-Based Compensation

The Company has included equity-based compensation expense as part of cost of revenue and operating expenses in the accompanying Condensed Consolidated Statements of Operations as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Cost of revenue	\$ 2,359	\$ 2,243	\$ 4,753	\$ 3,708
Research and development	3,670	2,502	7,118	4,423
Selling and marketing	1,094	1,080	2,455	1,905
General and administrative	3,200	2,205	6,262	3,610
Total	<u>\$ 10,323</u>	<u>\$ 8,030</u>	<u>\$ 20,588</u>	<u>\$ 13,646</u>

Note 11. Income Taxes

The effective tax rate used for interim periods is the estimated annual effective consolidated tax rate, based on the current estimate of full year results, except that taxes related to specific events, if any, are recorded in the interim period in which they occur. The annual effective tax rate is based upon several significant estimates and judgments, including the estimated annual pre-tax income of the Company in each tax jurisdiction in which it operates, and the development of tax planning strategies during the year. In addition, the Company's tax expense can be impacted by changes in tax rates or laws and other factors that cannot be predicted with certainty. As such, there can be significant volatility in interim tax provisions.

The Company recorded consolidated benefit from income taxes of \$3.1 million and \$8.3 million for the three and six months ended June 30, 2023, respectively. The Company recorded consolidated provision for income tax of \$2.7 million and \$51.1 million for the three and six months ended June 30, 2022, respectively. The Company's effective tax rate were 21% and 23% for the three and six months ended June 30, 2023, respectively, compared with 19% and 24% for the three and six months ended June 30, 2022, respectively. The change in the effective tax rate for the three and six months ended June 30, 2023, relative to 2022, was primarily attributable to shortfalls from stock-based compensation reducing the amount of tax loss that the Company could benefit from.

The Company is under examination by certain tax authorities for the 2020 to 2021 tax years. During 2023, the statutes of limitations will lapse on the Company's 2019 federal tax year and certain 2018 and 2019 state tax years. The Company does not

believe the federal or state statute lapses or any other event will significantly impact the balance of unrecognized tax benefits in the next twelve months.

Note 12. Income (Loss) per Share

The following table presents the calculation of basic and diluted income (loss) per share for the three and six months ended June 30, 2023 and 2022:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands, except per share data)			
Net income (loss) attributable to Fulgent	\$ (11,229)	\$ 11,537	\$ (26,569)	\$ 165,516
Weighted-average common shares—outstanding, basic	29,813	30,362	29,675	30,298
Weighted-average common shares—outstanding, diluted	29,813	31,189	29,675	31,225
Net income (loss) per common share, basic	\$ (0.38)	\$ 0.38	\$ (0.90)	\$ 5.46
Net income (loss) per common share, diluted	\$ (0.38)	\$ 0.37	\$ (0.90)	\$ 5.30

The following securities have been excluded from the calculation of diluted income (loss) per share because their effect would have been anti-dilutive:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Options	210	1	211	1
Restricted Stock Units	1,274	858	1,232	379
Contingently Issuable Shares	371	—	371	—

The anti-dilutive shares described above were calculated using the treasury stock method. In the three and six months ended June 30, 2023, the Company had outstanding stock options and restricted stock units and contingently issuable shares for held back related shares to the business combination of Fulgent Pharma that were excluded from the weighted-average share calculation for continuing operations due to the Company's net loss positions.

Note 13. Related Parties

Linda Marsh, who is a member of the Company's Board of Directors, or the Board, currently serves as the Senior Executive Vice President of AHMC Healthcare Inc., or AHMC. The Company performs genetic testing and other testing services, on an arms-length basis, for AHMC, and the Company recognized \$22,000 and \$117,000 in revenue from AHMC in the three and six months ended June 30, 2023, respectively. The Company recognized \$253,000 and \$1.0 million in revenue from AHMC in the three and six months ended June 30, 2022, respectively. As of June 30, 2023 and December 31, 2022, \$53,000 and \$93,000, respectively, was owed to the Company by AHMC, which is included in trade accounts receivable, net, in the accompanying Condensed Consolidated Balance Sheets, in connection with this relationship.

Ming Hsieh, the Chief Executive Officer and Chairperson of the Board, is on the board of directors and a 20% owner of ANP Technologies, Inc., or ANP, from which the Company purchased COVID-19 antigen rapid test kits and entered into certain drug-related licensing and development service agreements. The President and Chief Scientific Officer of Fulgent Pharma, Ray Yin, is the Founder, President and Chief Technology Officer of ANP. The Company incurred \$532,000 and \$1.5 million, respectively, related to the licensing and development services and purchases of equipment and COVID-19 antigen rapid test kits in the three and six months ended June 30, 2023. The Company incurred \$90,000 and \$160,000, respectively, in the three and six months ended June 30, 2022. As of June 30, 2023 and December 31, 2022, \$241,000 and \$607,000, respectively, were owed to ANP by the Company in connection with these relationships. The Company also entered into an employee service agreement with ANP in April 2023, an insignificant amount was recognized in the three and six months ended June 30, 2023, and an insignificant amount was owed by ANP in connection with the employee service agreement as of June 30, 2023.

Note 14. Goodwill and Acquisition-Related Intangibles

Summaries of goodwill and intangibles balances assets as of June 30, 2023 and December 31, 2022 were as follows:

	Weighted-Average Amortization Period	June 30,	December 31,
		2023	2022
(in thousands)			
Goodwill		\$ 141,970	\$ 143,027
In-process research & development	n/a	\$ 64,590	\$ 64,590
Royalty-free technology	10 Years	5,103	5,364
Less: accumulated amortization		(1,106)	(894)
Royalty-free technology, net		3,997	4,470
Customer relationships	13 Years	82,693	82,750
Less: accumulated amortization		(9,385)	(6,215)
Customer relationships, net		73,308	76,535
Trade name	8 Years	3,790	3,790
Less: accumulated amortization		(659)	(412)
Trade name, net		3,131	3,378
In-place lease intangible assets	5 Years	360	360
Less: accumulated amortization		(81)	(46)
In-place lease intangible assets, net		279	314
Laboratory information system platform	5 Years	1,860	1,860
Less: accumulated amortization		(713)	(527)
Laboratory information system platform, net		1,147	1,333
Purchased patent	10 Years	28	29
Less: accumulated amortization		(7)	(6)
Purchased patent, net		21	23
Total intangible assets, net		\$ 146,473	\$ 150,643

Acquisition-related intangibles included in the above tables are generally finite-lived and are carried at cost less accumulated amortization, except for In-Process Research and Development, or IPR&D, which is related to a business combination in 2022 and has an indefinite life until research and development efforts are completed or abandoned. All other finite-lived acquisition-related intangibles related to the business combinations in 2022 and 2021 are amortized on a straight-line basis over their estimated lives, which approximates the pattern in which the economic benefits of the intangible assets are expected to be realized.

Changes in the carrying amount of goodwill for the six months ended June 30, 2023 are as follows:

	Amounts	
	(in thousands)	
Balance as of January 1, 2023		
Goodwill	\$	143,027
Accumulated impairment losses		—
		143,027
Net foreign currency exchange differences		(1,057)
Balance as of June 30, 2023		
Goodwill		141,970
Accumulated impairment losses		—
	\$	141,970

Based on the carrying value of finite-lived intangible assets recorded as of June 30, 2023, and assuming no subsequent impairment of the underlying assets, the annual amortization expense for intangible assets is expected to be as follows:

	Amounts	
	(in thousands)	
Year Ending December 31,		
2023 (remaining 6 months)	\$	3,914
2024		7,826
2025		7,826
2026		7,524
2027		7,199
2028		7,164
Thereafter		40,430
Total	\$	81,883

Note 15. Stock Repurchase Program

In March 2022, the Board authorized a \$250.0 million stock repurchase program. Under the stock repurchase program, the Company may repurchase shares from time to time in the open market or in privately negotiated transactions. The stock repurchase program has no expiration from the date of authorization. During the three and six months ended June 30, 2023, the Company did not repurchase any shares of its common stock. During the three months ended June 30, 2022, the Company repurchased 215,000 shares of its common stock at an aggregate cost of \$10.6 million under the stock repurchase program. As of June 30, 2023, a total of approximately \$175.7 million remained available for future repurchases of its common stock under the stock repurchase program.

Note 16. Subsequent Events

As of August 1, 2023, no subsequent events are being reported.

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

The following discussion and analysis of our financial condition and results of operations should be read together with our condensed consolidated financial statements and related notes included in this report. Additionally, pursuant to Instruction 2 to paragraph (b) of Item 303 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission, or SEC, in preparing this discussion and analysis, we presume that readers have access to and have read the discussion and analysis of our financial condition and results of operations included in our annual report on Form 10-K for our fiscal year ended December 31, 2022 filed with the SEC on February 28, 2023, or the 2022 Annual Report. As used in this discussion and analysis and elsewhere in this report, unless the context otherwise requires, the terms “Fulgent,” the “Company,” “we,” “us” and “our” refer to Fulgent Genetics, Inc. and its consolidated subsidiaries.

Forward-Looking Statements

The following discussion and analysis contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Forward-looking statements are statements other than historical facts and relate to future events or circumstances or our future performance, and they are based on our current assumptions, expectations and beliefs concerning future developments and their potential effect on our business. The forward-looking statements in this discussion and analysis include statements about, among other things, our future financial and operating performance, our future cash flows and liquidity and our growth strategies, as well as anticipated trends in our business and industry. These forward-looking statements are subject to a number of risks and uncertainties, including, among others, those described under “Item 1A. Risk Factors” in Part I of the 2022 Annual Report. Moreover, we operate in a competitive and rapidly evolving industry and new risks emerge from time to time. It is not possible for us to predict all of the risks we may face, nor can we assess the impact of all factors on our business or the extent to which any factor or combination of factors could cause actual results to differ from our expectations. In light of these risks and uncertainties, the forward-looking events and circumstances described in this discussion and analysis may not occur, and actual results could differ materially and adversely from those described in or implied by any forward-looking statements we make. Although we have based our forward-looking statements on assumptions and expectations we believe are reasonable, we cannot guarantee future results, levels of activity, performance or achievements or other future events. As a result, forward-looking statements should not be relied on or viewed as predictions of future events, and this discussion and analysis should be read with the understanding that actual future results, levels of activity, performance and achievements may be materially different than our current expectations. The forward-looking statements in this discussion and analysis speak only as of the date of this report, and except as required by law, we undertake no obligation to update publicly any forward-looking statements for any reason after the date of this report to conform these statements to actual results or to changes in our expectations.

Overview

We are a technology-based company with a well-established clinical diagnostic business and a therapeutic development business. Our clinical diagnostic business offers molecular diagnostic testing services, comprehensive genetic testing, and high-quality anatomic pathology laboratory services designed to provide physicians and patients with clinically actionable diagnostic information to improve the quality of patient care. Our therapeutic development business is focused on developing drug candidates for treating a broad range of cancers using a novel nanoencapsulation and targeted therapy platform designed to improve the therapeutic window and pharmacokinetic profile, or PK profile, of new and existing cancer drugs. We aim to transform from a genomic diagnostic business into a fully integrated precision medicine company.

Business Risks and Uncertainties and Other Factors Affecting Our Performance

Our business and prospects are exposed to numerous risks and uncertainties. For more information, see “Item 1A. Risk Factors” in Part I of the 2022 Annual Report. In addition, our performance in any period is affected by a number of other factors. See the description of some of the material factors affecting our performance in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” of the 2022 Annual Report.

Results of Operations

The table below summarizes our results of our continuing operations for each of the periods presented. For a financial overview relating to our results of operations, including general descriptions of the make-up of material line items of our statement of operation data, see “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” of the 2022 Annual Report.

	Three Months Ended June 30,		\$ Change	% Change	Six Months Ended June 30,		\$ Change	% Change
	2023	2022			2023	2022		
Statement of Operation Data:								
	(in thousands)							
Revenue	\$ 67,853	\$ 125,341	\$ (57,488)	(46%)	\$ 134,021	\$ 445,609	\$ (311,588)	(70%)
Cost of revenue	47,281	60,065	(12,784)	(21%)	94,638	137,790	(43,152)	(31%)
Gross profit	20,572	65,276	(44,704)	(68%)	39,383	307,819	(268,436)	(87%)
Operating expenses:								
Research and development	9,692	6,905	2,787	40%	19,474	12,894	6,580	51%
Selling and marketing	10,723	10,866	(143)	(1%)	20,806	18,806	2,000	11%
General and administrative	17,993	30,240	(12,247)	(40%)	39,795	56,015	(16,220)	(29%)
Amortization of intangible assets	1,962	1,575	387	25%	3,930	2,481	1,449	58%
Restructuring costs	—	2,896	(2,896)	(100%)	—	2,896	(2,896)	(100%)
Total operating expenses	40,370	52,482	(12,112)	(23%)	84,005	93,092	(9,087)	(10%)
Operating (loss) income	(19,798)	12,794	(32,592)	(255%)	(44,622)	214,727	(259,349)	(121%)
Interest and other income, net	5,098	958	4,140	432%	8,873	1,003	7,870	785%
(Loss) income before income taxes	(14,700)	13,752	(28,452)	(207%)	(35,749)	215,730	(251,479)	(117%)
(Benefit from) provision for income taxes	(3,110)	2,653	(5,763)	(217%)	(8,310)	51,074	(59,384)	(116%)
Net (loss) income from consolidated operations	(11,590)	11,099	(22,689)	(204%)	(27,439)	164,656	(192,095)	(117%)
Net loss attributable to noncontrolling interests	361	438	(77)	(18%)	870	860	10	1%
Net (loss) income attributable to Fulgent	\$ (11,229)	\$ 11,537	\$ (22,766)	(197%)	\$ (26,569)	\$ 165,516	\$ (192,085)	(116%)

Revenue

Revenue decreased \$57.5 million, or 46%, from \$125.3 million in the three months ended June 30, 2022 to \$67.9 million in the three months ended June 30, 2023, and decreased \$311.6 million, or 70%, from \$445.6 million in the six months ended June 30, 2022 to \$134.0 million in the six months ended June 30, 2023. The decreases in revenue between periods were primarily due to decreased orders for our COVID-19 tests.

Revenue from non-U.S. sources increased \$1.6 million, or 48%, from \$3.2 million in the three months ended June 30, 2022 to \$4.8 million in the three months ended June 30, 2023, and increased \$2.6 million, or 41%, from \$6.3 million in six months ended June 30, 2022 to \$8.9 million in the six months ended June 30, 2023. The increase in revenue from non-U.S. sources between periods were primarily due to increased sales of our traditional genetic testing services to customers in China through our joint venture in China.

After aggregating customers that are under common control or affiliation, one customer contributed 13% of the Company's revenue in the three months ended June 30, 2023, and no customer contributed more than 10% of the Company's revenue in the six months ended June 30, 2023. Two customers contributed 15% and 12%, respectively, of the Company's revenue in the three months ended June 30, 2022, respectively, and one customer contributed 23% of the Company's revenue in the six months ended June 30, 2022.

Cost of Revenue

Cost of revenue decreased \$12.8 million, or 21%, from \$60.1 million in the three months ended June 30, 2022 to \$47.3 million in the three months ended June 30, 2023. The decrease was primarily due to decreases of \$9.8 million in consulting and outside labor costs related to the decreased tests delivered and decreased orders for our COVID-19 tests, \$3.8 million in depreciation expenses, and \$1.3 million in allocated facility expense, partially offset by an increase of \$2.4 million in personnel costs including equity-based compensation expense related to entity acquired in the second quarter of 2022.

Cost of revenue decreased \$43.2 million, or 31%, from \$137.8 million in the six months ended June 30, 2022 to \$94.6 million in the six months ended June 30, 2023. The decrease was primarily due to decreases of \$27.5 million in consulting and outside labor costs for production, \$20.5 million in reagent and supply expenses, and \$1.6 million in shipping expenses related to the decreased tests delivered and orders for our COVID-19 tests, and \$5.0 million in depreciation expenses, partially offset by an increase of \$14.7 million in personnel costs including equity-based compensation expense related to entity acquired in the second quarter of 2022.

Our gross profit decreased \$44.7 million, from \$65.3 million three months ended June 30, 2022 to \$20.6 million in the three months ended June 30, 2023. The decrease in gross profit was primarily due to the decrease in revenue from our COVID-19 tests. Our gross profit as a percentage of revenue, or gross margin, decreased from 52.1% to 30.3% due to changes in product mix.

Our gross profit decreased \$268.4 million, from \$307.8 million in the six months ended June 30, 2022 to \$39.4 million in the six months ended June 30, 2023. The decrease in gross profit was primarily due to the decrease in revenue from our COVID-19 tests. Our gross profit as a percentage of revenue, or gross margin, decreased from 69.1% to 29.4% due to changes in product mix.

Research and Development

Research and development expenses increased \$2.8 million, or 40%, from \$6.9 million in the three months ended June 30, 2022 to \$9.7 million in the three months ended June 30, 2023. The increase was primarily due to an increase of \$2.3 million in personnel costs including equity-based compensation expense related to increased headcount and equity awards granted post the second quarter of 2022.

Research and development expenses increased \$6.6 million, or 51%, from \$12.9 million in the six months ended June 30, 2022 to \$19.5 million in the six months ended June 30, 2023. The increase was primarily due to increases of \$5.6 million in personnel costs including equity-based compensation expense related to increased headcount and equity awards granted post the second quarter of 2022, and \$623,000 in consulting and outside labor costs related to continued development of our therapeutic product candidates.

Selling and Marketing

Selling and marketing expenses decreased \$143,000, or 1%, from \$10.9 million in the three months ended June 30, 2022 to \$10.7 million in the three months ended June 30, 2023. The decrease was primarily due to decreases of \$556,000 in consulting and outside labor costs and \$238,000 in personnel costs including equity-based compensation expense, and partially offset by an increase of \$619,000 in software expense.

Selling and marketing expenses increased \$2.0 million, or 11% from \$18.8 million in the six months ended June 30, 2022 to \$20.8 million in the six months ended June 30, 2023. The increase was primarily due to increases of \$2.0 million in software expense, and \$674,000 related to allocated facility expenses, and partially offset by a decrease of \$1.5 million in consulting and outside labor costs.

General and Administrative

General and administrative expenses decreased \$12.2 million, or 40%, from \$30.2 million in the three months ended June 30, 2022 to \$18.0 million in the three months ended June 30, 2023. The decrease was primarily due to decreases of \$9.0 million in provisions for credit losses, \$5.2 million in acquisition related costs incurred in the prior period, and \$708,000 in consulting and outside labor costs, partially offset by increases of \$1.3 million related to allocated facility expenses, \$909,000 in depreciation expenses, and \$758,000 in personnel costs including equity-based compensation expense related to equity awards granted post the second quarter of 2022.

General and administrative expenses decreased \$16.2 million, or 29%, from \$56.0 million in the six months ended June 30, 2022 to \$39.8 million in the six months ended June 30, 2023. The decrease was primarily due to decreases of \$20.7 million in provision for credit losses, \$5.2 million in acquisition related costs incurred in the prior period, and \$1.8 million in legal and professional fees, partially offset by increases in \$5.8 million in personnel costs including equity-based compensation expense related to equity acquired in the second quarter of 2022 and equity awards granted post the second quarter of 2022, \$3.3 million related to allocated facility expense, and \$2.7 million in depreciation expense.

Amortization of Intangible Assets

Amortization of intangible assets represents amortization expenses on the intangible assets arose from the business combinations in 2022 and 2021 and a patent purchased in 2021. Amortization expenses were \$2.0 million and \$1.6 million in the three months ended June 30, 2023 and 2022, respectively, and \$3.9 million and \$2.5 million in the six months ended June 30, 2023 and 2022, respectively.

Restructuring Costs

Restructuring expenses represent one-time employee termination benefits provided to employees associated with an entity acquired by the Company who were involuntarily terminated in the prior period.

Interest and Other Income, net

Interest and other income, net, is primarily comprised of net interest income (expenses), which was \$5.0 million and \$874,000 in the three months ended June 30, 2023 and 2022, respectively, and \$8.8 million and \$824,000 in the six months ended June 30, 2023 and 2022, respectively. This interest income (expense) related to interest earned on various investments in marketable securities including realized and holding gain (loss) on marketable equity securities, net of interest expenses incurred for our notes payable and margin loan.

(Benefit from) Provision for Income Taxes

(Benefit from) provision for income taxes was \$(3.1 million) and \$(8.3 million) for the three and six months ended June 30, 2023, respectively, and \$2.7 million and \$51.1 million for the three and six months ended June 30, 2022, respectively. The effective tax rate was 21% and 19% for the three months ended June 30, 2023 and 2022, respectively. The effective tax rate was 23% and 24% for the six months ended June 30, 2023 and 2022, respectively. The change in the effective tax rate for the three and six months ended June 30, 2023, relative to 2022, was primarily attributable to shortfalls from stock-based compensation reducing the amount of tax loss that we could benefit from.

Net Loss Attributable to Noncontrolling Interest

Net loss attributable to noncontrolling interest represents net loss attributable to the minority shareholders from entities not wholly owned.

Liquidity and Capital Resources

Liquidity and Sources of Cash

We had \$846.8 million and \$852.9 million in cash, cash equivalents and marketable securities as of June 30, 2023 and December 31, 2022, respectively. Our marketable securities primarily consist of U.S. government and U.S. agency debt securities, U.S. treasury bills, corporate bonds, municipal bonds, and Yankee debt securities as of June 30, 2023 and December 31, 2022.

Our primary uses of cash are to fund our operations and to fund strategic acquisitions as we continue to invest in and seek to grow our business. Cash used to fund operating expenses is impacted by the timing of our expense payments, as reflected in the changes in our outstanding accounts payable and accrued expenses.

We believe our existing cash, cash equivalent, and short-term marketable securities will be sufficient to meet our anticipated cash requirements for at least the next 12 months. Cash provided by operations significantly contributed to our ability to meet our liquidity needs, including paying for capital expenditures. However, cash provided by our operations fluctuates from period to period, which we expect may continue in the future. These fluctuations can occur because of a variety of factors, including, among others, factors relating to the demand for our tests, the amount and timing of sales, the prices we charge for our tests due to changes in product mix, customer mix, general price degradation for tests, or other factors, the rate and timing of our billing and collections cycles and the timing and amount of our commitments and other payments. Moreover, even if our liquidity expectations are correct, we may still seek to raise additional capital through securities offerings, credit facilities or other debt financings, asset sales or collaborations or licensing arrangements.

If we raise additional funds by issuing equity securities, our existing stockholders could experience substantial dilution. Additionally, any preferred stock we issue could provide for rights, preferences or privileges senior to those of our common stock, and our issuance of any additional equity securities, or the possibility of such an issuance, could cause the market price of our common stock to decline. The terms of any debt securities we issue or borrowings we incur, if available, could impose significant restrictions on our operations, such as limitations on our ability to incur additional debt or issue additional equity or other restrictions that could adversely affect our ability to conduct our business, and would result in increased fixed payment obligations. If we seek to sell assets or enter into collaborations or licensing arrangements to raise capital, we may be required to accept unfavorable terms or relinquish or license to a third party our rights to important or valuable technologies or tests we may otherwise seek to develop ourselves. Moreover, we may incur substantial costs in pursuing future capital, including investment banking, legal and accounting fees, printing and distribution expenses and other similar costs. Additional funding may not be available to us when needed, on acceptable terms or at all. If we are not able to secure funding if and when needed and on reasonable terms, we may be forced to delay, reduce the scope of or eliminate one or more sales and marketing initiatives, research and development programs or other growth plans or strategies. In addition, we may be forced to work with a partner on one or more aspects of our tests or market development programs or initiatives,

which could lower the economic value to us of these tests, programs or initiatives. Any such outcome could significantly harm our business, performance and prospects.

Cash Flows

The following table summarizes our cash flows for each of the periods indicated:

	Six Months Ended June 30,	
	2023	2022
	(in thousands)	
Net cash provided by operating activities	\$ 1,830	\$ 199,537
Net cash used in investing activities	\$ (5,450)	\$ (213,004)
Net cash used in financing activities	\$ (17,360)	\$ (12,086)

Operating Activities

Cash provided by operating activities in the six months ended June 30, 2023 was \$1.8 million. The difference between net loss and cash provided in operating activities for the period was primarily due to the effects of \$20.6 million in equity-based compensation expenses, \$13.2 million in the depreciation and amortization, and \$3.3 million in noncash lease expense, partially offset by negative impact of \$8.4 million in deferred taxes, \$2.0 million in provision for credit losses, and \$1.2 million in amortization of bond discount on marketable securities. Changes in operating assets and liabilities primarily consisted of decrease of \$19.7 million in trade accounts receivable due to the timing of collections, partially offset by decrease of \$4.5 million in accrued liabilities and other current and non-current liabilities, \$4.4 million in accounts payable related to the timing of payments, \$3.1 million in operating lease liabilities, and an increase of \$3.8 million in other current and long-term assets.

Cash provided by operating activities in the six months ended June 30, 2022 was \$199.5 million. The difference between net income and cash provided by operating activities for the period was primarily due to the effects of \$18.7 million in provision for credit losses, \$13.6 million in equity-based compensation expenses, \$13.0 million in the depreciation and amortization, \$3.2 million in amortization of premium of marketable securities, \$1.7 million in noncash lease expense, \$1.0 million in unrecognized tax benefits, partially offset by a negative impact of \$7.6 million increased deferred tax assets. Changes in operating assets and liabilities primarily consisted of decreases of \$10.3 million in accounts payable related to timing of payments, \$1.7 million in operating and finance lease liabilities, and an increase of \$1.9 million in other current and long-term assets primary related to increased prepaid insurance premium, partially offset by an increase of \$2.0 million in income tax payable due to the timing of the payment and a decrease of \$1.8 million in trade accounts receivable due to timing of collections.

Investing Activities

Cash used in investing activities in the six months ended June 30, 2023 was \$5.5 million, which primarily related to \$250.5 million on purchases of marketable securities and \$14.2 million on purchases of fixed assets, including real estate, partially offset by \$258.8 million related to maturities of marketable securities.

Cash used in investing activities in the six months ended June 30, 2022 was \$213.0 million, which primarily related to \$245.5 million on purchase of marketable securities and \$137.8 million payment related to acquisition of Inform Diagnostics, \$15.0 million investment in private equity securities, \$10.0 million contingent consideration payment made in current period related to a business combination in 2021, purchase of \$8.6 million of fixed assets, partially offset by proceeds of \$133.4 million from sale of marketable securities and \$70.4 million related to maturities of marketable securities.

Financing Activities

Cash used in financing activities in the six months ended June 30, 2023 was \$17.4 million, which primarily related to \$15.0 million repayment to the margin loan account and \$1.1 million common stock withholding for employee tax obligations.

Cash used in financing activities in the six months ended June 30, 2022 was \$12.1 million, which primarily related to \$10.6 million repurchase of common stock and \$930,000 related to common stock withholding for employee tax obligations.

Stock Repurchase Program

In March 2022, the Board authorized a \$250.0 million stock repurchase program. Under the stock repurchase program, the Company may repurchase shares from time to time in the open market or in privately negotiated transactions. The stock repurchase program has no expiration from the date of authorization. During the three and six months ended June 30, 2023, we did not repurchase

any common stock under our stock repurchase program. During the three months ended June 30, 2022, we repurchased 215,000 shares of our common stock at an aggregate cost of \$10.6 million under the stock repurchase program. As of June 30, 2023, a total of approximately \$175.7 million remained available for future repurchases of our common stock under our stock repurchase program.

Critical Accounting Policies and Use of Estimates

There have been no material changes to our critical accounting policies or estimates from the information provided in Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” included in the 2022 Annual Report.

Recent Accounting Pronouncements

See Note 2, *Summary of Significant Accounting Policies*, to our condensed consolidated financial statements included in this report for information about recent accounting pronouncements.

Off-Balance Sheet Arrangements

We did not have during the periods presented, and do not currently have, any off-balance sheet arrangements, as defined in the rules and regulations of the SEC, that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenue or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

For quantitative and qualitative disclosures about market risk, see Part II, Item 7A, “Quantitative and Qualitative Disclosures About Market Risk,” in our 2022 Annual Report.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are controls and other procedures of a company that are designed to ensure that information required to be disclosed by the company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. As required by Rule 13a-15(b) under the Exchange Act, our management, with the participation of our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our disclosure controls and procedures as of June 30, 2023. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of June 30, 2023.

Changes in Internal Control over Financial Reporting

There have not been any changes in our internal control (as required by Rule 13a-15(b) under the Exchange Act) over the financial reporting during the three months ended June 30, 2023 that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

Inherent Limitations on Disclosure Controls and Procedures and Internal Control over Financial Reporting

Management recognizes that any controls and procedures, no matter how well-designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the benefits of possible controls and procedures relative to their costs. Because of these inherent limitations, our disclosure and internal controls may not prevent or detect all instances of fraud, misstatements or other control issues. In addition, projections of any evaluation of the effectiveness of disclosure or internal controls to future periods are subject to risks, including, among others, that controls may become inadequate because of changes in conditions or that the degree of compliance with policies or procedures may deteriorate.

Item 1. Legal Proceedings.

From time to time, we may be involved in legal proceedings arising in the ordinary course of our business.

The outcome of litigation is inherently uncertain, and there can be no assurances that favorable outcomes will be obtained.

Regardless of outcome, litigation can have an adverse impact on us due to defense and settlement costs, diversion of management resources, negative publicity and reputational harm, among other factors.

Item 1A. Risk Factors.

There have been no material changes to the risk factors set forth in Part I, Item 1A, “Risk Factors,” of the 2022 Annual Report.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**Use of Proceeds from Registered Securities**

To date, we have used \$121.7 million of the net proceeds from sales of our common stock, of which, \$4.5 million was used for contributions to FF Gene Biotech, prior to the FF Gene Biotech acquisition, \$101.4 million was used to fund the Company’s operations and a business combination, and \$15.8 million was used to pay off the investment margin loan. All other net proceeds from sales of our common stock are invested in investment-grade and interest-bearing securities, such as U.S. government and U.S. agency debt securities, corporate bonds, and municipal bonds. There has been no material change in the planned use of proceeds from the sales of our common stock from that described in the Prospectus.

Information on Share Repurchases

The Company did not repurchase any common stock during the three and six months ended June 30, 2023. The number of shares of common stock repurchased by the Company during the second quarter of 2022 and the average price paid per share are as follows:

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid Per Share (1)	(c) Total Number of Shares Purchased As Part of Publicly Announced Plans or Programs	(d) Maximum Dollar Value that May Yet Be Purchased Under the Plans or Programs
May 2022 (5/1/2022 - 5/31/2022)	30,000	\$ 49.56	30,000	\$ 248,515,000
June 2022 (6/1/2022 - 6/30/2022)	185,000	\$ 48.97	185,000	\$ 239,429,000
Total	215,000	\$ 49.05	215,000	

(1) Includes commissions for the shares repurchased under the stock repurchase program.

Item 5. Other Information**Amended and Restated Bylaws**

On August 1, 2023 our Board approved and adopted the Amended and Restated Bylaws, or the Amended Bylaws. The amendments address matters relating to Rule 14a-19 under the Exchange Act, or the Universal Proxy Rules as further set forth in the Amended and Restated Bylaws attached as Exhibit 3.2 to this Quarterly Report on Form 10-Q.

Item 6. Exhibits.

The information required by this Item 6 is set forth on the Exhibit Index that immediately precedes the signature page to this report and is incorporated herein by reference.

EXHIBIT INDEX

Exhibit No.	Exhibit Title	Filed with this Form 10-Q	Incorporated by Reference		
			Form	Form No.	Date Filed
3.1	Certificate of Incorporation of the registrant, dated May 13, 2016.		10-Q	001-37894	8/14/2017
3.1.1	Certificate of Amendment to Certificate of Incorporation of the registrant, dated August 2, 2016.		10-Q	001-37894	8/14/2017
3.1.2	Certificate of Amendment to Certificate of Incorporation of the registrant, dated May 17, 2017.		10-Q	001-37894	8/14/2017
3.2	Amended and Restated Bylaws of the registrant.	X			
10.1 [^]	Amended and Restated 2016 Omnibus Incentive Plan of the registrant		8-K	001-37894	5/18/2023
10.1 [#]	Executive Officer Incentive Plan		10-Q	001-37894	5/05/2023
31.1	Certification of Principal Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X			
31.2	Certification of Principal Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X			
32.1*	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	X			
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.	X			
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X			
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X			
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	X			
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	X			
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X			
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)	X			

* Furnished herewith.

[^] Management compensation plan or arrangement.

[#] Certain exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplementally a copy of any omitted exhibit or schedule upon request by the SEC.

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.

FULGENT GENETICS, INC.

Date: August 4, 2023

By: _____
/s/ MING HSIEH
Ming Hsieh
Chief Executive Officer
(principal executive officer)

Date: August 4, 2023

By: _____
/s/ PAUL KIM
Paul Kim
Chief Financial Officer
(principal financial and accounting officer)

AMENDED AND RESTATED

BYLAWS

OF

FULGENT GENETICS, INC.

a Delaware Corporation

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BYLAWS
OF
FULGENT GENETICS, INC.

ARTICLE 1

OFFICES

Section 1.1 Registered Office.

The registered office of the Corporation in the State of Delaware shall be set forth in the Certificate of Incorporation of the Corporation (as amended, modified or restated from time to time, the “**Certificate of Incorporation**”).

Section 1.2 Other Offices.

The Corporation may also have offices at such other places, either within or without the State of Delaware, as the board of directors of the Corporation (the “**Board of Directors**” or “**Board**”) may from time to time determine or the business of the Corporation may require.

ARTICLE 2

STOCKHOLDERS’ MEETINGS

Section 2.1 Place of Meetings.

(a) Meetings of stockholders may be held at such place, either within or without the State of Delaware, as may be designated by or in the manner provided in these Bylaws or, if not so designated, as determined by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (b) of this Section 2.1.

(b) If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(1) Participate in a meeting of stockholders; and

(2) Be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the

proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

(c) For purposes of these Bylaws, “remote communication” shall include (1) telephone or other voice communications and (2) electronic mail or other form of written or visual electronic communications satisfying the requirements of Section 2.11(b).

Section 2.2 Annual Meetings.

The annual meetings of the stockholders of the Corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. To the fullest extent permitted by applicable law, the Board of Directors may postpone or reschedule any previously scheduled annual meeting.

Section 2.3 Special Meetings.

Special meetings of the stockholders of the Corporation may be called, for any purpose or purposes, by the Chairperson of the Board or the Chief Executive Officer or the President or the Board of Directors at any time. Only such business shall be brought before a special meeting of stockholders as shall have been specified in the notice of such meeting. To the fullest extent permitted by applicable law, the Board of Directors may postpone or reschedule any previously scheduled special meeting.

Section 2.4 Notice of Meetings.

(a) Except as otherwise provided by law or the Certificate of Incorporation, written notice of each meeting of stockholders, specifying the place, if any, date and hour and purpose or purposes of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote thereat, directed to such stockholder’s address as it appears upon the books of the Corporation. If the Board of Directors fixes a date for determining the stockholders entitled to notice of a meeting of stockholders, such date shall also be the record date for determining the stockholders entitled to vote at such meeting, unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

(b) If at any meeting action is proposed to be taken which, if taken, would entitle stockholders fulfilling the requirements of Section 262(d) of the Delaware General Corporation Law to an appraisal of the fair value of their shares, the notice of such meeting shall contain a statement to that effect and shall be accompanied by a copy of that statutory section.

(c) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communication,

if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken unless the adjournment is for more than thirty days, or unless after the adjournment a new record date is fixed for the adjourned meeting, in which event a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting.

(d) Notice of the time, place and purpose of any meeting of stockholders may be waived in writing or by electronic transmission, either before or after such meeting, and, to the extent permitted by law, will be waived by any stockholder or proxyholder by their attendance thereat, in person or by proxy.

(e) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of Delaware General Corporation Law, the Certificate of Incorporation, or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent, and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this subparagraph (e) shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 2.5 Quorum and Voting.

(a) At all meetings of stockholders except where otherwise provided by law, the Certificate of Incorporation or these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. Shares, the voting of which at said meeting have been enjoined, or which for any reason cannot be lawfully voted at such meeting, shall not be counted to determine a quorum at said meeting. In the absence of a quorum, any meeting of stockholders

may be adjourned, from time to time, by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. At such adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the original meeting. The stockholders present at a duly called or convened meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

(b) Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the votes cast on a matter affirmatively or negatively shall be valid and binding upon the Corporation. For purposes of these Bylaws, a share present at a meeting, but for which there is an abstention or as to which a stockholder gives no authority or direction as to a particular proposal or director nominee, shall be counted as present for the purpose of establishing a quorum but shall not be counted as a vote cast.

(c) Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter, and the affirmative vote of the majority of votes cast of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

Section 2.6 Voting Rights.

(a) Except as otherwise provided by law, only persons in whose names shares entitled to vote stand on the stock records of the Corporation on the record date for determining the stockholders entitled to vote at said meeting shall be entitled to vote at such meeting. Shares standing in the names of two or more persons shall be voted or represented in accordance with the determination of the majority of such persons, or, if only one of such persons is present in person or represented by proxy, such person shall have the right to vote such shares and such shares shall be deemed to be represented for the purpose of determining a quorum.

(b) Every person entitled to vote or to execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or such person's duly authorized agent, which proxy shall be filed with the Secretary of the Corporation at or before the meeting at which it is to be used. Said proxy so appointed need not be a stockholder. No proxy shall be voted on after three (3) years from its date unless the proxy provides for a longer period. Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it or of their legal representatives or assigns, except in those cases where an irrevocable proxy permitted by statute has been given.

(c) Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy pursuant to subsection (b) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

(1) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or their authorized officer, director, employee or agent signing such writing or causing their signature to

be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(2) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such transmission must either set forth or be submitted with information from which it can be determined that the transmission was authorized by the stockholder. Such authorization can be established by the signature of the stockholder on the proxy, either in writing or by a signature stamp or facsimile signature, or by a number or symbol from which the identity of the stockholder can be determined, or by any other procedure deemed appropriate by the inspectors or other persons making the determination as to due authorization. If it is determined that such transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(d) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (c) of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.7 Voting Procedures and Inspectors of Elections.

(a) The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of their duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of their ability.

(b) The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery shall determine otherwise upon application by a stockholder.

(d) In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Sections 211(e) or 212(c) (2) of the Delaware General Corporation Law, or any information provided pursuant to Section 211(a)(2)(B)(i) or (iii) thereof, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to subsection (b)(v) of this section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

Section 2.8 List of Stockholders.

The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, (or, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote on the tenth day before the meeting date), arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. The Corporation need not include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 2.9 Stockholder Proposals at Annual Meetings.

At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder. The foregoing clause (iii) shall be the exclusive means for a stockholder to propose business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8

under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)) at an annual meeting of stockholders.

In addition to any other applicable requirements for business to be properly brought before an annual meeting by a stockholder, whether or not the stockholder is seeking to have a proposal included in the Corporation’s proxy statement or information statement under Rule 14a-8 under the Exchange Act, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, in the case of a stockholder seeking to have a proposal included in the Corporation’s proxy statement or information statement, a stockholder’s notice must be delivered to the Secretary at the Corporation’s principal executive offices not less than 120 days or more than 180 days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials (or, in the absence of proxy materials, its notice of meeting) for the previous year’s annual meeting of stockholders. However, if the Corporation did not hold an annual meeting the previous year, or if the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30 days after the anniversary of the preceding year’s annual meeting, then to be timely, notice by the stockholder must be delivered to the Secretary at the Corporation’s principal executive offices not later than the close of business on the later of (i) the 90th day prior to such annual meeting or (ii) the 15th day following the day on which public announcement of the date of such meeting is first made. If the stockholder is not seeking inclusion of the proposal in the Corporation’s proxy statement or information statement, timely notice consists of a stockholder’s notice delivered to or mailed and received at the principal executive offices of the Corporation not less than 90 days prior to the date of the annual meeting. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder’s notice as described above. Other than with respect to stockholder proposals relating to director nomination(s), which requirements are set forth in Section 2.10 below, a stockholder’s notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of the stockholder proposing such business, (iii) the class and number of shares of the Corporation which are beneficially owned by the stockholder, (iv) any material interest of the stockholder in such business, (v) as to the stockholder giving the notice and any Stockholder Associated Person (as defined below) or any member of such stockholder’s immediate family sharing the same household, whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including, but not limited to, any short position or any borrowing or lending of shares of stock) has been made, the effect or intent of which is to mitigate loss or increase profit to or manage the risk or benefit of stock price changes for, or to increase or decrease the voting power of, such stockholder, such Stockholder Associated Person or family member with respect to any share of stock of the Corporation (each, a “**Relevant Hedge Transaction**”), and (vi) as to the stockholder giving the notice and any Stockholder Associated Person or any member of such stockholder’s immediate family sharing the same household, to the extent not set forth pursuant to the immediately preceding clause, (a) whether and the extent to which such stockholder, Stockholder Associated Person or family member has direct or indirect beneficial ownership of any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of

capital stock of the Corporation or otherwise, or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation (a “**Derivative Instrument**”), (b) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder, Stockholder Associated Person or family member that are separated or separable from the underlying shares of the Corporation, (c) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder, Stockholder Associated Person or family member is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (d) any performance-related fees (other than an asset-based fee) that such stockholder, Stockholder Associated Person or family member is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date).

For purposes of this Section 2.9 and Section 2.10, “Stockholder Associated Person” of any stockholder shall mean (i) any person controlling or controlled by, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder and (iii) any person controlling, controlled by or under common control with such Stockholder Associated Person.

Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set forth in Section 2.1 and this Section 2.9, provided, however, that nothing in this Section 2.9 shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting in accordance with said procedure.

The chairperson of an annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of Section 2.1 and this Section 2.9, and if he should so determine he shall so declare to the meeting, and any such business not properly brought before the meeting shall not be transacted.

Nothing in this Section 2.9 shall affect the right of a stockholder to request inclusion of a proposal in the Corporation’s proxy statement or information statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2.10 Nominations of Persons for Election to the Board of Directors.

In addition to any other applicable requirements, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders (i) pursuant to the Corporation’s notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) by or at the direction of the Board of Directors, or by any nominating committee or person appointed by the Board of Directors or (iii) by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section 2.10. Except for a nomination made in accordance with the foregoing clause (iii), as permitted by Rule 14a-19 as promulgated under the Exchange

Act or as otherwise permitted by law, the foregoing clause (iii) is the sole and exclusive manner for stockholders to nominate persons for election as directors. Upon request by the Corporation, if a stockholder provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act or includes the information required by Rule 14a-19(b) in a preliminary or definitive proxy statement previously filed by such stockholder, such stockholder shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting of stockholders, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act. A stockholder who complies with the notice procedures set forth in this Section 2.10 is permitted to present the nomination at the meeting of stockholders but is not entitled to have a nominee included in the Corporation's proxy statement in the absence of an applicable rule of the U.S. Securities and Exchange Commission requiring the Corporation to include a director nomination made by a stockholder in the Corporation's proxy statement or information statement.

Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, notice by the stockholder must be delivered to the Secretary at the Corporation's principal executive offices not later than 90 days prior to the date of the annual meeting. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above. The stockholder's notice relating to director nomination(s) shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class and number of shares of the Corporation which are beneficially owned by the person, (iv) a statement whether such person, if elected, intends to tender a resignation effective upon such person's failure to receive the required vote for re-election at the next meeting at which such person would face re-election and upon acceptance of such resignation by the Board of Directors, in accordance with these Bylaws, (v) a representation as to whether or not the stockholder or beneficial owner, if any, or any of their respective affiliates, associates or others acting in concert therewith intend to solicit proxies in support of director nominees other than the Corporation's nominees in accordance with Rule 14a-19 promulgated under the Exchange Act, (vi) each person's consent to be named in a proxy statement relating to such meeting of stockholders, and (vii) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to Regulation 14A under the Exchange Act; (b) as to the stockholder giving the notice, (i) the name and record address of the stockholder, and (ii) the class and number of shares of the Corporation which are beneficially owned by the stockholder; (c) as to the stockholder giving the notice and any Stockholder Associated Person (as defined in Section 2.9), to the extent not set forth pursuant to the immediately preceding clause, whether and the extent to which any Relevant Hedge Transaction (as defined in Section 2.9) has been entered into, and (d) as to the stockholder giving the notice and any Stockholder Associated Person, (i) whether and the extent to which any Derivative Instrument (as defined in Section 2.9) is directly or indirectly beneficially owned, (ii) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation, (iii) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (iv) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative

Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date). Notwithstanding the foregoing provisions of this Section 2.10, a stockholder shall also comply with all applicable requirements of state and federal law, including the Exchange Act, the Certificate of Incorporation and these Bylaws with respect to any nomination, proposal or other matter set forth in this Section 2.10. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation. Unless otherwise required by law, if any stockholder or beneficial owner, if any, or any of their respective affiliates or associates (i) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act or includes the information required by Rule 14a-19(b) in a preliminary or definitive proxy statement previously filed by such person (it being understood that such notice or filing shall be in addition to all notices required pursuant to this Section 2.10) and (ii) subsequently fails to comply with any requirements of Rule 14a-19 promulgated under the Exchange Act or any other rules or regulations thereunder, then the Corporation shall disregard any proxies or votes solicited for such nominees and such nomination shall be disregarded. The stockholder giving such notice shall indemnify the Corporation in respect of any loss arising as a result of any false or misleading information or statement submitted by the nominating stockholder in connection with the nomination, as provided by Section 112(5) of the Delaware General Corporation Law. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth herein. These provisions shall not apply to nomination of any persons entitled to be separately elected by holders of preferred stock.

The chairperson of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

Section 2.11 Action Without Meeting.

Unless otherwise provided in the Certificate of Incorporation, the stockholders of the Corporation may not act by written consent.

ARTICLE 3

DIRECTORS

Section 3.1 Number and Term of Office.

(a) Subject to the rights of holders of any series of preferred stock to elect additional directors under specified circumstances, the number of directors which shall constitute the whole of the Board of Directors shall be determined from time to time by resolutions of the Board of Directors, provided that the Board of Directors shall consist of at least one member. Elected directors shall hold office until the next annual meeting and until their successors shall be duly elected and qualified. Directors need not be stockholders. If, for any cause, the Board of Directors shall not have been elected at an annual meeting, they may be elected as soon as convenient at a

special meeting of the stockholders called for that purpose in the manner provided in these Bylaws. In no case will a decrease in the number of directors shorten the term of any incumbent director.

(b) Except as provided in Section 3.3 of this Article III, the directors shall be elected by a plurality vote of the votes cast and entitled to vote on the election of directors at any meeting for the election of directors at which a quorum is present.

Section 3.2 Powers.

The powers of the Corporation shall be exercised, its business conducted and its property controlled by or under the direction of the Board of Directors.

Section 3.3 Vacancies.

Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and each director so elected shall hold office for the unexpired portion of the term of the director whose place shall be vacant and until such director's successor shall have been duly elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this section in the case of the death, removal or resignation of any director, or if the stockholders fail at any meeting of stockholders at which directors are to be elected (including any meeting referred to in Section 3.4 below) to elect the number of directors then constituting the whole Board of Directors.

Section 3.4 Resignations and Removals.

(a) Any director may resign at any time by delivering their resignation to the Secretary in writing or by electronic transmission, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until such director's successor shall have been duly elected and qualified.

(b) At a special meeting of stockholders called for the purpose in the manner hereinabove provided, the Board of Directors or any individual director may be removed from office, with or without cause, and a new director or directors elected by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of directors.

Section 3.5 Meetings.

(a) The annual meeting of the Board of Directors shall be held immediately after the annual stockholders' meeting and at the place where such meeting is held or at the place announced by the chairperson at such meeting. No notice of an annual meeting of the Board of Directors shall

be necessary, and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held at the principal executive office of the Corporation. Regular meetings of the Board of Directors may also be held at any place, within or without the State of Delaware, which has been designated by resolutions of the Board of Directors or the written consent of all directors.

(c) Special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairperson of the Board or, if there is no Chairperson of the Board, by the Chief Executive Officer or the President, or by any of the directors.

(d) Written notice of the time and place of all regular and special meetings of the Board of Directors shall be delivered personally to each director or sent by any form of electronic transmission at least 48 hours before the start of the meeting, or sent by first class mail at least 120 hours before the start of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat.

Section 3.6 Quorum and Voting.

(a) A quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time in accordance with Section 3.1 of Article III of these Bylaws, but not less than one; provided, however, at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by a vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation, or these Bylaws.

(c) Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communication equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) The transactions of any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the directors not present shall sign a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.7 Action Without Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.8 Fees and Compensation.

Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by resolution of the Board of Directors.

Section 3.9 Committees.

(a) **Executive Committee:** The Board of Directors may appoint an Executive Committee of not less than one member, each of whom shall be a director. To the extent permitted by law, the Executive Committee shall have and may exercise when the Board of Directors is not in session all powers of the Board of Directors in the management of the business and affairs of the Corporation, except such committee shall not have the power or authority to amend these Bylaws or to approve or recommend to the stockholders any action which must be submitted to stockholders for approval under the General Corporation Law.

(b) **Other Committees:** The Board of Directors may from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committee, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) **Term:** The terms of members of all committees of the Board of Directors shall expire on the date of the next annual meeting of the Board of Directors following their appointment; provided that they shall continue in office until their successors are appointed. Subject to the provisions of subsections (a) or (b) of this Section 3.9, the Board of Directors may at any time increase or decrease the number of members of a committee or terminate the existence of a committee; provided that no committee shall consist of less than one member. The membership of a committee member shall terminate on the date of such member's death or voluntary resignation, but the Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum,

may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) **Meetings:** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 3.9 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter; special meetings of any such committee may be held at the principal executive office of the Corporation or at any place which has been designated from time to time by resolution of such committee or by written consent of all members thereof, and may be called by any director who is a member of such committee upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time after the meeting and will be waived by any director by attendance thereat. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 3.10 Emergency Provisions.

In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the Delaware General Corporate Law, or other similar emergency condition, as a result of which a quorum of the Board of Directors or a standing committee of the Board of Directors cannot readily be convened for action, any director or officer of the Corporation may call a meeting of the Board of Directors or any standing committee of the Board of Directors by any practical means. Notice of the time and place of the meeting shall be given by any available means of communication by the person calling the meeting to such of the directors as it may be feasible to reach. Such notice shall be given at such time in advance of the meeting as, in the judgment of the person calling the meeting, circumstances permit.

If, as a result of such an emergency, disaster or catastrophe, a quorum of the Board of Directors or a standing committee of the Board of Directors cannot readily be convened for action, the director or directors in attendance at the meeting shall constitute a quorum. To the extent necessary to constitute a quorum at any meeting of the Board of Directors during such emergency, the officers or other persons designated on a list to be approved by the Board of Directors before the emergency, all in such order of priority as provided in such list, shall be deemed directors for such meeting. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board of Directors as they shall deem necessary and appropriate.

The Board of Directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the Corporation shall for any reason be rendered incapable of discharging their duties.

No officer, director or employee acting in accordance with this Section 3.10, with any other emergency bylaw provision, or pursuant to Section 110 of the Delaware General Corporate Law or any successor section, shall be liable except for willful misconduct.

ARTICLE 4

OFFICERS

Section 4.1 Officers Designated.

The officers of the Corporation shall be a President, a Secretary and a Treasurer. The Board of Directors or the Chief Executive Officer or the President may also appoint a Chairperson of the Board, one or more Vice-Presidents, Assistant Secretaries, Assistant Treasurers, and such other officers and agents with such powers and duties as it or he shall deem necessary. The order of the seniority of the Vice-Presidents shall be in the order of their nomination unless otherwise determined by the Board of Directors. The Board of Directors may assign such additional titles to one or more of the officers as they shall deem appropriate. Any one person may hold any number of offices of the Corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the Corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 4.2 Tenure and Duties of Officers.

(a) **General.** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. Nothing in these Bylaws shall be construed as creating any kind of contractual right to employment with the Corporation.

(b) **Duties of the Chairperson of the Board of Directors.** The Chairperson of the Board of Directors (if there be such an officer appointed) when present shall preside at all meetings of the stockholders and the Board of Directors. The Chairperson of the Board of Directors shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(c) **Duties of Chief Executive Officer.** The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director), unless the Chairperson of the Board of Directors has been appointed and is present. The Chief Executive Officer shall be the chief executive officer of the Company and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Company. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(d) **Duties of President.** The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairperson of the Board of Directors has

been appointed and is present. The President shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(e) **Duties of Vice-Presidents.** The Vice-Presidents, in the order of their seniority or as otherwise provided by the Board of Directors, may assume and perform the duties of the President in the absence or disability of the President or whenever the office of the President is vacant. The Vice-President shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer or the President shall designate from time to time.

(f) **Duties of Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board of Directors and any committee thereof, and shall record all acts and proceedings thereof in the minute book of the Corporation, which may be maintained in either paper or electronic form. The Secretary shall give notice, in conformity with these Bylaws, of all meetings of the stockholders and of all meetings of the Board of Directors and any Committee thereof requiring notice. The Secretary shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The Chief Executive Officer or the President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer or the President shall designate from time to time.

(g) **Duties of Treasurer.** The Treasurer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner, and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer or the President. The Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Corporation. The Treasurer shall perform all other duties commonly incident to the Treasurer's office and shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer or the President shall designate from time to time. The Chief Executive Officer or the President may direct any Assistant Treasurer to assume and perform the duties of the Treasurer in the absence or disability of the Treasurer, and each Assistant Treasurer shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer or the President shall designate from time to time.

ARTICLE 5

EXECUTION OF CORPORATE INSTRUMENTS, AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 5.1 Execution of Corporate Instruments.

(a) The Board of Directors may in its discretion determine the method and designate the signatory officer or officers, or other person or persons, to execute any corporate instrument or document, or to sign the corporate name without limitation, except where otherwise provided by law, and such execution or signature shall be binding upon the Corporation.

(b) Unless otherwise specifically determined by the Board of Directors or otherwise required by law, formal contracts of the Corporation, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the Corporation, other corporate instruments, and certificates of shares of stock owned by the Corporation, shall be executed, signed or endorsed by the Chairperson of the Board (if there be such an officer appointed) or by the Chief Executive Officer or the President; such documents may also be executed by any Vice-President and by the Secretary or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments and documents requiring the corporate signature may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

(c) All checks and drafts drawn on banks or other depositories on funds to the credit of the Corporation or in special accounts of the Corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

(d) Execution of any corporate instrument may be effected in such form, either manual, facsimile or electronic signature, as may be authorized by the Board of Directors.

Section 5.2 Voting of Securities Owned by Corporation.

All stock and other securities of other corporations owned or held by the Corporation for itself or for other parties in any capacity shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors or, in the absence of such authorization, by the Chairperson of the Board (if there be such an officer appointed), or by the Chief Executive Officer or the President, or by any Vice-President.

ARTICLE 6

SHARES OF STOCK

Section 6.1 Form and Execution of Certificates.

The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Certificates for the shares of stock of the Corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of the Corporation by, the Chairperson of the Board (if there be such an officer appointed), or by the Chief Executive Officer, President or any Vice-President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class

of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the Delaware General Corporation Law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 6.2 Lost Certificates.

The Board of Directors may direct a new certificate or certificates (or uncertificated shares in lieu of a new certificate) to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates (or uncertificated shares in lieu of a new certificate), the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or such owner's legal representative, to indemnify the Corporation in such manner as it shall require and/or to give the Corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed.

Section 6.3 Transfers.

Transfers of record of shares of stock of the Corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, who shall furnish proper evidence of authority to transfer, and in the case of stock represented by a certificate, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed.

Section 6.4 Fixing Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the date on which the meeting is held. A determination of stockholders of record entitled notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing or by electronic transmission without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing

the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing or by electronic transmission without a meeting, when no prior action by the Board of Directors is required by the Delaware General Corporation Law, shall be the first date on which a signed written consent or electronic transmission setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded; provided that any such electronic transmission shall satisfy the requirements of Section 2.11(b) and, unless the Board of Directors otherwise provides by resolution, no such consent by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing or by electronic transmission without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6.5 Registered Stockholders.

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE 7

OTHER SECURITIES OF THE CORPORATION

All bonds, debentures and other corporate securities of the Corporation, other than stock certificates, may be signed by the Chairperson of the Board (if there be such an officer appointed), or the Chief Executive Officer, President or any Vice-President or such other person as may be authorized by the Board of Directors and the corporate seal impressed thereon or a facsimile of

such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signature of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the Corporation, or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon has ceased to be an officer of the Corporation before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the Corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the Corporation.

ARTICLE 8

INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS

Section 8.1 Right to Indemnification.

Each person who was or is a party or is threatened to be made a party to or is involved (as a party, witness, or otherwise), in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter a “**Proceeding**”), by reason of the fact that he, or a person of whom he is the legal representative, is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another Corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to employee benefit plans, whether the basis of the Proceeding is alleged action in an official capacity as a director, officer, employee, or agent or in any other capacity while serving as a director, officer, employee, or agent (hereinafter an “**Agent**”), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended or interpreted (but, in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the Corporation to provide broader indemnification rights than were permitted prior thereto) against all expenses, liability, and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid or to be paid in settlement, and any interest, assessments, or other charges imposed thereon, and any federal, state, local, or foreign taxes imposed on any Agent as a result of the actual or deemed receipt of any payments under this Article) reasonably incurred or suffered by such person in connection with investigating, defending, being a witness in, or participating in (including on appeal), or preparing for any of the foregoing in, any Proceeding (hereinafter “**Expenses**”).

Section 8.2 Authority to Advance Expenses.

Expenses incurred by an officer or director (acting in their capacity as such) in defending a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding, provided, however, that if required by the Delaware General Corporation Law, as amended, such Expenses shall be advanced only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article or otherwise. Expenses incurred by other Agents of the Corporation (or by the directors or officers not acting in their capacity as such, including service with respect to employee benefit plans) may be advanced upon such terms and conditions as the Board of Directors deems appropriate. Any obligation to reimburse the Corporation for Expense advances shall be unsecured and no interest shall be charged thereon.

Section 8.3 Right of Claimant to Bring Suit.

If a claim under Section 8.1 or 8.2 of this Article is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense (including attorneys' fees) of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending a Proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed. The burden of proving such a defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper under the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant had not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

Section 8.4 Provisions Nonexclusive.

The rights conferred on any person by this Article shall not be exclusive of any other rights that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. To the extent that any provision of the Certificate of Incorporation, agreement, or vote of the stockholders or disinterested directors is inconsistent with these Bylaws, the provision, agreement, or vote shall take precedence.

Section 8.5 Authority to Insure.

The Corporation may purchase and maintain insurance to protect itself and any Agent against any Expense, whether or not the Corporation would have the power to indemnify the Agent against such Expense under applicable law or the provisions of this Article.

Section 8.6 Enforcement of Rights

Without the necessity of entering into an express contract, all rights provided under this Article shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Corporation and such Agent. Any rights granted by this Article to an Agent shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction.

Section 8.7 Survival of Rights.

The rights provided by this Article shall continue as to a person who has ceased to be an Agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 8.8 Settlement of Claims.

The Corporation shall not be liable to indemnify any Agent under this Article (a) for any amounts paid in settlement of any action or claim effected without the Corporation's written consent, which consent shall not be unreasonably withheld; or (b) for any judicial award if the Corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action.

Section 8.9 Effect of Amendment.

Any amendment, repeal, or modification of this Article that adversely affects any rights provided in this Article to an Agent shall only be effective upon the prior written consent of such Agent.

Section 8.10 Primacy of Indemnification.

Notwithstanding that an Agent may have certain rights to indemnification, advancement of expenses and/or insurance provided by other persons (collectively, the "**Other Indemnitors**"), the Corporation: (i) shall be the indemnitor of first resort (i.e., its obligations to an Agent are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Agent are secondary); and (ii) shall be required to advance the full amount of expenses incurred by an Agent and shall be liable for the full amount of all Expenses, without regard to any rights such Agent may have against any of the Other Indemnitors. No advancement or payment by the Other Indemnitors on behalf of an Agent with respect to any claim for which such Agent has sought indemnification from the Corporation shall affect the immediately preceding sentence, and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Agent against the Corporation.

Section 8.11 Subrogation.

In the event of payment under this Article, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the Agent (other than against the Other Indemnitors), who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

Section 8.12 No Duplication of Payments.

Except as otherwise set forth in Section 8.10 above, the Corporation shall not be liable under this Article to make any payment in connection with any claim made against the Agent to the extent the Agent has otherwise actually received payment (under any insurance policy, agreement, vote, or otherwise) of the amounts otherwise indemnifiable hereunder.

Section 8.13 Saving Clause.

If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Agent to the fullest extent not prohibited by any applicable portion of this Article that shall not have been invalidated, or by any other applicable law.

ARTICLE 9

NOTICES

Whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, the same shall be given either (1) in writing, timely and duly deposited in the United States Mail, postage prepaid, and addressed to such stockholder's last known post office address as shown by the stock record of the Corporation or its transfer agent, or (2) by a means of electronic transmission that satisfies the requirements of Section 2.4(e) of these Bylaws, and has been consented to by the stockholder to whom the notice is given. Any notice required to be given to any director may be given by either of the methods hereinabove stated, except that such notice other than one which is delivered personally, shall be sent to such address or (in the case of electronic communication) such e-mail address, facsimile telephone number or other form of electronic address as such director shall have filed in writing or by electronic communication with the Secretary of the Corporation, or, in the absence of such filing, to the last known post office address of such director. If no address of a stockholder or director be known, such notice may be sent to the principal executive office of the Corporation. An affidavit of mailing, executed by a duly authorized and competent employee of the Corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing and all notices given by means of electronic transmission shall be deemed to have been given as at the sending time recorded by the electronic transmission equipment operator transmitting the same. It shall not be necessary that the same method of giving

notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such a stockholder or such director to receive such notice. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation, or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the Corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

ARTICLE 10

AMENDMENTS

Except as otherwise provided in Section 8.9 above, these Bylaws may be repealed, altered or amended or new Bylaws adopted at any meeting of the stockholders, either annual or special, by the affirmative vote of a majority of the stock entitled to vote at such meeting, unless a larger vote is required by these Bylaws or the Certificate of Incorporation. Except as otherwise provided in Section 8.9 above, the Board of Directors shall also have the authority to repeal, alter or amend these Bylaws or adopt new Bylaws (including, without limitation, the amendment of any Bylaws setting forth the number of directors who shall constitute the whole Board of Directors) by unanimous written consent or at any annual, regular, or special meeting by the affirmative vote of a majority of the whole number of directors, subject to the power of the stockholders to change or repeal such Bylaws.

ARTICLE 11

FORUM FOR CERTAIN ACTIONS

Except for (a) actions in which the Court of Chancery in the State of Delaware concludes that an indispensable party is not subject to the jurisdiction of the Delaware courts, and (b) actions in which a federal court has assumed exclusive jurisdiction of a proceeding, any derivative action brought by or on behalf of the Corporation, and any direct action brought by a stockholder against the Corporation or any of its directors or officers, alleging a violation of the Delaware General Corporation Law, the Corporation's Certificate of Incorporation or Bylaws or breach of fiduciary

duties or other violation of Delaware decisional law relating to the internal affairs of the Corporation, shall be brought in the Court of Chancery in the State of Delaware, which shall be the sole and exclusive forum for such proceedings; provided, however, that the Corporation may consent to an alternative forum for any such proceedings upon the approval of the Board of Directors of the Corporation.

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

In connection with the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2023 of Fulgent Genetics, Inc. (the “Company”), as filed with the Securities and Exchange Commission on the date hereof (the “Report”), each of the undersigned hereby certifies in his capacity as the specified officer of the Company, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of 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: August 4, 2023

By: _____
/s/ Ming Hsieh
Ming Hsieh
Chief Executive Officer
(principal executive officer)

Date: August 4, 2023

By: _____
/s/ Paul Kim
Paul Kim
Chief Financial Officer
(principal financial and accounting officer)

This certification accompanies the Quarterly Report on Form 10-Q to which it relates and shall not be deemed filed with the Securities and Exchange Commission or incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.
