

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED June 30, 2022

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

FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission File Number 001-38538

electroCore, Inc.

(Exact name of Registrant as specified in its charter)

Delaware

20-3454976

(State or other jurisdiction of incorporation or organization)

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

200 Forge Way, Suite 205, Rockaway, NJ 07866
(Address of principal executive offices, including zip code)

(973) 290-0097
(Registrant's telephone number, including area code)

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

| <u>Title of each class</u> | <u>Trading Symbol(s)</u> | <u>Name of each exchange on which registered</u> |
|---|--------------------------|--|
| Common Stock, par value \$0.001 per share | ECOR | The Nasdaq Capital Market |

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 | <input type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input checked="" type="checkbox"/> | Smaller reporting company | <input checked="" type="checkbox"/> |
| Emerging growth company | <input checked="" type="checkbox"/> | | |

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

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

As of August 1, 2022 the registrant had 71,121,078 shares of common stock outstanding.

| PART I. FINANCIAL INFORMATION | | Page Number |
|--------------------------------------|--|-------------|
| | <u>Cautionary Note Regarding Forward-Looking Statements</u> | 3 |
| Item 1. | Financial Statements | |
| | <u>Condensed Consolidated Balance Sheets as of June 30, 2022 (unaudited) and December 31, 2021</u> | 4 |
| | <u>Condensed Consolidated Statements of Operations for the Three and Six Months Ended June 30, 2022 and 2021 (Unaudited)</u> | 5 |
| | <u>Condensed Consolidated Statements of Comprehensive Loss for the Three and Six Months Ended June 30, 2022 and 2021 (Unaudited)</u> | 6 |
| | <u>Condensed Consolidated Statements of Equity for the Three and Six Months Ended June 30, 2022 and 2021 (Unaudited)</u> | 7 |
| | <u>Condensed Consolidated Statements of Cash Flows for the Six Months Ended June 30, 2022 and 2021 (Unaudited)</u> | 9 |
| | <u>Notes to Condensed Consolidated Financial Statements (unaudited)</u> | 10 |
| Item 2. | <u>Management’s Discussion and Analysis of Financial Condition and Results of Operations</u> | 19 |
| Item 3. | <u>Quantitative and Qualitative Disclosures About Market Risk</u> | 25 |
| Item 4. | <u>Controls and Procedures</u> | 25 |
| PART II. OTHER INFORMATION | | |
| Item 1. | <u>Legal Proceedings</u> | 26 |
| Item 1A. | <u>Risk Factors</u> | 26 |
| Item 2. | <u>Unregistered Sales of Equity Securities and Use of Proceeds</u> | 26 |
| Item 3. | <u>Defaults Upon Senior Securities</u> | 26 |
| Item 4. | <u>Mine Safety Disclosures</u> | 26 |
| Item 5. | <u>Other Information</u> | 26 |
| Item 6. | <u>Exhibits</u> | 27 |
| | <u>Signatures</u> | 28 |

REFERENCES TO ELECTROCORE

In this Quarterly Report on Form 10-Q, unless otherwise stated or the context otherwise requires, references to the “Company,” “electroCore,” “we,” “us” and “our” refer to electroCore, Inc. a Delaware corporation and its subsidiaries.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q, or Quarterly Report, contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed in the forward-looking statements. The statements contained in this report that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Forward-looking statements are often identified by the use of words such as, but not limited to, “anticipate,” “believe,” “can,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “project,” “seek,” “should,” “strategy,” “target,” “will,” “would” and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management based on information currently available to them. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, (i) risks and uncertainties related to the impact of the COVID-19 pandemic on general political and economic conditions, including as a result of efforts by governmental authorities to mitigate the COVID-19 pandemic, such as travel bans, vaccine mandates, shelter in place orders and third-party business closures and resource allocations, manufacturing and supply chains and patient access to commercial products; our ability to execute our operational and budget plans in light of the COVID-19 pandemic, and (ii) those included in our Form 10-Qs, our Annual Report on Form 10-K for the year ended December 31, 2021, in our other filings with the U.S. Securities and Exchange Commission or in materials incorporated by reference therein, including the information in the sections entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in such filings. Furthermore, any such forward-looking statements in this Quarterly Report speak only as of the date of this report. Except as required by law, we undertake no obligation to update or revise any forward-looking statements to reflect events or circumstances after the date of such statements.

The electroCore logo, gammaCore and other trademarks of electroCore, Inc. appearing in this Quarterly Report are the property of electroCore, Inc. All other trademarks, service marks and trade names in this Quarterly Report are the property of their respective owners. We have omitted the ® and ™ designations, as applicable, for the trademarks used in this Quarterly Report.

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
(unaudited)
(in thousands, except share data)

| | June 30, 2022 | December 31, 2021 |
|--|------------------|----------------------|
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 26,330 | \$ 34,689 |
| Restricted cash | 250 | — |
| Accounts receivable, net | 575 | 438 |
| Inventories, net | 1,739 | 1,361 |
| Prepaid expenses and other current assets | 230 | 1,053 |
| Total current assets | 29,124 | 37,541 |
| Inventories, noncurrent | 2,905 | 3,941 |
| Property and equipment, net | 99 | 147 |
| Operating lease right of use assets, net | 592 | 613 |
| Other assets, net | 761 | 591 |
| Total assets | <u>\$ 33,481</u> | <u>\$ 42,833</u> |
| Liabilities and Equity | | |
| Current liabilities: | | |
| Accounts payable | \$ 2,053 | \$ 938 |
| Accrued expenses and other current liabilities | 3,523 | 4,486 |
| Current portion of operating lease liabilities | 68 | 61 |
| Total current liabilities | 5,644 | 5,485 |
| Noncurrent liabilities: | | |
| Operating lease liabilities, noncurrent | 664 | 700 |
| Total liabilities | 6,308 | 6,185 |
| Commitments and contingencies | — | — |
| Stockholders' equity: | | |
| Preferred Stock, par value \$0.001 per share; 10,000,000 shares authorized at June 30, 2022 and December 31, 2021; 0 shares issued and outstanding at June 30, 2022 and December 31, 2021 | — | — |
| Common Stock, par value \$0.001 per share; 500,000,000 shares authorized at June 30, 2022 and December 31, 2021; 71,119,471 shares issued and outstanding at June 30, 2022 and 70,704,123 shares issued and outstanding at December 31, 2021 | 71 | 71 |
| Additional paid-in capital | 162,301 | 160,772 |
| Accumulated deficit | (135,127) | (124,208) |
| Accumulated other comprehensive loss | (72) | 13 |
| Total equity | 27,173 | 36,648 |
| Total liabilities and equity | <u>\$ 33,481</u> | <u>\$ 42,833</u> |

See accompanying notes to unaudited condensed consolidated financial statements.

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Operations
(unaudited)
(in thousands, except per share data)

| | Three months ended | | Six months ended | |
|---|--------------------|------------|------------------|------------|
| | June 30, | | June 30, | |
| | 2022 | 2021 | 2022 | 2021 |
| Net sales | \$ 2,157 | \$ 1,269 | \$ 4,056 | \$ 2,473 |
| Cost of goods sold | 358 | 374 | 718 | 738 |
| Gross profit | 1,799 | 895 | 3,338 | 1,735 |
| Operating expenses | | | | |
| Research and development | 1,341 | 825 | 2,275 | 1,324 |
| Selling, general and administrative | 6,278 | 5,272 | 12,464 | 10,997 |
| Total operating expenses | 7,619 | 6,097 | 14,739 | 12,321 |
| Loss from operations | (5,820) | (5,202) | (11,401) | (10,586) |
| Other (income) expense | | | | |
| Gain on extinguishment of debt | — | (1,422) | — | (1,422) |
| Interest and other income | (38) | (1) | (42) | (1) |
| Other expense | — | — | 5 | — |
| Total other (income) expense | (38) | (1,423) | (37) | (1,423) |
| Loss before income taxes | (5,782) | (3,779) | (11,364) | (9,163) |
| Benefit from income taxes | 445 | 885 | 445 | 885 |
| Net loss | \$ (5,337) | \$ (2,894) | \$ (10,919) | \$ (8,278) |
| Net loss per share of common stock - Basic and Diluted (see Note 8) | \$ (0.08) | \$ (0.06) | \$ (0.15) | \$ (0.17) |
| Weighted average common shares outstanding - Basic and Diluted (see Note 8) | 70,816 | 48,520 | 70,744 | 48,089 |

See accompanying notes to unaudited condensed consolidated financial statements.

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Comprehensive Loss
(unaudited)
(in thousands)

| | <u>Three months ended June 30,</u> | | <u>Six months ended June 30,</u> | |
|--|------------------------------------|-------------------|----------------------------------|-------------------|
| | <u>2022</u> | <u>2021</u> | <u>2022</u> | <u>2021</u> |
| Net loss | \$ (5,337) | \$ (2,894) | \$ (10,919) | \$ (8,278) |
| Other comprehensive (loss) income: | | | | |
| Foreign currency translation adjustment | (58) | 5 | (85) | 147 |
| Unrealized gain (loss) on securities, net of taxes as applicable | — | — | — | 2 |
| Other comprehensive (loss) income | (58) | 5 | (85) | 149 |
| Comprehensive loss | <u>\$ (5,395)</u> | <u>\$ (2,889)</u> | <u>\$ (11,004)</u> | <u>\$ (8,129)</u> |

See accompanying notes to unaudited condensed consolidated financial statements.

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Equity
(unaudited)
(in thousands)

| | Common Stock | | Additional paid-in capital | Accumulated deficit | Accumulated other comprehensive income (loss) | Total equity |
|--|-----------------|--------------|----------------------------------|------------------------|--|------------------|
| | Shares | Amount | | | | |
| Balance, January 1, 2022 | 70,704 | \$ 71 | \$ 160,772 | \$ (124,208) | \$ 13 | \$ 36,648 |
| Net loss | — | — | — | (5,582) | — | (5,582) |
| Other comprehensive loss | — | — | — | — | (27) | (27) |
| Issuance of stock related to employee compensation plans, net of forfeitures | 14 | — | — | — | — | — |
| Share based compensation | — | — | 777 | — | — | 777 |
| Balance, March 31, 2022 | 70,718 | \$ 71 | \$ 161,549 | \$ (129,790) | \$ (14) | \$ 31,816 |
| Net loss | — | — | — | (5,337) | — | (5,337) |
| Other comprehensive income | — | — | — | — | (58) | (58) |
| Issuance of stock related to employee compensation plans, net of forfeitures | 401 | — | — | — | — | — |
| Share based compensation | — | — | 752 | — | — | 752 |
| Balance, June 30, 2022 | <u>71,119</u> | <u>\$ 71</u> | <u>\$ 162,301</u> | <u>\$ (135,127)</u> | <u>\$ (72)</u> | <u>\$ 27,173</u> |

See accompanying notes to unaudited condensed consolidated financial statements

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Equity
(unaudited)
(in thousands)

| | Common Stock | | Additional paid-in capital | Accumulated deficit | Accumulated other comprehensive income (loss) | Total electroCore, Inc. stockholders' equity | Noncontrolling interest | Total equity |
|---|-----------------|--------------|----------------------------------|------------------------|--|---|----------------------------|------------------|
| | Shares | Amount | | | | | | |
| Balances as of January 1, 2021 | 45,560 | \$ 45 | \$ 130,205 | \$ (106,990) | \$ (251) | \$ 23,009 | \$ 635 | \$ 23,644 |
| Net loss | — | — | — | (5,384) | — | (5,384) | — | (5,384) |
| Other comprehensive income | — | — | — | — | 144 | 144 | — | 144 |
| Issuance of stock | 2,750 | 3 | 6,918 | — | — | 6,921 | — | 6,921 |
| Issuance of stock related to employee compensation plans, net of forfeitures | 18 | — | — | — | — | — | — | — |
| Settlement of accrued bonus | 165 | — | 400 | — | — | 400 | — | 400 |
| Share based compensation | — | — | 942 | — | — | 942 | — | 942 |
| Balances as of March 31, 2021 | 48,493 | \$ 48 | \$ 138,465 | \$ (112,374) | \$ (107) | \$ 26,032 | \$ 635 | \$ 26,667 |
| Net loss | — | — | — | (2,894) | — | (2,894) | — | (2,894) |
| Other comprehensive income | — | — | — | — | 5 | 5 | — | 5 |
| Issuance of stock related to employee compensation plans, net of forfeitures | 197 | — | — | — | — | — | — | — |
| Share based compensation | — | — | 838 | — | — | 838 | — | 838 |
| Balances as of June 30, 2021 | <u>48,690</u> | <u>\$ 48</u> | <u>\$ 139,303</u> | <u>\$ (115,268)</u> | <u>\$ (102)</u> | <u>\$ 23,981</u> | <u>\$ 635</u> | <u>\$ 24,616</u> |

ELECTROCORE, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
(unaudited)
(in thousands)

| | Six months ended | |
|---|-------------------------|------------------|
| | June 30, | |
| | 2022 | 2021 |
| Cash flows from operating activities: | | |
| Net loss | \$ (10,919) | \$ (8,278) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Stock-based compensation | 1,529 | 1,780 |
| Depreciation and amortization | 247 | 191 |
| Amortization of marketable securities discount | — | 114 |
| Gain on extinguishment of debt | — | (1,422) |
| Net noncash lease expense | 21 | 41 |
| Inventory reserve charge | — | 39 |
| Changes in operating assets and liabilities: | | |
| Accounts receivable, net | (137) | (98) |
| Inventories | 658 | 174 |
| Prepaid expenses and other current assets | 823 | 1,082 |
| Accounts payable | 1,115 | 220 |
| Accrued expenses and other current liabilities | (963) | 363 |
| Right of use operating leases | — | (78) |
| Operating lease liabilities | (29) | 46 |
| Other assets | (369) | — |
| Net cash used in operating activities | <u>(8,024)</u> | <u>(5,826)</u> |
| Cash flows from investing activities: | | |
| Purchase of marketable securities | — | (5,083) |
| Proceeds from maturities of marketable securities | — | 14,300 |
| Net cash provided by investing activities | <u>—</u> | <u>9,217</u> |
| Cash flows from financing activities: | | |
| Shares issued | — | 6,920 |
| Net cash provided by financing activities | <u>—</u> | <u>6,920</u> |
| Effect of changes in exchange rates on cash and cash equivalents | (85) | 146 |
| Net (decrease) increase in cash and cash equivalents | (8,109) | 10,457 |
| Cash and cash equivalents – beginning of period | 34,689 | 4,242 |
| Cash and cash equivalents and restricted cash – end of period | <u>\$ 26,580</u> | <u>\$ 14,699</u> |
| Supplemental cash flows disclosures: | | |
| Proceeds from sale of state net operating losses | \$ 445 | \$ 1,425 |
| Interest paid | \$ 4 | \$ — |
| Supplemental schedule of noncash activity: | | |
| 2020 Accrued bonus awarded in equity | \$ — | \$ 400 |

See accompanying notes to unaudited condensed consolidated financial statements.

ELECTROCORE, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(unaudited)

Note 1. The Company

electroCore is commercial stage medical device company with a proprietary non-invasive vagus nerve stimulation, or nVNS, therapy, called gammaCore. nVNS is a platform bioelectronic medical therapy that modulates neurotransmitters and immune function through its effects on both the peripheral and central nervous systems. The Company is focused on utilizing gammaCore in the management and treatment of primary headache conditions.

electroCore, headquartered in Rockaway, New Jersey, has two wholly owned subsidiaries: electroCore Germany GmbH, and electroCore UK Ltd. The Company has ceased its operations in Germany, although sales to Germany are still supported by electroCore UK Ltd.

Note 2. Summary of Significant Accounting Policies

(a) Basis of Presentation

The accompanying condensed consolidated financial statements were prepared in conformity with U.S. generally accepted accounting principles ("U.S. GAAP") and with instructions to Form 10-Q and Article 10 of Regulation S-X under the Securities Exchange Act of 1934, as amended. In the opinion of management, the Company has made all necessary adjustments, which include normal recurring adjustments necessary for a fair presentation of the Company's condensed consolidated financial position and results of operations for the interim periods presented. Certain information and disclosures normally included in the annual consolidated financial statements prepared in accordance with U.S. GAAP have been condensed or omitted. These interim condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes for the year ended December 31, 2021 included in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 10, 2022. The results for the three and six months ended June 30, 2022 are not necessarily indicative of the results to be expected for a full year, any other interim periods or any future year or period.

(b) Principles of Consolidation

The accompanying condensed consolidated financial statements include the accounts of electroCore and its wholly owned subsidiaries. electroCore Australia was consolidated with the non-controlled equity presented as non-controlling interest in the Company's Condensed Consolidated Statement of Equity for the three and six months ended June 30, 2021. The Company terminated its affiliation with electroCore Australia on November 2, 2021 and, as such, this dormant entity was not included in the Company's Condensed Consolidated Statement of Equity for the six months ended June 30, 2022. All intercompany balances and transactions have been eliminated in consolidation.

(c) Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include allowances for doubtful accounts, trade credits, rebates, co-payment assistance and sales returns, valuation of inventory, stock compensation, incremental borrowing rate and contingencies.

(d) Cash, Cash Equivalents and Restricted Cash

The following table provides a reconciliation of cash, cash equivalents and restricted cash to the balance reflected on the Condensed Consolidated Statement of Cash Flows for the six months ended June 30, 2022:

| <i>(in thousands)</i> | Six months ended June 30, 2022 |
|--|---|
| Cash and cash equivalents | \$ 26,330 |
| Restricted cash | 250 |
| Total cash, cash equivalents and restricted cash | <u>\$ 26,580</u> |

(e) Restricted Cash

The Company's restricted cash consists of cash that the Company is contractually obligated to maintain in accordance with the terms of its new corporate credit card arrangement with Citibank.

(f) Reclassification of Balance Sheet Item

Certain accounts payable amounts reported at December 31, 2021 have been reclassified to conform to current period presentation. A total of approximately \$605,000 of legal fees accrued at December 31, 2021 were reported on the line Accrued expenses and other current liabilities in the accompanying Condensed Consolidated Balance Sheet at December 31, 2021. See Note 7. Accrued Expenses and Other Current Liabilities.

Note 3. Significant Risks and Uncertainties

Liquidity

The Company has experienced significant net losses and cash used in operations, and it expects to continue to incur net losses and cash used in operations for the near future as it works to increase market acceptance of its gammaCore therapy. The Company has never been profitable and has incurred net losses and cash used in operations in each year since its inception. The Company incurred net losses of \$10.9 and \$8.3 million for the six months ended June 30, 2022 and 2021, respectively. Net cash used in operating activities for the six months ended June 30, 2022 and 2021 was \$8.0 million and \$5.8 million, respectively.

The Company's expected cash requirements for the next 12 months and beyond are largely based on the commercial success of its products. There are significant risks and uncertainties as to its ability to achieve these operating results. The Company believes its cash and cash equivalents on hand will enable it to fund its operating expenses and capital expenditure requirements, as currently planned, for at least the next 12 months from the date the accompanying financial statements are issued.

Concentration of Revenue Risks

The Company earns a significant amount of its revenue (i) in the United States from the Department of Veterans Affairs and Department of Defense ("VA/DoD") pursuant to its qualifying contract under the Federal Supply Schedule and open market sales to individual Department of Veterans Affairs facilities, and (ii) in the United Kingdom from the National Health Service. The VA/DoD and National Health Service were the Company's sole customers accounting for 10% or more of total net sales during the three and six months ended June 30, 2022 and 2021. The following table reflects the respective concentration as a percentage of the Company's net sales:

| Revenue channel: | Three months ended June | | Six months ended June 30, | |
|-------------------------|-------------------------|-------|---------------------------|-------|
| | 30, | | | |
| | 2022 | 2021 | 2022 | 2021 |
| VA/DoD | 55.1% | 61.3% | 60.4% | 59.0% |
| National Health Service | 16.4% | 27.0% | 15.3% | 26.4% |

During the three months ended June 30, 2022 and 2021, three and six VA/DOD facilities represented approximately 53.1% and 64.4%, respectively, of total VA/DOD net sales and two facilities accounted for more than 10% of total VA/DOD net sales in both periods. During the six months ended June 30, 2022 and 2021, three and four VA/DOD facilities represented approximately 51.9% and 51.0%, respectively, of total VA/DOD net sales and three and two facilities accounted for more than 10% of total VA/DOD net sales, respectively.

Foreign Currency Exchange

The Company has foreign currency exchange risk related to revenue and operating expenses in currencies other than the local currencies in which it operates. The Company is exposed to currency risk from the potential changes in functional currency values of its assets, liabilities, and cash flows denominated in foreign currencies.

COVID-19 Risks and Uncertainties

The Company continues to monitor the impact of the coronavirus pandemic on all aspects of its business and geographies, including how it will impact business partners, customers, and the global supply chain. While the Company experienced disruptions during the three and six months ended June 30, 2022 and 2021 from the coronavirus pandemic, it is unable to predict the full impact that the coronavirus pandemic may have on its financial condition, results of operations and cash flows due to numerous uncertainties. These uncertainties include the scope, severity and duration of the pandemic, the actions taken to contain the pandemic or mitigate its impact and the direct and indirect economic effects of the pandemic and containment measures, among others. The coronavirus pandemic has significantly adversely impacted global economic activity and has contributed to significant volatility and negative pressure in financial markets. Depending upon the duration and severity of the pandemic, the continuing effect on the Company's results and outlook over the long term remains uncertain.

Note 4. Revenue

Geographical Net Sales

The following table presents net sales disaggregated by geographic market:

| (in thousands) | Three months ended June 30, | | Six months ended June 30, | |
|------------------------|-----------------------------|-----------------|---------------------------|-----------------|
| | 2022 | 2021 | 2022 | 2021 |
| Product revenue | | | | |
| United States | \$ 1,690 | \$ 882 | \$ 3,284 | \$ 1,706 |
| United Kingdom | 355 | 354 | 621 | 671 |
| Other | 64 | 33 | 103 | 96 |
| License revenue | | | | |
| Japan | 48 | — | 48 | — |
| Total Net Sales | <u>\$ 2,157</u> | <u>\$ 1,269</u> | <u>\$ 4,056</u> | <u>\$ 2,473</u> |

Performance Obligations

The Company's net revenue represents total revenue, net of discounts, vouchers, rebates, returns, co-payment assistance, and certain fees for services related to its e-commerce platform. These adjustments represent variable consideration and are recorded for the Company's estimate of cash consideration expected to be given by the Company to a customer that is presumed to be a reduction of the transaction price of the Company's products and, therefore, are characterized as a reduction of revenue. These adjustments are established by management as its best estimate of available information and will be adjusted to reflect known changes in the factors that impact such allowances. Adjustments for variable consideration are determined based on the contractual terms with customers, historical trends, the levels of inventory remaining in the distribution channel, as well as expectations about the market for the product.

Revenue is recognized when delivery of the product is completed. The Company deems control to have transferred upon the completion of delivery because that is the point in which (1) it has a present right to payment for the product, (2) it has transferred the physical possession of the product, (3) the customer has legal title to the product, (4) the customer has risks and rewards of ownership and (5) the customer has accepted the product. After the products have been delivered and control has transferred, the Company has no remaining unsatisfied performance obligations.

Trade credits are discounts that are contingent upon a timely remittance of payment and are estimated based on historical experience. For the three and six months ended June 30, 2022 and 2021, the trade credits and discounts were immaterial.

Contract Balances

The Company generally invoices the customer and recognizes revenue once its performance obligations are satisfied, at which point payment is unconditional. Accordingly, under ASC 606, the Company's contracts with customers did not give rise to contract assets or liabilities during the three and six months ended June 30, 2022 and 2021.

Agreed upon payment terms with customers are within generally within 30 days of shipment. Accordingly, contracts with customers do not include a significant financing component.

License Agreement with Teijin Limited

Effective March 29, 2022, the Company entered into an agreement with Teijin Limited (Teijin), to license certain exclusive rights to its nVNS technology for commercialization in Japan for a range of primary headache disorders.

Under the agreement, the Company will receive a non-refundable, upfront payment for the licenses and rights granted to Teijin. The financial terms of the Teijin license agreement contain milestone payments, payable upon the decision by Teijin to commercialize the licensed product for specific indications. The Company also will receive an annual license fee commencing on the first anniversary of the agreement and payable annually until the first commercial sale on any approved indication. Upon favorable regulatory and payor coverage decisions in Japan, the parties plan to enter into an exclusive commercial supply agreement for gammaCore nVNS.

The agreement contains customary terms and conditions, including renewal and termination provisions, as well as minimum purchase commitments once a commercial supply agreement is in place. Furthermore, Teijin is responsible for all costs associated with regulatory approval by the Pharmaceuticals and Medical Devices Agency (PMDA), the Japanese FDA equivalent. As part of the agreement, Teijin will have the right of first negotiation for a license to additional indications in Japan. The Company began to recognize revenue from the non-refundable upfront payment over the 12-month period from the effective date due to the Company's continuing requirement to supply data under the agreement.

Note 5. Inventories

As of June 30, 2022 and December 31, 2021, inventories consisted of the following:

| (in thousands) | June 30, 2022 | December 31, 2021 |
|------------------------------|-----------------|----------------------|
| Raw materials | \$ 865 | \$ 769 |
| Work in process | 3,437 | 4,072 |
| Finished goods | 342 | 461 |
| Total inventories, net | 4,644 | 5,302 |
| Less: noncurrent inventories | 2,905 | 3,941 |
| Current inventories | <u>\$ 1,739</u> | <u>\$ 1,361</u> |

The reserve for obsolete inventory was \$711,000 and \$821,000 as of June 30, 2022 and December 31, 2021, respectively. The decrease in the reserve for obsolete inventory was due to the disposal of previously reserved inventory. The Company records charges for obsolete inventory in cost of goods sold. As of June 30, 2022 and December 31, 2021, noncurrent inventory was comprised of approximately \$0.6 million and \$0.9 million of raw materials, respectively, and \$2.3 million and \$3.0 million of work in process, respectively. Inventory classified under the category work in process consists of prefabricated assembled product.

Note 6. Leases

For the three and six months ended June 30, 2022 the Company recognized lease expense of \$38,000 and \$76,000, respectively, and \$47,000 and \$87,000, for the three and six months ended June 30, 2021 respectively. This expense does not include non-lease components associated with the lease agreements as the Company elected not to include such charges as part of the lease expense.

Supplemental Balance Sheet Information for Operating Leases:

| (in thousands) | June 30, 2022 | December 31, 2021 |
|--|---------------|----------------------|
| Operating leases: | | |
| Operating lease right of use assets | \$ 592 | \$ 613 |
| Operating lease liabilities: | | |
| Current portion of operating lease liabilities | 68 | 61 |
| Noncurrent operating lease liabilities | 664 | 700 |
| Total operating lease liabilities | <u>\$ 732</u> | <u>\$ 761</u> |
| Weighted average remaining lease term (in years) | 6.7 | 6.9 |
| Weighted average discount rate | 13.8% | 13.8% |

Future minimum lease payments under non-cancellable operating leases as of June 30, 2022:

| (in thousands) | |
|-------------------------------------|---------------|
| Remainder of 2022 | \$ 81 |
| 2023 | 164 |
| 2024 | 168 |
| 2025 | 171 |
| 2026 | 161 |
| 2027 and thereafter | 373 |
| Total future minimum lease payments | 1,118 |
| Less: Amounts representing interest | (386) |
| Total | <u>\$ 732</u> |

Note 7. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities as of June 30, 2022 and December 31, 2021 consisted of the following:

| (in thousands) | June 30, 2022 | December 31, 2021 |
|--|----------------------|------------------------------|
| Accrued professional fees | \$ 503 | \$ 468 |
| Accrued bonuses and incentive compensation | 910 | 1,849 |
| Accrued legal fees litigation expense | 947 | 605 |
| Accrued insurance expense | — | 499 |
| Accrued vacation and other employee related expenses | 642 | 455 |
| Accrued international taxes | 85 | 263 |
| Other | 436 | 347 |
| | <u>\$ 3,523</u> | <u>\$ 4,486</u> |

Finance and Security Agreement

On July 2, 2021, the Company entered into a Commercial Insurance Premium Finance and Security Agreement (the "2021 Agreement"). The 2021 Agreement provided for a single borrowing by the Company of \$1.2 million, with a ten-month term and an annual interest rate of 1.55%. The proceeds from this transaction were used to partially fund the premiums due under certain of the Company's insurance policies. All borrowings were repaid as of June 30, 2022. On July 5, 2022, the Company entered into a new Commercial Insurance Premium Finance and Security Agreement. See Note 12. Subsequent Event.

Note 8. Net Loss Per Share

Basic net loss per share is computed by dividing net loss by the weighted-average number of shares of common stock outstanding during the period. Diluted loss per share is computed by dividing net loss by the weighted-average number of shares of common stock outstanding adjusted to give effect to potentially dilutive securities. Restricted stock and unit awards, stock options, and warrants have not been included in the diluted loss per share calculation as their inclusion would have had an anti-dilutive effect.

The potential common stock equivalents that have been excluded from the computation of diluted loss per share consist of the following:

| (in thousands) | Six months ended June 30, | |
|--|----------------------------------|--------------|
| | 2022 | 2021 |
| Outstanding stock options | 6,282 | 5,070 |
| Nonvested restricted stock and unit awards | 947 | 1,265 |
| Stock purchase warrants | 178 | 217 |
| | <u>7,407</u> | <u>6,552</u> |

Note 9. Income Taxes

The Company may be eligible, from time to time, to receive cash from the sale of its net operating losses under New Jersey's Department of the Treasury - Division of Taxation NOL Transfer Program. On April 14, 2022, the Company received a net cash amount of approximately \$445,000 from the sale of its New Jersey state net operating losses. In 2021, the Company received a net cash amount of approximately \$880,000 from the sale of its New Jersey state net operating losses and tax credits. These sale proceeds are included in the Condensed Consolidated Statement of Operations for the three and six months ended June 30, 2022 and 2021, under the caption Benefit from income taxes.

Note 10. Stock Based Compensation

The following table presents a summary of activity related to stock options during the six months ended June 30, 2022:

| | Number of Options (in thousands) | Weighted Average Exercise Price | Weighted Average Remaining Contractual Term (Years) |
|------------------------------|--|---------------------------------------|---|
| Outstanding, January 1, 2022 | \$ 5,137 | \$ 4.61 | 8.0 |
| Granted | 1,238 | 0.75 | |
| Exercised | — | — | |
| Cancelled | (93) | 1.98 | |
| Outstanding, June 30, 2022 | <u>\$ 6,282</u> | <u>\$ 3.88</u> | <u>7.8</u> |
| Exercisable, June 30, 2022 | <u>\$ 3,083</u> | <u>\$ 6.17</u> | <u>7.0</u> |

The intrinsic value is calculated as the difference between the fair market value at June 30, 2022 and the exercise price per share of the stock options. As of June 30, 2022, all options outstanding had no intrinsic value. The options granted to employees generally vest over a three or four year period.

The following table presents a summary of activity related to restricted and deferred stock units (“Stock Units”) granted during the six months ended June 30, 2022:

| | Number of Shares (in thousands) | Weighted Average Grant Date Fair Value |
|----------------------------|---------------------------------------|--|
| Nonvested, January 1, 2022 | 1,056 | \$ 1.66 |
| Granted | 300 | 0.50 |
| Vested | (416) | 1.51 |
| Cancelled | (5) | 2.83 |
| Nonvested, June 30, 2022 | <u>935</u> | <u>\$ 1.34</u> |

In general, Stock Units granted to employees vest over two to four-year periods.

Immediately following the Company’s annual meeting of stockholders, the Company generally grants each non-employee director an equity award that vests over a 12-month period. Upon a non-employee director’s initial appointment or election to the board of directors, the Company grants such non-employee director an equity award subject to vesting as determined by the board of directors.

The Company recognized stock compensation expense for its equity awards as follows:

| (in thousands) | Three months ended June 30, | | Six months ended June 30, | |
|-------------------------------------|-----------------------------|---------------|---------------------------|-----------------|
| | 2022 | 2021 | 2022 | 2021 |
| Selling, general and administrative | \$ 676 | \$ 704 | \$ 1,381 | \$ 1,513 |
| Research and development | 68 | 114 | 134 | 227 |
| Cost of goods sold | 8 | 20 | 14 | 40 |
| Total expense | <u>\$ 752</u> | <u>\$ 838</u> | <u>\$ 1,529</u> | <u>\$ 1,780</u> |

Total unrecognized compensation cost related to unvested awards as of June 30, 2022 was \$3.5 million and is expected to be recognized over the next two years.

Valuation Information for Stock-Based Compensation

The fair value of each stock option award during the three and six months ended June 30, 2022 and 2021 was estimated on the date of grant using the Black-Scholes model. Expected volatility was based on historical common stock volatility of the Company’s peers. The risk-free interest rate was based on the average U.S. Treasury rate that most closely resembled the expected life of the related award. The expected term of the award was calculated using the simplified method. No dividend was assumed as the Company does not pay regular dividends on its common stock and does not anticipate paying any dividends in the foreseeable future.

The weighted average assumptions used in the Black-Scholes option pricing model in valuing stock options granted in the three and six months ended June 30, 2022 and 2021 are summarized in the table below.

| | Six months ended June 30, | |
|-----------------------------------|---------------------------|---------|
| | 2022 | 2021 |
| Fair value at grant date | \$ 0.53 | \$ 1.36 |
| Expected volatility | 84.0% | 80.1% |
| Risk-free interest rate | 1.7% | 0.7% |
| Expected holding period, in years | 6.0 | 6.0 |
| Dividend yield | —% | —% |

Note 11. Commitments and Contingencies

Stockholders Litigation

On July 8, 2019 and August 1, 2019, purported stockholders of the Company served putative class action lawsuits in the Superior Court of New Jersey for Somerset County, captioned *Paul Kuehl vs. electroCore, Inc., et al.*, Docket No. SOM-L 000876-19 and *Shirley Stone vs. electroCore, Inc., et al.*, Docket No. SOM-L 001007-19, respectively. In addition to the Company, the defendants include present and past directors and officers, Evercore Group L.L.C., Cantor Fitzgerald & Co., JMP Securities LLC and BTIG, LLC, the underwriters for its IPO; and two of the Company's stockholders. On August 15, 2019, the Superior Court entered an order consolidating the *Kuehl* and *Stone* actions, which proceeded under Docket No. SOM-L 000876-19. Each plaintiff was appointed a co-lead plaintiff. The plaintiffs filed a consolidated amended complaint, which sought certification of a class of stockholders who purchased common stock in the IPO or whose purchases are traceable to that offering. The consolidated amended complaint alleged that the defendants violated Sections 11, 12(a)(2) and 15 of the Securities Act with respect to the registration statement and related prospectus for the IPO. The complaint sought unspecified compensatory damages, interest, costs and attorneys' fees.

On October 31, 2019, the Company and the other defendants filed a motion to dismiss the complaint or in the alternative to stay the action in favor of the pending federal action (discussed below). On February 21, 2020, the court granted the defendants' motion to dismiss the consolidated amended complaint with prejudice. On March 2, 2020 the court entered an amended order dismissing the consolidated amended complaint with prejudice. On March 27, 2020, the plaintiffs filed a notice of appeal with the N.J. Superior Court – Appellate Division. The appeal was argued on September 27, 2021. On October 8, 2021, the Appellate Division issued an order reversing the decision of the Superior Court. The case has been remanded to the Superior Court for oral argument on the motion to dismiss. On November 11, 2021 the defendants filed a supplemental motion to dismiss based on the forum selection clause in our certificate of incorporation's. On December 10, 2021, the Superior Court heard argument of the original motion to dismiss and the supplemental motion to dismiss based on the federal forum selection clause. On December 14, 2021, the Superior Court granted the supplemental motion to dismiss based on the federal forum selection clause with prejudice and granted the original motion to dismiss without prejudice. On January 27, 2022, the plaintiffs filed a notice of appeal to the Appellate Division. On April 15, 2022 the plaintiffs filed their appeal brief. The brief of defendant-appellees was filed on May 16, 2022. The appeal is fully briefed. No argument date for the appeal has been set.

On September 26, 2019 and October 31, 2019, purported stockholders of the Company served putative class action lawsuits in the United States District Court for the District of New Jersey captioned *Allyn Turnofsky vs. electroCore, Inc., et al.*, Case 3:19-cv-18400, and *Priewe vs. electroCore, Inc., et al.*, Case 1:19-cv-19653, respectively. In addition to the Company, the defendants include present and past directors and officers, and Evercore Group L.L.C., Cantor Fitzgerald & Co., JMP Securities LLC and BTIG, LLC, the underwriters for the IPO. The plaintiffs each seek to represent a class of stockholders who (i) purchased the Company's common stock in the IPO or whose purchases are traceable to the IPO, or (ii) who purchased common stock between the IPO and September 25, 2019. The complaints each alleged that the defendants violated Sections 11 and 15 of the Securities Act and Sections 10(b) and 20(a) of the Exchange Act, with respect to (i) the registration statement and related prospectus for the IPO, and (ii) certain post-IPO disclosures filed with the SEC. The complaints sought unspecified compensatory damages, interest, costs and attorneys' fees. The *Priewe* case was voluntarily dismissed on February 19, 2020.

In the *Turnofsky* case, on November 25, 2019 several plaintiffs and their counsel moved to be selected as lead plaintiff and lead plaintiff's counsel. On April 24, 2020, the Court granted the motion of Carole Tibbs and the firm Bragar, Eigel & Squire, P.C. On July 17, 2020 the plaintiffs filed an amended complaint in *Turnofsky*. In addition to the prior claims, the amended complaint added an additional director defendant and two investors as defendants and adds a claim against the Company and the underwriters for violating Section 12(a)(2) of the Securities Act. On September 15, 2020, the Company and the other defendants filed a motion to dismiss the amended complaint for failure to state a claim. On November 6, 2020, the plaintiffs filed their opposition to the motion to dismiss. The Company and the other defendants filed reply papers in support of the motion on December 7, 2020. Argument of the motion to dismiss occurred on June 18, 2021. On August 13, 2021, the Court dismissed the amended complaint with leave to re-plead. On October 4, 2021, the plaintiffs filed a second amended complaint in the *Turnofsky* case. Briefing on the motion was complete on January 7, 2022. On July 5, 2022, the case was reassigned to Judge Zahid N. Quraishi, who has ordered that he will consider the pending motion to dismiss in due course. Argument of the motion has not yet been scheduled.

On March 4, 2021, purported stockholder Richard Maltz brought a purported stockholder derivative action in the United States District Court for the District of New Jersey. The action is captioned *Richard Maltz, derivatively on behalf of electroCore, Inc., vs. Francis R. Amato, et al.*, Case 3:21-cv-04135. The defendants include present and past directors and officers of the Company. The plaintiff purports to pursue derivative claims on behalf of the Company in connection with the IPO and actions occurring between the IPO and September 25, 2019. The complaint alleges that demand on the board of directors is excused. The complaint purports to allege claims against the defendants for violating Section 14(a) of the Exchange Act, breaching fiduciary duties, unjust enrichment and waste of corporate assets. The complaint also purports to allege claims for contribution in connection with the *Turnofsky* case described above, pursuant to Section 11(f) of the Securities Act and Sections 10(b) and 21D of the Exchange Act. The complaint seeks unspecified compensatory damages, interest, costs and attorneys' fees; declaratory relief; and an order requiring changes to corporate governance and internal procedures and a vote on proposed amendments to the Bylaws and Certificate of Incorporation.

On March 8, 2021, purported stockholder Erin Yuson brought a purported stockholder derivative action in the United States District Court for the District of New Jersey. The action is captioned *Erwin Yuson, derivatively on behalf of electroCore, Inc., vs. Francis R. Amato, et al.*, Case 3:21-cv-04481. The defendants include present and past directors and officers of the Company. The plaintiff purports to pursue derivative claims on behalf of the Company in connection with a 2019 proxy statement and actions occurring from the IPO through September 25, 2019. The complaint alleges that demand on the board of directors is excused. The complaint purports to allege claims against the defendants for violating Section 14(a) of the Exchange Act and breaching fiduciary duties. The complaint seeks unspecified compensatory damages, interest, costs and attorneys' fees; declaratory relief; and an order requiring changes to corporate governance and internal procedures and a vote on proposed amendments to the Bylaws and Certificate of Incorporation.

The plaintiffs in the *Maltz* and *Yuson* derivative actions agreed to consolidate and stay those actions. The actions are stayed until and through the resolution of any motion for summary judgment in the *Turnofsky* federal securities class action. A stipulation to that effect was filed by the plaintiffs on April 14, 2021 and ordered by the court on April 30, 2021. These cases also have been re-assigned.

The Company intends to continue to vigorously defend itself in these matters. However, in light of, among other things, the preliminary stage of these litigation matters, the Company is unable to determine the reasonable probability of loss or a range of potential loss. Accordingly, the Company has not established an accrual for potential losses, if any, that could result from any unfavorable outcome, and there can be no assurance that these litigation matters will not result in substantial defense costs and/or judgments or settlements that could adversely affect the Company's financial condition.

The Company is subject to various claims, complaints and legal actions in the normal course of business from time to time. The Company is not aware of any further currently pending litigation for which it believes the outcome could have a material adverse effect on its operations or financial position. The Company expenses associated legal fees including those relating to the stockholder litigation described in this Note 11 in the period they are incurred.

Note 12. Subsequent Event

On July 5, 2022, the Company entered into a Commercial Insurance Premium Finance and Security Agreement (the "2022 Agreement"). The 2022 Agreement provides for a single borrowing by the Company of approximately \$783,000 thousand with a nine-month term and an annual interest rate of 2.49%. The proceeds from this transaction were used to partially fund the premiums due under certain of the Company's insurance policies. The amounts payable are secured by the Company's rights under such policies. The Company began to pay monthly installments of approximately \$87,900 in July 2022.

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

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read this section in conjunction with our unaudited interim condensed consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q and our audited consolidated financial statements and related notes thereto and management's discussion and analysis of financial condition and results of operations for the year ended December 31, 2021 included in our Annual Report on Form 10-K, filed with the Securities and Exchange Commission, or SEC. As discussed in the section titled "Cautionary Note Regarding Forward-Looking Statements," the following discussion and analysis contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those under the caption "Risk Factors" in the aforementioned Annual Report and this Form 10-Q.

Overview

We are a commercial stage medical device company with a proprietary non-invasive vagus nerve stimulation, or nVNS, therapy, called gammaCore. nVNS is a platform bioelectronic medical therapy that modulates neurotransmitters and immune function through its effects on both the peripheral and central nervous systems. We are focused on utilizing gammaCore in the management and treatment of primary headache conditions.

Our gammaCore nVNS therapy is the first non-invasive, hand-held medical therapy applied at the neck as an adjunctive therapy to treat migraine and cluster headache through the utilization of a mild electrical stimulation to the vagus nerve that passes through the skin. Designed as a portable, easy-to-use technology, gammaCore is self-administered by patients, prophylactically or as needed, without the potential side effects associated with commonly prescribed drugs. When placed on a patient's neck over the vagus nerve, gammaCore stimulates the nerve's afferent fibers, which may lead to a reduction of pain in patients. gammaCore (nVNS) is FDA cleared in the United States for adjunctive use for the preventive treatment of cluster headache in adult patients, the acute treatment of pain associated with episodic cluster headache in adult patients, the acute and preventive treatment of migraine in adults and adolescent (ages 12 and older) patients, and paroxysmal hemicrania and hemicrania continua in adult patients. gammaCore is CE-marked in the United Kingdom and European Union for the acute and/or prophylactic treatment of primary headache (Migraine, Cluster Headache, Trigeminal Autonomic Cephalalgias and Hemicrania Continua) and Medication Overuse Headache in adults.

Since May 2019, we have primarily focused our sales efforts in two channels, the U.S. Department of Veterans Affairs and U.S. Department of Defense, and the United Kingdom. More recently, we began making targeted investments to increase the adoption of our gammaCore therapy in both the United States and abroad. We continue to evaluate strategies to expand commercial adoption of gammaCore, including traditional reimbursement models as well as the potential use of e-commerce and cash pay models through direct-to-physician and direct-to-consumer approaches. We expect to make continued targeted investments in the evaluation and possible execution of these strategies in future quarters. We are unable to predict the impact these strategies will have on our financial condition, results of operations and cash flows due to numerous uncertainties.

In April 2022, we announced that nVNS was selected for further study under the United States Department of Defense Biotech Optimized for Operational and Tactics (BOOST) research program conducted under the leadership of the 711 Human Performance Wing Performance Optimization Branch of the United States Air Force to provide accelerated training, sustained attention, reduced fatigue, and improved mood. The continued efforts of the BOOST Program may result in adoption by the United States Air Force of a device not intended for primary headache, which may result in the requirement by the Company to provide field devices to the United States Air Force in the future. We are unable to predict the impact the BOOST Program will have on our financial condition, results of operations and cash flows due to numerous uncertainties.

In addition, we have announced agreements with new distributors to make gammaCore Sapphire available in several countries beyond the U.S. and United Kingdom, as well as a licensing agreement enabling market access activities to begin in Japan.

Capital Activities

On January 18, 2022, we filed a Form S-3 registration statement, or the 2022 Shelf Registration Statement, with the SEC, for the issuance of common stock, preferred stock, warrants, rights, debt securities and units, up to an aggregate amount of \$75 million. The 2022 Shelf Registration Statement was declared effective on January 25, 2022. The proposed maximum offering price per unit and the proposed maximum aggregate offering price per class of security will be determined from time to time by us in connection with the issuance by us of the securities registered under the 2022 Shelf Registration Statement. Until such time as the aggregate market value of our securities held by non-affiliates equals or exceeds \$75 million, the aggregate maximum offering price of all securities issued by the us in any given 12-calendar month period pursuant to this and any of our other registration statements may not exceed one-third of the aggregate market value of our securities held by non-affiliates.

License Agreement with Teijin Limited

On March 29, 2022, we entered into an agreement with Teijin Limited (Teijin), to license certain exclusive rights to its nVNS technology for commercialization in Japan for a range of primary headache disorders.

Under the agreement, we will receive a non-refundable, upfront payment for the license and rights granted to Teijin, which we expect to receive in the third quarter of 2022. The Company began to recognize revenue for this upfront payment ratably over a period of one year commencing in the second quarter of 2022. The financial terms contain milestone payments, payable upon the decision by Teijin to commercialize the licensed product for specific indications. We will also receive an annual license fee commencing on the first anniversary of the agreement and payable annually until the first commercial sale on any approved indication. Upon favorable regulatory and payor coverage decisions in Japan, the parties plan to enter into an exclusive commercial supply agreement for gammaCore nVNS.

The agreement contains customary terms and conditions, including renewal and termination provisions, as well as minimum purchase commitments once a commercial supply agreement is in place. Furthermore, Teijin is responsible for all costs associated with regulatory approval by the Pharmaceuticals and Medical Devices Agency (PMDA), the Japanese FDA equivalent. As part of the agreement, Teijin will have the right of first negotiation for a license to additional indications in Japan.

Sale of New Jersey Net Operating Losses

We may be eligible, from time to time, to receive cash from the sale of our net operating losses under New Jersey's Department of the Treasury - Division of Taxation NOL Transfer Program. On April 14, 2022, we received a net cash amount of approximately \$445,000 from the sale of our New Jersey state net operating losses.

Impact of COVID-19

We continue to monitor the impact of the coronavirus pandemic on all aspects of our business and geographies, including how it will impact business partners, customers and the global supply chain. While we experienced disruptions during the three and six months ended June 30, 2022 and 2021 from the coronavirus pandemic, we are unable to predict the full impact that the coronavirus pandemic may have on our financial condition, results of operations and cash flows due to numerous uncertainties. These uncertainties include the scope, severity and duration of the pandemic, the actions taken to contain the pandemic or mitigate its impact and the direct and indirect economic effects of the pandemic and containment measures, among others. The coronavirus pandemic has significantly adversely impacted global economic activity and has contributed to significant volatility and negative pressure in financial markets. Depending upon the duration and severity of the pandemic, the continuing effect on our results and outlook over the long term remains uncertain.

Critical Accounting Policies and Estimates

The significant accounting policies and basis of presentation of our condensed consolidated financial statements are described in Note 2 "Summary of Significant Accounting Policies" of the consolidated financial statements included with the annual report on Form 10-K included in our Annual Report on Form 10-K, filed with the Securities and Exchange Commission, or SEC on March 10, 2022 ("2021 Annual Report"), and in Note 2 "Summary of Significant Accounting Policies" of the condensed consolidated financial statements included within this quarterly report on Form 10-Q.

The preparation of our financial statements is in accordance with U.S. Generally Accepted Accounting Principles, or GAAP, require us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and other related disclosures. While we believe our estimates, assumptions and judgments are reasonable, they are based on information presently available. Actual results may differ significantly from these estimates due to changes in judgments, assumptions and conditions as a result of unforeseen events or otherwise, which could have a material impact on our financial position and results of operations.

The critical accounting policies that we believe, the judgments, estimates, and assumptions associated with such policies, have the greatest potential impact on the condensed consolidated financial statements are disclosed in the section titled *Critical Accounting Policies and Estimates* in Part II of our 2021 Annual Report.

Results of Operations

Comparison of the three months ended June 30, 2022 to the three months ended June 30, 2021

The following table sets forth amounts from our condensed consolidated statements of operations for the three months ended June 30, 2022 and 2021:

| | For the three months ended June | | |
|---|---------------------------------|------------|------------|
| | 30, | | Change |
| | 2022 | 2021 | |
| | (in thousands) | | |
| Consolidated statements of operations: | | | |
| Net sales | \$ 2,157 | \$ 1,269 | \$ 888 |
| Cost of goods sold | 358 | 374 | (16) |
| Gross profit | 1,799 | 895 | 904 |
| Operating expenses | | | |
| Research and development | 1,341 | 825 | 516 |
| Selling, general and administrative | 6,278 | 5,272 | 1,006 |
| Total operating expenses | 7,619 | 6,097 | 1,522 |
| Loss from operations | (5,820) | (5,202) | (618) |
| Other (income) expense | | | |
| Gain on extinguishment of debt | — | (1,422) | 1,422 |
| Interest and other income | (38) | (1) | (37) |
| Other expense | — | — | — |
| Total other (income) expense | (38) | (1,423) | 1,385 |
| Loss before income taxes | (5,782) | (3,779) | (2,003) |
| Benefit from income taxes | 445 | 885 | (440) |
| Net loss | \$ (5,337) | \$ (2,894) | \$ (2,443) |

Net Sales

Net sales increased 70% for the three months ended June 30, 2022 compared to the comparable prior year period. This increase of \$888,000 is due to an increase in net sales across all major channels including the U.S. Department of Veteran Affairs, U.S. commercial channel, and sales from outside the U.S. which includes licensing revenue of \$48,000 in the three months ended June 30, 2022. There was no licensing revenue in the comparable prior year. Revenue from outside the U.S. was adversely impacted due to the strengthening of the U.S. dollar during the three months ended June 30, 2022. We expect that the majority of our remaining 2022 fiscal year revenue will continue to come from the U.S. Department of Veterans Affairs and United Kingdom. Additionally, we expect to increase revenue from our commercial channel through cash pay models via direct-to-consumer approaches through our online stores in the U.S. and United Kingdom. We also expect revenues to expand from our cash pay propositions which include direct to physician models for traditional neurology headache specialists, as well as the wide range of medical providers who manage patients' headache conditions including primary care physicians, women's health, pain management, sports medicine, functional and integrative medicine professionals, as well as chiropractors, and PharmDs (Doctors of Pharmacy).

Gross Profit

Gross profit increased by \$904,000 for the three months ended June 30, 2022 compared to the comparable prior year period. Gross margin was 83% and 71% for the three months ended June 30, 2022 and 2021, respectively. Our evolving commercial strategy has resulted in the launch of cash payment models under which we license certain starter devices. The cost of the licensed starter device is being recognized as cost of goods sold over the estimated useful life of the starter device versus expensing the cost of goods at the time of sale. Moreover, in recent quarters, we have sold an increasing amount of longer duration therapy, resulting in a higher average selling price, as well as selling an increased number of refill kits with a lower cost of goods. These factors, including Teijin license revenue with no associated cost of goods, and favorable absorption of labor and overhead costs associated with the increased number of units sold contributed to the increase in gross margin. Gross profit and gross margin for the remainder of 2022 will be largely dependent on revenue levels, product mix, any changes in the estimated useful lives of licensed starter devices, and the pricing levels of our therapy.

Research and Development

Research and development expense increased by \$516,000, or 63%, for the three months ended June 30, 2022 compared to the prior year period. This increase was primarily due to targeted investments to support the future iterations of our therapy delivery platform, including the use of our intellectual property around the delivery of smartphone-integrated and smartphone-connected non-invasive therapies.

Selling, General and Administrative

Selling, general and administrative expense of \$6.3 million for the three months ended June 30, 2022 increased by \$1.0 million, or 19%, compared to the comparable prior year period as we continued to make targeted investments to support our commercial efforts.

Other (Income) Expense

Other (income) expense for the three months ended June 30, 2021 primarily represents the gain of \$1.4 million recorded by the Company in association with the forgiveness of its Paycheck Protection Program ("PPP") loan. For both the 2022 and 2021 periods, Interest and other income primarily consists of interest earned on cash, cash equivalents and marketable securities.

Benefit from Income Taxes

The Benefit from income taxes of \$445,000 and \$885,000 for the three months ended June 30, 2022 and 2021, respectively, represent primarily the sale of our 2022 and 2021 state net operating losses and research and development tax credits under the State of New Jersey's NOL Transfer Program.

Comparison of the six months ended June 30, 2022 to the six months ended June 30, 2021

The following table sets forth amounts from our condensed consolidated statements of operations for the six months ended June 30, 2022 and 2021:

| | For the six months ended June 30, | | |
|---|--|-------------------|-------------------|
| | 2022 | 2021 | Change |
| | (in thousands) | | |
| Consolidated statements of operations: | | | |
| Net sales | \$ 4,056 | \$ 2,473 | \$ 1,583 |
| Cost of goods sold | 718 | 738 | (20) |
| Gross profit | 3,338 | 1,735 | 1,603 |
| Operating expenses | | | |
| Research and development | 2,275 | 1,324 | 951 |
| Selling, general and administrative | 12,464 | 10,997 | 1,467 |
| Total operating expenses | 14,739 | 12,321 | 2,418 |
| Loss from operations | (11,401) | (10,586) | (815) |
| Other (income) expense | | | |
| Gain on extinguishment of debt | — | (1,422) | 1,422 |
| Interest and other income | (42) | (1) | (41) |
| Other expense | 5 | — | 5 |
| Total other (income) expense | (37) | (1,423) | 1,386 |
| Loss before income taxes | (11,364) | (9,163) | (2,201) |
| Benefit for income taxes | 445 | 885 | (440) |
| Net loss | <u>\$ (10,919)</u> | <u>\$ (8,278)</u> | <u>\$ (2,641)</u> |

Net Sales

Net sales increased 64% for the six months ended June 30, 2022 compared to the prior year period. The increase of \$1.6 million is due net sales from all major channels including the U.S. Department of Veteran Affairs, U.S. commercial channel, and net sales from outside the U.S. which include \$48,000 of licensing revenue recognized in the six months ending June 30, 2022. Excluding the licensing revenue, net sales from outside the U.S. decreased by \$43,000 due principally to the impact of the COVID-19 pandemic on our National Health Service (NHS) channel in the United Kingdom and the strengthening of the U.S. dollar in the six months ended 2022. We expect that the majority of our remaining 2022 fiscal year revenue will continue to come from the U.S. Department of Veterans Affairs and the NHS in the United Kingdom. However, we expect to increase revenue from our commercial channel through cash pay models via direct-to-consumer approaches through our online stores in the U.S. and United Kingdom. We also expect revenues to increase from our cash pay propositions which include direct to physician models for traditional neurology headache specialists, as well as the wide range of medical providers who manage patients' headache conditions including primary care physicians, women's health, pain management, functional and integrative medicine professionals, as well as chiropractors, and PharmDs (Doctors of Pharmacy).

Gross Profit

Gross profit increased \$1.6 million for the six months ended June 30, 2022 compared to the prior year. Gross margin increased to 82% for the six months ended June 30, 2022 compared to 70% for the six months ended June 30, 2021. Our evolving commercial strategy has resulted in the launch of cash payment models under which we license certain starter devices. The cost of the licensed starter device is being recognized as cost of goods sold over the estimated useful life of the starter device versus expensing the cost of goods at the time of sale. Moreover, in recent quarters, we have sold an increasing amount of longer duration therapy, resulting in a higher average selling price, as well as selling an increased number of refill kits with a lower cost of goods. These factors, including Teijin license revenue with no associated cost of goods and favorable absorption of labor and overhead costs associated with the increased number of units sold contributed to the increase in gross margin. Gross profit and gross margin for the remainder of 2022 will be largely dependent on revenue levels, product mix, any changes in the estimated useful lives of licensed starter devices, and the pricing levels of our therapy.

Research and Development

Research and development expense increased by \$1.0 million or 72% for the six months ended June 30, 2022 compared to the prior year period. This increase was primarily due to targeted investments to support the future iterations of our therapy delivery platform, including the use of our intellectual property around the delivery of smartphone-integrated and smartphone-connected non-invasive therapies.

Selling, General and Administrative

Selling, general and administrative expense was \$12.5 million and \$11.0 million for the six months ended June 30, 2022 and 2021, respectively, as we continued to make targeted investments to support our commercial efforts.

Other (Income) Expense

Other (income) expense for the six months ended June 30, 2021 primarily represents the gain of \$1.4 million recorded by the Company in association with the forgiveness of its Paycheck Protection Program ("PPP") loan. For both the 2022 and 2021 periods, Interest and other income primarily consists of interest earned on cash and cash equivalents and, in the prior year period, marketable securities. Other expense relates to borrowings used to partially fund the premiums due under certain of our insurance policies.

Benefit from Income Taxes

The Benefit from income taxes of \$445,000 and \$885,000 for the six months ended June 30, 2022 and 2021, respectively, represent the sale of our 2019 and 2018 state net operating losses and research and development tax credits under the State of New Jersey's NOL Transfer Program.

Cash Flows

The following table sets forth the significant sources and uses of cash for the periods noted below:

| | For the six months ended June 30, | |
|---------------------------------------|--|-------------|
| | 2022 | 2021 |
| | (in thousands) | |
| Net cash (used in) provided by | | |
| Operating activities | \$ (8,024) | \$ (5,826) |
| Investing activities | \$ — | \$ 9,217 |
| Financing activities | \$ — | \$ 6,920 |

Operating Activities

Net cash used in operating activities was \$8.0 million and \$5.8 million for the six months ended June 30, 2022 and 2021, respectively. This increase is primarily due to the increase in our net loss from operations.

Investing Activities

No cash was provided by investing activities during the six months ended June 30, 2022. For the six months ended June 30, 2021, net cash provided by investing activities was \$9.2 million reflecting funds received from the maturity of marketable securities partially offset by our purchases of marketable securities during the prior period.

Financing Activities

No cash was provided by financing activities during the six months ended June 30, 2022. For the six months ended June 30, 2021, net cash provided by financing activities was \$6.9 million representing proceeds from the sale of our common stock.

Liquidity Outlook

As of June 30, 2022, our cash and cash equivalents and restricted cash totaled \$26.6 million.

We have experienced recurring losses since our inception. We incurred net losses of \$10.9 million and \$8.3 million for the six months ended June 30, 2022 and 2021, respectively. We expect to continue to incur substantial negative cash flows from operations for at least the next several years as we work to increase market acceptance of our gammaCore therapy for the acute treatment of primary headache and its other indications.

Our expected cash requirements for the next 12 months and beyond are largely based on the commercial success of our products and the level of targeted investment in our commercial strategies. There are significant risks and uncertainties as to our ability to achieve these operating results, including as a result of the adverse impact on our headache business from the ongoing COVID-19 pandemic. We believe our current cash and cash equivalents will enable us to fund our operating expenses and capital expenditure requirements, as currently planned, for at least the next 12 months from the date the financial statements included in this Form 10-Q are made available.

Beyond the next 12 months, we believe that our growth will depend, in part, on our ability to fund our commercial efforts for our gammaCore therapy; and to opportunistically pursue research and development activities for additional indications, and the next generation of our gammaCore therapy. Our existing resources are unlikely to allow us to conduct all the activities that we believe could be beneficial for our future growth. As a result, we will need to seek additional funds in the future or curtail or forgo some or all such activities. If we seek to and are unable to raise funds on favorable terms, or at all, we may not be able to support our commercialization efforts or research and development activities and the growth of our business may be negatively impacted. As a result, we may be unable to compete effectively. Changes, including those relating to the payer and competitive landscape, our commercialization strategy, our development activities and regulatory matters, may occur beyond our control that would cause us to consume our available capital more quickly.

In connection with the transfer of our common stock from the Nasdaq Global Select Market to the Nasdaq Capital Market effective June 23, 2022, we have been granted a 180-day grace period, or until December 19, 2022, to regain compliance with the Nasdaq requirement that the bid price per share of our common stock on the Nasdaq Capital Market be at least \$1.00 for at least 10 consecutive business days on or prior to December 19, 2022. If we fail to regain compliance during the additional compliance period, the common stock could be delisted from the Nasdaq Capital Market. Such a delisting could have a negative effect on the price of our common stock, impair the ability of investors to sell or purchase our common stock when they wish to do so, and materially adversely affect our ability to raise capital or pursue strategic, financing or other transactions on acceptable terms, or at all. See also Part II – Item 1A “*Risk Factors*.”

On January 18, 2022, we filed a Form S-3 registration statement, or the 2022 Shelf Registration Statement, with the SEC, for the issuance of common stock, preferred stock, warrants, rights, debt securities and units, which we refer to collectively as the Shelf Securities, up to an aggregate amount of \$75 million. The 2022 Shelf Registration Statement was declared effective on January 25, 2022. The proposed maximum offering price per unit and the proposed maximum aggregate offering price per class of security will be determined from time to time by us in connection with the issuance by us of the securities registered under the 2022 Shelf Registration Statement. Until such time as the aggregate market value of our securities held by non-affiliates equals or exceeds \$75 million, the aggregate maximum offering price of all securities issued by the us in any given 12-calendar month period pursuant to this and any of our other registration statements may not exceed one-third of the aggregate market value of our securities held by non-affiliates.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We develop our products in the United States and sell those products into several countries. As a result, our financial results could be affected by factors such as changes in foreign currency exchange rates or weak economic conditions in foreign markets. Most of our sales in Europe are denominated in British Pound Sterling and our license agreement with Teijin is denominated in Japanese Yen. As our sales in currencies other than the U.S. dollar increase, our exposure to foreign currency fluctuations may increase. In addition, changes in exchange rates also may affect the end-user prices of our products compared to those of our foreign competitors, who may be selling their products based on local currency pricing. These factors may make our products less competitive in some countries.

If the U.S. dollar uniformly increased or decreased in strength by 10% relative to the currencies in which our sales were denominated, our net income would have correspondingly increased or decreased by an immaterial amount for the three months ended June 30, 2022.

Our exposure to market interest rate risk is confined to our cash and cash equivalents and marketable securities. The goals of our investment policy are preservation of capital, fulfillment of liquidity needs and fiduciary control of cash and investments. We also seek to maximize income from our investments without assuming significant risk. To achieve our goals, we may maintain a portfolio of cash equivalents and investments in a variety of securities of high credit quality. The securities in our investment portfolio, if any, are not leveraged, are classified as available for sale and are, due to their very short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our cash equivalents, we do not believe that an increase in market rates would have any material negative impact on interest income recognized in our statement of operations. We have no investments denominated in foreign currencies and therefore our investments are not subject to foreign currency exchange risk. We contract with CROs, investigational sites, suppliers and other vendors in Europe and internationally. In addition, our recently announced license agreement requires payments to us to be denominated in Japanese Yen. We are subject to fluctuations in foreign currency rates in connection with these agreements. We do not hedge our foreign currency exchange rate risk.

All of the potential changes noted above are based on sensitivity analyses performed on our financial position as of June 30, 2022.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the rules and forms, and that such information is accumulated and communicated to us, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decision making regarding required disclosure. In designing and evaluating our disclosure controls and procedures, we recognize that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, as ours are designed to do, and we apply our judgment in evaluating whether the benefits of the controls and procedures that we adopt outweigh their costs.

As required by Rule 13a-15(b) of the Exchange Act, an evaluation as of June 30, 2022 was conducted under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act). Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures, as of June 30, 2022 were effective for the purposes stated above.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act that occurred during the three months ended June 30, 2022 that has materially affected or is reasonably likely to materially affect our internal control over financial reporting.

PART II— OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

The information set forth in Note 11. *Commitments and Contingencies – Stockholders Litigation* of the condensed consolidated financial statements included with our quarterly report on Form 10-Q is incorporated here by reference to this Part II Item 1.

Item 1A.

RISK FACTORS

You should carefully consider the risk factors included in Item 1A. of our Annual Report on Form 10-K for the year ended December 31, 2021 (Annual Report), which was filed with the SEC on March 10, 2022, in addition to the following risk factor, and the other information in this report on Form 10-Q, including the section of this report titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements and related notes. If any of the events described in our Annual Report, the following risk factor and the risks described elsewhere in this report on Form 10-Q occur, our business, operating results and financial condition could be seriously harmed. This report on Form 10-Q also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of factors that are described in our Annual Report, below and elsewhere in this report.

Our failure to meet the continued listing requirements of Nasdaq could result in a delisting of our common stock, which could negatively impact the market price and liquidity of our common stock and our ability to access the capital markets.

On June 22, 2022, we received approval (the “Approval”) from the Nasdaq Listing Qualifications Department of the Nasdaq Stock Market (the “Nasdaq”) that our application to transfer the listing of our common stock from the Nasdaq Global Select Market to the Nasdaq Capital Market had been approved. The common stock was transferred to the Nasdaq Capital Market at the opening of business on June 23, 2022. The common stock will continue to trade under the symbol “ECOR.” The Nasdaq Capital Market operates in substantially the same manner as the Nasdaq Global Select Market, and listed companies must meet certain financial requirements and comply with Nasdaq’s corporate governance requirements. On December 20, 2021, we received a letter from Nasdaq indicating that we were not in compliance with Nasdaq Listing Rule 5450(a)(1) because the closing bid price per share for our common stock had closed below \$1.00 for the previous 30 consecutive business days (the “Bid Price Rule”). We were given until June 20, 2022, to regain compliance with the rule. In response, we filed an application to transfer the listing of our common stock from the Nasdaq Global Select Market to the Nasdaq Capital Market. As a result of the Approval, we have been granted an additional 180-day grace period, or until December 19, 2022, to regain compliance with the Bid Price Rule. To regain compliance with the Bid Price Rule and qualify for continued listing on the Nasdaq Capital Market, the minimum bid price per share of our common stock must be at least \$1.00 for at least 10 consecutive business days on or prior to December 19, 2022. As a condition of the Approval imposed by Nasdaq Listing Rule 5810(c)(3)(a)(i), we notified Nasdaq that we intend to affect a reverse stock split, if necessary, to regain compliance with the Bid Price Rule.

If we fail to regain compliance during the additional compliance period, then Nasdaq will notify us of its determination to delist our common stock, at which point we would have an opportunity to appeal the delisting determination to a Nasdaq Listing Qualifications Panel (the “Panel”), but there can be no assurance that the Panel would grant our request for continued listing.

Such a delisting could have a negative effect on the price of our common stock, impair the ability of investors to sell or purchase our common stock when they wish to do so, and materially adversely affect our ability to raise capital or pursue strategic, financing or other transactions on acceptable terms, or at all. Delisting from Nasdaq could also have other negative results, including the potential loss of institutional investor interest.

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

(a) Not applicable.

(b) Not applicable.

Item 6. EXHIBITS

| Exhibit Number | Description |
|-----------------------|--|
| 10.2† | <u>electroCore, Inc. 2018 Omnibus Equity Incentive Plan, incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q as filed with the Commission on August 14, 2018.</u> |
| 10.3* | <u>Form of electroCore, Inc. Management Severance Plan as amended on June 10, 2022.</u> |
| 31.1* | <u>Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u> |
| 31.2* | <u>Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u> |
| 32.1** | <u>Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u> |
| 32.2** | <u>Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to 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 its 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 (formatted as Inline XBRL and contained in Exhibit 101) |
| * | Filed herewith. |
| ** | Furnished herewith. |
| † | Indicates management agreement or compensation plan. |

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.

Company Name

Date: August 4, 2022

By: _____ /s/ DANIEL S. GOLDBERGER

Daniel S. Goldberger
Chief Executive Officer
(Principal Executive Officer)

Date: August 4, 2022

By: _____ /s/ BRIAN M. POSNER

Brian M. Posner
Chief Financial Officer
(Principal Financial and Accounting Officer)

electroCore, Inc. Executive Severance Policy

**ARTICLE I.
PURPOSE**

The electroCore, Inc. Executive Severance Policy (“the Policy”) is established to provide eligible executives of electroCore, Inc. or any of its wholly-owned subsidiaries (collectively, the “Company”) who incur an Involuntary Termination of Employment (as defined below) with severance pay and other benefits in accordance with and subject to the terms and conditions set forth in this Policy.

This Policy is intended to be an unfunded employee benefit plan maintained for a select group of management or highly compensated employees for purposes of the Employee Retirement Income Security Act of 1974, as amended. All previous existing pay plans, programs, agreements and practices that provide for the payment of severance benefits, whether formal or informal (each a “Prior Severance Plan”), are hereby revoked and terminated for any Participant (as defined below). This document applies to Participants who incur an Involuntary Termination of Employment on and after of the Effective Date of this Policy. The payment of severance benefits, if any, payable to any executive who incurred a Termination of Employment prior to the Effective Date of this Policy shall be determined in accordance with the terms of the Prior Severance Plan, applicable to such individual at the time of his Termination of Employment.

**ARTICLE II.
DEFINITIONS**

When used in this Policy, the following words shall have the following meaning unless the context clearly indicates otherwise.

Section 2.01 “Accrued Obligations” means the sum of (i) the Participant's unpaid base salary earned through the date of his Termination of Employment, (ii) any reimbursable business expenses incurred prior to the Participant's Termination of Employment, (iii) any earned but unpaid vacation pay as of the Participant's Termination of Employment and (iv) any vested benefits to which the Participant is entitled under any benefit plan, program or arrangement maintained by the Company.

Section 2.02 “Administrator” shall be the Committee.

Section 2.03 “Base Annual Compensation” means (a) with respect to the CEO, the sum of the Participant's gross annual base salary and target annual incentive bonus, and (b) with respect to all other Participants, such Participant's gross annual base salary, in each case as in effect immediately prior to the Participant's Termination of Employment or as in effect immediately prior to any reduction in the Participant's Base Annual Compensation that results in the Participant's Termination of Employment for Good Reason.

Section 2.04 “Board” means the board of directors of electroCore, Inc.

Section 2.05 “Cause” means any of the following:

- (a) the Participant’s willful failure to fulfill, in any material respect, his duties and responsibilities to the Company (other than by reason of death, illness or disability);
- (b) The Participant’s willful misconduct, gross negligence or willful acts of personal dishonesty in the performance of his duties to the Company that directly, materially and demonstrably impairs or damages the property, goodwill, reputation, business or finances of the Company;
- (c) The conviction of, or plea of nolo contendere by, the Participant to, a felony or a crime involving moral turpitude that materially and demonstrably impairs or damages the property, goodwill, reputation, business or finances of the Company;
- (d) The Participant’s commission of fraud or embezzlement against the Company;
- (e) the Participant’s willful or intentional violation of any lawful policy of the Company that directly, materially and demonstrably impairs or damages the property, goodwill, reputation, business or finances of the Company; or
- (f) the Participant’s breach of the terms of the Restrictive Covenant Agreement.

Notwithstanding the foregoing, no failure or violation described in (a), (b) or (e) above shall constitute Cause unless (i) the Administrator provides the Participant with a written notice describing the Participant’s acts or omissions that constitute a failure or violation described in (a), (b) or (e) above, (ii) the Participant fails to cure such failure or violation within 10 business days after he receives such written notice and (iii) following the expiration of the cure period, the Company terminates the Participant’s employment due to such failure or violation; provided, however, that if the Administrator determines that the failure or violation described in (a), (b) or (e) is not capable of being cured, the Company may terminate the Participant’s employment for Cause at any time after the Administrator provides the written notice described in (i) above.

Section 2.06 “CEO” means the Chief Executive Officer of electroCore, Inc.

Section 2.07 “Change in Control” means either:

- (a) the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:
 - (i) any person (or group of persons acting together) other than Core Ventures II, LLC and its managing members becomes the owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding voting securities other than by virtue of a merger, consolidation or similar transaction; provided, however, that a Change in Control under this clause (i) shall not occur solely as a result of any redemption, repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding;

(ii) any person (or group of persons acting together) other than Core Ventures II, LLC and its managing members acquires (or has acquired within any 12-month period ending on the date of the most recent acquisition by such person or group) ownership, directly or indirectly, of securities of the Company representing more than 30% of the combined voting power of the Company's then outstanding voting securities other than by virtue of a merger, consolidation or similar transaction;

(iii) the consummation of a merger, consolidation or similar transaction involving (directly or indirectly) the Company if, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of any direct or indirect parent of the surviving entity in such merger, consolidation or similar transaction; or

(iv) the acquisition by a person (or a group of persons acting together) other than Core Ventures II, LLC and its managing members during the 12-month period ending on the date of the most recent acquisition by such person or group of assets from the Company that have a total gross fair market value equal to or exceeding 40% of the total gross fair market value of all of the assets of the Company immediately before such acquisition or acquisitions.

Notwithstanding the foregoing, no transaction or series of related transactions shall constitute a Change in Control of the Company unless such transaction or series of related transactions qualify as a change in ownership of the Company, a change in effective control of the Company or a change in ownership of a substantial portion of the Company's assets as each of these terms are defined in Treasury Regulation Section 1.409A-3(i)(5).

Section 2.08 "COBRA" means the provisions regarding healthcare continuation coverage set forth in Section 601 et seq. of ERISA and Section 4980B of the Code.

Section 2.09 "COBRA Premium" means the monthly cost of providing healthcare continuation coverage for a qualified beneficiary under COBRA, as adjusted from time to time.

Section 2.10 "Code" means the Internal Revenue Code of 1986, as amended.

Section 2.11 "Committee" means the compensation committee of the Board.

Section 2.12 "Company" means electroCore, Inc., its wholly-owned subsidiaries and its successors and assigns.

Section 2.13 Reserved.

Section 2.14 "Eligible Participant" means a Participant who satisfies the eligibility conditions set forth in Section 3.01 for receiving Severance Benefits under this Policy.

Section 2.15 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

Section 2.16 "Excess Parachute Tax" means the taxes, if any, imposed under Section 4999 of the Code on a Participant with respect to all or a portion of his Total Parachute Payments as a result of a Change in ownership or effective control of the Company (within the meaning of Section 280G of the Code).

Section 2.17 “Good Reason” means

- (a) Any material reduction in the Participant's Base Annual Compensation prior to a Change in Control; provided, however, that a reduction in the Participant's Annual Base Compensation under this paragraph (a) shall not constitute Good Reason if the Company reduces the Annual Base Compensation of all Participants on a substantially equivalent basis;
- (b) any material reduction in the Participant's Base Annual Compensation during the period commencing on or after a Change in Control and ending on the second anniversary of a Change in Control;
- (c) any material diminution in the Participant's authority, duties, offices, title or responsibilities; or
- (d) a transfer of Participant's principal place of employment to a location that is more than 30 miles from the Participant's then current principal place of employment.

A Participant will not have Good Reason to terminate his employment and receive Severance Benefits under this Policy unless the Participant provides the Administrator with written notice of the circumstances he believes constitutes Good Reason within 30 days after the occurrence of such circumstances, or, if later, within 30 days after the Participant in the exercise of ordinary care first becomes aware of any such circumstances. If the Participant does not provide such written notice within this time period, he may not assert those circumstances as a basis for any Termination of Employment for Good Reason. If Company does not cure any claimed event of Good Reason within 30 days after receipt of such written notice from the Participant, the Participant may terminate his employment for Good Reason within 60 days after the expiration of such cure period. If the Participant terminates his employment prior to the expiration of the 30-day cure period or more than 60 days after the expiration of such cure period, the Participant will not be treated as having terminated his employment for Good Reason.

Section 2.18 “Involuntary Termination of Employment” means a Participant's Termination of Employment (i) by the Company for any reason other than for Cause or (ii) by the Participant for Good Reason. Notwithstanding the foregoing, however, an Involuntary Termination of Employment shall not include a termination of a Participant's employment due to:

- (a) the Participant's death, total and permanent disability or his voluntary resignation or retirement (other than for Good Reason); or
- (b) the sale or other disposition of any subsidiary, division or business unit of the Company or the outsourcing of any operations of the Company if the Participant receives a written offer of comparable employment from the purchaser of such subsidiary, division or business unit or from the entity that acquires the outsourced operations or from any direct or indirect parent, subsidiary or affiliate of such purchaser or entity (a “Successor Employer”) whether or not the Participant accepts such offer of comparable employment.

An offer of employment from a Successor Employer will not be considered to be an offer of “comparable employment” for purposes of (b) unless all of the following conditions are satisfied: (i) the Participant is offered Base Annual Compensation in an amount equal to or exceeding 100% of the Participant's Base Annual Compensation immediately prior to the consummation of such transaction, (ii) the Participant is offered employment by the Successor Employer at a principal place of employment that is located not more than 30 miles from the Participant's principal place of employment with the Company immediately prior to the consummation of such transaction and (iii) the Successor Employer offers the Participant employment in a position that is not expected to result in a material diminution in the authority, duties or responsibilities the Participant held immediately prior to his Termination of Employment, regardless of his title or position with the Successor Employer.

Section 2.19 “Participant” means the CEO, and each other member of the Company's senior management team who is designated (by name or by job title or description) as a Participant hereunder by the Committee.

Section 2.20 “Release” means a general release of a Participant's claims against the Company, its subsidiaries, affiliates, predecessors, and successor, and their respective agents, officers, directors, employees and stockholders in a form provided by the Administrator in good faith.

Section 2.21 “Restrictive Covenants Agreement” means the Employee Confidentiality and Assignment Agreement or similar agreement imposing employment covenants on the Participant in favor of the Company.

Section 2.22 “Severance Benefits” means the Severance Pay and other benefits payable to an Eligible Participant pursuant to Article IV of this Policy.

Section 2.23 “Severance Pay” means the cash payments made to an Eligible Participant pursuant to Section 4.01 of this Policy.

Section 2.24 “Severance Period” means the period commencing on the first day following an Eligible Participant’s Involuntary Termination of Employment and continuing for a period equal to:

(a) If the Eligible Participant’s Involuntary Termination of Employment occurs prior to a Change in Control or on or after the second anniversary of a Change in Control, the number of months set forth in the applicable table below based on the Eligible Participant’s employment position at the time of his Involuntary Termination of Employment or his employment position immediately prior to any change in his employment position that results in the Participant’s Termination of Employment for Good Reason:

| Employment Position | Severance Period |
|-------------------------|------------------|
| CEO : | 12 months |
| All Other Participants: | 6 months |

(b) If an Eligible Participant’s Involuntary Termination of Employment occurs on or after a Change in Control and prior to the second anniversary of such Change in Control, the number of months set forth in the applicable table below based on the Eligible Participant’s employment position at the time of his Involuntary Termination of Employment or his position immediately prior to any change in his employment position that results in his Termination of Employment for Good Reason:

| Employment Position | Severance Period |
|-------------------------|------------------|
| CEO: | 18 months |
| All Other Participants: | 12 months |

Section 2.25 “Termination of Employment” or words to similar effect means the Participant’s separation from service (as defined in regulations under Section 409A of the Code) with the Company (and each entity that together with the Company is required to be treated as a single service recipient for purposes of determining whether a separation from service has occurred for purposes of Section 409A of the Code).

Section 2.26 “Total Parachute Payments” shall mean any payment or benefit in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) paid or provided to or for the benefit of a Participant (whether paid or provided pursuant to this Policy or otherwise) which is conditioned on a Change in ownership or effective control of the Company (within the meaning of Section 280G of the Code) and would subject the Eligible Participant in whole or in part to an Excess Parachute Tax.

**ARTICLE III.
ELIGIBILITY FOR SEVERANCE BENEFITS**

Section 3.01 Eligibility for Severance Benefits. A Participant will become an Eligible Participant who is entitled to receive Severance Benefits under this Policy if such Participant

- (a) incurs an Involuntary Termination of Employment,
- (b) timely executes a Release within 60 days following such Involuntary Termination of Employment (or within such shorter time frame as may be specified in the Release provided by the Administrator), and
- (c) does not revoke such Release within the applicable revocation period provided under applicable law for revocation of a release of employment-based claims (including, without limitation, the release of claims under the Age Discrimination in Employment Act).

A Participant who does not return a signed copy of the Release to the Company within the time frame specified above or who revokes a signed Release within the applicable revocation period, will not be eligible to receive any Severance Benefits under this Policy. The Company will provide a Participant who has an Involuntary Termination of Employment with an executable form of Release no later than five business days after the Participant's Involuntary Termination of Employment.

**ARTICLE IV.
SEVERANCE BENEFITS**

An Eligible Participant who satisfies the eligibility requirements set forth in Section 3.01 will receive Severance Pay and other Severance Benefits as provided in this Article IV, in addition to the payment of any Accrued Obligations to which the Eligible Participant is entitled.

Section 4.01 Severance Pay.

- (a) Amount of Severance Pay.

(i) Normal Severance. Except as provided in clause (ii) below, an Eligible Participant will receive Severance Pay in an amount equal to his Base Annual Compensation times the applicable severance multiple specified in the table below based on the Eligible Participant's employment position at the time of his Involuntary Termination of Employment or his employment position immediately prior to any change in his employment position that results in his Termination of Employment for Good Reason:

| Employment Position | Severance Multiple |
|-------------------------|--------------------|
| CEO : | 1.0 |
| All Other Participants: | 0.5 |

(ii) Change in Control Severance. If an Eligible Participant's Involuntary Termination of Employment occurs on or after a Change in Control and prior to the second anniversary of such Change in Control, he will receive Severance Pay in an amount equal to his Base Annual Compensation times the applicable severance multiple specified in the table below based on the Eligible Participant's employment position at the time of his Involuntary Termination of Employment or his employment position immediately prior to any change in his employment position that results in his Termination of Employment for Good Reason:

| Employment Position | Severance Multiple |
|-------------------------|--------------------|
| CEO: | 1.5 |
| All Other Participants: | 1.0 |

(b) Timing of Severance Pay.

(i) Normal Severance. Except as provided in clause (ii) below (and subject to Section 4.04), an Eligible Participant will receive his Severance Pay in equal installments over the Participant's Severance Period in accordance with the Company's regular payroll schedule; provided, however, that no installment will be paid to a Participant unless and until the Participant has satisfied all of the eligibility conditions in Section 3.01.

(ii) Change in Control Severance. If an Eligible Participant's Involuntary Termination of Employment occurs on or after a Change in Control but prior to the second anniversary of such Change in Control, the Eligible Participant's Severance Pay will be paid in a single lump sum as soon as practicable after the Participant has satisfied all of the eligibility conditions in Section 3.01.

Section 4.02 Medical, Dental and Vision Coverage. If an Eligible Participant is entitled to file, and does timely file, an election to continue any health benefits for himself, his spouse and his eligible dependents, if any, under a medical, dental and/or vision benefit program maintained by the Company in accordance with the provisions of COBRA, the Company shall promptly reimburse the Eligible Participant for the monthly COBRA Premiums paid by the Eligible Participant for such COBRA coverage until the earlier of (i) the expiration of the Eligible Participant's continuation coverage under COBRA or (ii) the end of the Participant's Severance Period. Notwithstanding the foregoing, an Eligible Participant shall not receive any reimbursement of COBRA Premiums unless and until all of the eligibility conditions in Section 3.01 have been satisfied. The Eligible Participant is responsible for the payment of all applicable COBRA Premiums.

Section 4.03 Acceleration of Vesting of Equity. If a Participant's Involuntary Termination of Employment occurs on or after a Change in Control and prior to the second anniversary of a Change in Control, all outstanding forms of equity-based compensation granted to such Participant that remains outstanding immediately prior to the Participant's Involuntary Termination of Employment shall vest and become exercisable upon satisfaction of all of the eligibility conditions in Section 3.01, and the period of time during which the Eligible Participant may exercise outstanding stock options or outstanding stock appreciation rights shall be extended until the earlier of (a) 150 days following the Participant's Termination of Employment (or, if later, the period of time set forth in the applicable award agreement for exercising such stock options or stock appreciation rights) or (b) the original expiration date for such stock options. Such equity awards shall otherwise settle in accordance with their terms and conditions.

Section 4.04 Compliance with Section 409A of the Code. The Severance Benefits provided under this Policy are, to the fullest extent possible, intended to be exempt from the requirements of Section 409A of the Code and to the extent that any Severance Benefits provided hereunder are not exempt from Section 409A of the Code, they are intended to comply with the requirements of Section 409A of the Code and the regulations thereunder, and this Policy shall be construed accordingly. Notwithstanding any provision in this Policy to the contrary, if at the time of an Eligible Participant's Termination of Employment, the Administrator determines that the Eligible Participant is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code and applicable regulations thereunder, then, to the extent that such Severance Benefits constitute deferred compensation within the meaning of Section 409A of the Code and applicable regulations issued thereunder, payment or provision of such Severance Benefits shall be suspended and shall not be paid or provided to the Eligible Participant until the date that occurs on the earlier of (i) the first day of the seventh month following the Eligible Participant's Termination of Employment or (ii) the Eligible Participant's death. The payments suspended pursuant to this Section 4.04 will be paid to the Eligible Participant as soon as practicable after the period of suspension ends. Notwithstanding any provision in this Policy to the contrary, if any Severance Benefits are to be paid or provided in installments, each such installment shall constitute a separate payment for purposes of Section 409A of the Code and the regulations thereunder.

Section 4.05 Excess Parachute Tax. Notwithstanding any other provisions of this Policy or any plan, arrangement or agreement maintained by the Company, if a Participant receives or is entitled to receive any Total Parachute Payments under the terms of this Policy or otherwise that would subject the Participant to an Excess Parachute Tax as a result of a change in ownership or effective control of the Company (within the meaning of Section 280G of the Code), the portion of the Total Parachute Payments payable to the Participant (whether under this Policy or otherwise) shall be reduced to the extent necessary to prevent the imposition of the Excess Parachute Tax but only if the amount determined under (a) below exceeds the amount determined under (b) below, where:

(a) is the net after-tax amount of the Total Parachute Payments remaining after (i) reducing the Total Parachute Payments to the extent necessary to prevent the imposition of the Excess Parachute Tax and (ii) deducting the net amount of Federal, state, and local income and payroll taxes payable by the Participant with respect to such reduced Total Parachute Payments computed at the Participant's highest marginal tax rates; and

(b) is the net after-tax amount of the Total Parachute Payments (without any reduction to prevent imposition of the Excess Parachute Tax) but after deducting the net amount of Federal, state, and local income and payroll taxes payable by the Participant with respect to such Total Parachute Payments computed at the Participant's highest marginal tax rates and further reduced by the amount of the Excess Parachute Tax that would be imposed on the Participant with respect to such Total Parachute Payments.

Such reduction shall first be applied to the accelerated vesting of any equity-based compensation, starting with stock options and stock appreciation rights that have the highest exercise or strike price, followed by any equity-based compensation that does not constitute nonqualified deferred compensation within the meaning of Section 409A of the Code and next followed by any Severance Pay under this Policy that is not considered to be deferred compensation within the meaning of Section 409A of the Code and lastly to any Severance Pay that is considered to be deferred compensation within the meaning of Section 409A of the Code (starting with the installment payments that are payable latest in time).

Section 4.06 Death of an Eligible Participant. If an Eligible Participant dies after having satisfied all of the eligibility conditions set forth in Section 3.01 and before the end of the Severance Period, any remaining Severance Pay will continue to be paid to the beneficiary designated by the Participant to the Company, in writing. If a Participant has not designated a beneficiary (or if the beneficiary does not survive the Participant), the remaining Severance Pay, if any, will be paid to the Eligible Participant's estate.

Section 4.07 Violation of Post-Employment Obligations and Covenants. Notwithstanding any provision in this Policy to the contrary, if any Eligible Participant breaches the terms of Restricted Covenant Agreement with the Company, such Eligible Employee shall immediately forfeit any and all rights he may have to any unpaid Severance Benefits hereunder and such Eligible Participant shall return to the Company any Severance Benefits previously received by the Eligible Participant.

**ARTICLE V.
POLICY ADMINISTRATION**

This Policy shall be administered by the Administrator. The Administrator shall have the discretionary authority to determine eligibility for Severance Benefits under the Policy and to construe the terms of the Policy, including the making of factual determinations. Benefits under the Policy shall be paid or provided only if the Administrator determines that Participant is entitled to such benefits under the terms of this Policy. The decisions of the Administrator shall be final and conclusive with respect to all questions concerning administration of the Policy. The Administrator may delegate all or a portion of its duties under this Policy to the CEO; provided, however, that the Committee's express approval is required for the payment of any compensation or benefits as a result of any Participant's Termination of Employment that are not Accrued Obligations or otherwise authorized under this Policy and further provided that the Administrator shall not delegate any duties to the CEO in connection with his own Termination of Employment. The actions of the CEO with respect to his delegated duties shall be treated as if such actions were taken by the Administrator.

**ARTICLE VI.
CLAIMS PROCEDURE; ARBITRATION**

Filing a Claim. No formal claim for benefits shall be required for Severance Benefits to be paid or provided under this Policy. The Administrator will inform any Participant who incurs an Involuntary Termination of Employment that such Participant will be eligible for Severance Benefits under this Policy if the Participant satisfies the conditions set forth in Section 3.01. However, any individual who believes he is eligible for Severance Benefits under this Policy that have not been provided (a "Claimant") may submit a written claim ("Claim") for Severance Benefits to the Administrator. A Claimant shall have no right to seek review of a denial of Severance Benefits, or to bring any action in any court to enforce a Claim, prior to filing a Claim and exhausting his administrative remedies under this Article VI.

When a Claim has been filed properly, the Administrator shall evaluate it and shall notify the Claimant of the approval or the denial of the Claim within 90 days after the Administrator receives such Claim unless special circumstances require an extension of time for processing the Claim. If such an extension of time for processing is required, the Administrator shall furnish the Claimant with written notice of the extension prior to the termination of the initial 90-day period. The notice of extension will specify the special circumstances requiring an extension and the date by which a final decision will be reached. The extension may not exceed 180 days after the date on which the Claim was filed. The Administrator shall provide the Claimant with a written notice advising the Claimant as to whether the Claim is granted or denied, in whole or in part. If a Claim is denied, in whole or in part, the notice will contain (a) the specific reasons for the denial, (b) references to pertinent provisions of the Policy upon which the denial is based, (c) a description of any additional material or information, if any, that is necessary to perfect the Claim and an explanation of why such material or information is necessary, and (d) the Claimant's right to seek review of the denial.

Section 6.02 Review of Claim Denial. If a Claim is denied, in whole or in part, the Claimant may shall have the right to (a) request that the Committee review the denial, (b) review pertinent documents, and (c) submit issues and comments in writing, provided that the Claimant files a written request for review with the Committee within 60 days after the date on which the Claimant received written notification of the denial. Within 60 days after a request for review is received, the Committee shall review the Claim and advise the Claimant in writing of the Committee's decision on review. If special circumstances require an extension of time for processing the review, the Committee shall provide the Claimant with written notice within the initial 60-day review period specifying the reasons for the extension and when such review shall be completed. The extension of the review period may not exceed 120 days after the date on which the request for review was filed. The Committee shall notify the Claimant of its decision on review in writing, which will include specific reasons for the decision and reference to the provisions of the Policy upon which the decision is based. A decision on review shall be final and binding on all persons for all purposes. A Claimant or other individual shall not be entitled to bring any legal action or arbitration unless such person has exhausted such person's rights under Section 6.01 and this Section 6.02 by timely submitting a Claim and requesting a review of a decision with respect to such Claim.

Section 6.03 **Arbitration.** If a Claimant has exhausted his or her administrative remedies under Section 6.02 relating to any Claim under this Policy, then the Claimant may demand that any remaining disputed matters under this Policy (a “Dispute”) be settled by final and binding arbitration by sending written notice of such election to the Administrator clearly marked “Arbitration Demand” and such Dispute shall be arbitrated in accordance with the terms and conditions of this Section 6.03. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm or to enforce the terms of a Participant’s Restrictive Covenants Agreement.

The Dispute shall be resolved by a single arbitrator in an arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Employment Arbitration Rules in effect at the time of the arbitration hearing and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The decision of the arbitrator shall be final and binding on the parties, and specific performance giving effect to the decision of the arbitrator may be ordered by any court of competent jurisdiction. Nothing contained herein shall operate to prevent either party from asserting any counterclaims in any arbitration commenced in accordance with this Agreement.

The arbitration shall be filed with the AAA office located in the State of New Jersey. The decision of the arbitrator, which shall be in writing and state the findings, the facts and conclusions of law upon which the decision is based, shall be final and binding upon the parties, who shall forthwith comply after receipt thereof. Judgment upon the award rendered by the arbitrator may be entered by any competent court. Each party submits itself to the jurisdiction of any such court, but only for the entry and enforcement to judgment with respect to the decision of the arbitrator hereunder.

Except as otherwise provided by law, the parties shall bear their own costs in preparing for and participating in the resolution of any Dispute pursuant to this Section 6.03, and the costs of the arbitrator(s) shall be equally divided between the parties.

The provisions of this Section 6.03 shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to any Dispute arising in connection with this Agreement. Any party commencing a lawsuit in violation of this Section 6.03 shall pay the costs of the other party, including, without limitation, reasonable attorney’s fees and defense costs.

**ARTICLE VII.
AMENDMENT AND TERMINATION**

The Board or the Committee reserves the right to amend this Policy from time to time or to terminate the Policy; provided, however, that no such amendment or termination shall reduce the amount of Severance Benefits payable to any Eligible Participant who had an Involuntary Termination of Employment on or before the date of such amendment is executed or this Policy is terminated. Moreover, this Policy may not be amended or terminated at any time on or after the date Change in Control occurs and prior to the second anniversary of such Change in Control if such amendment or termination will have a material adverse affect on any Participant’s eligibility for Severance Pay or Severance Benefits or the amount of Severance Benefits provided under this Policy or under any plan, policy, program, arrangement or agreement that replaces this Policy. This Policy may not be amended, modified or terminated in a manner that would subject any Participant to taxation of his Severance Benefits under Section 409A(a)(1) of the Code.

**ARTICLE VIII.
MISCELLANEOUS**

Section 8.01 Accrued Obligations. Notwithstanding any provision in this Policy to the contrary, a Participant who has a Termination of Employment shall receive all of the Accrued Obligations to which such Participant is entitled in accordance with the Company's customary payroll practices and/or the terms of any applicable plan, program, policy or arrangement maintained by the Company without regard to whether the Participant is or may become entitled to any Severance Pay or Severance Benefits under this Policy and the payment of such Accrued Obligations shall not be conditioned upon the Participant's execution of a Release.

Section 8.02 Successors and Assigns. The obligations of the Company under this Policy shall be assumed by its successors and assigns.

Section 8.03 Employment Rights. The existence of this Policy shall not confer any legal or other rights upon any employee to continuation of employment. The Company and its subsidiaries reserve the right to terminate any employee with or without cause at any time, notwithstanding the provisions of this Policy.

Section 8.04 Controlling Law. The provisions of this Policy shall be governed, construed and administered in accordance with ERISA. To the extent that ERISA does not apply, the laws of the State of New Jersey shall be controlling, other than New Jersey law concerning conflicts of law.

Section 8.05 Interests Not Transferable. The interest of persons entitled to Severance Benefits under this Policy are not subject to their debts or other obligations and, except as provided in Sections 4.06 and 8.02 above and Section 8.11 below, as required by federal or state garnishment orders issued to the Plan or the Company, or as may be required by ERISA, may not be voluntarily or involuntarily sold, transferred, alienated, assigned or encumbered.

Section 8.06 Representations Contrary to the Policy. No officer or employee of the Company has the authority to alter, vary or modify the terms of the Policy or the Severance Benefits available to any Eligible Participant without the written consent of the Board or the Committee. No verbal or written representations contrary to the terms of the Policy and any duly authorized written consent of the Board or Committee shall be binding upon the Company.

Section 8.07 Plan Funding. No Participant or beneficiary thereof shall acquire by reason of this Policy any right in or title to any assets, funds, or property of the Company. Any Severance Benefits that become payable under this Policy are unfunded obligations of the Company and shall be paid from the Company's general assets. No employee, officer, director or agent of the Company guarantees in any manner the payment of Severance Benefits.

- Section 8.08 Headings. The headings in this Plan are for convenience of reference and shall not be given substantive effect.
- Section 8.09 Gender. Except when the context indicates to the contrary, when used in this Policy, masculine terms shall be deemed to include the feminine.
- Section 8.10 Severability. If any provision of this Policy is held illegal or invalid for any reason, the other provisions of this Policy shall not be affected.
- Section 8.11 Tax Withholding. Notwithstanding any other provision of this Policy, the Company may withhold from any and all Severance Benefits such United States federal, state or local or foreign taxes as may be required to be withheld pursuant to any applicable law or regulation.
- Section 8.12 Non-Exclusivity of Rights. The terms of the Policy shall not prevent or limit the right of a Participant to receive any base annual salary, pension or welfare benefit, perquisite, bonus or other payment provided by the Company to the Participant, except for such rights as the Participant may have specifically waived in writing. Amounts that are vested benefits or which the Participant is otherwise entitled to receive under any benefit policy or program provided by the Company shall be payable in accordance with the terms of such policy or program.
- Section 8.13 Indemnification. The CEO and the individuals serving on the Committee shall be indemnified to the fullest extent permitted by applicable law and the Company's Bylaws.

As adopted by the Compensation Committee
on June 21, 2018, and amended and restated as of June 10, 2022

CERTIFICATION

I, Daniel S. Goldberger, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of electroCore, 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)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2022

/s/ Daniel S. Goldberger

Daniel S. Goldberger
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Brian M. Posner, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of electroCore, 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)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2022

/s/ BRIAN M. POSNER

Brian M. Posner
Chief Financial Officer
(Principal Financial and Accounting Officer)

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

In connection with the Quarterly Report on Form 10-Q of electroCore, Inc, (the "Company") for the period ended June 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Daniel S. Goldberger, as Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 4, 2022

/s/ Daniel S. Goldberger
Daniel S. Goldberger
Chief Executive Officer
(Principal Executive Officer)

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

In connection with the Quarterly Report on Form 10-Q of electroCore, Inc. (the "Company") for the period ended June 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Brian M. Posner, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 4, 2022

/s/ BRIAN M. POSNER

Brian M. Posner
Chief Financial Officer
(Principal Financial and Accounting Officer)