

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

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

For the quarterly period ended September 30, 2024

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 1-41509



Nxu, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

92-2819012

(I.R.S. Employer Identification Number)

1828 N. Higley Rd. Ste 116

Mesa, AZ 85205

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(760) 515-1133**

Former name, former address and former fiscal year, if changed since last report: N/A

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Class A Common Stock, par value \$0.0001 per share	NXU	NASDAQ

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

Non-accelerated filer

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 pursuant to Section 13(a) of the Exchange Act.

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

As of November 12, 2024, there were 15,834,755 and 276,503 shares of the Registrant's Class A and Class B Common Stock outstanding, respectively, par value \$0.0001.

INDEX

	Page
PART I. FINANCIAL INFORMATION	
ITEM 1. Financial Statements	1
Condensed Consolidated Balance Sheets as of September 30, 2024 and December 31, 2023 (Unaudited)	1
Condensed Consolidated Statements of Operations for the Three and Nine Months Ended September 30, 2024 and 2023 (Unaudited)	2
Condensed Consolidated Statements of Stockholders' Equity (Deficit) for the Three and Nine Months Ended September 30, 2024 and 2023 (Unaudited)	3
Condensed Consolidated Statements of Cash Flows for the Nine Months Ended September 30, 2024 and 2023 (Unaudited)	5
Notes to Condensed Consolidated Financial Statements (Unaudited)	6
ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	22
ITEM 3. Quantitative and Qualitative Disclosures About Market Risk	29
ITEM 4. Controls and Procedures	29
PART II. OTHER INFORMATION	
ITEM 1. Legal Proceedings	29
ITEM 1A. Risk Factors	29
ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds	32
ITEM 3. Defaults Upon Senior Securities	32
ITEM 4. Mine Safety Disclosures	32
ITEM 5. Other Information	32
ITEM 6. Exhibits	32
Signatures	34

PART I. FINANCIAL INFORMATION
Item 1. Financial Statements

NXU, INC. and Subsidiaries
CONDENSED CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except share data)
(Unaudited)

	September 30, 2024	December 31, 2023
Assets		
Current Assets:		
Cash	\$ 2,208	\$ 2,846
Prepaid expenses and other current assets	841	999
Notes receivable from related party, net of allowance for doubtful accounts of \$235 and \$0, respectively	-	250
Total current assets	3,049	4,095
Property and equipment, net	1,922	3,865
Assets held for sale	717	-
Right-of-use assets, net	433	1,507
Investment in Lynx, net	2,025	3,000
Intangible assets, net	45	20
Other assets	249	772
Total assets	\$ 8,440	\$ 13,259
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable and accrued liabilities	\$ 1,670	\$ 3,371
Variable share settled restricted stock units	2,483	1,334
Current portion of operating lease liability	869	864
Other current liabilities	-	40
Total current liabilities	5,022	5,609
Lease liability, net of current portion	52	688
Convertible debt and warrant liability, at fair value	16	65
Other long-term liabilities	-	233
Total liabilities	5,090	6,595
Commitments and contingencies (Note 12)		
Stockholders' Equity:		
Class A Common Stock, par value \$0.0001; 4,000,000,000 shares authorized; 11,934,072 issued and outstanding as of September 30, 2024; 2,563,288 issued and outstanding as of December 31, 2023	1	—
Class B Common Stock, par value \$0.0001; 1,000,000,000 authorized; 270,503 issued and outstanding at September 30, 2024; 243,503 issued and outstanding at December 31, 2023	—	—
Series A Convertible Preferred Stock, par value \$0.0001; 5,000 shares authorized; 0 issued and outstanding at September 30, 2024; 1,000 issued and outstanding at December 31, 2023	—	—
Additional paid-in capital	281,061	266,302
Accumulated deficit	(277,712)	(259,638)
Total stockholders' equity	3,350	6,664
Total liabilities and stockholders' equity	\$ 8,440	\$ 13,259

See accompanying notes to condensed consolidated financial statements (unaudited).

NXU, INC. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in thousands, except share and per share data)
(Unaudited)

	<u>Three Months Ended September 30,</u>		<u>Nine Months Ended September 30,</u>	
	<u>2024</u>	<u>2023</u>	<u>2024</u>	<u>2023</u>
Revenue	\$ 6	\$ 117	\$ 17	\$ 117
Cost of revenue	6	1,013	13	1,013
Depreciation	20	1	59	1
Total cost of revenue	<u>26</u>	<u>1,014</u>	<u>72</u>	<u>1,014</u>
Gross loss	(20)	(897)	(55)	(897)
Operating expenses:				
Research and development	-	3,018	957	12,040
General and administrative	3,042	8,208	13,204	27,133
Advertising	12	104	56	284
Total operating expenses	<u>3,054</u>	<u>11,330</u>	<u>14,217</u>	<u>39,457</u>
Operating loss	(3,074)	(12,227)	(14,272)	(40,354)
Other income (expense):				
Interest income (expense)	—	(33)	72	(73)
Impairment of long-lived assets	—	—	(1,128)	—
Impairment of held for sale assets, net	(191)	—	(794)	—
Impairment of investment in Lynx	(975)	—	(975)	—
Loss on operating lease cancellation	(266)	—	(266)	—
(Loss) gain on sale or disposal of property and equipment	(531)	(80)	(847)	30
Warrant expense	—	—	—	(984)
Gain on convertible debt and warrant liability	—	1,903	49	4,007
Other income	45	—	88	33
Total other (loss) income, net	(1,918)	1,790	(3,801)	3,013
Net loss	<u>\$ (4,992)</u>	<u>\$ (10,437)</u>	<u>\$ (18,073)</u>	<u>\$ (37,341)</u>
Loss per share, basic and diluted	\$ (0.42)	\$ (31.88)	\$ (1.75)	\$ (160.60)
Weighted average number of common shares outstanding used in computing loss per share:	11,933,602	327,343	10,349,618	232,505

See accompanying notes to condensed consolidated financial statements (unaudited).

NXU, INC. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Amounts in thousands, except share data)
(Unaudited)

Three Months Ended September 30, 2024

	Common Stock				Additional Paid-in Capital	Accumulated (Deficit)	Total
	Class A		Class B				
	Shares	Amount	Shares	Amount			
Balance at June 30, 2024	11,930,986	\$ 1	261,503	\$ —	\$ 280,370	\$ (272,719)	\$ 7,652
Class B common stock issued	—	—	9,000	—	—	—	—
Stock-based compensation	—	—	—	—	691	—	691
Common stock issued under stock compensation plans	4,366	—	—	—	—	—	—
Forfeitures of restricted stock and restricted stock surrendered in lieu of withholding taxes	(1,280)	—	—	—	—	—	—
Net loss	—	—	—	—	—	(4,992)	(4,992)
Balance at September 30, 2024	<u>11,934,072</u>	<u>\$ 1</u>	<u>270,503</u>	<u>\$ —</u>	<u>\$ 281,061</u>	<u>\$ (277,712)</u>	<u>\$ 3,350</u>

Nine Months Ended September 30, 2024

	Common Stock						Additional Paid-in Capital	Accumulated (Deficit)	Total
	Class A		Class B		Series A Convertible Preferred Stock				
	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at December 31, 2023	2,563,288	\$ —	243,503	\$ —	1,000	\$ —	\$ 266,302	\$ (259,638)	\$ 6,664
Class A common stock issued for cash under ATM	8,153,574	1	—	—	—	—	10,711	—	10,712
Class B common stock issued	—	—	27,000	—	—	—	—	—	—
Conversion of Series A Convertible Preferred Stock	1,000,000	—	—	—	(1,000)	—	—	—	—
Stock-based compensation	—	—	—	—	—	—	4,048	—	4,048
Common stock issued under stock compensation plans	218,490	—	—	—	—	—	—	—	—
Forfeitures of restricted stock and restricted stock surrendered in lieu of withholding taxes	(1,280)	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	—	—	(18,073)	(18,073)
Balance at September 30, 2024	<u>11,934,072</u>	<u>\$ 1</u>	<u>270,503</u>	<u>\$ —</u>	<u>—</u>	<u>\$ —</u>	<u>\$ 281,061</u>	<u>\$ (277,712)</u>	<u>\$ 3,350</u>

See accompanying notes to condensed consolidated financial statements (unaudited).

NXU, INC. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(Amounts in thousands, except share data)
(Unaudited)

Three Months Ended September 30, 2023

	Common Stock				Additional Paid-in Capital	Accumulated (Deficit)	Total
	Class A		Class B				
	Shares	Amount	Shares	Amount			
Balance at June 30, 2023	254,499	\$ —	225,503	\$ —	\$ 246,907	\$ (246,364)	\$ 543
Class A common stock issued for cash	101,778	—	—	—	1,248	—	1,248
Class B common stock issued	—	—	9,000	—	—	—	—
Stock-based compensation	26,089	—	—	—	4,216	—	4,216
Exercise of warrants	6,700	—	—	—	120	—	120
Conversion of long term debt to equity	1,749	—	—	—	50	—	50
Net loss	—	—	—	—	—	(10,437)	(10,437)
Balance at September 30, 2023	<u>390,815</u>	<u>\$ —</u>	<u>234,503</u>	<u>\$ —</u>	<u>\$ 252,541</u>	<u>\$ (256,801)</u>	<u>\$ (4,260)</u>

Nine Months Ended September 30, 2023

	Common Stock				Additional Paid-in Capital	Accumulated (Deficit)	Total
	Class A		Class B				
	Shares	Amount	Shares	Amount			
Balance at December 31, 2022	65,092	\$ —	207,503	\$ —	\$ 210,412	\$ (219,460)	\$ (9,048)
Class A common stock issued for cash	157,092	—	—	—	6,168	—	6,168
Class B common stock issued	—	—	27,000	—	1	—	1
Stock-based compensation	26,089	—	—	—	15,541	—	15,541
Shares issued for services	973	—	—	—	106	—	106
Exercise of warrants	42,814	—	—	—	3,420	—	3,420
Exercise of stock options	520	—	—	—	547	—	547
Conversion of long term debt to equity	98,235	—	—	—	16,346	—	16,346
Net loss	—	—	—	—	—	(37,341)	(37,341)
Balance at September 30, 2023	<u>390,815</u>	<u>\$ —</u>	<u>234,503</u>	<u>\$ —</u>	<u>\$ 252,541</u>	<u>\$ (256,801)</u>	<u>\$ (4,260)</u>

See accompanying notes to condensed consolidated financial statements (unaudited).

NXU, INC. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2024	2023
Cash flows from operating activities:		
Net loss	\$ (18,073)	\$ (37,341)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Allowance for estimated loss on note receivable due from related party	235	—
Depreciation and amortization	681	465
Employee stock-based compensation	5,130	15,675
Non-employee stock-based compensation	—	106
Non-cash warrant expense	—	984
Net change in operating lease assets and liabilities	(908)	(22)
Loss on operating lease cancellation	266	—
Loss on write-off of inventory	—	896
(Gain) loss on the sale or disposal of property and equipment	847	(30)
Loss on impairment of lease right-of-use assets and related improvements	1,128	—
Loss on impairment of assets held for sale, net	794	—
Loss on impairment of investment in Lynx	975	—
Gain on fair value of convertible debt and warrant liability	(49)	(4,007)
Changes in assets and liabilities:		
Prepaid expenses and other current assets	158	243
Inventory	—	(797)
Other assets	523	(558)
Accounts payable and accrued liabilities	(1,702)	500
Other current liabilities	—	(117)
Other long-term liabilities	(233)	300
Net cash used in operating activities	(10,228)	(23,703)
Cash flows from investing activities:		
Purchases of property and equipment	(1,615)	(1,571)
Proceeds from sale of property and equipment	546	559
Capitalized patent costs	(28)	—
Note receivable from related party	15	—
Payments on financing liability	—	(77)
Net cash used in investing activities	(1,082)	(1,089)
Cash flows from financing activities:		
Proceeds from public offering, net of equity offering costs	—	18,595
Proceeds from ATM, net of offering costs	10,712	—
Proceeds from the issuance of convertible debt	—	7,330
Payments on convertible debt	—	(2,353)
Payments on financing liability	(40)	—
Proceeds from the exercise of stock options	—	547
Net cash provided by financing activities	10,672	24,119
Net decrease in cash	(638)	(673)
Cash, beginning of period	2,846	2,701
Cash, end of period	\$ 2,208	\$ 2,028
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ —	\$ 1
Cash paid for income taxes	\$ —	\$ 1
Supplemental disclosure of non-cash investing and financing activities:		
Debt converted to equity	\$ —	\$ 16,464
Operating lease right-of-use asset obtained in exchange for operating lease liability	\$ 1,861	\$ —
Capital expenditures included in accounts payable and other accrued liabilities	\$ —	\$ 196
Stock-based compensation expense capitalized to property and equipment	\$ —	\$ 172

See accompanying notes to condensed consolidated financial statements (unaudited).

NXU, INC. and Subsidiaries
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Organization and Basis of Presentation

Organization

Nxu, Inc. (the “Company” or “Nxu”) is a US-based technology company focused on leveraging its intellectual property and innovations to support energy storage and charging solutions for the infrastructure needed to power an electrified future. Nxu historically focused on building megawatt (“MW”) charging stations and developing innovative battery cells and battery packs for use in advanced energy storage systems, and mobility products.

Reorganization, Merger and Incorporation of Nxu, Inc.

On May 12, 2023, Atlis Motor Vehicles Inc. (“Atlis”) completed its previously announced reorganization merger pursuant to the Agreement and Plan of Merger, dated as of April 16, 2023 (the “Reorganization Agreement”), by and among Atlis, Nxu, Inc., a Delaware Corporation, and Atlis Merger Sub, Inc., a Delaware corporation and, as of immediately prior to the consummation of such merger, a wholly-owned subsidiary of Nxu (“Merger Sub”). The Reorganization Agreement provided for the merger of Atlis and Merger Sub, with Atlis surviving the merger as a wholly-owned subsidiary of Nxu (the “Reorganization Merger”). The Reorganization Agreement was approved and adopted by Atlis’s stockholders at Atlis’s Special Meeting of Stockholders, which was held on May 9, 2023. After the Reorganization Merger, Atlis was reclassified from a corporation to a limited liability company and renamed Nxu Technologies, LLC. Nxu Technologies, LLC is a wholly owned operating company and the sole subsidiary of Nxu. References to “Nxu” or the “Company” shall collectively mean Nxu, Inc. and its wholly owned subsidiary, Nxu Technologies, LLC.

The directors and executive officers of Nxu immediately following the completion of the Reorganization Merger were the same individuals who were directors and executive officers, respectively, of Atlis as of immediately prior to the Reorganization Merger.

Upon completion of the Reorganization Merger, Nxu Class A Common Stock was deemed to be registered under Section 12(b) of the Securities Exchange Act of 1934, as amended, pursuant to Rule 12g-3(a) promulgated thereunder and for purposes of Rule 12g-3(a), Nxu is the successor issuer to Atlis.

Transactions that occurred in connection with the Reorganization Merger are considered transactions between entities under common control, and thus the financial statements for periods prior to the Reorganization Merger have been adjusted to combine the previously separate entities for presentation purpose. See more information regarding shares of common stock authorized, issued and outstanding in connection with the Reorganization Merger in Note 13 – Stock-based Compensation and Common Stock.

Evaluation of Strategic Alternatives

On May 10, 2024, Nxu announced its intention to evaluate strategic alternatives, with the Strategic Planning Committee of its Board of Directors (the “Strategic Planning Committee”) leading such evaluation with outside assistance from advisors. At the time of announcement, the Strategic Planning Committee had identified targets for a business combination intended to position the newly combined company for sustainable long-term value creation with a strengthened financial profile.

On October 23, 2024, NXU Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Nxu (“Merger Sub I”), NXU Merger Sub, LLC, a Delaware limited liability company (“Merger Sub II”) and Verde Bioresins, Inc., a Delaware corporation (“Verde”), entered into an Agreement and Plan of Merger (the “Merger Agreement”), pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub I will merge with and into Verde, with Verde continuing as a wholly owned subsidiary of Nxu and the surviving corporation of the first merger (the “First Merger”) and promptly following the First Merger, Verde shall merge with and into Merger Sub II (the “Second Merger” and together with the First Merger, the “Merger”), with Merger Sub II continuing as the surviving entity of the Second Merger. See Note 17 – Subsequent Events for additional information.

There can be no assurance that Nxu will be successful in effecting the Merger or any other transactions, or realizing any of the intended benefits, including obtaining a sufficient level of capital in the time frames needed to sustain or grow the business or on terms agreeable to it.

Basis of Consolidation

The accompanying unaudited condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and the rules of the Securities and Exchange Commission, which require us to make estimates based on assumptions about current, and for some estimates, future economic and market conditions which affect reported amounts and related disclosures in our financial statements. Although our estimates contemplate current and expected future conditions, it is reasonably possible that actual conditions could differ from our expectations, which could materially affect our results of operations, our financial position and cash flows. The results for any of the interim periods are not necessarily indicative of the results to be expected for the full year or any other period. In the opinion of management, all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation with respect to interim financial statements, have been included.

Certain information and note disclosures normally included in annual financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to those rules and regulations. The December 31, 2023 balance sheet was derived from audited financial statements. This Quarterly Report on Form 10-Q should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2023 ("2023 10-K").

References to amounts in the consolidated financial statement sections are in thousands, except share and per share data, unless otherwise specified.

Reverse Stock Split

On December 26, 2023, the Company effected a 1-for-150 reverse stock split of the shares of common stock of the Company. All historical share and per share amounts reflected throughout the financial statements have been retroactively adjusted to give effect to the reverse stock split. See Note 13 – Stock-based Compensation and Common Stock for further discussion.

Correction of Immaterial Misclassification

Management identified an immaterial error in its previously reported stock-based compensation expense in the June 30, 2023 unaudited condensed consolidated financial statements. Correction of the error resulted in a decrease to stock-based compensation expense of \$0.5 million for the three months ended September 30, 2023 and a \$0.6 million decrease for the nine months ended September 30, 2023, respectively. The restatement had no effect on stockholders' equity as of September 30, 2023 and had no other effect to the Company's condensed consolidated financial statements.

Going Concern

The accompanying unaudited condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and the liquidation of liabilities in the normal course of business. These financial statements do not include any adjustments to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

The Company has incurred recurring losses from operations and has not yet achieved profitability in its charging operations. During the nine-month period ended September 30, 2024, the Company incurred a net loss of \$18.1 million and had net cash used in operating activities of \$10.2 million. As of September 30, 2024, the Company had \$2.2 million in cash and an accumulated deficit of \$277.7 million. These conditions indicate that there is substantial doubt about the Company's ability to continue as a going concern within one year after the condensed consolidated financial statement issuance date.

Unforeseen circumstances could occur at any time within the next twelve months or thereafter that could increase the need for the Company to raise additional capital on an immediate basis. The Company cannot provide any assurance that access to capital will be readily available when needed.

Company management is addressing this risk by, among other things, entering into the Merger Agreement, pursuing all available options for funding, including seeking funding in the form of potential equity and/or debt financing arrangements or similar transactions, further reducing expenses, selling assets and exploring strategic alternatives for its business. The Company cannot provide any assurance that it will be successful in closing the Merger or implementing any strategic alternative or other such actions, which may be subject to the satisfaction of conditions beyond the Company's control.

2. Recent Accounting Pronouncements and Summary of Significant Accounting Policies

Recent Accounting Pronouncements

The Company has reviewed all recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a material impact on its unaudited condensed consolidated financial statements.

Use of Estimates

The preparation of unaudited condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and accompanying notes. Due to uncertainties, actual results could differ from the estimates and assumptions used in preparation of the unaudited condensed consolidated financial statements.

Assets Held for Sale

The Company classifies long-lived assets, including property and equipment and right-of-use assets, and finite-lived intangible assets to be sold as held for sale in the period in which all of the required criteria under Accounting Standards Codification (“ASC”) 360, Impairment or Disposal of Long-lived Assets (“ASC 360”) are met. The Company initially measures a long-lived asset that is classified as held for sale at the lower of its carrying amount or fair value less any costs to sell. Fair value is determined based on discounted or undiscounted cash flows, appraised values, or management’s estimates, depending upon the nature of the assets and the information available to the Company. Any loss resulting from this measurement is recognized in the period in which the held for sale criteria are met. Conversely, gains are not recognized on the sale of a long-lived asset until the date of sale. Upon determining that a long-lived asset meets the criteria to be classified as held for sale, the Company ceases depreciation and reports long-lived assets as “Assets held for sale” on the condensed consolidated balance sheets.

Impairment of Long-lived Assets

In accordance with ASC 360, the Company evaluates long-lived assets, including property and equipment and right-of-use assets, and finite-lived intangible assets for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. When such facts and circumstances exist, the Company compares the projected undiscounted future cash flows associated with the related asset or group of assets over their estimated useful lives against their respective carrying amount. Impairment, if any, is based on the excess of the carrying amount over the fair value, based on market value when available, or discounted expected cash flows, of those assets and is recorded in the period in which the determination is made. Depending on the asset, estimated fair market value may be determined either by use of the discounted cash flow model or by reference to estimated selling values of assets in similar condition.

See Note 4 – Assets Held for Sale, Note 5 – Property and Equipment, and Note 11 – Leases for additional information on impairment losses recognized as of September 30, 2024.

Stock-based Compensation

The Company accounts for stock-based compensation in accordance with ASC Topic 718, Compensation-Stock Compensation (“ASC 718”). The Company classifies stock-based awards granted in exchange for services as either equity awards or liability awards. The classification of an award as either an equity award or a liability award is generally based upon cash settlement options. Equity awards are measured based on the fair value of the award at the grant date. Liability awards are granted at a fixed dollar amount settled in a variable number of shares and are measured at fair value at the grant date and remeasured at the end of each reporting period until fully vested. As such, the fair value of awards classified as liabilities at each reporting date approximates the fixed dollar amount at inception.

The Company generally recognizes stock-based compensation on a straight-line basis over the award’s requisite service period, which is generally the vesting period of the award, less actual forfeitures. No compensation expense is recognized for awards for which participants do not render the requisite services. For equity and liability awards earned based on performance or upon occurrence of a contingent event, when and if the awards will be earned is estimated. If an award is not considered probable of being earned, no amount of stock-based compensation is recognized. If the award is deemed probable of being earned, related compensation expense is recorded over the estimated service period. To the extent the estimate of awards considered probable of being earned changes, the amount of stock-based compensation recognized will also change.

The Company accounts for modification of stock-based compensation awards in accordance with ASC 718-20-35. Upon modification, the Company records any incremental fair value of the modified award as stock-based compensation on the date of modification for vested awards or over the remaining vesting period for unvested awards. The incremental compensation is the excess of the fair value of the modified award on the date of modification over the fair value of the original award immediately before the modification. In addition, the Company records any remaining unrecognized compensation cost for the original cost for the original award on the modification date over the remaining vesting period for unvested awards.

3. Revenue

In 2023, the Company began recognizing revenue from the delivery of electricity to customer electric vehicles using its NxuOne™ charging station. During the three and nine months ended September 30, 2024, the Company recognized \$6 thousand and \$17 thousand, respectively, of revenue related to retail charging services.

During the three and nine months ended September 30, 2024, the Company recognized no revenue from the delivery of battery systems and components. During each of the three and nine months ended September 30, 2023, the Company recognized \$0.12 million from the delivery of battery systems and components.

4. Assets Held for Sale

On June 28, 2024, the Company entered into a contract with Silicon Valley Disposition (“SVD”) to sell battery manufacturing equipment and certain other assets located in its leased warehouse space in Mesa, Arizona. Pursuant to the contract, assets identified and held for sale were sold in an online public auction (the “Auction”) beginning on August 13, 2024. In connection with the Auction contract, the Company sold certain assets previously classified as held for sale for total cash proceeds of approximately \$0.4 million, net of SVD commissions, and recorded a related loss on the disposal of assets sold at Auction of approximately \$0.5 million. The Company continues to classify manufacturing equipment and certain other assets that were not sold at Auction, but that are available and marketed for sale, as held for sale.

Assets held for sale will no longer be used in the Company’s continuing operations. As of September 30, 2024, and in accordance with ASC 360, the Company compared the carrying amount of assets held for sale to their fair value, which is based on management’s advertised prices for those assets, less anticipated discounts and estimated costs to sell, and recorded additional impairment loss of approximately \$0.2 million, net of recoveries.

The carrying amount of assets held for sale consist of the following (in thousands):

	<u>September 30, 2024</u>
Tools and plant equipment	\$ 1,511
Office equipment	0
Vehicles	0
Total carrying amount of assets held for sale	1,511
Less: Carrying amount in excess of fair value (less selling costs)	(794)
Fair value of assets held for sale	\$ 717

The Company ceased recording depreciation expense related to assets held for sale as of June 30, 2024.

5. Property and Equipment

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

	<u>September 30, 2024</u>	<u>December 31, 2023</u>
Charging station equipment	\$ 1,206	\$ 649
Leasehold improvements	108	151
Tools and plant equipment	—	2,715
Office equipment	—	318
Software	1,059	860
Vehicles	—	70
Total property and equipment excluding construction in progress	2,373	4,763
Less: Impairment of property and equipment	—	—
Less: Accumulated depreciation and amortization	(550)	(898)
Property and equipment excluding construction in progress, net	1,823	3,865
Charging station equipment and charging site construction in progress	99	—
Property and equipment, net	\$ 1,922	\$ 3,865

Depreciation and amortization expense was \$0.16 million and \$0.68 million for the three and nine months ended September 30, 2024, respectively of which \$0.14 million and \$0.62 million, respectively, was recorded to general and administrative expense, and \$0.02 million and \$0.06 million, respectively, was expensed to cost of revenue. Depreciation and amortization expense was \$0.16 million and \$0.46 million for the three and nine months ended September 30, 2023, respectively, the majority of which was recorded to general and administrative expense, and a nominal amount was capitalized to cost of revenue.

The Company recorded impairment charges for leasehold improvements classified as property and equipment of \$0 and \$43 thousand for the three and nine months ended September 30, 2024, respectively. See Note 11 – Leases for additional information.

6. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following (in thousands):

	<u>September 30, 2024</u>	<u>December 31, 2023</u>
Tax credit receivable	\$ 488	\$ 372
Prepaid insurance	24	302
Prepaid rent	43	98
Deferred offering costs	—	102
Prepaid legal fees and other prepaid expenses	286	125
Total prepaid expenses and other current assets	<u>\$ 841</u>	<u>\$ 999</u>

7. Other Assets

As of September 30, 2024 and December 31, 2023, the entire balance of other assets consisted of security deposits.

8. Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consist of the following (in thousands):

	<u>September 30, 2024</u>	<u>December 31, 2023</u>
Accounts payable	\$ 839	\$ 2,501
Accrued contract settlement, current portion	333	—
Accrued compensation and benefits	33	153
Other accrued liabilities	465	717
Total accounts payable and accrued liabilities	<u>\$ 1,670</u>	<u>\$ 3,371</u>

In December 2021, the Company entered into an agreement (the “Agreement”) with QAD, Inc. (“QAD”), a cloud-based enterprise resource software provider. Under the Agreement, QAD would facilitate implementation services and access to the cloud-based software platform for a non-cancellable, 5-year term. Subsequent to executing the Agreement, the Company determined that the software did not fit the Company’s needs and the Company and QAD (collectively, the “Parties”) were unable to successfully implement the software platform. The Parties attempted to mutually terminate the Agreement but were unsuccessful, and in May 2023, the dispute moved to arbitration to determine whether the Company owed QAD a payment for cancellation of the contract. On October 27, 2023, the Parties agreed to a settlement whereby the Company has agreed to pay a termination fee of \$0.70 million to QAD over a 21-month period, upon which the Company will be released from the contract. The Company accrued the remaining unpaid fee, entirely due within the next twelve months, of \$0.33 million in accounts payable and accrued liabilities in the Company’s unaudited condensed consolidated balance sheets as of September 30, 2024.

9. Income Taxes

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company recorded a full valuation allowance due to the uncertainty of future realization of federal and state net operating loss carryforwards.

As of September 30, 2024, total net operating loss carryforwards totaled approximately \$74.4 million. The Company’s net operating loss carryforwards consist of approximately \$16.6 million related to years prior to 2022, which will carryforward through 2037, and approximately \$19.9 million and \$23.5 million for fiscal years 2022 and 2023, respectively, which will carry forward indefinitely. The Company’s net operating loss carryforward of \$14.3 million for the first nine months of fiscal year 2024 will also carry forward indefinitely.

In December 2017, the U.S. Tax Cuts and Jobs Act of 2017 (“Tax Act”) was enacted into law which significantly revised the Internal Revenue Code of 1986, as amended. The enacted federal income tax law, among other things, contains significant changes to corporate taxation, including a flat corporate tax rate of 21%, limitation of the tax deduction for interest expense to 30% of adjusted taxable income, limitation of the deduction for newly generated net operating losses to 80% of current year taxable income and elimination of net operating loss carrybacks, future taxation of certain classes of offshore earnings regardless of whether they are repatriated, immediate deductions for certain new investments instead of deductions for depreciation expense over time, and modifying or repealing many business deductions and credits beginning in 2018.

The Company generated an income tax benefit of \$0.9 million and \$4.1 million for the three and nine months ended September 30, 2024, respectively, resulting in a cumulative income tax benefit of \$67.2 million. The Company has increased its valuation allowance for this deferred tax asset accordingly as the Company’s ability to generate sufficient taxable income to utilize its net operating loss carry forwards is uncertain. The Company’s deferred tax balances primarily consist of its operating loss carryforwards and stock-based compensation.

The Company recognizes interest and penalties related to uncertain tax positions in general and administrative expense. At September 30, 2024 and 2023, the Company did not have any unrecognized uncertain tax positions or any associated interest and penalties.

10. Net Loss per Share

Net loss per share is computed by dividing net loss by the weighted-average number of common shares outstanding during the period, excluding shares of Class B common stock as these shares do not participate in the earnings of the Company. For the three and nine months ended September 30, 2024 and 2023, the Company’s basic and diluted net loss per share were the same because the Company generated a net loss for each period and potentially dilutive securities are excluded from diluted net loss per share as a result of their anti-dilutive impact.

The following table presents the calculation of basic and diluted net loss per share during the three and nine months ended September 30, 2024 and 2023 (dollars in thousands, except per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Numerator:				
Net loss	\$ (4,992)	\$ (10,437)	\$ (18,073)	\$ (37,341)
Denominator:				
Weighted-average shares of Class A common stock outstanding	11,933,602	327,343	10,349,618	232,505
Net loss per share, basic and diluted	\$ (0.42)	\$ (31.88)	\$ (1.75)	\$ (160.60)

11. Leases

Real Estate Leases

As of September 30, 2024, the Company had operating leases for office space in Tempe, Arizona and warehouse space in Mesa, Arizona, which had initial terms of two years and five years, respectively. Both lease terms expire in 2025. In June 2024, the Company listed and began to actively market both leased properties for sublease.

Right-of-use assets related to these real estate leases are not considered held for sale; however, they are no longer being fully utilized for purposes of the Company’s continuing operations. As the nature and extent of the Company’s use of these leases changed in the second quarter of 2024, management’s projections of future cash flows related to the underlying assets changed as of June 30, 2024. As such, and in accordance with ASC 360, the Company compared the carrying amount of the lease right-of-use assets to their respective estimate of future undiscounted cash flows and recorded an impairment loss totaling \$0 and \$0.55 million for the three and nine months ended September 30, 2024, respectively.

Equipment Lease

As of June 30, 2024, the Company had an operating lease for equipment used primarily for battery manufacturing in its leased warehouse space in Mesa, Arizona. The lease had initial terms of two years and an original expiration date of December 2025. The nature and extent of the Company’s use of this lease changed in the second quarter of 2024, and thus management’s projections of future cash flows related to the underlying assets changed as of June 30, 2024. As such, and in accordance with ASC 360, the Company compared the carrying amount of the lease right-of-use assets to their fair value, based on estimates of Auction sale proceeds, less costs of sell, and recorded an impairment loss totaling \$0.54 million as of June 30, 2024.

On July 3, 2024, the Company executed an agreement to cancel its equipment lease contract and subsequently purchased all equipment held under the lease (“Equipment Purchase Agreement”) for a total purchase price of approximately \$1.7 million. Upon cancellation of the equipment lease, the Company recorded a loss on lease cancellation of approximately \$0.3 million for the three and nine months ended September 30, 2024.

Under the terms of the Equipment Purchase Agreement, title of all assets held under the equipment lease transferred to Nxu. Upon entering into the Equipment Purchase Agreement, the Company classified all assets acquired as held for sale and subsequently sold substantially all of those assets in the Auction held on August 13, 2024. See Note 4 – Assets Held for Sale for additional information related to the Company’s Auction results and assets classified as held for sale as of September 30, 2024.

12. Commitments and Contingencies

Registration Rights

The holders of the Convertible Notes (as defined below) have registration rights that require the Company to register the sale of their debt securities held by them pursuant to a registration rights agreement, as amended, that was signed in conjunction with the Convertible Notes.

Contingencies

The Company is not currently subject to any material legal proceedings, nor, to the Company’s knowledge, are any material legal proceedings threatened against the Company. From time to time, the Company may be a party to certain legal or regulatory proceedings in the ordinary course of business. While the outcome of any such future legal or regulatory proceedings cannot be predicted with certainty, management does not expect that any such future proceedings will have a material effect on the Company’s financial condition or results of operations.

13. Stock-based Compensation and Common Stock

Stock-based Compensation

A summary of stock-based compensation expense recognized during the three and nine months ended September 30, 2024 and 2023 is as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Restricted stock units (classified as liabilities)	\$ 404	\$ 1,751	\$ 1,190	\$ 3,042
Restricted stock units (classified as equity)	-	758	(22)	1,037
Stock options	691	1,838	4,029	11,768
Total stock-based compensation	1,095	4,347	5,197	15,847
Stock-based compensation capitalized to property and equipment	—	(172)	(67)	(172)
Stock-based compensation, net of capitalized amount	\$ 1,095	\$ 4,175	\$ 5,130	\$ 15,675

As of September 30, 2024, the total unrecognized compensation related to outstanding stock option awards and restricted stock units (“RSUs”) was \$2.6 million, which the Company expects to recognize over a weighted-average period of approximately 0.9 years. Total unrecognized stock-based compensation will be adjusted for actual forfeitures.

During the three months ending March 31, 2023, the Company issued 573 shares of its Class A common stock to a vendor for services rendered and recognized \$0.1 million of expense related to this issuance.

On October 31, 2023, the Company’s Board of Directors approved an amendment to certain existing stock-based compensation grant agreements to delay the vesting of service-based liability-classified RSU awards that would have vested between October and December 2023 to vest on January 31, 2024. The Board of Directors subsequently approved additional amendments in January, March and June 2024 to further delay the vesting of the same RSUs, including vests between January 2024 and December 2024, until January 2025.

In March and May 2024, the Company's Board of Directors approved amendments to certain existing Independent Director grant agreements to delay the vesting of service-based liability-classified Director RSU awards that would have vested between March 31, 2024 and December 31, 2024 until January 31, 2025 (collectively with the amendments to stock-based compensation grants agreements discussed above, the "Amendments").

As of the dates of the Amendments, the Company determined there was no incremental value of the awards in connection with the Amendments. Additionally, as all employees and Directors affected by the Amendments were still providing service as of the original vest dates, the Company determined it was probable they would meet the service requirements, and their awards would vest within the initial vesting period of the awards. Therefore, the Company recognized stock-based compensation expense at the fair value of the awards through the initial vesting dates. The amended awards will remain classified in liabilities in the consolidated balance sheets of the Company until they are settled in a variable number of shares.

On February 23, 2024 (the "Exchange Date"), the Compensation Committee of the Board of Directors authorized a mandatory Exchange Program (the "RSU Exchange Program") to provide for the cancellation and exchange of approximately \$0.4 million of stock-based compensation related to unvested RSUs ("Exchanged RSUs"), previously recorded as liabilities within the unaudited condensed consolidated balance sheets, for an option to purchase shares of Class A common stock of the Company ("Exchange Option"). The Company accounts for the effects of the RSU Exchange Program as a modification of liability-classified awards in accordance with ASC 718.

Pursuant to the RSU Exchange Program, the Company granted 1,117,457 Exchange Options to employees, which were scheduled to vest in equal amounts on March 31, 2024 and June 30, 2024. The Exchange Options had an initial fair value of \$0.7 million, which is equal to the fair value of the Exchanged RSUs at the Exchange Date, and as such no additional compensation cost was recorded as a result of the modification on the Exchange Date. Concurrently with the grant of the Exchange Options, the Company granted 553,236 additional stock options with a fair value of \$0.3 million to employees, which were scheduled to vest in equal amounts on June 30, 2024 and September 30, 2024. Both the Exchange Options and the additional options are classified as equity awards. As of September 30, 2024, 628,776 Exchange Options and 69,808 additional stock options were vested with a fair valuing totaling approximately \$0.4 million. As of September 30, 2024, a total of 972,109 Exchange Options and additional stock options were forfeited.

On October 23, 2024, the existing RSUs subject to the Amendments were further amended such that, following the signing of the Merger Agreement, the Company agreed to deliver such RSUs to the RSU holders in installments in such amounts as the Company determines may be delivered to such holders without jeopardizing the Company's ability to continue as a going concern. See Note 17 – Subsequent Events for additional information.

On October 23, 2024, concurrently with the signing of the Merger Agreement, Nxu entered into a Board of Directors Agreement (collectively, the "Board of Directors Agreements") with each of Jessica Billingsley and Britt Ide (each a "Non-Employee Director"), pursuant to which, among other things, each Non-Employee Director will be granted 591,715 RSUs under the Amended Incentive Plan (as defined below). See Note 17 – Subsequent Events for additional information.

Nxu Executives hold stock options under the Amended Incentive Plan and/or the Stock Option Plan of Atlis Motor Vehicles, Inc. Pursuant to compensation-related agreements entered into on October 23, 2024, Nxu Executives have agreed to forfeit all outstanding stock options, whether vested or unvested, for no consideration immediately prior to a change in control of the Company, provided the per share exercise price, as adjusted to reflect any changes in the Company's capitalization between October 23, 2024 and the date on which a change in control of the Company occurs, remains in excess of the Company's closing stock price on the trading day immediately preceding the date on which the change in control of the Company occurs.

2023 Omnibus Incentive Plan

On May 12, 2023, the Company adopted the 2023 Omnibus Incentive Plan (the "Plan"). The purposes of the Plan are to a) encourage the growth of the Company through short and long-term incentives that are consistent with the Company's objectives; (b) give participants an incentive for excellence in individual performance; (c) promote teamwork among participants; and (d) give the Company a significant advantage in attracting and retaining key employees, directors and consultants. To accomplish such purposes, the Plan provides that the Company may grant (i) options, (ii) stock appreciation rights, (iii) restricted shares, (iv) RSUs, (v) performance-based awards (including performance-based restricted shares and RSUs), (vi) other share-based awards, (vii) other cash-based awards or (viii) any combination of the foregoing. The Plan was originally adopted in connection with the consummation of the Company's Reorganization Merger as contemplated by that certain agreement and plan of merger, dated as of April 14, 2023, by and among the Company, Atlis, and such other parties to the agreement.

With respect to awards granted under the Plan and in accordance with the Plan, the Company's Board of Directors (or the "Administrator") is authorized to deliver an aggregate of 350 million shares of common stock to be reserved and available for issuance under the Plan (the "Initial Share Limit"), which includes (i) 250 million shares of common stock available for new issuances under the Plan and (ii) 100 million shares of common stock relating to a portion of outstanding stock options and RSUs assumed by the Company in connection with the Reorganization Merger; provided, that the total number of shares of common stock that will be reserved, and that may be issued, under the Plan will automatically increase on the first trading day of each calendar year, beginning with calendar year 2024, by a number of common shares equal to five percent (5%) of the total number of outstanding shares on the last day of the prior calendar year. Notwithstanding the foregoing, the Administrator may act prior to January 1 of a given year to provide that there will be no such increase in the share reserve for that year or that the increase in the share reserve for such year will be a lesser number of common shares than provided herein.

At the 2024 Annual Meeting of Stockholders of the Company held on August 14, 2024 (the "2024 Annual Meeting"), the stockholders of the Company approved the amendment and restatement of the Nxu, Inc. 2023 Omnibus Incentive Plan (the "Amended Incentive Plan"). The primary purposes of the amendment and restatement are to (i) increase the number of shares of Class A common stock of the Company available for issuance under the Amended Incentive Plan by an additional 48,000,000 shares, and (ii) extend the last date on which awards can be made under the Amended Incentive Plan to August 13, 2034.

Common Stock

Organizational Structure

As described in Note 1 - Organization and Basis of Presentation, on May 12, 2023, Atlis completed its Reorganization Merger to Nxu. At the effective time of the Reorganization Merger, all of the issued and outstanding shares of Atlis's Class A common stock, par value \$0.0001 per share ("Atlis Class A Common Stock") were converted automatically on a one-for-one basis into shares of Nxu's Class A common stock, par value \$0.0001 per share ("Nxu Class A Common Stock") and all of the issued and outstanding shares of Atlis's Class D common stock, par value \$0.0001 per share ("Atlis Class D Common Stock" and, together with Atlis Class A Common Stock, "Atlis Common Stock") were converted automatically on a one-for-one basis into shares of Nxu's Class B common stock, par value \$0.0001 per share ("Nxu Class B Common Stock" and, together with Nxu Class A Common Stock, "Nxu Common Stock"), and, as a result, the current stockholders of Atlis automatically became stockholders of Nxu, holding the same number and percentage of shares of Nxu Common Stock as they held of Atlis Common Stock as of immediately prior to the Reorganization Merger.

Issuance and conversion of shares of common stock pursuant to the Reorganization Merger are considered transactions between entities under common control. As a result, the unaudited condensed consolidated financial statements for periods prior to these transactions have been adjusted to combine the previously separate entities for presentation purposes.

Except as otherwise required by applicable law, and the voting rights described below, shares of Class A common stock and Class B common stock have the same rights, privileges and powers, rank equally, share ratably and be identical in all respects and as to all matters. The voting, dividend, liquidation and other rights, powers and preferences of the holders of Class A common stock and Class B common stock are subject to and qualified by the rights, powers and preferences of the holders of the preferred stock of any series as may be designated by the Board of Directors of the Company upon any issuance of the preferred stock of any series.

In addition, at the effective time of the Reorganization Merger, (i) each outstanding option to purchase shares of Atlis Class A Common Stock ("Atlis Option"), whether vested or unvested, automatically converted into an option to purchase shares of Nxu Class A Common Stock (a "Nxu Option") and (ii) each outstanding Atlis RSU (an "Atlis Restricted Share"), whether vested or unvested, automatically converted into an RSU of Nxu (a "Nxu RSU"). Each Nxu Option is subject to terms and conditions consistent with the Employee Stock Option Plan and the applicable Atlis Option award agreement as in effect immediately prior to the effective time. Each Nxu RSU is subject to terms and conditions consistent with the applicable Atlis RSU award agreement as in effect immediately prior to the effective time.

At the effective time of the Reorganization Merger, (i) each outstanding Senior Secured Original Issue 10% Discount Convertible Promissory Note (an "Atlis Note") convertible into shares of Atlis Class A Common Stock automatically converted into a Senior Secured Original Issue 10% Discount Convertible Promissory Note convertible into shares of Nxu Class A Common Stock (a "Nxu Note") and (ii) each outstanding warrant to purchase shares of Atlis Class A Common Stock (an "Atlis Warrant") automatically converted into a warrant to purchase shares of Nxu Class A Common Stock (a "Nxu Warrant"). Each Nxu Note is subject to terms and conditions consistent with the applicable Atlis Note as in effect immediately prior to the effective time. Each Nxu Warrant is subject to terms and conditions consistent with the applicable Atlis Warrant as in effect immediately prior to the effective time.

At the 2024 Annual Meeting, the stockholders of the Company approved an amendment to the Company's Certificate of Incorporation as amended (the "Certificate of Incorporation"). In connection with such approval, on August 16, 2024, the Company filed a Certificate of Amendment of Certificate of Incorporation (the "Charter Amendment") with the Secretary of State of the State of Delaware that amends Article V of the Certificate of Incorporation in its entirety in order to provide that the Company expressly elects to be governed by Section 242(d) of the Delaware General Corporation Law ("Section 242(d)"), which permits a corporation to increase or decrease the authorized number of shares of class of stock, or to reclassify by combining the issued shares of a class of capital stock into a lesser number of issued shares (that is, a reverse stock split) if, among other things, (a) the class of stock is listed on a national securities exchange and will meet the listing requirements of that exchange relating to the minimum number of holders immediately after the amendment becomes effective and (b) the votes cast "for" the amendment exceed the votes cast "against" the amendment at a meeting at which a quorum of the stockholders is present in person or by proxy. As a result, so long as the requirements of Section 242(d) are satisfied, increases or decreases to the number of shares of the Company's Class A common stock, and reverse splits of the Company's Class A common stock, may be approved by the votes cast standard described above. Broker non-votes, abstentions, and shares not present in person or by proxy at a stockholder meeting would have no effect on the outcome of whether these amendments are approved by stockholders.

In 2022, the Company began issuing Class B shares of common stock. These shares are not traded openly nor available for sale to the public. Class B shares are offered only to the (1) Chief Executive Officer and (2) President of the Company. At all meetings of stockholders and on all matters submitted to a vote of stockholders of the Corporation generally, each holder of Class A common stock, as such, shall have the right to one (1) vote per share of Class A common stock held of record by such holder and each holder of Class B common stock, as such, shall have the right to ten (10) votes per share of Class B common stock held of record by such holder. The shares of Class B common stock are not entitled to receive any dividends or any distribution upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company. Class B shares are not convertible, are deemed to have no economic value, and upon a holder's cessation of service to the Company, such holder shall, on the one-year anniversary of such cessation, surrender to the Company for no consideration all shares of Class B shares owned by such holder.

Common Stock Offerings

On February 21, 2023, the Company completed a public offering of 0.1 million units at a public offering price of \$234.00 per unit (the "February 2023 Offering"). Each unit consists of one share of Class A common stock, Series A warrants to purchase 0.65 shares of Class A common stock (the "Series A Warrants"), and Series B warrants to purchase 0.75 shares of Class A common stock (the "Series B Warrants"). See Note 14 - Convertible Notes and Warrant Liability for more information regarding the Series A and Series B warrants. Proceeds from the offering, net of offering costs, were approximately \$12.0 million.

On August 11, 2023, the Company completed a public offering of 0.1 million units at an offering price of \$45.00 per unit (the "August 2023 Offering"). Each unit consists of one share of Class A common stock (or a pre-funded warrant in lieu thereof) and one common warrant, with each warrant exercisable for two shares of Class A common stock at an exercise price of \$45.00 per share (the "August 2023 Warrants"). See Note 14 - Convertible Notes and Warrant Liability for more information regarding the August 2023 Warrants. Proceeds from the offering, net of offering costs, were approximately \$4.5 million.

On September 27, 2022, a stock purchase agreement between the Company and GEM Global Yield LLC SCS and GEM Yield Bahamas Limited, respectively (together, "GEM Global") became effective whereby GEM Global committed to purchase up to \$300.0 million in shares of the Company's Class A common stock for up to three years (the "GEM Stock Purchase Facility"). In connection with the GEM Stock Purchase Facility, GEM Global would earn a commitment fee proportionate to number of shares sold in the first year, or a \$6.0 million commitment fee on September 27, 2023 if no shares were sold. As of September 27, 2023, the Company had not sold any shares under the GEM Stock Purchase Facility and, as such, registered 0.3 million Class A common shares, 0.2 million of which were immediately issuable to GEM Global for payment of the commitment fee. Additionally, in connection with the share registration, approximately 2 thousand warrants were issuable to GEM Global. On October 2, 2023, 0.2 million shares of Class A common stock and 2 thousand common stock warrants were issued to GEM Global.

On October 23, 2023, the Company completed a public offering of 0.6 million shares of its Class A common stock at an offering price of \$5.25 per share. Proceeds from the offering, net of offering costs, were approximately \$2.6 million.

In November 2023, the Company launched its ATM pursuant to its shelf registration on Form S-3 for sale from time to time of up to \$75.0 million of Class A common stock. As of September 30, 2024, the Company has issued and sold approximately 9.1 million shares of its Class A common stock, resulting in \$14.0 million of proceeds, net of commissions and offering costs.

Series A Convertible Preferred Stock

Share Exchange Agreement with Lynx Motor Corporation

On December 27, 2023, the Company entered into a share exchange agreement (the "Share Exchange Agreement") with Lynx, pursuant to which Lynx sold to the Company, and the Company purchased from Lynx, a number of newly issued shares of Lynx representing 15% of the issued and outstanding equity interests in Lynx in exchange for 1,000 newly issued shares of series A convertible preferred stock, par value \$0.0001 per share, of the Company (the "Series A Convertible Preferred Stock" or "Series A Convertible Preferred Shares"). Each Series A Convertible Preferred Share is convertible into 1,000 shares of Class A common stock, par value \$0.0001 per share, of the Company for a conversion price of \$3.00 per share. The Share Exchange Agreement contains customary representations and warranties by the Company. As a part of the transaction, the Company designated one person to serve on the board of directors of Lynx. The Company's investment in Lynx is presented within investment in Lynx at the fair market value of the Series A Convertible Preferred Stock on the transaction date, with the corresponding issuance of Series A Convertible Preferred Stock presented within stockholders' equity in the unaudited condensed consolidated balance sheets.

On January 29, 2024, the Company registered 1.0 million shares of Class A common stock, par value \$0.0001, pursuant to the terms of its Share Exchange Agreement with Lynx, under which Nxu sold to Lynx 1,000 shares of Series A convertible preferred stock, par value \$0.0001, which are convertible into shares of Class A common stock. The Company did not sell any shares of its Class A common stock and received no proceeds from the offering. On February 8, 2024, Lynx converted all the Series A Convertible Preferred Stock into 1.0 million shares of Class A common stock.

The Company assessed its investment in Lynx determining that Lynx's fair value had deteriorated due to its delay in vehicle production and related sales and its need to raise capital through discounted equity offerings to fund continuing operations. In accordance with ASC 321, Equity Investments, the Company performed a qualitative assessment of various impairment indicators, including proposed terms for a discounted private funding round, and concluded the investment in Lynx was impaired as of September 30, 2024. As a result, and since the impairment charge was both probable and reasonably estimable as of September 30, 2024, the Company recognized an estimated impairment loss equal to the difference between the fair value of the investment and its carrying amount. An impairment charge of \$0.98 million was recorded within other (loss) income, net in the condensed consolidated statements of operations for the three and nine months ended September 30, 2024. The Company will adjust the amount of the impairment charge, as necessary, based upon finalizing the valuation during the fourth quarter of fiscal 2024.

Concurrently with the Share Exchange Agreement, Lynx issued a non-interest bearing promissory note ("Note") in the principal amount of \$0.3 million to Lynx in exchange for \$0.3 million in immediately available funds from the Company. The Note was originally due and payable by June 2024 and is presented in notes receivable from related party in the unaudited condensed consolidated balance sheets. Effective June 28, 2024, the Company and Lynx agreed to amend the terms of the Note, which was extended to be repaid over nine months at an annual interest rate of 8% (the "Amended Note"). Scheduled payments on the Amended Note included an upfront principal payment of \$20,000, which was due and paid upon execution of the amendment, eight payments of \$20,000 in principal and interest from July 2024 to February 2025, and a lump sum payment of the remaining principal and interest of approximately \$0.08 million due no later than March 27, 2025. Pursuant to the Notice of Promissory Note Default; Demand (the "Notice of Default") dated September 9, 2024, Lynx is in default on repayment of the Amended Note. As of the date of this Form 10-Q, the Company is engaged in further discussion with Lynx about the terms of the Amended Note, which is due immediately. Ongoing discussions contemplate Lynx's offer to make payment on the note in shares of Lynx, rather than in cash funds. While management of the Company is actively participating in negotiations, the Company currently intends to pursue recovery of the note in full, including accrued interest, in cash; however, the Company has recognized an allowance for estimated losses of \$0.2 million as of September 30, 2024.

The total number of shares of all classes of capital stock which the Company has authority to issue is 5.0 billion shares, consisting of (1) 5.0 billion authorized shares of common stock, including (a) 4.0 billion authorized shares of Class A Common Stock, (b) 1.0 billion authorized shares of Class B common stock and (2) 10.0 million authorized shares of preferred stock, par value \$0.0001 per share.

14. Convertible Notes and Warrant Liability

Convertible Notes

On November 3, 2022, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement") with certain institutional investors (collectively, the "Investors"), pursuant to which the Company agreed to issue to the Investors Senior Secured Original Issue 10% Discount Convertible Promissory Notes ("Convertible Notes" or "Notes") and common stock warrants to purchase a number of shares of the Company's Class A common stock equal to 30% of the face value of the Notes divided by the volume weighted average price ("VWAP"), in three tranches.

The Convertible Notes are convertible solely into Class A common stock of the Company at a conversion price of (a) \$2,250 per share ("Fixed Conversion Price") or (b) 92.5% of the average of the three lowest daily VWAP of the common stock during the ten-trading day period ("Variable Conversion Price"), whichever is lower. The Fixed Conversion Price includes a one-time reset at the six-month anniversary of the Original Issuance Date (the "Reset Date") to the lower of the conversion price (with the Variable Conversion Price determined as if the conversion notice was delivered on the Reset Date) and 130% of the daily VWAP of the common stock for the trading day immediately prior to the Reset Date.

All Convertible Notes and related common stock warrants, by written agreement, provide for a beneficial ownership limitation cap of 4.99% shares of the total issued and outstanding common stock of the Company, at any given time. Upon an event of default, the Convertible Notes earn interest at a rate of 10% per annum.

First Tranche

On November 3, 2022, the Company issued the first tranche of the Convertible Notes in the aggregate principal amount of \$10.0 million and common stock warrants to purchase up to an aggregate of 1,543 shares of Class A common stock (the "First Tranche") to the Investors pursuant to the Purchase Agreement for net proceeds of \$9.0 million. These Convertible Notes have a maturity date of 24 months from the issuance date. Subsequently, upon reaching the Reset Date, the exercise price of the remaining balance was changed to \$96.05 per share. These Convertible Notes are secured by a first priority security interest in all of the assets of the Company.

On January 5, 2023, the Company entered into an amendment to the Purchase Agreement (the “Purchase Agreement Amendment”), pursuant to which the Company and each Investor agreed, among other things, to amend the terms and conditions of the second tranche of funding and terminate the third tranche of funding contemplated under the Purchase Agreement. In connection with the Purchase Agreement Amendment, the Company also issued a warrant to the Investors to purchase up to an aggregate of 3,587 shares of the Company’s Class A common stock (the “Purchase Agreement Amendment Tranche”).

Second Tranche

On January 27, 2023, the Investors exercised their rights to purchase the allowable amounts under the Purchase Agreement Amendment and the Company issued the second tranche of the Convertible Notes in the aggregate principal amount of \$10.0 million and common stock warrants to purchase up to an aggregate of 6,281 shares of Class A common stock (the “Second Tranche”) to the Investors pursuant to the Purchase Agreement for net proceeds of \$9.0 million. These Convertible Notes have a maturity date of 24 months from the issuance date. Subsequently, upon reaching the Reset Date, the exercise price of the remaining balance was changed to \$112.32 per share.

The Company elected the fair value option to account for the Convertible Notes, as further discussed in Note 15 – Fair Value. As such, the Company recorded the Convertible Notes at fair value and subsequently remeasures them at fair value at each reporting date. Changes in fair value are recognized as a component of other income (expense), net in the unaudited condensed consolidated statements of operations.

Estimated activity related to the Company’s Convertible Notes during the six-month period ended September 30, 2024 were as follows (in thousands):

	Nine Months Ended September 30, 2024
Balance at December 31, 2023	\$ 10
Convertible Notes issued during the period	—
Conversions	—
Payments	—
Change in fair value measurement	—
Convertible Notes liability at September 30, 2024	<u>\$ 10</u>

Warrant Liability

As discussed in previous sections of this Form 10-Q, the Company has issued warrants in connection with various capital raises. The following tables summarizes the Company’s warrants outstanding as of September 30, 2024 and December 31, 2023:

	First Tranche	Purchase Agreement Amendment	Second Tranche	Series B	August 2023	GEM Warrants
December 31, 2023	1,543	3,587	6,281	33,605	62,223	2,270
Issued	—	—	—	—	—	—
Exercised	—	—	—	—	—	—
September 30, 2024	<u>1,543</u>	<u>3,587</u>	<u>6,281</u>	<u>33,605</u>	<u>62,223</u>	<u>2,270</u>

Common Stock Warrants	Issue Date	Reset Date	Exercise Price at Issuance	Reset Exercise Price
First Tranche	11/3/2022	5/3/2023	\$ 2,250	\$ 88.65
Purchase Agreement				
Amendment	1/5/2023	6/5/2023	\$ 2,250	\$ 87.38
Second Tranche	1/27/2023	7/30/2023	\$ 2,250	\$ 103.68
Series A	2/21/2023	No Reset	\$ —	N/A
Series B	2/21/2023	No Reset	\$ 234 ⁽¹⁾	N/A
August 2023	8/11/2023	No Reset	\$ 45 ⁽²⁾	N/A
GEM Warrants	10/2/2023	No Reset	\$ 26.54	N/A

(1) Excludes 4,800 of remaining warrants authorized to exercise for no consideration, as discussed below.

(2) Excludes pre-funded warrants, as discussed below.

In connection with the issuance of the Convertible Notes, the Investors received a number of common stock warrants equal to 30% of the face value of the Convertible Notes divided by the VWAP prior to the applicable closing date. The common stock warrants entitle the holder to purchase one share of the Company's Class A common stock at the exercise price of a) \$2,250 per share ("Exercise Price") or (b) 92.5% of the average of the three lowest daily VWAP of the common stock during the ten-trading day period ("Variable Exercise Price"), whichever is lower. The Exercise Price included a one-time reset at the six-month anniversary of the initial exercise date (the "Reset Date") to the lower of the initial Exercise Price and 120% of the daily VWAP on the trading day prior to the Reset Date. The common stock warrants issued in First Tranche, Purchase Agreement Amendment Tranche, and Second Tranche have a five-year exercise period from their respective issuance date. Subsequently to their issuance, upon reaching the Reset Date, the Exercise Price of these warrants was changed to \$88.65, \$87.38, and \$103.68 per share for the First Tranche, Purchase Agreement Amendment Tranche, and Second Tranche, respectively.

As discussed in Note 13 – Stock-based Compensation and Common Stock, in connection with the February 2023 Offering, the purchasing shareholders received Series A and Series B Warrants with each Class A common share issued. All Series A warrants were exercised following issuance for no consideration. The Series B Warrants were exercisable upon completion of the Reorganization Merger and will expire five years from the merger date.

As discussed in Note 13 – Stock-based Compensation and Common Stock, in connection with the August 2023 Offering, the purchasing shareholders received August 2023 Warrants with each Class A common share issued. The Company also issued pre-funded warrants (the "Pre-Funded Warrants") which were immediately exercisable for one share of Class A common stock at an Exercise Price of \$0.0001 and do not expire until exercised. The August 2023 Warrants were immediately exercisable and expire three years from the date of issuance. All of these Pre-Funded Warrants were exercised in 2023.

In connection with the August 2023 Offering, the Company amended existing Series B warrant agreements to authorize certain Investors to purchase 12,865 shares of the Company's Class A common stock for no consideration. As of September 30, 2024, 8,065 of these Series B warrants were exercised. Series B warrants are accounted for as liabilities and the fair market value of the warrants is remeasured at the end of every reporting period. As such, the change in the valuation of the liabilities related to the Series B warrant agreements are reflected in the Company's unaudited condensed consolidated balance sheets as of September 30, 2024.

The First Tranche, Purchase Agreement Amendment tranche, Second Tranche, Series A, Series B, and August 2023 Warrants (together, the "Common Stock Warrants") contain a feature that precludes them from being considered indexed to the Company's own stock and therefore are accounted for as liabilities in the Company's unaudited condensed consolidated balance sheets. The Company records the Common Stock Warrants at fair value and subsequently remeasures unexercised warrants to fair value at the reporting date, and further discussed in Note 15 – Fair Value. Estimated activity related to the Company's warrants during the six-month period ended September 30, 2024 were as follows (in thousands):

	<u>September 30, 2024</u>
Balance at December 31, 2023	\$ 55
Warrants issued during the period	—
Warrants exercised during the period	—
Change in fair value measurement	(49)
Warrant liability at September 30, 2024	<u>\$ 6</u>

15. Fair Value

The following table presents information about the Company's liabilities that are measured at estimated fair value on a recurring basis at September 30, 2024 and December 31, 2023, and indicates the fair value hierarchy of the valuation inputs the Company utilized to determine such fair value (in thousands).

Description:	Level	September 30, 2024	December 31, 2023
Convertible Notes	3	\$ 10	\$ 10
Warrant liability	3	6	55
Convertible Notes and warrant liability, at fair value		<u>\$ 16</u>	<u>\$ 65</u>

Convertible Notes

The following table provides the estimated fair value and contractual principal balance outstanding of the Convertible Notes accounted for under the fair value option as of September 30, 2024 and December 31, 2023:

	<u>September 30, 2024</u>	<u>December 31, 2023</u>
Convertible Notes fair value	\$ 10	\$ 10
Convertible Notes, contractual principal outstanding	10	10
Fair value less unpaid principal balance	<u>\$ —</u>	<u>\$ —</u>

As of September 30, 2024 and December 31, 2023, the Second Tranche of Convertible Notes was fully converted, and a nominal amount of the First Tranche was outstanding.

Warrant Liability

The following tables provide quantitative information regarding Level 3 fair value measurements for Common Stock Warrants as of September 30, 2024 and December 31, 2023.

September 30, 2024						
	First Tranche	Purchase Agreement Amendment	Second Tranche	Series B Warrants	August 2023	GEM Warrants
Risk-free interest rate	4.33%	4.33%	4.33%	4.46%	4.33%	4.33%
Time to expiration (in years)	3.34	3.51	3.51	3.64	2.11	1.16
Expected volatility	85%	85%	85%	85%	85%	85%
Dividend yield	—	—	—	—	—	—
Stock price	\$ 0.37	\$ 0.37	\$ 0.37	\$ 0.37	\$ 0.37	\$ 0.37
Exercise price	\$ 88.65	\$ 87.38	\$ 103.68	\$ 234.00	\$ 45.00	\$ 26.54

December 31, 2023						
	First Tranche	Purchase Agreement Amendment	Second Tranche	Series B Warrants	August 2023	GEM Warrants
Risk-free interest rate	3.84%	3.84%	3.84%	3.91%	3.84%	3.84%
Time to expiration (in years)	3.84	4.01	4.01	4.14	2.61	1.66
Expected volatility	90%	90%	90%	125%	85%	90%
Dividend yield	—	—	—	—	—	—
Stock price	\$ 2.30	\$ 2.30	\$ 2.30	\$ 2.30	\$ 2.30	\$ 2.30
Exercise price	\$ 88.65	\$ 87.38	\$ 103.68	\$ 234.00	\$ 45.00	\$ 26.54

16. Restructuring Costs

During the second quarter of 2024, management began considering necessary actions it may take due to its limited ability to raise additional capital or generate cash flows from operations to support future operations and growth. On May 10, 2024, the Company significantly reduced its headcount across Product, Engineering, Manufacturing, and General & Administrative functions as a cost saving and cash preserving measure. Additionally, other cost saving measures were implemented, including preparing assets for sale, negotiating lease terminations and accounts payables balances, and cleaning and vacating unneeded leased space.

Severance and other benefits were provided to employees terminated in this action during the three months and nine months ended September 30, 2024, totaling \$0.0 million and \$0.8 million, respectively, with no future amounts accrued or expected to be paid. Additionally, the Company incurred costs for clean-up of the leased warehouse facility in Mesa, Arizona during the three and nine months ended September 30, 2024 of \$0 and \$0.02 million, respectively. These costs are included in general and administrative expenses in the condensed consolidated statements of operations.

Management also assessed long-lived fixed assets and lease right-of-use assets held for use for indicators of impairment and recorded resulting losses during the three and nine months ended September 30, 2024. In connection with the Equipment Purchase Agreement, the Company recorded a loss on lease cancellation during the three months ended September 30, 2024, with no future amounts accrued or expected to be paid. In addition, the Company's investment in Lynx was assessed for indicators of impairment and resulting losses were recorded during the three and nine months ended September 30, 2024. See Note 4 – Assets Held for Sale, Note 5 – Fixed Assets, Note 11 – Leases and Note 13 – Stock-based Compensation and Common Stock for information about the above actions.

The following table presents the effects of the above actions on the condensed consolidated statement of operations for the three months ended September 30, 2024 (in thousands):

	<u>Employee Severance</u>	<u>Warehouse Clean Up</u>	<u>Impairment of Assets Held for Use and ROU Assets</u>	<u>Impairment of Assets Held for Sale, net of Recoveries</u>	<u>Impairment of Investment in Lynx</u>	<u>Loss on Sale of Held for Sale Assets</u>	<u>Loss on Equipment Lease Cancellation</u>	<u>Total</u>
General and administrative	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Total operating expenses	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Total other loss (income), net	\$ 0	\$ 0	\$ 0	\$ 191	\$ 975	\$ 531	\$ 266	\$ 1,963
Total restructuring costs	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 191</u>	<u>\$ 975</u>	<u>\$ 531</u>	<u>\$ 266</u>	<u>\$ 1,963</u>

The following table presents the effects of the above actions on the condensed consolidated statements operations for the nine months ended September 30, 2024 (in thousands):

	<u>Employee Severance</u>	<u>Warehouse Clean Up</u>	<u>Impairment of Assets Held for Use and ROU Assets</u>	<u>Impairment of Assets Held for Sale, net of Recoveries</u>	<u>Impairment of Investment in Lynx</u>	<u>Loss on Sale of Held for Sale Assets</u>	<u>Loss on Equipment Lease Cancellation</u>	<u>Total</u>
General and administrative	\$ 799	\$ 21	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 820
Total operating expenses	799	21	0	0	0	0	0	\$ 820
Total other loss (income), net	\$ 0	\$ 0	\$ 1,128	\$ 794	\$ 975	\$ 531	\$ 266	\$ 3,694
Total restructuring costs	<u>\$ 799</u>	<u>\$ 21</u>	<u>\$ 1,128</u>	<u>\$ 794</u>	<u>\$ 975</u>	<u>\$ 531</u>	<u>\$ 266</u>	<u>\$ 4,514</u>

17. Subsequent Events

Nasdaq Minimum Bid Price Exception Extension

On April 2, 2024, the Company received a notice from Nasdaq stating that the Company is not in compliance with the \$1.00 minimum bid price requirement set forth in Nasdaq Listing Rule 5550(a)(2) for continued listing on Nasdaq (the "Bid Price Requirement"). On October 1, 2024, we received a second notice from Nasdaq confirming that the Company is still not in compliance with the Bid Price Requirement as of September 30, 2024 and granting the Company an additional 180 days, or until March 31, 2025, to regain compliance.

Merger with Verde Bioresins, Inc.

On October 23, 2024, Nxu, MergerSub I, Merger Sub II and Verde entered into the Merger Agreement, pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub I will merge with and into Verde, with Verde continuing as a wholly owned subsidiary of Nxu and the surviving corporation of the First Merger and promptly following the First Merger, Verde shall merge with and into Merger Sub II, with Merger Sub II continuing as the surviving entity of the Second Merger. The Boards of Directors of Nxu and Verde have both approved the Merger.

Subject to the terms and conditions of the Merger Agreement, (i) immediately prior to the effective time of the First Merger (the "Effective Time"), all outstanding convertible notes of Verde will be converted into shares of Verde common stock and all outstanding and unexercised Verde warrants will be exercised for shares of Verde common stock, and (ii) at the Effective Time, (a) each then-outstanding share of Verde common stock, other than any cancelled shares and dissenting shares, will be converted into the right to receive a number of shares of Nxu common stock, and (b) each then-outstanding and unexercised Verde option to purchase shares of Verde common stock, whether vested or unvested, will be assumed by Nxu and converted into an option to purchase a number of shares of Nxu common stock. The shares of Nxu common stock that will be issued to Verde stockholders and the number of shares of Nxu common stock underlying options that will be issuable to Verde option holders will be calculated using a formula in the Merger Agreement based on the enterprise value of each of Verde and Nxu. Verde has been ascribed an aggregate enterprise value of approximately \$306.9 million, and Nxu's aggregate enterprise value will be an amount equal to approximately \$16.2 million less an amount equal to the excess of certain lease payments remaining unpaid at the closing of the Merger over Nxu's cash balance at closing. Upon the closing of the Merger, assuming Nxu's aggregate enterprise value is approximately \$16.2 million, pre-Merger Verde stockholders will own approximately 95% of the combined company and pre-Merger Nxu stockholders will own approximately 5% of the combined company, in each case, on a fully-diluted and as-converted basis.

Consummation of the Merger, and the other transactions contemplated by the Merger Agreement, is subject to certain closing conditions, including, among other things, (i) approval by the requisite Nxu stockholders of the Nxu Proposals, (ii) approval by the requisite Verde stockholders of the adoption and approval of the Merger Agreement and the transactions contemplated thereby, (iii) Nasdaq's approval of the listing of the shares of Nxu common stock to be issued in connection with the Merger, and (iv) the Registration Statement having become effective in accordance with the Securities Act and not being subject to any stop order or proceeding seeking a stop order. In addition, immediately prior to the Effective Time, (i) except for Jessica Billingsley, each current director of Nxu will resign from the Nxu Board; (ii) each current officer of Nxu will resign from his or her position with Nxu; and (iii) each current officer of Verde will resign from his or her position with Verde. Immediately following the Effective Time, (i) the Nxu Board will consist of seven members, six of whom will be appointed by Verde and one of whom will be appointed by Nxu; and (ii) the officers of Verde (as of immediately prior to the Effective Time) will be appointed to serve as officers of Nxu in identical positions. Each party's obligation to consummate the Merger is also subject to other specified customary conditions, including the accuracy of the representations and warranties of the other party (subject to certain materiality standards) and the performance in all material respects by the other party of its obligations under the Merger Agreement required to be performed on or prior to the date of the closing of the Merger.

The Merger Agreement contains certain termination rights, including, among others, (i) the mutual written consent of the parties, (ii) in the event that there is a breach by a party of any of its representations, warranties, covenants or agreements, which breach is not timely cured or curable, (iii) in the event that the Merger has not been consummated by March 31, 2025, (iv) in the event that the requisite approval of Nxu's stockholders is not obtained upon a vote thereon (triggering Verde's right to terminate), and (v) in the event that any governmental authority shall have taken action to restrain, enjoin or prohibit the consummation of the Merger, which action shall have become final and non-appealable. In addition, upon termination of the Merger Agreement by Verde by written notice to Nxu or by Nxu due to Verde's failure to receive the requisite approval of Verde's stockholders within 10 business days after the effectiveness of the Registration Statement, Verde will be required to pay Nxu a termination fee of \$1.0 million. Further, Nxu may terminate the Merger Agreement prior to receipt of the requisite approval of Nxu's stockholders to enter into a definitive agreement with respect to a Superior Proposal (as such term is defined in the Merger Agreement), provided that Nxu has provided Verde with at least five business days' notice prior to such termination.

As soon as practicable following the Merger, Nxu will be renamed "Verde Bioresins, Corp.," or such other name mutually agreed to by Nxu and Verde and will cause its current ticker symbol "NXU" to be changed to "VRDE" upon Nasdaq's approval of the listing application.

Stock-based Compensation Modifications

On October 23, 2024 (the "Modification Date"), concurrently with the signing of the Merger Agreement, the Company agreed to modify \$2.3 million of stock-based compensation related to RSUs previously granted to certain employees of the Company, the vesting of which have been delayed as of September 30, 2024, previously recorded as liabilities in the condensed consolidated balance sheets (the "Equity Modification"). Following the signing of the Merger Agreement, Nxu will deliver such RSUs to RSU holders in installments in such amounts as Nxu determines may be delivered without jeopardizing Nxu's ability to continue as a going concern. Such RSUs will be delivered until the earlier of (a) the date all RSUs subject to delayed vesting have been delivered to the RSU holder or (b) the date that is no later than five business days prior to the closing of the Merger (the "Cut-Off Date"). Any RSUs that have not been delivered to the RSU holder as of the Cut-Off Date will be forfeited for no consideration. No RSUs will be settled if such settlement would cause a person to be subject to excise taxes imposed by Section 4999 of the Code, unless at the Company and the individual's request, Verde may consider permitting such RSUs to be settled upon receipt of satisfactory evidence that the individual has remitted to an escrow account the amount necessary to satisfy the Company's tax withholding obligations under Section 4999 upon the closing of the transaction contemplated by the Merger Agreement. In connection with the Equity Modification, RSUs previously granted to employees of the Company with vest dates occurring after September 30, 2024 were canceled for no consideration.

On the Modification Date, the Company and current and former members of the Board of Directors also agreed to the modification of \$0.2 million of stock-based compensation related to RSUs granted to independent directors of the Company and delayed as of September 30, 2024, previously recorded as liabilities in the condensed consolidated balance sheets. Following the signing of the Merger Agreement, Nxu will deliver RSUs to current and former independent directors that were granted as consideration for their prior service as members of the Board of Directors (the "Director Delayed RSUs"). Such Director Delayed RSUs shall be delivered in installments in such amounts as Nxu determines may be delivered to the current and former independent directors without jeopardizing Nxu's ability to continue as a going concern. Such Director Delayed RSUs will be delivered until the earlier of (a) the date all Director Delayed RSUs have been delivered to the current or former independent director or (b) the Cut-Off Date. Any Director Delayed RSUs that have not been delivered as of the Cut-Off Date will be forfeited for no consideration.

Stock-based Compensation Granted to Non-Employee Directors

On October 23, 2024, concurrently with the signing of the Merger Agreement, Nxu entered into the Board of Directors Agreements with the Non-Employee Directors, pursuant to which each Non-Employee Director will receive a \$15,000 per quarter cash stipend and each Non-Employee Director will be granted 591,715 RSUs under the Amended Incentive Plan. Such RSUs will vest as follows: (1) 147,928 RSUs are consideration for services rendered for the quarter ending September 30, 2024 and shall be immediately vested, (2) the remaining RSUs shall vest ratably at the end of each calendar quarter from December 31, 2024 until June 30, 2025, provided that the Non-Employee Director continues to serve on the Nxu Board on the applicable vesting date. Vesting of the RSUs granted to the Non-Employee Directors and quarterly Non-Employee Director stipend payments shall cease upon the closing of the Merger. The Board of Directors Agreements also amend outstanding equity awards as described above.

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

Cautionary Note Concerning Forward-Looking Statements

The Securities and Exchange Commission ("SEC") encourages companies to disclose forward-looking information so that investors can better understand a company's future prospects and make informed investment decisions. This Quarterly Report on Form 10-Q for the period ended September 30, 2024 (this "Form 10-Q") contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as "anticipates," "could," "may," "estimates," "expects," "projects," "intends," "plans," "believes," "will" and words or phrases of similar substance used in connection with any discussion of future operations, financial performance, plans, events, trends or circumstances can be used to identify some, but not all, forward-looking statements. In particular, statements regarding our ability to continue as a going concern; our ability to complete the Merger (as defined below) in a timely manner or at all and challenges to achieving strategic objectives, synergies and other anticipated benefits from the Merger; our belief that additional funding will be required in order to continue operations; our ability to obtain additional funding in the form of potential equity and/or debt financing arrangements or similar transactions; any plans to seek strategic alternatives for our business; expectations and opportunities, industry trends, new product expectations and capabilities, and our outlook regarding our performance and growth are forward-looking statements. This Form 10-Q also contains statements regarding plans, goals and objectives. There is no assurance that we will be able to carry out our plans or achieve our goals and objectives or that we will be able to do so successfully on a profitable basis. These forward-looking statements are just predictions and involve significant risks and uncertainties, many of which are beyond our control, and actual results may differ materially from these statements. Factors that could cause actual outcomes or results to differ materially from those reflected in forward-looking statements include, but are not limited to, those discussed in this Item 2 (including in the section entitled "Overview" below), Part II, Item 1A of this Form 10-Q, and under the heading "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2023 filed with the SEC on April 1, 2024 (the "2023 Form 10-K"). Investors are urged not to place undue reliance on forward-looking statements. Forward-looking statements speak only as of the date on which they were made. Except as may be required by law, we do not undertake any obligation, and expressly disclaim any obligation, to update or alter any forward-looking statements, whether as a result of new information, future events or otherwise. All forward-looking statements contained herein are qualified in their entirety by the foregoing cautionary statements.

The following discussion of our results of operations and financial condition should be read in conjunction with our unaudited condensed consolidated financial statements and related notes included in Part I, Item 1 of this Form 10-Q and our audited consolidated financial statements and the notes thereto in the 2023 Form 10-K.

Our investor relations website is located at <https://investors.nxuenergy.com>. At or through the Investor Relations section of our website, we make available free of charge our Annual Reports on Form 10-K, other reports and all amendments to these reports as soon as practicable after the reports are electronically filed with or furnished to the SEC. Additionally, the Company uses its website, [nxuenergy.com](https://www.nxuenergy.com) and social media channels including Instagram, YouTube, Facebook, LinkedIn, and X (formerly known as Twitter) (@Nxu) to disclose information about the Company and its products to customers, investors, and the public. It is important to note that this information is not incorporated by reference in any reports or documents filed with the SEC, and website URLs are intended to be inactive textual references only. The information posted on these channels may be considered material, so investors should monitor them in addition to press releases, SEC filings, and public conference calls and webcasts. By enrolling your email address to any of our newsletters, you may receive automatic alerts and other information about Nxu.

Unless the context otherwise requires, the terms "we", "us", "our", "Nxu" and "Company" refer to Nxu, Inc. and its consolidated subsidiaries.

Company Overview

Nxu, Inc. is a US-based technology company leveraging its intellectual property and innovations to support energy storage and charging solutions for the infrastructure needed to power an electrified future. We historically focused on building energy and infrastructure solutions for consumers and businesses to enable faster transition to electrification across all market segments, including building megawatt NxuOne™ charging stations and innovative battery cells and battery packs for use in advanced energy storage systems and mobility products.

On May 12, 2023, Atlis Motor Vehicles Inc. (“Atlis”), our predecessor company, completed its previously announced reorganization merger pursuant to the Agreement and Plan of Merger, dated as of April 16, 2023 (the “Reorganization Agreement”), by and among Atlis, Nxu, and Atlis Merger Sub, Inc., a Delaware corporation and, as of immediately prior to the consummation of such merger, a wholly-owned subsidiary of Nxu (“Merger Sub”). The Reorganization Agreement provided for the merger of Atlis and Merger Sub, with Atlis surviving the merger as a wholly-owned subsidiary of Nxu (the “Reorganization Merger”). The Reorganization Agreement was approved and adopted by Atlis’s stockholders at Atlis’s Special Meeting of Stockholders, which was held on May 9, 2023.

On October 23, 2024, NXU Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Nxu (“Merger Sub I”), NXU Merger Sub, LLC, a Delaware limited liability company (“Merger Sub II”) and Verde Bioresins, Inc., a Delaware corporation (“Verde”), entered into an Agreement and Plan of Merger (the “Merger Agreement”), pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub I will merge with and into Verde, with Verde continuing as a wholly owned subsidiary of Nxu and the surviving corporation of the first merger (the “First Merger”) and promptly following the First Merger, Verde shall merge with and into Merger Sub II (the “Second Merger” and together with the First Merger, the “Merger”), with Merger Sub II continuing as the surviving entity of the Second Merger. See Note 17 – Subsequent Events for additional information.

Nxu is an early-stage company and as such, has incurred losses from operations and has had negative cash flows from operating activities since our inception.

In light of our liquidity position and anticipated future funding requirements, we continue to pursue all available options for funding including seeking funding in the form of potential equity and/or debt financing arrangements or similar transactions, further reducing expenses, and selling assets. Even if we are successful in implementing the Merger or other strategic alternative, we will continue to require additional funding. The Company cannot provide any assurance that access to capital will be readily available when needed or that it will be successful in implementing the Merger or other strategic alternative, which is subject to the satisfaction of conditions beyond the Company’s control. If we are unable to complete the Merger or other strategic transaction in a timely manner, we could be required to dissolve and liquidate our assets under the bankruptcy laws or otherwise.

Company Outlook

We have historically focused on building products to capture the commercial and industrial markets which represent a portion of the electric vehicle opportunity that we believe is not fully serviced by existing electric vehicle solutions. Individuals and companies that make up these segments require vehicles and equipment that are comparable in performance to their existing diesel-powered vehicles and equipment. However, limited battery capacity, range anxiety, and long charge times continue to be primary challenges to electrification. We historically developed products aimed at addressing these challenges, including our proprietary mega-watt charging infrastructure and energy storage solutions.

Following a shift in focus in the latter half of 2023, we continued developing and producing our NxuOne™ megawatt charging station in our Mesa, Arizona facility. As of March 31, 2024, we successfully launched our first charging station and produced multiple production units ready for deployment. Production costs, including costs of materials and labor, reduced with each unit produced, as we focused on scale and efficiency. We started the second quarter of 2024 centered on developing plans for charging station deployment, continued scaled production of our NxuOne™ megawatt charging station, and initial design of future charging products.

So far in 2024, we incurred losses from the operation of our first NxuOne™ charging station. We expect to continue to incur losses until we obtain sufficient capital to restart and efficiently scale our production capabilities, increase production volume, and deploy additional NxuOne™ charging systems for public use.

Our operations have been financed primarily through net proceeds from the sale of securities. During the nine months ended September 30, 2024, we raised approximately \$10.7 million net, after expenses, through our “At-The-Market” equity offering (“ATM”).

On May 10, 2024, we announced our intention to evaluate strategic alternatives, with the Strategic Planning Committee of our Board of Directors (the “Strategic Planning Committee”) leading such evaluation with outside assistance from advisors. At the time of announcement, the Strategic Planning Committee had identified targets for a business combination intended to position the newly combined company for sustainable long-term value creation with a strengthened financial profile. On October 23, 2024, we entered into the Merger Agreement with Verde. There can be no assurance that we will be successful in effecting the Merger or any other transactions or realizing any of the intended benefits, including obtaining a sufficient level of capital through this or other channels in the time frames needed to sustain or grow the business or on terms agreeable to us. As we focus on a Merger with Verde, we remain focused on reducing costs to maximize the strength of our balance sheet, reducing our use of cash, and continuing to evaluate all feasible paths to raising capital to fund operations through the date of a merger closing.

Segment Information

We evaluated segment reporting in accordance with Accounting Standards Codification 280 – Segment Reporting and concluded that Nxu is comprised of one operating segment. We report segment information based on the operating results regularly reviewed by the chief operating decision maker to make decisions about resource allocation and the performance of the business.

Revenue and Profitability

Focus on Megawatt Charging

During the three and nine months ended September 30, 2024, we generated revenue from the operation of our NxuOne™ megawatt charging station delivering electricity to consumer and commercial customer electric vehicles in Mesa, Arizona. We expect to continue to generate revenue from charging customer vehicles. Sales of electricity to consumer and commercial customers for electric vehicle charging generated losses during the three and nine months ended September 30, 2024, primarily as a result of discounted prices offered to customers near the beginning of the year to generate customer interest and encourage high charging station utilization, and due to the cost of depreciation. In the future, our goal is to continue to drive customer interest while focusing on increasing opportunities for profitability through utilization of our NxuOne™ charging station network, competitive pricing, and deployment of additional NxuOne™ charging stations.

For the year ended December 31, 2023, we generated revenue totaling approximately \$0.5 million through the sale of battery systems and components. We have not continued to generate revenue from the production and sale of battery systems and components.

Other Investing Activities and Opportunities

On June 28, 2024, we entered into a contract with Silicon Valley Disposition (“SVD”) to sell battery manufacturing equipment and certain other assets located in our leased warehouse space in Mesa, Arizona. Pursuant to the contract, assets identified and held for sale were sold in an online public auction (the “Auction”) held on August 13, 2024. In connection with the Auction contract, the Company sold certain assets previously classified as held for sale for total cash proceeds of approximately \$0.4 million, net of SVD commissions, and recorded a related loss on the disposal of assets sold at Auction of approximately \$0.5 million. The Company continues to classify manufacturing equipment and certain other assets that were not sold at Auction, but that are available and marketed for sale, as held for sale assets. See Note 4 – Assets Held for Sale of our accompanying unaudited condensed consolidated financial statements included in Part I, Item 1, Financial Statements of this Form 10-Q for additional information related to the Company’s Auction results.

Production Investment and Cost Management

We achieved success in our strategic focus to reduce costs of operations and scale the production of our NxuOne™ megawatt charging system in the three months ended March 31, 2024. During that quarter, we doubled our production of units from the prior quarter and reduced costs of materials and labor through product development, process efficiency and team organization.

During the three months ended June 30, 2024, we paused production of our NxuOne™ charging station and reduced our headcount across Product, Engineering, Manufacturing, and General & Administrative functions in an effort to reduce costs. In addition, we consolidated and streamlined product plans and processes within our remaining functions, with a focus on lessening our reliance on outside vendors. The resulting cost savings we gained allowed us to shift our focus toward evaluating and pursuing strategic alternatives.

Results of Operations

Three Months ended September 30, 2024 Compared to the Three Months Ended September 30, 2023

The following table sets forth certain statement of operations data for the three-month periods ended September 30, 2024 and 2023 (dollars in thousands):

	Three Months Ended September 30,				
	2024	% of Total operating expenses	2023	% of Total operating expenses	Change
Revenue	\$ 6	—%	\$ 117	1%	\$ (111)
Cost of revenue	6	-	1,013	9	(1,007)
Depreciation	20	1	1	0	19
Total cost of revenue	26	1	1,014	9	(988)
Gross loss	(20)	(1)	(897)	(8)	877
Operating expenses					
Research and development	-	-	3,018	27	(3,018)
General and administrative	3,042	100	8,208	72	(5,166)
Advertising	12	—	104	1	(92)
Total operating expenses	3,054	100	11,330	100	(8,276)
Operating loss	(3,074)	—	(12,227)	—	9,153
Other (loss) income, net	(1,918)	—	1,790	—	(3,708)
Net loss	\$ (4,992)	—%	\$ (10,437)	—%	\$ 5,445

Revenue

Three months ended September 30, 2024 vs. 2023. We recognized charging revenue during the third quarter of 2024 of approximately \$6 thousand from the delivery of electricity to customer electric vehicles through our NxuOne™ megawatt charging station in Mesa, Arizona. No battery revenue was recognized during the third quarter of 2024. We launched our first megawatt charging station in September 2023, and we recognized charging revenue during the third quarter of 2023 of less than \$1 thousand. Prior to September 2023, the Company had never generated revenue.

We recognized battery revenue during the three months ended September 30, 2023 of approximately \$0.12 million primarily from partial delivery of battery system and components recognized upon partial satisfaction of a customer contract. During the third quarter of 2023, we paused battery production and battery-related research and development.

Cost of revenue

Three months ended September 30, 2024 vs. 2023. We recognized cost of revenue for the three months ended September 30, 2024 of approximately \$0.03 million. The cost of revenue represents energy costs and depreciation related to charging station services.

We recognized cost of revenue for the three months ended September 30, 2023 of approximately \$1.0 million primarily related to the cost of battery systems and components sales including costs to acquire the components for sale to the customer and adjustments to reflect inventory at the lower of cost or net realizable value. We wrote-off approximately \$0.90 million of inventory to cost of goods sold during the three months ended September 30, 2023 when we determined we would no longer be able to complete the remaining work in process related to a customer contract for battery systems and components.

Gross loss

Three months ended September 30, 2024 vs. 2023. Gross loss decreased \$0.88 million from \$0.9 million during the third quarter of 2023 to \$0.02 million during the third quarter of 2024 as we paused battery system and component sales and continued charging services. Gross loss represents revenue less energy costs and depreciation related to charging station services.

Research and development

Three months ended September 30, 2024 vs. 2023. Research and development decreased \$3.0 million from \$3.0 million during the third quarter of 2023 to \$0 in the third quarter of 2024 as we paused development and production of our battery technologies and megawatt charging stations and additionally initiated cost saving measures, including reducing headcount in operations and ceasing initial development of future products.

General and administrative

Three months ended September 30, 2024 vs. 2023. General and administrative expenses decreased \$5.2 million from \$8.2 million during the third quarter of 2023 to \$3.0 million in the third quarter of 2024. The reduction in general and administrative expense was primarily due to decreases in stock-based compensation and other payroll costs of approximately \$2.7 million and \$0.9 million, respectively, due to less vesting expense and a smaller team compared to the three months ended September 30, 2023. The reduction in general and administrative expense also resulted from a decrease in corporate insurance expense of approximately \$0.5 million and in legal and other outside services expense of approximately \$0.08 million as compared to the three months ended September 30, 2023. Additional tax credits received as well as agreements to settle unpaid balances for less than the original expense recorded further decreased expenses by approximately \$0.2 million for the three months ended September 30, 2024. These were offset by an increase in bad debt expense of \$0.2 million for the three months ended September 30, 2024.

Other (loss) income, net

Three months ended September 30, 2024 vs. 2023. Other (loss) income, net decreased by \$3.7 million from income of \$1.8 million during the third quarter of 2023 to a loss of \$1.9 million during the third quarter of 2024. The net loss recorded for the three months ended September 30, 2024 was primarily as a result of an impairment of the Company's investment in Lynx of \$0.98 million, a loss on operating lease cancellation of \$0.3 million, additional impairment of held for sale assets of \$0.2 million, net of recoveries, and \$0.5 million loss on disposal of assets. The other income recorded for the three months ended September 30, 2023 related primarily to an estimated gain on the fair value of convertible debt and warrant liabilities. See Note 4 – Assets Held for Sale, Note 5 – Property and Equipment, and Note 11 – Leases of our accompanying unaudited condensed consolidated financial statements included in Part I, Item 1, Financial Statements of this Form 10-Q for further discussion.

Nine Months ended September 30, 2024 Compared to the Nine Months Ended September 30, 2023

The following table sets forth certain statement of operations data for the nine-month periods ended September 30, 2024 and 2023 (dollars in thousands):

	Nine Months Ended September 30,				
	2024	% of Total operating expenses	2023	% of Total operating expenses	Change
Revenue	\$ 17	—%	\$ 117	0%	\$ (100)
Cost of revenue	13	—	1,013	3	(1,000)
Depreciation	59	—	1	0	58
Total cost of revenue	72	—	1,014	3	(942)
Gross loss	(55)	—	(897)	(2)	842
Operating expenses					
Research and development	957	7	12,040	30	(11,083)
General and administrative	13,204	93	27,133	69	(13,929)
Advertising	56	—	284	1	(228)
Total operating expenses	14,217	100	39,457	100	(25,240)
Operating loss	(14,272)	—	(40,354)	—	26,082
Other (loss) income, net	(3,801)	—	3,013	—	(6,814)
Net loss	\$ (18,073)	—%	\$ (37,341)	—%	\$ 19,268

Revenue

Nine months ended September 30, 2024 vs. 2023. We recognized charging revenue during the first nine months of 2024 of approximately \$17 thousand from the delivery of electricity to customer electric vehicles through our NxuOne™ megawatt charging station in Mesa, Arizona. No battery revenue was recognized during the first nine months of 2024. Prior to September 2023, the Company had never generated revenue.

We recognized battery revenue during the nine months ended September 30, 2023 of approximately \$0.12 million primarily from partial delivery of battery system and components recognized upon partial satisfaction of a customer contract. During the third quarter of 2023, we paused battery production and battery-related research and development

Cost of revenue

Nine months ended September 30, 2024 vs. 2023. We recognized cost of revenue during the nine months ended September 30, 2024 of approximately \$0.07 million. The cost of revenue represents energy costs and depreciation related to charging station services.

We recognized cost of revenue for the nine months ended September 30, 2023 of approximately \$1.0 million related to the cost of battery systems and components sales including costs to acquire the components for sale to the customer and adjustments to reflect inventory at the lower of cost or net realizable value.

Gross loss

Nine months ended September 30, 2024 vs. 2023. Gross loss decreased \$0.84 million from \$0.9 million during the first nine months of 2023 to \$0.06 million in the first nine months of 2024 as we paused battery system and component sales and continued charging services. Gross loss represents revenue less energy costs and depreciation related to charging station services.

Research and development

Nine months ended September 30, 2024 vs. 2023. Research and development decreased \$11.1 million from \$12.0 million during the first nine months of 2023 to \$0.9 million in the first nine months of 2024. During the third quarter of 2023, we paused development and production of our battery technologies to focus on development of our megawatt charging stations and utilized labor hours from research and development team in construction of our megawatt charging units. During the second quarter of 2024, we implemented cost savings measures that included reducing headcount in operations and ceasing initial development of future products. Additional tax credits received as well as agreements to settle unpaid balances for less than the original expense recorded further decreased research and development expenses for the nine months ended September 30, 2024.

General and administrative

Nine months ended September 30, 2024 vs. 2023. General and administrative expenses decreased \$13.9 million from \$27.1 million during the first nine months of 2023 to \$13.2 million in the first nine months of 2024. The reduction in general and administrative expense was primarily due to decreases in stock-based compensation and employee payroll and benefits of approximately \$10.1 million, due to less vesting expense and a smaller team compared to the nine months ended September 30, 2023. Additionally, costs for corporate insurance decreased by approximately \$1.8 million and legal and other outside services decreased by approximately \$2.5 million, as we incurred fewer costs in connection with capital offerings in the first nine months of 2024 in comparison to the first nine months of 2023. These were partially offset by an increase in rent expense of \$0.7 million in the first nine months of 2024 in comparison to the first nine months of 2023 due to a new equipment lease and an increase in bad debt expense of \$0.2 million in the first nine months of 2024 in comparison to the first nine months of 2023.

Other (loss) income, net

Nine months ended September 30, 2024 vs. 2023. Other (loss) income, net decreased \$6.8 million from other income, net of \$3.0 million during the first nine months of 2023 to other loss, net of \$3.8 million during the first nine months of 2024 primarily as a result of a \$1.9 million write down of fixed assets held for sale and impairment of lease right-of-use assets, impairment of the Company's investment in Lynx of \$0.98 million, \$0.3 million loss on lease cancellation and \$0.8 million loss on disposal of assets. Additionally, during the nine months ended September 30, 2023, the Company recognized a \$4.0 million gain on the fair value of long-term debt and warrant liability, partially offset by \$1.0 million of warrant expense. See Note 15 – Fair Value of our accompanying unaudited condensed consolidated financial statements included in Part I, Item 1, Financial Statements of this Form 10-Q for further discussion.

Liquidity and Capital Resources

As disclosed in Note 1 – Organization and Basis of Presentation of our accompanying unaudited condensed consolidated financial statements included in Part I, Item 1, Financial Statements of this Form 10-Q, the accompanying unaudited condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern.

During the nine months ended September 30, 2024, the Company incurred a net loss of approximately \$18.1 million and had net cash used in operating activities of \$10.2 million. On September 30, 2024, the Company had \$2.2 million in cash and an accumulated deficit of approximately \$277.7 million.

During the nine months ended September 30, 2024, the Company raised approximately \$10.7 million, net of offering costs and commissions, through its ATM. As of September 30, 2024, the Company received the maximum amount of capital available under the shelf registration and is currently unable to continue to raise capital with the ATM.

Because our working capital requirements depend upon numerous factors, there can be no assurance that our current cash resources will be sufficient to fund our operations. The Company cannot provide any assurance that access to capital will be readily available when needed.

These matters, among others, raise substantial doubt about the Company's ability to continue as a going concern for a period of one year after the date the financial statements in this Form 10-Q are issued. Company management is addressing this risk by, among other things, entering into the Merger Agreement, pursuing all available options for funding, including seeking funding in the form of potential equity and/or debt financing arrangements or similar transactions, reducing expenses, and selling assets. The Company cannot provide any assurance that it will be successful in closing the Merger with Verde or implementing such other actions, which may be subject to the satisfaction of conditions beyond the Company's control.

The table below sets forth a summary of our cash flows for the nine months ended September 30, 2024 and 2023 (in thousands):

	Nine Months Ended September 30,	
	2024	2023
Net cash used in operating activities	\$ (10,228)	\$ (23,703)
Net cash used in investing activities	(1,082)	(1,089)
Net cash provided by financing activities	10,672	24,119

Net cash used in operating activities. Net cash used in operating activities during the nine months ended September 30, 2024 was \$10.2 million. The use of cash resulted primarily from a net loss of \$18.1 million, partially offset by employee stock-based compensation expense of \$5.1 million, \$2.9 million in impairment charges, \$0.8 million loss on the sale or disposal of property and equipment, \$0.3 million loss on operating lease cancelation, and net changes in working capital.

Net cash used in operating activities during the nine months ended September 30, 2023 was \$23.7 million. The use of cash resulted primarily from a net loss of \$37.3 million, offset by employee and non-employee stock-based compensation expense of \$15.7 million, warrant expense of \$1.0 million, net changes in working capital, and changes in the fair value of convertible debt and warrant liability.

Net cash used in investing activities. Net cash used in investing activities for the nine months ended September 30, 2024 was \$1.1 million. The cash used in investing activities was related to production of NxuOne™ charging station, and the purchase of other property and equipment, during the period.

Net cash used in investing activities for the nine months ended September 30, 2023 was \$1.1 million. Cash used in investing activities was related to purchases of property and equipment during the period, partially offset by proceeds of sales of certain assets.

Net cash provided by financing activities. Net cash provided by financing activities of \$10.7 million during the nine months ended September 30, 2024 primarily consisted of proceeds from stock issued under the ATM.

Net cash provided by financing activities of \$24.1 million during the nine months ended September 30, 2023 primarily consisted of proceeds from stock and convertible debt issuance, partially offset by payments on convertible debt.

Off-balance sheet arrangements and contractual obligations

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements.

We have contractual lease obligations for our two properties with initial lease terms ending in the summer of 2025. The lease agreement for our warehouse facility in Mesa, Arizona includes one or more options to renew with renewal terms that can extend the lease term by five years or more. We added one equipment lease during the nine months ended September 30, 2024, with a lease term ending in December 2025. This equipment lease was canceled during the three months ended September 30, 2024, see Note 11 – Leases of our accompanying unaudited condensed consolidated financial statements included in Part I, Item 1, Financial Statements of this Form 10-Q for further discussion. In addition, we have obligations under our convertible debt facility to repay the remaining balance not converted into equity at the maturity date two years from issuance. See Note 14 - Convertible Notes and Warrant Liability of our accompanying unaudited condensed consolidated financial statements included in Part I, Item 1, Financial Statements of this Form 10-Q for further discussion.

Critical Accounting Estimates

There have been no material changes to the items disclosed as critical accounting policies and estimates under “Liquidity and Capital Resources—Critical Accounting Estimates” in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, Item 7 of the 2023 Form 10-K.

Item 3. *Quantitative and Qualitative Disclosures about Market Risk*

Not required.

Item 4. *Controls and Procedures*

Our Chief Executive Officer and Chief Financial Officer (our principal executive officer and principal financial officer, respectively) have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Security Exchange Act of 1934, as amended, (the “Exchange Act”) as of September 30, 2024, the end of the period covered by this Form 10-Q (the “Evaluation Date”). They have concluded that, as of the Evaluation Date, these disclosure controls and procedures were effective to ensure that material information relating to the Company and its consolidated subsidiaries would be made known to them by others within those entities and would be disclosed on a timely basis. The Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures are designed, and are effective, to give reasonable assurance that the information required to be disclosed by us in reports that we file under the Exchange Act is recorded, processed, summarized and reported within the time period specified in the rules and forms of the SEC. They have also concluded that our disclosure controls and procedures are effective to ensure that information required to be disclosed in the reports that are filed or submitted under the Exchange Act are accumulated and communicated to our management, including the Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

During the quarter ended September 30, 2024, there were no changes in our “internal control over financial reporting” (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

See Note 12 – Commitments and Contingencies of our accompanying unaudited condensed consolidated financial statements included in Part I, Item 1, Financial Statements of this Form 10-Q.

Item 1A. Risk Factors

In addition to the other information set forth in this Form 10-Q, you should carefully consider the factors discussed in the section entitled “Risk Factors,” in the 2023 Form 10-K, which could materially affect our business, financial condition, or future results. As of the date of this Form 10-Q, there have been no material changes to the risk factors disclosed in the section entitled “Risk Factors” in our 2023 Form 10-K other than as set forth below:

Our Class A common stock may be delisted from Nasdaq if we do not maintain compliance with Nasdaq’s continued listing requirements. If our Class A common stock is delisted, it could negatively impact the Company.

Continued listing of a security on Nasdaq is conditioned upon compliance with various continued listing standards. On April 2, 2024, we received a notice from Nasdaq stating that the Company is not in compliance with the \$1.00 minimum bid price requirement set forth in Nasdaq Listing Rule 5550(a)(2) for continued listing on Nasdaq (the “Bid Price Requirement”). On October 1, 2024, we received a second notice from Nasdaq confirming that the Company is still not in compliance with the Bid Price Requirement as of September 30, 2024 and granting the Company an additional 180 days, or until March 31, 2025, to regain compliance.

On September 4, 2024, the Company received a notice from Nasdaq notifying the Company that, due to Caryn Nightengale not standing for re-election as a director of the Company at the Company’s 2024 annual meeting of stockholders held on August 14, 2024 (the “Annual Meeting”), the Company was no longer in compliance with Nasdaq’s audit committee requirements as set forth in Nasdaq Listing Rule 5605 (the “Audit Committee Requirements”). The Company intends to appoint an additional independent director to the Board of Directors and the Audit Committee as soon as practicable and prior to the earlier of the Company’s next annual meeting of stockholders or August 14, 2025, or, if the Company’s next annual meeting of stockholders is held before February 10, 2025, by February 10, 2025.

No assurances can be provided that we will regain compliance with the minimum bid price requirement or the audit committee requirement within the required compliance periods. If the Company's Class A common stock ultimately were to be delisted for any reason, it could negatively impact the Company by (i) reducing the liquidity and market price of the Company's Class A common stock; (ii) reducing the number of investors willing to hold or acquire the Company's Class A common stock, which could negatively impact the Company's ability to raise equity financing; (iii) limiting the Company's ability to use a registration statement to offer and sell freely tradable securities, thereby preventing the Company from accessing the public capital markets; and (iv) impairing the Company's ability to provide equity incentives to its employees.

We have incurred significant losses since our inception, and we expect to continue to incur losses for the foreseeable future. Accordingly, our financial condition raises substantial doubt regarding our ability to continue as a going concern.

During the nine-month period ended September 30, 2024, we incurred a net loss of \$18.1 million and had net cash used in operating activities of \$10.2 million. As of September 30, 2024, we had \$2.2 million in cash and an accumulated deficit of \$277.7 million. The Company cannot provide any assurance that unforeseen circumstances that could occur at any time within the next twelve months or thereafter will not increase the need for the Company to raise additional capital on an immediate basis. Additionally, the Company cannot provide any assurance that access to capital will be readily available when needed. These matters, among others, raise substantial doubt about the Company's ability to continue as a going concern for a period of one year after the date these financial statements are issued. The report of our independent registered public accountant on our financial statements as of and for the years ended December 31, 2023 and 2022 also includes explanatory language describing the existence of substantial doubt about our ability to continue as a going concern. See Note 1 – Organization and Basis of Presentation of our accompanying unaudited condensed consolidated financial statements included in Part I, Item 1, Financial Statements of this Form 10-Q and “—Liquidity and Capital Resources” in Part I, Item 2, Management's Discussion and Analysis of Financial Condition and Results of Operations of this Form 10-Q for further information.

If we are unable to satisfy our capital requirements, we could be required to adopt one or more of the following alternatives: delaying the implementation of or revising certain aspects of our business strategy; reducing or delaying the development of our products; reducing or delaying capital spending, product development spending and marketing and promotional spending; entering into financing agreements on unattractive terms; significantly curtailing or discontinuing operations, or dissolve and liquidate our assets under the bankruptcy laws or otherwise.

There can be no assurance that we would be able to take any of the actions referred to above because of a variety of commercial or market factors, including, without limitation, market conditions being unfavorable for an equity or debt issuance or similar transactions. In addition, such actions, if taken, may not enable us to satisfy our capital requirements if the actions that we are able to consummate do not generate a sufficient amount of additional capital. If we are ultimately unable to satisfy our capital requirements, we would likely need to dissolve and liquidate our assets under the bankruptcy laws or otherwise.

The following risk factor does not take into account the proposed Merger and assumes that the Company remains a stand-alone company except as otherwise noted.

There can be no assurance that our evaluation of strategic alternatives will enhance stockholder value or result in any transaction being consummated, and speculation and uncertainty regarding the outcome of our evaluation of strategic alternatives may adversely impact our business, financial condition and results of operations.

On May 10, 2024, we announced our intention to evaluate strategic alternatives. There can be no assurance of the terms, timing or structure of any transaction, or whether any such transaction will take place at all, and any such transaction is subject to risks and uncertainties. The process of reviewing strategic alternatives may involve significant resources and costs. In addition, the announced evaluation of strategic alternatives may cause or result in:

- disruption of our business;
- diversion of the attention of management;
- increased stock price volatility;
- increased costs and advisory fees; and
- challenges in retaining key employees

If we are unable to mitigate these or other potential risks related to the uncertainty caused by our exploration of strategic alternatives, it may disrupt our business or could have a material adverse effect on our financial condition and results of operations in future periods.

Our ability to complete a transaction, will depend on numerous factors, some of which are outside of our control. A merger of independent businesses is complex, costly and time-consuming. To consummate a merger, we may incur asset write-offs and restructuring costs and other related expenses that could have a material adverse impact on our operating results. Mergers also involve numerous other risks, including potential exposure to assumed litigation and unknown environmental and other liabilities, as well as undetected internal control, regulatory or other issues, or additional costs not anticipated at the time of a transaction.

Even if a merger transaction is completed, there can be no assurance that it will be successful or have a positive effect on stockholder value. Further, it is not certain what impact any potential transaction may have on our stock price, our current stockholders' percentage ownership, business, financial condition, and results of operations.

Risks Related to the Pending Merger with Verde

The completion of the Merger is subject to conditions, some or all of which may not be satisfied or completed on a timely basis, if at all. Failure to complete the Merger could have material adverse effects on the Company.

On October 23, 2024, the Company entered into the Merger Agreement with Merger Sub I, Merger Sub II and Verde, pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub I will merge with and into Verde, with Verde continuing as a wholly owned subsidiary of Nxu and the surviving corporation of the First Merger, and promptly following the First Merger, Verde shall merge with and into Merger Sub II, with Merger Sub II continuing as the surviving entity of the Second Merger. The Merger Agreement is subject to customary closing conditions.

We cannot predict whether and when the conditions to the Merger will be satisfied, including but not limited to the requirement that our stockholders approve the issuance of adequate shares to complete the Merger and effect a change of control pursuant to certain approval requirements of the Nasdaq Capital Market as well as approval of certain other proposals to be submitted to our stockholders. If one or more of these conditions are not satisfied, and as a result, we do not complete the Merger, we would remain liable for significant transaction costs, and the focus of our management would have been diverted from seeking other potential strategic opportunities, in each case without realizing any benefits of the Merger. Certain costs associated with the Merger have already been incurred or may be payable even if the Merger is not consummated. Finally, any disruptions to our business resulting from the announcement and pendency of the Merger, including any adverse changes in our relationships with our customers, clients, suppliers and employees, could continue or accelerate in the event that we fail to consummate the Merger.

In addition, the Merger Agreement generally requires us to operate in the ordinary course of business consistent with past practice, pending consummation of the Merger, and restricts us from taking certain actions with respect to our business and financial affairs without Verde's consent. Such restrictions will be in place until either the Merger is consummated or the Merger Agreement is terminated. These restrictions could restrict our ability to, or prevent us from, pursuing attractive business opportunities (if any) that arise prior to the consummation of the Merger. For these and other reasons, the pendency of the Merger could adversely affect our business, operating results and financial condition.

The price of our Class A common stock may also fluctuate significantly based on announcements by Verde, other third parties, or us regarding the Merger or based on market perceptions of the likelihood of the satisfaction of the conditions to the consummation of the Merger. Such announcements may lead to perceptions in the market that the Merger may not be completed, which could cause our share price to fluctuate or decline.

If we do not consummate the Merger, the price of our Class A common stock may decline significantly from the current market price, which may reflect a market assumption that the Merger will be consummated. Any of these events could have a material adverse effect on our business, operating results and financial condition and could cause a decline in the price of our Class A common stock.

If we do not successfully consummate the Merger or another strategic transaction, our board of directors may decide to pursue a dissolution and liquidation of the Company. In such an event, the amount of cash available for distribution to the Company's stockholders will depend heavily on the costs and timing of such liquidation as well as the amount of cash that will need to be reserved for commitments and contingent liabilities, as to which we can give no assurance.

The Merger will involve substantial costs and will require substantial management resources.

In connection with the consummation of the Merger, management and financial resources have been diverted and will continue to be diverted towards the completion of the Merger. We expect to incur substantial costs and expenses relating to, as well as the direction of management resources towards, the Merger. Such costs, fees and expenses include fees and expenses payable to financial advisors, other professional fees and expenses, fees and costs relating to regulatory filings and filing with the SEC and notices and other transaction-related costs, fees and expenses. If the Merger is not completed, we will have incurred substantial expenses and expended substantial management resources for which we will have received little or no benefit if the closing of the Merger does not occur.

Stockholder litigation could prevent or delay the consummation of the Merger or otherwise negatively impact our business, operating results and financial condition.

We may incur additional costs in connection with the defense or settlement of any stockholder litigation in connection with the Merger. These lawsuits or other future litigation may adversely affect our ability to complete the Merger. We could incur significant costs in connection with any such litigation, including costs associated with the indemnification of our directors and officers.

Furthermore, one of the conditions to the consummation of the Merger is the absence of any governmental order or law preventing the consummation of the Merger or making the consummation of the Merger illegal. Consequently, if a plaintiff were to secure injunctive or other relief prohibiting, delaying or otherwise adversely affecting our ability to complete the consummation of the Merger, then such injunctive or other relief may prevent the Merger from becoming effective within the expected time frame or at all.

Another attractive strategic transaction may not be available if the Merger is not completed.

If the Merger is not completed and is terminated, there can be no assurance that the Company will be able to find a party willing to pay equivalent or more attractive consideration than the consideration to be provided under the Merger or be willing to proceed at all with a similar transaction or any alternative transaction.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Rule 10b5-1 Trading Plans

During the three months ended September 30, 2024, no director or officer of the Company adopted or terminated any “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement” (as such terms are defined under Item 408(a) of Regulation S-K).

Item 6. Exhibits

Exhibit No.	Exhibit Description
--------------------	----------------------------

2.1	<u>Agreement and Plan of Merger, dated as of October 23, 2024, by and among Nxu, Inc., Nxu Merger Sub, Inc., Nxu Merger Sub, LLC and Verde Biosins, Inc. (incorporated by reference to Exhibit 2.1 of the Company’s Form 8-K filed with the SEC on October 24, 2024)</u>
3.1	<u>Certificate of Incorporation of Nxu, Inc. (incorporated by reference to Exhibit 3.1 of the Company’s Form 10-K filed with the SEC on April 1, 2024)</u>
3.2	<u>Certificate of Amendment to the Certificate of Incorporation of Nxu, Inc., dated December 26, 2023 (incorporated by reference to Exhibit 3.2 of the Company’s Form 8-K filed with the SEC on December 27, 2023)</u>
3.3	<u>Certificate of Amendment of Certificate of Incorporation of Nxu, Inc., dated August 16, 2024 (incorporated by reference to Exhibit 3.1 of the Company’s Form 8-K filed with the SEC on August 16, 2024)</u>
3.4	<u>Certificate of Designations of Series A Convertible Preferred Stock of Nxu, Inc., dated December 22, 2023 (incorporated by reference to Exhibit 3.1 to the Company’s Form 8-K filed with the SEC on December 27, 2023)</u>
3.5*	<u>Certificate of Designations of Series B Preferred Stock of Nxu, Inc., dated August 16, 2024 (incorporated by reference to Exhibit 3.5 of the Company’s Registration Statement on Form S-4 filed with the SEC on November 12, 2024)</u>
3.6	<u>Bylaws of Nxu, Inc. (incorporated by reference to Exhibit 3.4 of the Company’s Form 10-K filed with the SEC on April 1, 2024)</u>
3.7	<u>Amendment No. 1 to the Bylaws of Nxu, Inc. (incorporated by reference to Exhibit 3.1 of the Company’s Form 8-K filed with the SEC on July 24, 2024)</u>

10.1+	<u>Nxu, Inc. Amended and Restated 2023 Omnibus Incentive Plan (incorporated by reference to Exhibit 3.1 of the Company's Form 8-K filed with the SEC on August 16, 2024)</u>
10.2	<u>Form of Nxu Support Agreement (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed with the SEC on October 24, 2024)</u>
10.3	<u>Form of Verde Support Agreement (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed with the SEC on October 24, 2024)</u>
10.4	<u>Form of Lock-Up Agreement (incorporated by reference to Exhibit 10.3 of the Company's Form 8-K filed with the SEC on October 24, 2024)</u>
10.5	<u>Voting Agreement and Irrevocable Proxy, dated as of October 23, 2024, by and between Nxu, Inc. and Mark Hanchett (incorporated by reference to Exhibit 10.4 of the Company's Form 8-K filed with the SEC on October 24, 2024)</u>
10.6+	<u>Form of Amendment to Employment Agreement, by and between Nxu, Inc. and each of Mark Hanchett and Annie Pratt (incorporated by reference to Exhibit 10.5 of the Company's Form 8-K filed with the SEC on October 24, 2024)</u>
10.7+	<u>Executive Employment Agreement, dated as of October 23, 2024, by and between Nxu, Inc. and Sarah Wyant (incorporated by reference to Exhibit 10.6 of the Company's Form 8-K filed with the SEC on October 24, 2024)</u>
10.8+	<u>Form of Board of Directors Agreement, by and between Nxu, Inc. and each of Jessica Billingsley and Britt Ide (incorporated by reference to Exhibit 10.7 of the Company's Form 8-K filed with the SEC on October 24, 2024)</u>
10.9+	<u>Amendment to Restricted Stock Award Agreement, dated as of October 23, 2024, by and between Nxu, Inc. and Caryn Nightengale (incorporated by reference to Exhibit 10.8 of the Company's Form 8-K filed with the SEC on October 24, 2024)</u>
31.1*	<u>Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d - 14(a)</u>
31.2*	<u>Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d - 14(a)</u>
32.1**	<u>Certification of Chief Executive Officer and Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002</u>
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.
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (embedded within the Inline XBRL document)
*	Filed herewith.
**	Furnished herewith. This exhibit should not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.
+	Management contract or compensatory plan or arrangement.

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.

Nxu, Inc.

Date: November 12, 2024

By: /s/ Sarah Wyant

Sarah Wyant

Chief Financial Officer

(Principal Financial Officer)

**CERTIFICATE OF DESIGNATIONS OF
SERIES B PREFERRED STOCK OF
NXU, INC.**

Nxu, Inc., a Delaware corporation (the "Corporation"), hereby certifies that:

The following resolution was duly adopted by the Board of Directors of the Corporation by consent in lieu of a meeting pursuant to Section 141(f) and Section 151(g) of the Delaware General Corporation Law (the "DGCL") on July 24, 2024.

Resolved, that pursuant to the authority set forth in Article IV, Part B of the Certificate of Incorporation of the Corporation (as amended from time to time, the "Certificate of Incorporation"), the Board of Directors hereby fixes the designations, powers, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions thereof, of a series of preferred stock, par value \$0.0001 per share, of the Corporation (the "Preferred Stock"), as follows:

1. **Designation and Number.** This series of Preferred Stock shall be designated as the "Series B Preferred Stock," and one share is hereby designated as the sole share of Series B Preferred Stock.
 2. **Defined Terms.**
 - (a) Capitalized terms that are not defined in this Certificate of Designations have the meaning given those terms in the Certificate of Incorporation.
 - (b) "Holder" means the person or entity then holding the Series B Preferred Stock.
 3. **Dividends.** The Holder shall not be entitled to receive dividends of any kind by reason of his or her ownership of Series B Preferred Stock.
 4. **Liquidation, Dissolution and Winding Up.** Following the liquidation, dissolution or winding up of the Corporation, the Holder shall be entitled to receive \$1.00, payable in cash and only out of funds legally available therefor, by reason of his or her ownership of Series B Preferred Stock, which shall be paid prior to the payment of any amounts to the holders of Class A Common Stock and Class B Common Stock in connection with such liquidation, dissolution or winding up. The Series B Preferred Stock shall rank junior to the Series A Preferred Stock with respect to distributions paid on a liquidation, dissolution or winding up of the Corporation. Any series of Preferred Stock authorized and issued by the Corporation following the effectiveness of this Certificate of Designations may rank senior or junior to, or on a parity with, the Series B Preferred Stock, as determined by the terms of such series of Preferred Stock.
 5. **Voting Rights.** With respect to each action voted upon, or proposed to be voted upon, by the holders of any class or series of capital stock of the Corporation, the Series B Preferred Stock shall entitle the Holder to cast a number of votes equal to the total number of votes that could be cast by the holders of Class A Common Stock and Class B Common Stock on such action. The Holder shall be entitled to vote with the Class A Common Stock and Class B Common Stock as a single class on such actions.
-

6. **Redemption.** The Series B Preferred Stock may be redeemed at any time at the option of the Board of Directors of the Corporation (acting in its sole discretion) for \$1.00, payable in cash and only out of funds legally available therefor.
7. **Amendments.** No amendment to this Certificate of Designations shall be effected without the approval of the Holder.
8. **Governing Law.** This Certificate of Designations shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware, regardless of any laws or legal principles that might otherwise govern under the applicable principles of conflicts of law thereof.
9. **Severability.** The provisions of this Certificate of Designations are severable, so that the invalidity or unenforceability of any provision of this Certificate of Designations shall not affect the validity or enforceability of any other provision of this Certificate of Designations.

[Signature Page Follows]

In witness whereof, the undersigned Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on the date set forth below.

NXU, INC.

By: /s/ Mark Hanchett
Mark Hanchett
Chief Executive Officer

DATED: November 12, 2024

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

I, Mark Hanchett, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Nxu, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2024

By: /s/ Mark Hanchett
Mark Hanchett
Chief Executive Officer

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

I, Sarah Wyant, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Nxu, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2024

By: /s/ Sarah Wyant

Sarah Wyant

Interim Chief Financial Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
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 of Nxu, Inc. (the “*Company*”) on Form 10-Q for the period ended September 30, 2024 (the “*Report*”), the undersigned hereby certify in their capacities as Chief Executive Officer and Chief Financial Officer of the Company, respectively, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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 result of operations of the Company.

Date: November 12, 2024

By: /s/ Mark Hanchett

Mark Hanchett
Chief Executive Officer

Date: November 12, 2024

By: /s/ Sarah Wyant

Sarah Wyant
Interim Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.
