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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

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

For the quarterly period ended: September 30, 2024

OR

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

For the transition period from _____ to _____

COMMISSION FILE NUMBER: 001-38365

EYENOVIA, INC.

(Exact name of Registrant as Specified in Its Charter)

DELAWARE	**47-1178401**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)
295 Madison Avenue, Suite 2400 NEW YORK, NY	**10017**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: (833) 393-6684

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

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

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

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

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any news 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 Act). Yes ☐ No ☒

The number of outstanding shares of the registrant's common stock was 86,441,611 as of November 8, 2024.

EYENOVIA, INC.

FORM 10-Q

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2024

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PART I – FINANCIAL INFORMATION

Item 1. Financial Statements.

EYENOVIA, INC.
Condensed Balance Sheets

	September 30, 2024 (unaudited)	December 31, 2023
Assets		
Current Assets		
Cash and cash equivalents	$ 7,188,129	$ 14,849,057
Inventories	2,967,256	109,798
Deferred clinical supply costs	408,832	4,256,793
License fee and expense reimbursements receivable	137,594	123,833
Security deposits, current	—	1,506
Prepaid expenses and other current assets	987,754	1,365,731
Total Current Assets	11,689,565	20,706,718
Property and equipment, net	2,752,404	3,374,384
Security deposits, non-current	197,526	197,168
Intangible assets	6,122,945	2,122,945
Prepaid expenses, non-current	46,520	-
Operating lease right-of-use asset	1,275,690	1,666,718
Equipment deposits	711,441	711,441
Total Assets	$ 22,796,091	$ 28,779,374
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable	$ 1,573,940	$ 1,753,172
Accrued compensation	1,656,832	1,658,613
Accrued expenses and other current liabilities	2,518,086	287,928
Operating lease liabilities - current portion	604,647	501,250
Notes payable - current portion, net of debt discount of $562,711 and $503,914 as of September 30, 2024 and December 31, 2023, respectively	6,168,593	5,329,419
Convertible notes payable - current portion, net of debt discount of $72,467 and $0 as of September 30, 2024 and December 31, 2023, respectively	3,260,866	—
Total Current Liabilities	15,782,964	9,530,382
Accrued expenses and other non-current liabilities	316,275	—
Operating lease liabilities - non-current portion	836,434	1,292,667
Notes payable - non-current portion, net of debt discount of $0 and $448,367 as of September 30, 2024 and December 31, 2023, respectively	637,500	4,355,800
Convertible notes payable - non-current portion, net of debt discount of $163,051 and $398,569 as of September 30, 2024 and December 31, 2023, respectively	1,503,615	4,601,431
Total Liabilities	19,076,788	19,780,280
Commitments and contingencies (Note 8)		
Stockholders' Equity:		
Preferred stock, $0.0001 par value, 6,000,000 shares authorized; 0 shares issued and outstanding as of September 30, 2024 and December 31, 2023	—	—
Common stock, $0.0001 par value, 300,000,000 shares authorized; 86,375,958 and 45,553,026 shares issued and outstanding as of September 30, 2024 and December 31, 2023, respectively	8,638	4,555
Additional paid-in capital	179,065,877	154,486,098
Accumulated deficit	(175,355,212)	(145,491,559)
Total Stockholders' Equity	3,719,303	8,999,094
Total Liabilities and Stockholders' Equity	$ 22,796,091	$ 28,779,374

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

EYENOVIA, INC.

Condensed Statements of Operations
(unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Operating Income				
Revenue	$ 1,625	$ 1,198	$ 29,243	$ 1,198
Cost of revenue	(132,522)	(13,416)	(825,910)	(13,416)
Gross Loss	(130,897)	(12,218)	(796,667)	(12,218)
Operating Expenses:				
Research and development	3,471,939	3,578,113	12,500,713	8,911,124
Selling, general and administrative	3,729,091	2,929,855	11,125,115	9,016,550
Reacquisition of license rights	—	—	4,864,600	—
Total Operating Expenses	7,201,030	6,507,968	28,490,428	17,927,674
Loss From Operations	(7,331,927)	(6,520,186)	(29,287,095)	(17,939,892)
Other Income (Expense):				
Other income (expense), net	1,184	(348,226)	(93,394)	(157,783)
Change in fair value of equity consideration payable	—	—	1,240,800	—
Interest expense	(602,109)	(679,222)	(1,954,768)	(1,691,228)
Interest income	44,999	208,901	230,804	494,944
Total Other Expense	(555,926)	(818,547)	(576,558)	(1,354,067)
Net Loss	$ (7,887,853)	$ (7,338,733)	$ (29,863,653)	$ (19,293,959)
Net Loss Per Share - Basic and Diluted	$ (0.11)	$ (0.18)	$ (0.53)	$ (0.50)
Shares Outstanding - Basic and Diluted	69,558,325	40,139,697	56,476,876	38,563,074

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

EYENOVIA, INC.

Condensed Statements of Changes in Stockholders' (Deficiency) Equity
(unaudited)

	For the Three and Nine Months Ended September 30, 2024				
	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' (Deficiency) Equity
	Shares	Amount			
Balance - January 1, 2024	45,553,026	$ 4,555	$ 154,486,098	$ (145,491,559)	$ 8,999,094
Issuance of common stock in At the Market Program [1]	1,833,323	183	3,194,364	—	3,194,547
Stock-based compensation	—	—	546,232	—	546,232
Net loss	—	—	—	(10,922,101)	(10,922,101)
Balance - March 31, 2024	47,386,349	4,738	158,226,694	(156,413,660)	1,817,772
Issuance of common stock in offering [2]	3,223,726	322	1,888,507	—	1,888,829
Issuance of common stock as consideration for licensing agreement [3]	613,496	62	436,747	—	436,809
Issuance of common stock as consideration for reacquisition of licensing agreement [4]	2,299,397	230	2,322,161	—	2,322,391
Issuance of common stock in At the Market Program [5]	2,294,953	230	1,676,709	—	1,676,939
Stock-based compensation	—	—	541,056	—	541,056
Net loss	—	—	—	(11,053,699)	(11,053,699)
Balance - June 30, 2024	55,817,921	5,582	165,091,874	(167,467,359)	(2,369,903)
Issuance of common stock and warrants in offerings [6]	29,055,757	2,906	12,345,272	—	12,348,178
Warrant modification and additional warrants - incremental value (7)	—	—	2,868,000	—	2,868,000
Warrant modification and additional warrants - in issuance costs for offering (8)	—	—	(2,868,000)	—	(2,868,000)
Issuance of common stock in At the Market Program [9]	1,502,280	150	1,175,733	—	1,175,883
Stock-based compensation	—	—	452,998	—	452,998
Net loss	—	—	—	(7,887,853)	(7,887,853)
Balance - September 30, 2024	86,375,958	$ 8,638	$ 179,065,877	$ (175,355,212)	$ 3,719,303

[1] Includes gross proceeds of $3,293,347 less total issuance costs of $98,800.
[2] Includes gross proceeds of $2,000,000, less total issuance costs of $111,171.
[3] Shares issued as partial consideration for License Agreement with Formosa Pharmaceuticals Inc.
[4] Shares issued as partial consideration for reversion of License Agreement with Bausch & Lomb Ireland Limited.
[5] Includes gross proceeds of $1,728,804 less total issuance costs of $51,865.
[6] Includes gross proceeds of $14,139,994, less total cash issuance costs of $1,791,816.
[7] Offering includes modification of warrants and additional warrants in the July 2024 offering.
[8] Non-cash warrant modification and additional warrants issuance costs related to one of the offerings of $2,868,000 are shown on a separate line item.
[9] Includes gross proceeds of $1,212,251 less total issuance costs of $36,368.

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

EYENOVIA, INC.

Condensed Statements of Changes in Stockholders' Equity, continued
(unaudited)

	For the Three and Nine Months Ended September 30, 2023				
	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance - January 1, 2023	36,668,980	$ 3,667	$ 135,461,361	$ (118,230,463)	$ 17,234,565
Issuance of common stock in At the Market offering [1]	1,299,947	130	3,499,462	—	3,499,592
Cashless exercise of stock options	19,530	2	(2)	—	—
Stock-based compensation	—	—	819,064	—	819,064
Issuance of common stock related to vested restricted stock units	3,289	—	—	—	—
Net loss	—	—	—	(5,739,366)	(5,739,366)
Balance - March 31, 2023	37,991,746	3,799	139,779,885	(123,969,829)	15,813,855
Issuance of common stock in At the Market offering [2]	121,989	13	403,107	—	403,120
Cashless exercise of stock options	1,219	—	—	—	—
Exercise of stock options	10,000	1	27,199	—	27,200
Stock-based compensation	—	—	493,632	—	493,632
Issuance of common stock related to vested restricted stock units	44,444	4	(4)	—	—
Net loss	—	—	—	(6,215,860)	(6,215,860)
Balance -June 30, 2023	38,169,398	3,817	140,703,819	(130,185,689)	10,521,947
Issuance of common stock and warrants in registered direct offering [3][7]	4,198,633	420	10,885,694	—	10,886,114
Issuance of common stock as consideration for licensing agreement [4]	487,805	49	999,951	—	1,000,000
Issuance of common stock in At the Market offering [5]	42,410	4	97,432	—	97,436
Warrant modification - incremental value (6)	—	—	1,738,700	—	1,738,700
Warrant modification - in issuance costs for registered direct offering (7)	—	—	(1,738,700)	—	(1,738,700)
Stock-based compensation	—	—	612,969	—	612,969
Net loss	—	—	—	(7,338,733)	(7,338,733)
Balance - September 30, 2023	42,898,246	$ 4,290	$ 153,299,865	$ (137,524,422)	$ 15,779,733

[1] Includes gross proceeds of $3,607,827 less total issuance costs of $108,235.
[2] Includes gross proceeds of $415,588 less total issuance costs of $12,468.
[3] Includes gross proceeds of $11,977,468 less total cash issuance costs of $1,091,354.
[4] Shares issued as partial consideration for License Agreement with Formosa Pharmaceuticals Inc.
[5] Includes gross proceeds of $100,449 less total issuance costs of $3,013.
[6] Registered direct offering included modification of warrant originally granted in the March 2022 offering.
[7] Non-cash warrant modification issuance costs related to the registered direct offering of $1,738,700 are shown on a separate line item.

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

EYENOVIA, INC.

Condensed Statements of Cash Flows
(unaudited)

	For the Nine Months Ended September 30,	
	2024	**2023**
Cash Flows From Operating Activities		
Net loss	$ (29,863,653)	$ (19,293,959)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	1,540,286	1,925,665
Change in fair value of equity consideration payable	(1,240,800)	—
Depreciation of property and equipment	830,605	505,684
Amortization of debt discount	552,620	497,654
Write-off of property and equipment	88,251	—
Write-down of inventories to net realizable value	769,217	12,218
Provision for returned deferred clinical supplies	—	400,000
Reacquisition of license rights	2,864,600	—
Non-cash rent expense	391,028	403,362
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets	836,507	39,035
License fee and expense reimbursement receivables	(13,761)	786,772
Deferred clinical supply costs	1,272,309	(1,637,756)
Inventories	(1,051,023)	(62,514)
Security and equipment deposits	1,148	1,750
Accounts payable	(179,232)	(2,255)
Accrued compensation	(1,781)	(371,359)
Accrued expenses and other current liabilities	(453,567)	(307,373)
Lease liabilities	(352,836)	(411,266)
Net Cash Used In Operating Activities	(24,010,082)	(17,514,342)
Cash Flows From Investing Activities		
Purchases of property and equipment	(161,476)	(2,702,361)
Investment in intangible asset	—	(1,122,945)
Net Cash Used In Investing Activities	(161,476)	(3,825,306)
Cash Flows From Financing Activities		
Proceeds from sale of common stock and warrants in offerings	16,139,994	11,977,468
Payment of offerings issuance costs	(1,902,987)	(1,091,354)
Proceeds from sale of common stock in At the Market Program	6,234,402	4,123,864
Payment of issuance costs for At the Market Program	(187,033)	(123,716)
Proceeds from exercise of stock options	—	27,200
Proceeds from note payable to Avenue	—	5,000,000
Payment of issuance costs for notes issued to Avenue	—	(125,982)
Repayments of notes payable	(3,773,746)	(609,140)
Net Cash Provided By Financing Activities	16,510,630	19,178,340
Net Decrease in Cash and Cash Equivalents	(7,660,928)	(2,161,308)
Cash and Cash Equivalents - Beginning of Period	14,849,057	22,863,520
Cash and Cash Equivalents - End of Period	$ 7,188,129	$ 20,702,212

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

EYENOVIA, INC.

Condensed Statements of Cash Flows, continued
(unaudited)

	For the Nine Months Ended September 30,	
	2024	**2023**
Supplemental Disclosure of Cash Flow Information:		
Cash paid during the period for:		
Interest	$ 1,402,147	$ 1,194,132
Supplemental Disclosure of Non-Cash Investing and Financing Activities		
Purchase of insurance policy financed by note payable	$ 505,050	$ 609,140
Accrual for intangible asset milestone obligation	$ 2,000,000	$ —
Reclassification of deferred clinical supply costs to inventories	$ 2,575,652	$ —
Right-of-use assets obtained in exchange for lease liabilities	$ —	$ 904,437
Vendor deposits applied to purchases of property and equipment	$ —	$ 39,573
Original issue discount on notes payable	$ —	$ 212,500
Warrant modification and additional warrants - incremental value	$ 2,868,000	$ 1,738,700
Issuance of common stock in consideration of licensing agreement	$ —	$ 1,000,000
Cashless exercise of stock options	$ —	$ 2
Common stock issued in consideration for licensing agreement	$ 436,809	$ —
Common stock issued in consideration for reacquisition of licensing agreement	$ 2,322,391	$ —
Issuance of common stock related to vested restricted stock units	$ —	$ 4

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

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

(UNAUDITED)

Note 1 – Business Organization, Nature of Operations and Basis of Presentation

Eyenovia, Inc. ("Eyenovia" or the "Company") is an ophthalmic technology company developing and commercializing advanced products leveraging its proprietary Optejet topical ophthalmic medication dispensing platform. The Optejet is especially useful in the treatment of chronic front-of-the-eye diseases due to its ease of use, enhanced safety and tolerability, and potential for superior compliance versus standard eye drops. Together, these benefits may combine to produce better treatment options and outcomes for patients and providers. The company's pre-NDA candidate, MicroPine, is being developed for pediatric progressive myopia, a global epidemic impacting hundreds of millions of children worldwide and representing a multi-billion-dollar addressable market. The company's current commercial portfolio includes clobetasol propionate ophthalmic suspension, 0.05%, for post-surgical pain and inflammation, and Mydcombi® for mydriasis. Eyenovia has also secured licensing and development agreements for additional multi-billion-dollar indications where the Optejet may be advantageous, including dry eye.

The accompanying unaudited condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim financial information and with the instructions to Form 10-Q and Article 8 of Regulation S-X. Accordingly, they do not include all of the information and disclosures required by U.S. GAAP for complete financial statements. In the opinion of management, such statements include all adjustments (consisting only of normal recurring items) which are considered necessary for a fair presentation of the condensed financial statements of the Company as of September 30, 2024 and for the three and nine months ended September 30, 2024 and 2023. The results of operations for the three and nine months ended September 30, 2024 are not necessarily indicative of the operating results for the full year ending December 31, 2024 or any other period. These unaudited condensed financial statements should be read in conjunction with the audited financial statements and related disclosures of the Company as of December 31, 2023 and for the year then ended, which were included in the Company's Annual Report on Form 10-K for the year ended December 31, 2023, filed with the Securities and Exchange Commission ("SEC") on March 18, 2024 (the "2023 Form 10-K"), as amended by Amendment No. 1, filed with the SEC on April 26, 2024 (the "2023 Form 10-K Amendment").

Note 2 – Summary of Significant Accounting Policies

The Company disclosed its significant accounting policies in Note 2 – Summary of Significant Accounting Policies included in the 2023 Form 10-K. There have been no material changes to the Company's significant accounting policies during the nine months ended September 30, 2024, except as disclosed below.

Liquidity and Going Concern

As of September 30, 2024, the Company had unrestricted cash and cash equivalents of approximately $7.2 million and an accumulated deficit of approximately $175.4 million. For the nine months ended September 30, 2024 and 2023, the Company incurred net losses of approximately $29.9 million and $19.3 million, respectively, and used cash in operations of approximately $24.0 million and $17.5 million, respectively. The Company does not have recurring significant revenue and has not yet achieved profitability. The Company expects to continue to incur cash outflows from operations for the near future. The Company expects that it will continue to incur significant research and development and selling, general and administrative expenses and, as a result, it will eventually need to generate significant product revenues to achieve profitability. These circumstances raise substantial doubt about the Company's ability to continue as a going concern for at least one year from the date that these financial statements are issued. Implementation of the Company's plans and its ability to continue as a going concern will depend on many factors, including the Company's ability to successfully commercialize its products and services, competing technological and market developments, and the need to enter into collaborations with other companies, or acquire other companies or technologies to enhance or complement its product and service offerings. Additionally, the Company will need to raise further capital, through the sale of additional equity or debt securities. If the Company is unable to generate sufficient recurring revenues or secure additional capital, it may be required to curtail its research and development initiatives and take additional measures to reduce costs in order to conserve its cash.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents in the financial statements. As of September 30, 2024 and December 31, 2023, the Company had Treasury bills with original maturity dates of three months or less in the amounts of $0 and $5,450,118, respectively.

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

(UNAUDITED)

The Company has cash deposits in financial institutions that, at times, may be in excess of Federal Deposit Insurance Corporation ("FDIC") insurance limits. The Company has not experienced losses in such accounts and periodically evaluates the creditworthiness of its financial institutions. As of September 30, 2024 and December 31, 2023, the Company had cash and cash equivalent balances in excess of FDIC insurance limits of $6,784,903 and $14,243,870, respectively.

Clinical Supply Arrangements

Bausch + Lomb Ireland Limited ("Bausch + Lomb") and Arctic Vision had contracted with the Company to manufacture and supply them with the appropriate drug-device combination products to conduct their clinical trials on a cost plus 10% mark-up basis. Pursuant to the Letter Agreement (as defined below) with Bausch + Lomb, as referenced in Note 8 – Commitments and Contingencies – Bausch License Agreements, the arrangement with Bausch + Lomb has been terminated, and all rights have been repurchased by Eyenovia. The arrangement with Arctic Vision is still in place. The Company's licensing agreement with Arctic Vision represents a collaborative arrangement and Arctic Vision is not a customer with respect to the clinical supply arrangements. The Company's policy is to (a) defer the materials and manufacturing costs in order to properly match them up against the income from the clinical supply arrangements; and (b) report the net income from the clinical supply arrangements as other income. Deferred clinical supply costs were $0.4 million and $4.3 million at September 30, 2024 and December 31, 2023, respectively. See Note 8 – Commitments and Contingencies –Defective Clinical Supply for additional information.

Inventories

Inventories are stated at the lower of cost or net realizable value. Cost is determined using the first-in, first-out method. The cost of inventory that is sold commercially to third parties is included within cost of sales. The Company will periodically review for slow-moving, excess or obsolete inventories.

Inventory is primarily comprised of drug-device combination products, which are available for commercial sale, as follows:

	September 30, 2024	December 31, 2023
Finished goods	$ 427,217	$ 30,683
Raw materials	2,540,039	79,115
Total inventory	$ 2,967,256	$ 109,798

The Company has evaluated the net realizable value of the commercial inventory. The write-down of commercial inventory to net realizable value for the three months ended September 30, 2024 and 2023 was $0.1 million and $0.0 million, respectively. The write-down of commercial inventory for the nine months ended September 30, 2024 and 2023 was $0.8 million and $0.0 million, respectively. The write - down for the nine months ended September 30, 2024 consisted of $0.2 million of inventory write down adjustments to list price for the first quarter of 2024, $0.5 million for the write-down of short dated inventory to net realizable value for the second quarter of 2024 and $0.1 million for the write - down of inventory to net realizable value for the third quarter of 2024. The Company recorded the write-downs to cost of revenue as it relates to goods that were part of commercial inventory during 2024.

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

(UNAUDITED)

Net Loss Per Share of Common Stock

Basic net loss per share of common stock is computed by dividing net loss by the weighted average number of shares of common stock outstanding during the period, plus fully vested shares that are subject to issuance for little or no monetary consideration. Diluted loss per share reflects the potential dilution that could occur if securities or other instruments to issue common stock were exercised or converted into common stock. The following table presents the computation of basic and diluted net loss per common share:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Numerator:				
Net loss attributable to common stockholders	$ (7,887,853)	$ (7,338,733)	$ (29,863,653)	$ (19,293,959)
Denominator (weighted average quantities):				
Common shares issued	69,316,561	39,107,338	56,298,569	38,192,414
Add: Prefunded warrants	—	926,225	—	305,349
Add: Undelivered vested restricted shares	241,764	106,134	178,307	65,311
Denominator for basic and diluted net loss per share	69,558,325	40,139,697	56,476,876	38,563,074
Basic and diluted net loss per common share	$ (0.11)	$ (0.18)	$ (0.53)	$ (0.50)

The following securities are excluded from the calculation of weighted average diluted shares of common stock because their inclusion would have been anti-dilutive:

	September 30,	
	2024	2023
Warrants	28,947,744	10,926,554
Options	6,695,042	5,218,686
Convertible notes	2,327,747	2,327,747
Restricted stock units	368,886	86,205
Total potentially dilutive shares	38,339,419	18,559,192

Subsequent Events

The Company has evaluated subsequent events through the date which the financial statements were issued. Based upon the evaluation, the Company did not identify any recognized or non-recognized subsequent events that would have required adjustment or disclosure in the financial statements, except as disclosed.

Recently Issued Accounting Standards

In November 2023, the FASB issued ASU 2023-07, Improvements to Reportable Segments Disclosures (Topic 280), which updates reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses on both an annual and interim basis. The guidance becomes effective for fiscal years beginning after December 15, 2023 and interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted. Since this new ASU addresses only disclosures, the Company does not expect the adoption of this ASU to have any material effects on its financial condition, results of operations or cash flows. The Company is currently evaluating any new disclosures that may be required upon adoption of ASU 2023-07.

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

(UNAUDITED)

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures. The amendments in this update address investor requests for more transparency about income tax information through improvements to income tax disclosures primarily related to the rate reconciliation and income taxes paid information. This update also includes certain other amendments to improve the effectiveness of income tax disclosures. The amendments in ASU 2023-09 are effective for fiscal years beginning after December 15, 2024, with early adoption permitted. The Company is currently evaluating the impact of this standard, but does not expect it to have a material impact on its financial statements.

Note 3 – Prepaid Expenses and Other Current Assets

As of September 30, 2024 and December 31, 2023, prepaid expenses and other current assets consisted of the following:

	September 30, 2024	December 31, 2023
Prepaid insurance expenses	$ 356,214	$ 167,338
Payroll tax receivable	288,705	500,684
Prepaid general and administrative expenses	131,606	85,938
Prepaid patent expenses	71,073	48,409
Prepaid conference expenses	54,810	123,556
Prepaid research and development expenses	48,172	421,056
Prepaid rent and security deposit	18,750	18,750
Other	18,424	—
Total prepaid expenses and other current assets	$ 987,754	$ 1,365,731

Note 4 - Intangible Assets

On August 15, 2023, the Company entered into a license agreement (the "Formosa License") with Formosa Pharmaceuticals Inc. ("Formosa"), whereby the Company acquired the exclusive U.S. rights to commercialize any product related to a novel formulation of clobetasol propionate ophthalmic suspension, 0.05% (the "Formosa Licensed Product"), which was approved by the FDA for ophthalmic use for inflammation and pain after ocular surgery and supplemental disease indications, if any, associated with the New Drug Application for the Formosa Licensed Product. The Formosa License will remain in effect for ten years from the date of the first commercial sale of a Formosa Licensed Product, unless earlier terminated. The Company paid Formosa the aggregate amount of $2.0 million (the "Upfront Payment"), consisting of (a) cash in the amount of $1.0 million and (b) 487,805 shares of common stock, which is included in Intangible Assets on the accompanying balance sheet. The Company also capitalized $122,945 of transaction costs, which were primarily legal expenses. In addition to the Upfront Payment, the Company must pay Formosa up to $4.0 million upon the achievement of certain development milestones and up to $80.0 million upon the achievement of certain sales milestones. The trigger for the initial $2.0 million development milestone payments was FDA approval of the Formosa Licensed Product and the effective date of the acceptance by the Company of the transfer and assignment of the FDA approval. This occurred on March 14, 2024. Under the provisions of the Formosa License, the Company had 45 days from the effective date of acceptance of the transfer and assignment of FDA approval to make the payment half in cash and half in common stock, otherwise the payment due would revert to be fully in cash. The Company paid Formosa the aggregate amount of $2.0 million, consisting of (a) cash in the amount of $1.0 million on April 26, 2024 and (b) 613,496 shares of common stock on April 29, 2024 (calculated pursuant to the Formosa License using a five-day volume-weighted average price on March 14, 2024, but valued at $0.4 million on the April 29, 2024 settlement date, resulting in a $0.6 million change in fair value of the equity consideration payable), which is included in Intangible Assets on the accompanying balance sheet as of September 30, 2024. The second $2.0 million development milestone (to be fully paid in cash) was earned upon FDA approval of the Formosa Licensed Product and payment was triggered on the earlier of twelve months after FDA approval or six months following the first commercial sale of the Formosa Licensed Product. Because the payment became probable and estimable, the Company recorded an additional $2.0 million increase in the intangible asset and the related accrual on March 14, 2024.

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

(UNAUDITED)

Note 5 – Accrued Compensation

As of September 30, 2024 and December 31, 2023, accrued compensation consisted of the following:

	September 30, 2024	December 31, 2023
Accrued bonus expenses	$ 1,141,884	$ 1,302,997
Accrued payroll expenses	514,948	355,616
Total accrued compensation	$ 1,656,832	$ 1,658,613

Note 6 – Accrued Expenses and Other Current Liabilities

As of September 30, 2024 and December 31, 2023, accrued expenses and other current liabilities consisted of the following:

	September 30, 2024	December 31, 2023
Accrued intangible asset milestone obligation	$ 2,000,000	$ —
Accrued defective clinical supply settlement, net	250,000	100,000
Accrued clinical studies costs	121,588	—
Accrued professional services	79,042	63,028
Credit card payable	29,502	27,193
Accrued franchise tax	15,000	—
Accrued research and development expenses	13,550	89,872
Other	9,404	7,835
Total accrued expenses and other current liabilities	$ 2,518,086	$ 287,928

Note 7 – Notes Payable and Convertible Notes Payable

As of September 30, 2024 and December 31, 2023, notes payable and convertible notes payable consisted of the following:

	September 30, 2024			December 31, 2023		
	Notes Payable	Debt Discount	Net	Notes Payable	Debt Discount	Net
Current portion:						
D&O insurance policy loan	$ 64,637	$ —	$ 64,637	$ —	$ —	$ —
Avenue - Note payable	6,666,667	(562,711)	6,103,956	5,833,333	(503,914)	5,329,419
Avenue - Convertible note payable	3,333,333	(72,467)	3,260,866	—	—	—
Total current portion	$ 10,064,637	$ (635,178)	$ 9,429,459	$ 5,833,333	$ (503,914)	$ 5,329,419
Non-Current portion:						
Avenue - Note payable	$ 637,500	$ —	$ 637,500	$ 4,804,167	$ (448,367)	$ 4,355,800
Avenue - Convertible note payable	1,666,666	(163,051)	1,503,615	5,000,000	(398,569)	4,601,431
Total non-current portion	$ 2,304,166	$ (163,051)	$ 2,141,115	$ 9,804,167	$ (846,936)	$ 8,957,231

On February 24, 2024, the Company issued a note payable in the amount of $505,050 for the purchase of a directors and officers' liability insurance policy (the "D&O Loan"). The note accrued interest at a rate of 8.15% per year and matured on October 24, 2024. The D&O Loan was payable in eight monthly payments of $65,076 consisting of principal and interest. During the nine months ended September 30, 2024, the Company repaid $440,413 of principal owed on the D&O Loan. The note was paid off in full on the maturity date.

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

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In June 2024, the Company began making principal payments related to that certain loan and security agreement (the "Loan and Security Agreement") with Avenue Capital Management II, L.P. and related entities (together, "Avenue") in the amount of $833,333 per month plus interest.

During the three months ended September 30, 2024, the Company recorded interest expense of $602,109, of which $598,188 (including amortization of debt discount of $184,207) was related to the Avenue loan and $3,921 was related to the D&O Loan. During the nine months ended September 30, 2024, the Company recorded interest expense of $1,954,768, of which $1,939,650 was related to the Loan and Security Agreement (including amortization of debt discount of $552,620) and $15,118 was related to the D&O Loan.

Note 8 – Commitments and Contingencies

Defective Clinical Supply

During the third quarter of 2023, a certain portion of clinical supply product sold by the Company to Bausch + Lomb was determined to be defective. On April 23, 2024, the Company and Bausch + Lomb executed a letter agreement (the "Side Letter") pursuant to which the Company and Bausch + Lomb agreed that the Company would pay approximately $0.5 million to Bausch + Lomb related to the defective clinical supply. Accordingly, the Company recorded an estimated charge equal to $0.4 million, which was included within other income (expense) during the year ended December 31, 2023, because the original sales to the licensee were recorded on that line item. During the three and nine months ended September 30, 2024, the Company recorded no additional charge and a $0.1 million charge, respectively, to other income (expense).

Bausch License Agreements

On October 9, 2020, the Company entered into a license agreement (the Bausch License Agreement"), pursuant to which Bausch + Lomb was permitted to develop and commercialize the Bausch Licensed Product (as defined in the Bausch License Agreement) in the United States and Canada (the "Licensed Territory"). Bausch + Lomb could terminate the Bausch License Agreement, with respect to the Bausch Licensed Product to either country in the Licensed Territory, at any time for convenience upon 90 days' written notice.

On January 12, 2024, the Company and Bausch + Lomb entered into a mutual termination and reassignment agreement (the "Letter Agreement"), pursuant to which Eyenovia reacquired the rights to the Bausch Licensed Product. The terms of the agreement include the immediate transfer of the rights and the subsequent transfer of certain assets relating to the Bausch Licensed Product from Bausch + Lomb to the Company in exchange for cash and common stock consideration. In addition, under the terms of the Letter Agreement, the Company agreed to pay Bausch + Lomb a low single-digit royalty on its net sales of the Bausch Licensed Product in the United States and Canada for a period of ten years from the date of the first commercial sale by the Company (or its affiliates or licensees) of the Bausch Licensed Product in the United States. Under the Letter Agreement, (i) the Company will re-acquire any and all licenses and other rights granted by the Company to Bausch + Lomb under the original Bausch License Agreement, (ii) any and all licenses and other rights granted by Bausch + Lomb to the Company under the License Agreement are terminated, other than as set forth in the Letter Agreement, and (iii) other than as set forth in the Letter Agreement, Bausch + Lomb is released from all of their ongoing obligations under the License Agreement, including development and commercialization obligations.

Pursuant to the Letter Agreement, the Company paid Bausch + Lomb an upfront payment of $2.0 million in cash on January 22, 2024. The Company recorded this amount as an operating expense. In connection with the entry into the Letter Agreement, the Company also agreed to issue Bausch + Lomb $3.0 million in shares of the Company's common stock, following the Regulatory Transfer Date (the "Transfer Date"). On April 11, 2024, the Transfer Date, the transfer of the rights and certain assets relating to the CHAPERONE trial from Bausch + Lomb to the Company, was completed. On May 3, 2024, the Company issued Bausch + Lomb 2,299,397 shares of the Company's common stock (calculated pursuant to the Letter Agreement at $3.0 million using a thirty-day volume-weighted average price on April 11, 2024, but valued at $2.3 million on the May 3, 2024 settlement date, resulting in a $0.7 million change in fair value of the equity consideration payable), in satisfaction of its obligations pursuant to the Letter Agreement.

Pursuant to the Side Letter described above (see Defective Clinical Supply), the Company agreed to pay approximately $0.5 million to Bausch + Lomb related to the defective clinical supply. It was also agreed that the Company will receive approximately $0.25 million from Bausch + Lomb to fund the vendor hold back liability that will be due upon completion of the CHAPERONE study. The Company

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

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recorded the payable to Bausch + Lomb in the amount of $0.25 million. In addition, the Company purchased $0.5 million of clinical supplies from Bausch + Lomb in April 2024.

Operating Leases

A summary of the Company's right-of-use assets and liabilities is as follows:

	For the Nine Months Ended September 30,	
	2024	2023
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows used in operating activities	$ 352,836	$ 411,266
Right-of-use assets obtained in exchange for lease obligations		
Operating leases	$ —	$ 904,437
Weighted Average Remaining Lease Term (Years)		
Operating leases	2.37	3.28
Weighted Average Discount Rate		
Operating leases	10.0 %	10.0 %

Future minimum payments under the Company's operating lease agreements are as follows:

For the Years Ending December 31,	Minimum Lease Payments
2024	$ 183,092
2025	675,400
2026	560,996
2027	214,618
Total future minimum lease payments	1,634,106
Less: Imputed interest	(193,025)
Present value of lease liabilities	1,441,081
Less: current portion	(604,647)
Lease liabilities, non-current portion	$ 836,434

Litigations, Claims and Assessments

The Company may be involved in legal proceedings, claims and assessments arising in the ordinary course of business. The Company records legal costs associated with loss contingencies as incurred and accrues for all probable and estimable settlements.

Note 9 – Related Party Transactions

The Company has an advisory service agreement with a member of the board of directors. The agreement calls for a monthly consulting fee of $5,000, paid on a quarterly basis, which is in addition to the compensation paid to the individual pursuant to the Company's non - employee director compensation policy while such individual remains a member of the board of directors.

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

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Note 10 – Stockholders' Equity

Increase in Authorized Number of Shares of Common Stock

On June 12, 2024, at the Annual Shareholders' Meeting, the Company proposed and the shareholders approved an increase in the authorized number of shares of the Company's common stock from 90,000,000 to 300,000,000 at the same par value of $0.0001 per share.

Common Stock Issuances

Pursuant to the License and certain milestone achievements, the Company issued 613,496 shares of common stock valued at $0.4 million on April 29, 2024 to Formosa (see Note 4 – Intangible Assets).

On May 3, 2024, the Company issued Bausch + Lomb 2,299,397 shares of the Company's common stock, valued at $2.3 million, in satisfaction of its obligations pursuant to the Letter Agreement (see Note 8 – Commitments and Contingencies).

At-The-Market Program

During the nine months ended September 30, 2024, the Company received approximately $6.0 million in net proceeds from the sale of 5,630,556 shares of its common stock pursuant to a sales agreement (the "Sales Agreement") with Leerink Partners, LLC, formerly known as SVB Securities LLC ("Leerink Partners") in an "at-the-market" offering.

Offerings

Second Quarter Offering

On April 8, 2024, the Company entered into a securities purchase agreement (the "Purchase Agreement") with a single fundamentals-based healthcare investor (the "Purchaser"), pursuant to which the Company agreed to sell, in a registered direct offering by the Company directly to the Purchaser (the "April Offering"), 3,223,726 shares of common stock. The price per share in the April Offering was $0.6204. The aggregate gross proceeds to the Company from the April Offering were $2.0 million, and net proceeds after offering costs were approximately $1.9 million.

Third Quarter Offerings

A summary of the offerings for the third quarter is presented below:

	Common Stock		Additional Paid-In Capital	Total Stockholders' Equity
	Shares	Amount		
July Offering	7,575,757	$ 758	$ 4,298,643	$ 4,299,401
August Offering	12,850,000	1,285	4,449,822	4,451,107
September Offering	8,630,000	863	3,596,807	3,597,670
	29,055,757	$ 2,906	$ 12,345,272	$ 12,348,178

July Offering and Warrant Amendment

On July 1, 2024, the Company closed on a registered direct offering (the "July Offering") with certain institutional and accredited investors (the "July Investors"), pursuant to which the Company sold 7,575,757 shares of common stock and warrants to purchase up to 7,575,757 shares of common stock. The combined offering price for each share of common stock and accompanying warrant was $0.66. The Company also agreed to issue warrants to purchase an additional 1,749,780 shares of common stock (the "Additional Warrants") to one of the July Investors. All of the new warrants become exercisable six months following their issuance, at an exercise price of $0.69 per share, and may be exercised until January 2, 2030.

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

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In connection with the July Offering, the Company entered into warrant amendment agreements (the "Amendments") with the holders of previously issued warrants (the "Prior Warrants") to purchase up to an aggregate of 10,386,269 shares of common stock, whereby the Company agreed to amend the Prior Warrants to reduce the exercise price of the Prior Warrants from $2.23 and $2.47 per share of common stock to $0.69 per share of common stock, extend the term of the Prior Warrants until January 2, 2030 and prohibit exercise of the Prior Warrants for the six-month period following the effective date of the Amendments.

The aggregate gross proceeds to the Company from the July Offering were approximately $5.0 million, and net proceeds after cash offering costs were approximately $4.3 million. Offering costs include placement agent fees of $0.4 million and Company legal fees of $0.3 million. In addition, there were $2.9 million of non-cash issuance costs which represents the value of the Additional Warrants, plus the modification date incremental value of the modified Prior Warrants as compared to the original Prior Warrants, as an issuance cost of the warrant exercise.

August Offering

On August 21, 2024, the Company agreed to sell 12,850,000 shares of common stock to certain institutional and accredited investors (the "August Investors"), in some cases pursuant to a securities purchase agreement (the "August Offering"). The price per share in the August Offering was $0.40. The aggregate gross proceeds to the Company from the August Offering were approximately $5.1 million, and net proceeds after offering costs were approximately $4.5 million.

September Offering

On September 30, 2024, the Company closed on a registered direct offering (the "September Offering") with a certain purchaser, pursuant to which the Company sold to the purchaser 8,630,000 shares of common stock; pre-funded warrants to purchase up to 65,653 shares of common stock; and warrants to purchase up to 8,695,653 shares of common stock at an exercise price of $0.50 per share. The combined offering price for each share and accompanying warrant was $0.46. The combined offering price for each pre-funded warrant and accompanying Warrant was $0.4599, which is equal to the purchase price per share in the September Offering, minus $0.0001, the exercise price per share of the pre-funded warrants. The warrants will be exercisable beginning six months following the date of issuance and may be exercised until March 31, 2030. The aggregate gross proceeds to the Company from the September Offering were approximately $4.0 million, and net proceeds after offering costs were approximately $3.6 million.

Warrants

The issuance date or modification date fair value of stock warrants issued or modified during the three and nine months ended September 30, 2024 and 2023 was determined using the Black Scholes method, with the following assumptions used:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Fair value of common stock on date of grant	$0.68	$1.97	$0.68	$1.97
Risk free interest rate	4.39% - 5.22%	4.48%	4.39% - 5.22%	4.48%
Expected term (years)	0.7 - 5.5 years	4.0 - 5.5 years	0.7 - 5.5 years	4.0 - 5.5 years
Expected volatility	86% - 118%	81%	86% - 118%	81%
Expected dividends	n/a	n/a	n/a	n/a

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

(UNAUDITED)

A summary of the warrant activity during the nine months ended September 30, 2024 is presented below:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Life In Years
Outstanding January 1, 2024	10,926,554	$ 2.28	
Granted (1)	18,021,190	0.60	
Repriced - (Old) (2)	(10,386,269)	2.25	
Repriced - (New) (2)	10,386,269	0.69	
Exercised	—	—	
Outstanding September 30, 2024 (1)	28,947,744	$ 0.67	5.1
Exercisable September 30, 2024 (1)	540,285	$ 2.96	1.4

(1) - Warrants granted, outstanding and exercisable exclude 65,653 pre-funded warrants with an exercise price of $0.0001.
(2) - Repriced warrants represent the reset of the exercise price of certain warrants to purchase 10,386,269 shares of common stock to a price of $0.69 per share.

The following table presents information related to warrants as of September 30, 2024:

Warrants Outstanding (1)		Warants Exercisable (1)	
Exercise Price	Weighted Outstanding Number of Warrants	Average Remaining Life In Years	Exercisable Number of Warrants
$0.5000	8,695,653 (2)	—	—
$0.6900	19,711,806 (3)	—	—
$2.4696	232,021	0.5	232,021
$2.7240	216,380	0.5	216,380
$4.7600	91,884	6.6	91,884
	28,947,744	1.4	540,285

(1) - Warrants outstanding and exercisable exclude 65,653 Pre-Funded Warrants with an exercise price of $0.0001.
(2) - These warrants become exercisable on March 26, 2025.
(3) - These warrants become exercisable on January 1, 2025.

Stock-Based Compensation Expense

The Company records stock-based compensation expense related to stock options and restricted stock units (“RSUs”). For the three months ended September 30, 2024 and 2023, the Company recorded stock-based compensation expense of $452,998 ($179,776 of which was included within research and development expenses and $273,222 was included within selling, general and administrative expenses on the statements of operations) and $612,969 ($235,731 of which was included within research and development expenses and $377,238 of which was included within selling, general and administrative expenses on the statements of operations), respectively. For the nine months ended September 30, 2024 and 2023, the Company recorded stock-based compensation expense of $1,540,286 ($618,516 of which was included within research and development expenses and $921,770 of which was included within selling, general and administrative expenses on the statements of operations) and $1,925,665 ($647,058 of which was included within research and development expenses and $1,278,607 of which was included within selling, general and administrative expenses on the statements of operations), respectively.

EYENOVIA, INC.

NOTES TO CONDENSED FINANCIAL STATEMENTS

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Restricted Stock Units

A summary of the restricted stock units ("RSUs") activity during the nine months ended September 30, 2024 is presented below:

	Number of RSUs	Weighted Average Exercise Price
RSUs non-vested January 1, 2024	106,019	$ 2.12
Granted	368,886	0.65
Vested	(106,019)	2.12
Forfeited	—	—
RSUs non-vested September 30, 2024	368,886	$ 0.65
Vested RSUs undelivered September 30, 2024	241,764	$ 2.17

To date, RSUs have only been granted to directors in accordance with the Company's Amended and Restated 2018 Omnibus Stock Incentive Plan. The Company's policy is not to deliver shares underlying the RSUs until a director's termination of service.

As of September 30, 2024, there was $169,739 of unrecognized stock-based compensation expense related to RSUs which will be recognized over a weighted average period of 0.7 years.

Stock Options

A summary of the option activity during the nine months ended September 30, 2024 is presented below:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Life In Years	Aggregate Intrinsic Value
Outstanding, January 1, 2024	5,306,377	3.31		
Granted	2,188,136	1.10		
Exercised	—	—		
Forfeited/Expired	(799,471)	3.26		
Outstanding, September 30, 2024	6,695,042	$ 2.59	7.2	$ 44,053
Exercisable, September 30, 2024	4,022,998	$ 3.46	5.8	$ —

The following table presents information related to stock options as of September 30, 2024:

Options Outstanding		Options Exercisable	
Exercise Price	Number of Options	Weighted Average Remaining Life In Years	Number of Options
$0.01 - $0.99	1,315,136	—	—
$1.00 - $1.99	2,224,213	5.4	1,160,055
$2.00 - $2.99	1,249,586	6.7	1,026,448
$3.00 - $3.99	758,637	6.0	703,605
$4.00 - $4.99	279,000	7.0	264,420
$5.00 - $5.99	26,668	2.0	26,668
$6.00 - $6.99	691,162	5.2	691,162
$7.00+	150,640	3.5	150,640
	6,695,042	5.8	4,022,998

EYENOVIA, INC.

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In applying the Black-Scholes option pricing model to stock options granted, the Company used the following approximate assumptions:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Expected term (years)	5.85 - 6.25	N/A	5.50 - 10.00	5.50 - 10.00
Risk free interest rate	3.47% - 3.80%	N/A	3.47% - 4.72%	3.44% - 4.18%
Expected volatility	87%	N/A	80% - 87%	82% - 95%
Expected dividends	0.00%	N/A	0.00%	0.00%

As of September 30, 2024, there was $2,042,227 of unrecognized stock-based compensation expense related to stock options which will be recognized over a weighted average period of 1.8 years. The weighted average estimated grant date fair value of the stock options granted for the three months ended September 30, 2024 was approximately $0.40 per share. There were no options granted in the three months ended September 30, 2023. The weighted average estimated grant date fair value of the stock options granted for the nine months ended September 30, 2024 and 2023 was approximately $0.79 and $1.70 per share, respectively.

Note 11 – Employee Benefit Plans

401(k) Plan

In April 2019, the Company adopted the Eyenovia 401(k) Plan (the "Plan"), which went into effect in May 2019. All Company employees are able to participate in the Plan, subject to eligibility requirements as outlined in the Plan documents. Under the terms of the Plan, eligible employees are able to defer a percentage of their pay every pay period up to annual limitations set by Congress and the Internal Revenue Service under Section 401(k) of the Internal Revenue Code. The Company's Board of Directors approved a matching contribution equal to 100% of elective deferrals up to 4% of eligible earnings with the matching contribution subject to certain vesting requirements as outlined in the Plan documents.

During the three months ended September 30, 2024 and 2023, the Company recorded expense of $56,493 ($41,186 which was included within research and development expenses and $15,307 was included within selling, general and administrative expenses on the statements of operations) and $46,636 ($37,383 of which was included within research and development expenses and $9,253 of which was included within selling, general and administrative expenses on the statements of operations), respectively, associated with its matching contributions. During the nine months ended September 30, 2024 and 2023, the Company recorded expense of $220,682 ($136,598 of which was included within research and development expenses and $84,084 of which was included within selling, general and administrative expenses on the statements of operations) and $171,800 ($115,559 of which was included within research and development expenses and $56,241 of which was included within selling, general and administrative expenses on the statements of operations) associated with its matching contributions, respectively.

Note 12 - Subsequent Events

Exercise of Pre-Funded Warrants

On October 1, 2024, the holder of the 65,653 pre-funded warrants issued in the September Offering, exercised the pre-funded warrants at a price of $0.0001 per share of common stock (see Note 10 - Stockholders' Equity - Offerings).

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

The following discussion and analysis of the results of operations and financial condition of Eyenovia, Inc. ("Eyenovia," the "Company," "we," "us" and "our") as of September 30, 2024 and for the three and nine months ended September 30, 2024 and 2023 should be read in conjunction with our unaudited condensed financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q and with our audited financial statements and the notes thereto included in the 2023 Form 10-K, as amended by the 2023 Form 10-K Amendment.

Forward Looking Statements

This Quarterly Report on Form 10-Q 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. The statements contained in this Quarterly Report on Form 10-Q that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Such forward-looking statements include our estimates regarding expenses, future revenue, capital requirements and our need for additional financing and other financial items; any statements of the plans, strategies and objectives of management for future operations; any statements about the advantages of our product candidates and platform technology; estimates regarding the potential market opportunity for our product candidates and platform technology; statements regarding our clinical trials; factors that may affect our operating results; statements about our ability to establish and maintain intellectual property rights; statements about our ability to retain key personnel and hire necessary employees and appropriately staff our operations; statements related to future capital expenditures; statements related to future economic conditions or performance; and other matters that do not relate strictly to historical facts or statements of assumptions underlying any of the foregoing. 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," "might," "will," "plan," "project," "seek," "should," "target," "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 management. 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, those discussed in the sections titled "Summary Risk Factors" and "Risk Factors" included in Item 1A of Part I of the 2023 Form 10-K, as amended by our 2023 Form 10-K Amendment, and the risks discussed in our other SEC filings. Furthermore, such forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

Overview

We are an ophthalmic technology company developing and commercializing advanced products leveraging our proprietary Optejet topical ophthalmic medication dispensing platform. The Optejet is especially useful in the treatment of chronic front-of-the-eye diseases due to its ease of use, enhanced safety and tolerability, and potential for superior compliance versus standard eye drops. Together, these benefits may combine to produce better treatment options and outcomes for patients and providers. The company's pre-NDA candidate, MicroPine, is being developed for pediatric progressive myopia, a global epidemic impacting hundreds of millions of children worldwide and representing a multi-billion-dollar addressable market. The company's current commercial portfolio includes clobetasol propionate ophthalmic suspension, 0.05%, for post-surgical pain and inflammation, and Mydcombi® for mydriasis. Eyenovia has also secured licensing and development agreements for additional multi-billion-dollar indications where the Optejet may be advantageous, including dry eye.

The ergonomic and functional design of the Optejet allows for horizontal drug delivery and eliminates the need to tilt the head back or the manual dexterity to squeeze a bottle, to administer medications. Drug is delivered in a microscopic array of droplets faster than the blink reflex to help ensure instillation success. The precise delivery of a low-volume columnar spray by the Optejet device minimizes contamination risk with a non-protruding nozzle and self-closing shutter. In clinical trials, the Optejet has demonstrated that its targeted delivery achieves a high rate of successful administration, with 98% of sprays being accurately delivered upon first attempt compared to the established rate reported with traditional eye drops of approximately 50%.

A more physiologically appropriate volume of medication in the range of seven to nine microliters is delivered by the Optejet, which is approximately one-fifth of the 35 to 50 microliter dose typically delivered in a single eye drop. Lower volume of medication exposes the ocular surface to less active ingredient and preservatives, potentially reducing ocular stress and surface damage and improving tolerability. The lower volume also minimizes the potential for drug to enter systemic circulation, with the goal of avoiding some common side effects that are related to overdosing of the eye.

We are developing versions of the Optejet with on-board digital technology that records the date and time of each use. These data may be used to provide reminders via Bluetooth to smart devices and to allow healthcare practitioners to monitor usage. This information can then be used by practitioners and health care systems to measure treatment compliance and improve medical decision making. In this way, the Optejet could serve as an extension of the physician's office by providing information that is not currently possible to collect except through the use of diaries.

We have also successfully expanded our manufacturing capabilities through a partnership with Coastline International, Inc. located in Tijuana, Mexico, as well as the construction of our new manufacturing facility in Reno, Nevada and the construction of our own fill and finish facility in Redwood City, California. The FDA approved the use of both Coastline International and our Redwood City facility for the production of Mydcombi cartridges, and the use of our Reno facility for the production of technical elements such as the base unit for the Optejet device.

MicroLine is our investigational pharmacologic treatment for presbyopia, a non-preventable, age-related hardening of the lens, which causes the gradual loss of the eye's ability to focus on near objects and impairs near visual acuity. We have completed two Phase III studies using our Optejet device. In these studies, patients reported high satisfaction with using the device, and a strong preference over using an eye dropper bottle. Since completing these studies, the market opportunity has markedly deteriorated, and we have chosen to put this program on hold and reallocate our resources towards larger opportunities. When and if the market improves, we have kept open the option to continue development of MicroLine which would include a meeting with the FDA to review our clinical data to date.

Mydcombi is the only FDA-approved fixed combination of the two leading mydriatic agents, tropicamide and phenylephrine in the United States and our first FDA-approved product. As an ophthalmic spray delivered with Optejet technology, Mydcombi may present a number of benefits for ophthalmic surgical centers, optometric and ophthalmic offices and patients. Those benefits may include improved cost-effectiveness in centers that employ single-use bottles for mydriasis, more efficient use of office time and resources, and an overall improved doctor-patient experience. We have begun the commercialization of Mydcombi, with the first commercial sale of the product occurring on August 3, 2023 as part of a targeted launch, expanded our launch with the hiring and onboarding of ten sales representatives through September 30, 2024. We received FDA approval for our primary Mydcombi manufacturing facility in February 2024, which we believe will allow us to expand and continue to build our manufacturing operations. On July 24, 2024, we received written comments from the FDA outlining the design of a clinical bridging study to transition Mydcombi into our new Gen-2 Optejet device, which has a significantly lower cost to manufacture than the currently approved product.

We are in active discussions with manufacturers of existing and late-stage ophthalmic medications to explore whether development with the Optejet technology can solve unmet medical and business needs. Some of those business needs could include extension of exclusivity under the Optejet patents, improvement in a drug's tolerability profile, or potential improvement in treatment compliance.

On August 15, 2023, we entered into a license agreement with Formosa, whereby we acquired the exclusive U.S. rights to commercialize any product related to a novel formulation of clobetasol propionate ophthalmic suspension 0.05% (the "Formosa Licensed Product"), which was approved by the FDA, for post-operative inflammation and pain after ocular surgery, on March 4, 2024. The Formosa License will remain in effect for ten years from the date of the first commercial sale of a Formosa Licensed Product, unless earlier terminated.

We paid Formosa an upfront payment in an aggregate amount of $2.0 million which consisted of (a) cash in the amount of $1.0 million and (b) 487,805 shares of common stock valued pursuant to the Formosa License Agreement at $1.0 million. We also capitalized $122,945 of transaction costs in connection with the Formosa License. In addition, we agreed to pay Formosa up to $4.0 million upon the achievement of certain development milestones and up to $80 million upon the achievement of certain sales milestones. The trigger for the initial $2.0 million development milestone payment was FDA approval of the Formosa Licensed Product and the effective date of the acceptance by the Company of the transfer and assignment of the FDA approval, which occurred on March 14, 2024. Based on the achievement of this milestone, we paid Formosa (a) cash in the amount of $1.0 million on April 26, 2024 and (b) 613,496 shares of common stock (calculated pursuant to the Formosa License Agreement at $1.0 million using a five-day volume-weighted average price on March 14, 2024, but valued at $0.4 million on the April 29, 2024 settlement date). The remaining $2.0 million development milestone (to be fully paid in cash) was earned and accrued upon FDA approval, but payment will be triggered on the earlier of twelve months after FDA approval of the Formosa Licensed Product or six months following the first commercial sale of the Formosa Licensed Product.

On July 23, 2024, we entered into a collaboration agreement with Senju, under which the companies intend to work to develop EYEN-520, a combination of Senju's corneal epithelial wound healing candidate with our Optejet dispensing technology, as a potential treatment for chronic dry eye disease. The companies plan to request a meeting with the FDA in late 2024, to be followed by execution of a definitive agreement related to the further development of the product and anticipated completion of a Phase 2b study in 2025. If successful, the collaboration agreement could be expanded to bring the product into two Phase 3 studies by 2026.

On August 7, 2024, we entered into a collaboration agreement with Formosa under which the companies intend to work to develop EYEN-530, a combination of Formosa's clobetasol propionate ophthalmic solution with our Optejet dispensing technology, as a potential treatment for acute dry eye flare-ups. The companies plan to request a meeting with the FDA in late 2024, to be followed by execution of a definitive agreement related to further development of the product and anticipated initiation of two Phase 3 studies by 2026.

On September 26, 2024, we announced the U.S. launch and commercial availability of clobetasol propionate ophthalmic suspension 0.05%.

On September 18, 2024, we received notice from the Staff of Nasdaq providing notification that the Company's bid price had closed below the $1.00 minimum bid price requirement for continued listing on Nasdaq under Listing Rule 5550(a)(2). The notification letter stated that we would be provided 180 calendar days to regain compliance. In order to regain compliance, the closing bid price of our common stock has to be at least $1.00 for a minimum of 10 consecutive business days at any time before March 17, 2025. As of November 11, 2024 the Company has not regained compliance with Listing Rule 5550(a)(2).

Historically, we have financed our operations principally through equity offerings. We have also generated cash through licensing arrangements and our credit facilities with Leerink Partners and Avenue. However, based upon our current operating plan, there is substantial doubt about our ability to continue as a going concern for at least one year from the date that our financial statements were issued. Our ability to continue as a going concern depends on our ability to complete additional licensing or business development transactions or raise additional capital through the sale of equity or debt securities to support our future operations. If we are unable to secure additional capital, we may be required to curtail our research and development initiatives and/or take additional measures to reduce costs.

Our net losses were $7.9 million and $7.3 million for the three months ended September 30, 2024 and 2023, respectively. As of September 30, 2024, we had a working capital deficit and an accumulated deficit of approximately $4.1 million and $175.4 million, respectively.

Financial Overview

Revenue and Cost of Revenue

Revenue is earned from the sale of our FDA approved products, primarily Mydcombi through September 30, 2024. The first commercial sale of FDA approved products occurred on August 3, 2023 as part of a targeted launch and we expanded our launch with the onboarding of ten sales representatives through September 30, 2024.

Cost of sales consists of the cost of the production of the FDA approved products that were sold and the write-down of inventories to net realizable value.

Research and Development Expenses

Research and development expenses are incurred in connection with the research and development of our microdose therapeutics and consist primarily of personnel-related expenses. Given where we are in our life cycle, we do not separately track research and development expenses by project. Our research and development expenses consist of:

- direct clinical and non-clinical expenses, which include expenses incurred under agreements with contract research organizations, contract manufacturing organizations, and costs associated with preclinical activities, development activities and regulatory activities;
- personnel-related expenses, which include salaries and other compensation of employees that is attributable to research and development activities; and
- facilities and other expenses, which include direct and allocated expenses for rent and maintenance of facilities, insurance and other supplies used in research and development activities.

We expense research and development costs as incurred. We record costs for some development activities, such as clinical trials, based on an evaluation of the progress to completion of specific tasks using data such as subject enrollment, clinical site activations or other information our vendors provide to us.

Our research and development expenses may increase with the continuation of these initiatives and the expansion of development of our Optejet technology functionality, drug compounds and indications.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist primarily of payroll and related expenses, legal and other professional services, insurance expense, marketing expense, and non-cash stock-based compensation expense. We anticipate that our selling, general and administrative expenses will increase in the future as we increase our headcount to support our continued research and development and the commercialization of our approved products and current and future product candidates.

Reacquisition of License Rights

Reacquisition of license rights consists of the expense related to the payments that we are required to pay Bausch + Lomb in connection with the reacquisition of the Bausch Licensed Product.

Other Income (Expense), Net

Other income (expense), net consists of (a) other income (expense) related to our sales of clinical supply to our licensees; (b) changes in fair value of equity consideration (the equity payable for the Bausch + Lomb and Formosa transactions); (c) interest income earned on Treasury bills; and (d) interest expense incurred on our indebtedness.

Results of Operations

Three Months Ended September 30, 2024 Compared with Three Months Ended September 30, 2023

Revenue and Cost of Revenue

Revenue for the three months ended September 30, 2024 totaled $1,625, which consisted primarily of revenue from the sale of Mydcombi and was offset by cost of revenues of $132,522. Write-down of inventories to net realizable value for the three months ended September 30, 2024 totaled approximately $0.1 million, compared to $12,218 for the three months ended September 30, 2023. The gross loss was primarily due to write-downs of commercial inventory that were still on the balance sheet at September 30, 2024.

Revenue for the three months ended September 30, 2023 totaled $1,198, which was offset by cost of revenues of $13,416. We expect to continue to generate negative gross margins on Gen 1 Mydcombi sales during the early stage of commercialization of this product and may experience negative overall gross margins until the commercialization of other products that may generate positive gross margins.

Research and Development Expenses

Research and development expenses for the three months ended September 30, 2024 totaled $3.5 million, a decrease of $0.1 million, or 3%, compared to $3.6 million recorded for the three months ended September 30, 2023. Research and development expenses consisted of the following:

	For the Three Months Ended September 30,	
	2024	2023
Personnel-related expenses	$ 1,765,852	$ 1,716,355
Direct clinical and non-clinical expenses	610,404	269,471
Depreciation expense	289,003	316,674
Facilities expenses	205,958	333,114
Non-cash stock-based compensation expenses	179,776	235,731
Other expenses	89,594	21,070
Supplies and materials	331,352	685,698
Total research and development expenses	$ 3,471,939	$ 3,578,113

The decrease in supplies and materials expense was primarily due to a net overall decrease in related requirements due to the timing of Gen 1.0 and Gen 2.0 clinical production scale up and clinical testing. The increase in direct clinical and non-clinical expenses was primarily due to increased costs related to the reacquisition of the CHAPERONE study from Bausch + Lomb, Mydcombi stability testing and clinical regulatory expenses. The decrease in facilities expenses was due to costs incurred in 2023 related to getting the new Reno facility online that were not incurred in 2024. The decrease in non-cash stock-based compensation expenses was primarily due to the ending of the amortization period for older equity grants and terminations during the period. The increase in other expenses was primarily due to increased IT expenses related to CHAPERONE data tracking and cybersecurity.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for the three months ended September 30, 2024 totaled $3.7 million, an increase of $0.8 million, or 27%, compared to $2.9 million recorded for the three months ended September 30, 2023. Selling, general and administrative expenses consisted of the following:

	For the Three Months Ended September 30,	
	2024	2023
Salaries and benefits	$ 1,610,533	$ 963,634
Professional fees	719,239	715,832
Non-cash stock based compensation	273,222	377,238
Sales and marketing	169,377	190,915
Other	239,081	89,191
Insurance expense	212,783	224,645
Travel, lodging and meals	161,659	57,707
Facilities expense	127,173	111,388
Investor relations	118,524	102,430
Director fees and expense	97,500	96,875
Total selling, general and administrative expenses	$ 3,729,091	$ 2,929,855

The increase in personnel-related expenses was mainly due to new staff additions made to support commercialization during 2024. The increase in other expenses is primarily due to commercial regulatory costs for Mydcombi and software licensing fees in connection with new staff additions. The decrease in non-cash stock-based compensation expenses was primarily due to the ending of the amortization period for older equity grants. The increase in travel, lodging and meals was primarily due to increased travel by the sales team to promote our FDA approved products.

Total Other Expense

Total other expense for the three months ended September 30, 2024 was approximately $0.6 million, a decrease of $0.2 million, compared to $0.8 million for the three months ended September 30, 2023. Total other expense for the three months ended September 30, 2024 primarily consisted of approximately $0.6 million of interest expense related to the Avenue loan.

Results of Operations

Nine Months Ended September 30, 2024 Compared with Nine Months Ended September 30, 2023

Revenue and Cost of Revenue

Revenue for the nine months ended September 30, 2024 totaled $29,243, which was offset by cost of revenues of $825,910. Write-down of inventories to net realizable value for the nine months ended September 30, 2024 totaled approximately $0.8 million, compared to $12,218 for the nine months ended September 30, 2023. The $0.8 million was comprised of the adjustment to bring the inventory to list price and an additional write-down of short-dated inventory to net realizable value. The gross loss was primarily due to write-downs of commercial inventory that were still on the balance sheet at September 30, 2024.

Revenue for the nine months ended September 30, 2023 totaled $1,198, which was offset by cost of revenues of $13,416. We expect to continue to generate negative gross margins on Gen 1 Mydcombi sales during the early stage of commercialization of this product and may experience negative overall gross margins until the commercialization of other products that may generate positive gross margins.

Research and Development Expenses

Research and development expenses for the nine months ended September 30, 2024 totaled $12.5 million, an increase of $3.6 million, or 40%, compared to $8.9 million recorded for the nine months ended September 30, 2023. Research and development expenses consisted of the following:

	For the Nine Months Ended September 30,	
	2024	2023
Personnel-related expenses	$ 5,523,650	$ 5,078,228
Direct clinical and non-clinical expenses	2,641,136	547,697
Supplies and materials	1,812,674	1,197,692
Depreciation expense	914,172	537,528
Facilities expenses	652,531	828,111
Non-cash stock-based compensation expenses	618,516	647,058
Other expenses	338,034	74,810
Total research and development expenses	$ 12,500,713	$ 8,911,124

The increase in direct clinical and non-clinical expenses was primarily due to increased clinical regulatory expenses incurred in connection with the reacquisition of the Bausch + Lomb license and Mydcombi stability testing. The increase in supplies and materials expense was primarily due to the expensing of Gen-1 MicroPine clinical product and materials that will now be used in Eyenovia-led clinical trials rather than being sold to Bausch + Lomb as a result of the reacquisition of the Bausch Licensed Product; drug formulation engineering batches related to Gen 2.0 specific formulations and future Mydcombi production. The increase in personnel-related expenses was primarily due to new staff additions made to support commercialization during the last two quarters of 2023 and the first quarter of 2024. The increase in depreciation expense was primarily due to increased equipment purchases and equipment placed in service during the last two quarters of 2023 and the first and second quarters of 2024. The increase in other expenses was primarily due to increased IT expenses related to CHAPERONE data tracking and cybersecurity. The decrease in facilities expenses was due to costs incurred in 2023 related to getting the new Reno facility online that were not incurred in 2024.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for the nine months ended September 30, 2024 totaled $11.1 million, an increase of $2.1 million, or 23%, compared to $9.0 million recorded for the nine months ended September 30, 2023. Selling, general and administrative expenses consisted of the following:

	For the Nine Months Ended September 30,	
	2024	2023
Salaries and benefits	$ 4,594,448	$ 2,960,978
Professional fees	2,248,900	2,108,656
Non-cash stock based compensation	921,770	1,278,607
Sales and marketing	618,946	588,051
Insurance expense	642,499	708,639
Travel, lodging and meals	399,142	179,615
Facilities expense	376,127	359,057
FDA PDUFA fees	361,091	—
Investor relations	347,148	309,106
Director fees and expense	311,250	300,625
Other expenses	303,794	223,216
Total selling, general and administrative expenses	$ 11,125,115	$ 9,016,550

The increase in personnel-related expenses was mainly due to new staff additions related to commercialization efforts made during the last two quarters of 2023 and throughout fiscal year 2024. The increase in regulatory expenses was primarily due to the FDA Prescription Drug User Fee Act ("PDUFA") fees for Mydcombi. The decrease in non-cash stock-based compensation expenses was primarily due to the ending of the amortization period for older equity grants. The increase in travel, lodging and meals was primarily due to increased travel by the sales team to promote Mydcombi. The increase in professional fees was primarily due to the short-term need for temporary staff while in the process of hiring permanent employees. The increase in sales and marketing expenses was primarily due to samples initiatives for the Clobetasol launch in 2024. The increase in other expenses was primarily due to software licensing and public filing fees.

Reacquisition of License Rights

Reacquisition of license rights for the nine months ended September 30, 2024 totaled $4.9 million, compared to no expense for the nine months ended September 30, 2023. The $4.9 million is comprised of the aggregate $5.0 million of payments ($2.0 million of cash and $3.0 million settled in common stock) to Bausch + Lomb in connection with the reacquisition of the Bausch Licensed Product (which we are recording as an operating expense), partially offset by $0.1 million related to the repurchase of equipment.

Total Other Expense

Total other expense for the nine months ended September 30, 2024 was approximately $0.6 million, a decrease of $0.8 million, compared to $1.4 million for the nine months ended September 30, 2023. Total other expense for the nine months ended September 30, 2024 primarily consisted of approximately $2.0 million of interest expense related to the Avenue loan partially offset by $1.2 million of changes in fair value of equity consideration (the equity payable for the Bausch + Lomb and Formosa transactions) and $0.2 million of interest income, primarily from Treasury bills.

Liquidity and Going Concern

We measure our liquidity in a number of ways, including the following:

	September 30, 2024	December 31, 2023
Cash and Cash Equivalents	$ 7,188,129	$ 14,849,057
Working (Deficit) Capital	$ (4,093,399)	$ 11,176,336
Notes Payable (Gross)	$ 12,368,804	$ 15,637,500

Cash Flow

Since inception, we have experienced negative cash flows from operations and our operations have primarily been funded by proceeds from equity and debt financings.

Our net losses were $29.9 million and $19.3 million for the nine months ended September 30, 2024 and 2023, respectively. As of September 30, 2024, we had an accumulated deficit of approximately $175.4 million. As of September 30, 2024, we had a cash and cash equivalents balance of $7.2 million, a working capital deficit of $4.1 million and stockholders' equity of $3.7 million. As of September 30, 2024 and December 31, 2023, we had $12.4 million and $15.6 million, respectively, of gross debt outstanding.

These conditions raise substantial doubt about our ability to continue as a going concern for at least one year from the date that the financial statements included elsewhere in this Quarterly Report on Form 10-Q were issued. Our financial statements do not include adjustments to the amounts and classification of assets and liabilities that may be necessary should we be unable to continue as a going concern. Our ability to continue as a going concern depends on our ability to raise additional capital through the sale of equity or debt securities to support our future operations and the potential for entering into collaborations with other companies to enhance or complement our product and service offerings, and to enable us to make principal and interest payments on our debt obligations in the near term, which will be necessary to avoid a default on such obligations. Our operating needs also include the planned costs to operate our business, including amounts required to fund research and development activities including clinical studies, working capital and capital expenditures. Our future capital requirements and the adequacy of our available funds will depend on many factors, including our ability to successfully commercialize our products and services, competing technological and market developments, and the need to enter into collaborations with other companies or acquire other companies or technologies to further improve the marketability of our product and service offerings. If we are unable to secure additional capital, we may be required to curtail our research and development initiatives and take additional measures to reduce selling, general and administrative costs in order to conserve our cash.

During the nine months ended September 30, 2024 and 2023, our sources and uses of cash were as follows:

Net cash used in operating activities for the nine months ended September 30, 2024 was approximately $24.0 million, which includes cash used to fund a net loss of $29.9 million, reduced by $5.8 million of net non-cash expenses, plus $0.1 million of net cash generated from changes in the levels of operating assets and liabilities. Net cash used in operating activities for the nine months ended September 30, 2023 was $17.5 million, which includes cash used to fund a net loss of $19.3 million, reduced by $3.7 million of non-cash expenses, plus $2.0 million of cash used to fund changes in operating assets and liabilities.

Net cash used in investing activities for the nine months ended September 30, 2024 was approximately $0.2 million, which was primarily related to the purchase of property and equipment. Cash used in investing activities for the nine months ended September 30, 2023 was $3.8 million, which was related to $2.7 million for purchases of property and equipment and a $1.1 million cash investment in an intangible asset.

Net cash provided by financing activities for the nine months ended September 30, 2024 totaled approximately $16.5 million, which was primarily attributable to $14.2 million of net proceeds from the sale of common stock and warrants in offerings and, $6.0 million of net proceeds from the sale of common stock in our "at-the-market" offering pursuant to the Sales Agreement with Leerink Partners, partially offset by $3.8 million from the repayment of notes payable. Net cash provided by financing activities for the nine months ended September 30, 2023 totaled $19.2 million, which was attributable to $10.9 million of net proceeds received from a registered direct offering, $4.0 million of net proceeds from an at-the-market offering and $4.9 million of net proceeds from the additional tranche under the Loan and Security Agreement. This was slightly offset by the repayment of $0.6 million of notes payable in connection with the D&O Loan.

Contractual Obligations and Commitments

During the next twelve months, we have commitments to pay (a) $5.7 million to settle our September 30, 2024 accounts payable, accrued expenses and other current liabilities, (b) $0.6 million relating to our non-cancelable operating lease commitments, and (c) $10.1 million of gross payments due under our notes payable, convertible notes payable (if not previously converted).

After the next twelve months we have commitments to pay (a) an additional $0.3 million related to our accrued expenses and other non-current liabilities, (b) $0.8 million relating to our non-cancelable operating lease commitments, and (c) $2.3 million of gross payments due in connection with notes payable and convertible notes payable (if not previously converted).

Risks and Uncertainties

The continuing worldwide implications of the war between Russia and Ukraine and the conflict in the Middle East remain difficult to predict at this time. The imposition of sanctions on Russia by the United States and other countries and counter sanctions by Russia, and the resulting economic impacts on oil prices and other materials and goods, could affect the price of materials used in the manufacture of our product candidates. If the price of materials used in the manufacturing of our product candidates increase, that would adversely affect our business and the results of our operations.

Off-Balance Sheet Arrangements

There are no off-balance sheet arrangements between us and any other entity that have, or are reasonably likely to have, a current or future effect on financial conditions, changes in financial conditions, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to stockholders.

Critical Accounting Estimates

As described in Item 7 – Critical Accounting Estimates in our 2023 Form 10-K, as amended by our 2023 Form 10-K Amendment, we prepare our financial statements in accordance with U.S. GAAP, which require our management to make estimates that affect the reported amounts of assets, liabilities and disclosures of contingent assets and liabilities at the balance sheet dates, as well as the reported amounts of revenues and expenses during the reporting periods. To the extent that there are material differences between these estimates and actual results, our financial condition or results of operations would be affected. We base our estimates on our own historical experience and other assumptions that we believe are reasonable after taking account of our circumstances and expectations for the future based on available information. We evaluate these estimates on an ongoing basis.

We consider an accounting estimate to be critical if: (i) the accounting estimate requires us to make assumptions about matters that were highly uncertain at the time the accounting estimate was made, and (ii) changes in the estimate that are reasonably likely to occur from period to period or use of different estimates that we reasonably could have used in the current period, would have a material impact on our financial condition or results of operations. There are items within our financial statements that require estimation but are not deemed critical, as defined above.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Smaller reporting companies such as Eyenovia are not required to provide the information required by this Item.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

As of the end of the period covered by this Quarterly Report on Form 10-Q, we carried out an evaluation, under the supervision and with the participation of our management, including our principal executive officer and principal financial and accounting officer, of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act.

In designing and evaluating our disclosure controls and procedures, management recognizes that any disclosure controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on their evaluation, our principal executive officer and principal financial and accounting officer concluded that, as of September 30, 2024, our disclosure controls and procedures were designed to, and were effective to, provide assurance at a reasonable level that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial and accounting officer, as appropriate, to allow timely decisions regarding required disclosures as of September 30, 2024.

Changes in Internal Control over Financial Reporting

There has been no change in our internal control over financial reporting that occurred during the quarter ended September 30, 2024 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.

We are not currently a party to any material legal proceedings. From time to time, we may become involved in legal proceedings arising in the ordinary course of our business. Regardless of outcome, litigation can have an adverse impact on us due to defense and settlement costs, diversion of management resources, negative publicity, reputational harm and other factors.

Item 1A. Risk Factors.

There have been no material changes to the risk factors set forth in Part I, Item 1A of our 2023 Form 10-K, as amended by our 2023 Form 10-K Amendment.

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

Recent Sales of Unregistered Securities

None.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Securities Trading Plans of Directors and Executive Officers

During the nine months ended September 30, 2024, none of our directors or officers, or the Company, adopted or terminated any contract, instruction or written plan for the purchase or sale of our securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) promulgated under the Exchange Act or any “non-Rule 10b5-1 trading arrangement.”

Item 6. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference from Filings as Noted Below (Unless Otherwise Indicated)			
		Form	File No.	Exhibit	Filing Date
3.1	Third Amended and Restated Certificate of Incorporation	8-K	001-38365	3.1	January 29, 2018
3.1.1	Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation	8-K	001-38365	3.1.1	June 14, 2018
3.2	Second Amended and Restated Bylaws	8-K	001-38365	3.1	February 7, 2022
3.3	Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation	8-K	001-38365	3.1	June 14, 2024
4.1	Form of Warrant	8-K	001-38365	4.1	July 1, 2024
4.2	Form of Warrant 8 - K 001 - 38365 4.1 September 30, 2024				
4.3	Form of Pre-Funded Warrant 8 - K 001 - 38365 4.2 September 30, 2024				
10.1	Form of Securities Purchase Agreement, dated June 27, 2024	8-K	001-38365	10.1	July 1, 2024
10.2	Warrant Amendment Agreement, dated June 27, 2024	8-K	001-38365	10.2	July 1, 2024
10.3	Warrant Amendment Agreement, dated June 28, 2024	8-K	001-38365	10.3	July 1, 2024
10.4	Form of Securities Purchase Agreement, dated August 21, 2024	8-K	001-38365	10.1	August 22, 2024
10.5	Executive Employment Agreement by and between Eyenovia, Inc. and Andrew D. Jones, dated as of August 30, 2024	8-K	001-38365	10.1	September 3, 2024
10.6	Form of Securities Purchase Agreement, dated September 26, 2024.	8-K	001-38365	10.1	September 30, 2024
10.7	Form of Eyenovia, Inc. Inducement Stock Option Award Agreement	—	—	—	Filed herewith
10.8	Form of Indemnification and Advancement Agreement	—	—	—	Filed herewith
31.1	Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	—	—	—	Filed herewith
31.2	Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	—	—	—	Filed herewith
32.1*	Certification of the Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	—	—	—	Filed herewith
32.2*	Certification of the Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	—	—	—	Filed herewith
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document	—	—	—	Filed herewith
101.SCH	Inline XBRL Taxonomy Extension Schema Document	—	—	—	Filed herewith
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	—	—	—	Filed herewith
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	—	—	—	Filed herewith
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	—	—	—	Filed herewith
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	—	—	—	Filed herewith
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document contained in Exhibit 101	—	—	—	Filed herewith

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

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.

EYENOVIA, INC.

Date: November 12, 2024

By: /s/ Andrew Jones
Andrew Jones
Chief Financial Officer
(Principal Financial Officer)

Exhibit 10.7

EYENOVIA, INC.
NOTICE OF INDUCEMENT STOCK OPTION GRANT

_____
_____
_____
(Grantee name and address)

You have been granted an option to purchase shares of the Common Stock of Eyenovia, Inc. as follows, subject to the terms and conditions of the attached Inducement Stock Option Award Agreement. Capitalized terms used but not defined in this Notice of Inducement Stock Option Grant have the meanings set forth in the attached Inducement Stock Option Award Agreement.

Date of Grant:	_____
Exercise Price per Share:	_____
Total Number of Shares Subject to Option:	_____
Total Exercise Price:	_____
Type of Option:	Non-Qualified Stock Option (NSO)
Term/Expiration Date:	_____
Vesting Schedule:	25% of the Option will vest on each of the first four anniversaries of the Date of Grant, such that the Option will be fully vested on the fourth anniversary of the Date of Grant, subject to you providing Continuous Service to the Company or a Related Entity through each applicable date and your execution of a confidentiality agreement satisfactory to the Company.
Accelerated Vesting:	Notwithstanding the foregoing, to the extent not previously forfeited, vesting of the Option will be accelerated and the Option will become exercisable in its entirety immediately upon the occurrence of a Corporate Transaction, provided that you provide Continuous Service to the Company through the date such Corporate Transaction is closed.

[SIGNATURE PAGE FOLLOWS]

By your signature and the signature of the Company's representative below, you and the Company agree that the Option is granted under and governed by the terms and conditions of the Inducement Stock Option Award Agreement, which is attached and made a part of this document.

COMPANY:

Eyenovia, Inc.

By: _____
Name:
Title:

Address: _____
_____

GRANTEE:

_____

Address:

EYENOVIA, INC.
INDUCEMENT STOCK OPTION AWARD AGREEMENT

This Inducement Stock Option Award Agreement is made by and between Eyenovia, Inc. and _____ ("**Grantee**") effective as of the Date of Grant. Certain definitions for capitalized terms used in this Agreement and the Grant Notice are set forth in Section 19 below.

1. Grant of Option. The Company has granted to Grantee an option to purchase, on the terms and conditions set forth in this Agreement, all or any part of the number of Shares described in the Grant Notice, at the Exercise Price set forth in the Grant Notice (the "**Option**"), subject to adjustment as set forth in Section 12 below. The Option is intended to constitute an "employment inducement award" and to be exempt from shareholder approval requirements under Nasdaq Rule 5635(c)(4) and this Agreement and the terms and conditions of the Option will be interpreted consistent with such intent. The Option is a non-qualified stock option.

2. Vesting. Subject to the terms and conditions set forth in this Agreement, the Option will vest as provided in the Grant Notice, provided that vesting will cease upon the termination of Grantee's Continuous Service.

3. Forfeiture; Expiration. Any unvested portion of the Option will be forfeited immediately, automatically, and without consideration upon a termination of Grantee's Continuous Service for any reason. In the event Grantee's Continuous Service is terminated for Cause, the vested portion of the Option will also be forfeited immediately, automatically, and without consideration upon that termination for Cause. Any unexercised vested portion of the Option will expire on the Expiration Date set forth in the Grant Notice.

4. Period of Exercise. Subject to the terms and conditions set forth in this Agreement, Grantee may exercise all or any part of the vested portion of the Option at any time prior to the earliest to occur of:

(a) the Expiration Date;

(b) the effective date of the termination of Grantee's Continuous Service for Cause;

(c) the date that is twelve (12) months after the termination of Grantee's Continuous Service due to his or her death or Disability, provided, however, that in the event Grantee dies within such twelve (12) month period after the termination of Grantee's Continuous Service due to his or her Disability, the period for exercise will be extended until the date twelve (12) months after his or her death (but in no event later than the Expiration Date); or

(d) the date that is three (3) months after the termination of Grantee's Continuous Service for any reason other than Cause, Disability or death; provided however, that in the event that Grantee dies within such three (3) month period, the period for exercise will be extended until the date twelve (12) months after his or her death (but in no event later than the Expiration Date).

5. Exercise of Option. Grantee or, in the case of Grantee's death or Disability, Grantee's representative, may exercise all or any part of the vested portion of the Option by delivering to the Company at its principal office a written notice of exercise in the form attached as Exhibit A or any other form that the Administrator may permit (such notice, a "**Notice of Exercise**"). The Notice of Exercise will be signed by the person exercising the Option. In the event that the Option is being exercised by Grantee's representative, the Notice of Exercise will be accompanied by proof (satisfactory to the Administrator) of the representative's right to exercise the Option. In addition, any exercise of the Option, whether in whole or in part, is subject to the following conditions:

(a) Grantee (or Grantee's representative, if applicable) will deliver to the Company, at the time of giving the Notice of Exercise, payment in a form permissible under Section 6 below for the full amount of the Purchase Price;

(b) Grantee (or Grantee's representative, if applicable) may exercise the Option only for whole Shares;

(c) Grantee (or Grantee's representative, if applicable) may not exercise the Option unless the tax withholding obligations of the Company and/or any Related Entity, as described in Section 9 below, are satisfied; and

(d) In the event that Grantee is an employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (sometimes referred to as a "non-exempt employee"), then he or she may not exercise the Option until he or she has completed at least six (6) months of Continuous Service measured from the Date of Grant, notwithstanding any other provision of the Option.

6. Payment for Shares. The "**Purchase Price**" will be the Exercise Price multiplied by the number of Shares with respect to which the Option is being exercised. The Purchase Price may be paid as follows:

(a) in cash;

(b) by check or money order;

(c) by surrender to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned by Grantee free and clear of any liens, claims, encumbrances or security interests, with a Fair Market Value on the date of surrender or attestation equal to the Purchase Price (provided that Grantee may not exercise the Option by tender to the Company of Common Stock to the extent such tender would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock);

(d) through a formal "net exercise" arrangement adopted by the Company pursuant to which Grantee may exercise the Option and receive the net number of Shares equal to (i) the number of Shares as to which the Option is being exercised, multiplied by (ii) a fraction, the numerator of which is the Fair Market Value per Share (on such date as is determined by the Administrator) less the Exercise Price per Share, and the denominator of which is such Fair Market Value per Share;

(e) through a broker-dealer sale and remittance procedure pursuant to which Grantee (i) shall provide written instructions to a Company designated brokerage firm to effect the immediate sale of some or all of the purchased Shares and remit to the Company sufficient funds to cover the aggregate Exercise Price payable for the purchased Shares and (ii) shall provide written directives to the Company to deliver the certificates (or other evidence satisfactory to the Company to the extent that the Shares are uncertificated) for the purchased Shares directly to such brokerage firm in order to complete the sale transaction; or

(f) any combination of the foregoing methods of payment.

7. Compliance with Applicable Laws.

(a) If at any time the Administrator determines that the delivery of Shares pursuant to the exercise of the Option is or may be unlawful under Applicable Laws, the right to exercise the Option shall be suspended until the Administrator determines that such delivery is lawful and shall be further subject to the approval of counsel for the Company with respect to such compliance. No Shares will be issued pursuant to this Agreement unless and until all then applicable requirements imposed by federal and state securities and other laws, rules and regulations and by any regulatory agencies having jurisdiction, and by any exchanges upon which the Shares may be listed, have been fully met. The Company may impose such conditions on any Shares issuable pursuant to this Agreement as it may deem advisable, including, without limitation, restrictions under the Securities Act of 1933, as amended, under the requirements of any exchange upon which shares of the same class are then listed, and under any blue sky or other securities laws applicable to those Shares. The Company shall have no obligation to effect any registration or qualification of the Shares under any Applicable Law.

(b) As a condition to the exercise of the Option, the Company may require the person exercising the Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by any Applicable Laws.

(c) Subject to the Applicable Laws and any governing rules or regulations, the Company shall issue or cause to be issued the Shares acquired pursuant to the Option and shall deliver such Shares to or for the benefit of Grantee by means of one or more of the following as determined by the Administrator: (i) by delivering to Grantee evidence of book entry Shares credited to the account of Grantee, (ii) by depositing such Shares for the benefit of Grantee with any broker with which Grantee has an account relationship, or (iii) by delivering such Shares to Grantee in certificate form.

8. Withholding Obligations. Grantee may incur Tax Obligations under federal, state, local, and/or foreign law, in connection with the grant, vesting, or exercise of the Option, the ownership of the Shares, and other actions taken pursuant to this Agreement, and the Company may be required to satisfy by withholding from Grantee's compensation or otherwise collect from Grantee. Grantee agrees that the Company (or a Related Entity) may condition the exercise of the Option upon the satisfaction of such withholding tax obligations, and may satisfy such withholding obligations by any of the following means or by a combination of such means, in the

Administrator's discretion: (i) withholding from any compensation otherwise payable to Grantee by the Company; (ii) causing Grantee to tender a cash payment; or (iii) withholding from the Shares otherwise issuable to Grantee upon exercise of the Option the number of Shares with a Fair Market Value (measured as of the date the tax withholding obligations are to be determined) equal to the amount of such tax withholding; provided, however, that the number of such Shares so withheld will not exceed the amount necessary to satisfy the Company's required tax withholding obligations using the minimum statutory withholding rates for federal, state, local and foreign tax purposes, including payroll taxes, that are applicable to supplemental taxable income (or such lesser amount as may be necessary to avoid classification of the Shares as a liability for financial accounting purposes). Grantee understands that all matters with respect to the total amount of taxes to be withheld in respect of such compensation income will be determined by the Administrator in its reasonable discretion. Grantee further understands that, although the Company will pay withheld amounts to the applicable taxing authorities, Grantee remains responsible for payment of all taxes due as a result of income arising under the Agreement.

9. Rights as a Stockholder. Neither Grantee nor anyone claiming through Grantee will have any rights as a stockholder of the Company with respect to any Shares subject to the Option until Grantee has exercised the Option as described herein and the Shares are delivered (as evidenced by delivery of a certificate for such Shares or the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company).

10. Transferability. The Option may not be sold, pledged, assigned, hypothecated, transferred, except by will or by the laws of descent and distribution and in accordance with the Applicable Laws, and is exercisable during Grantee's life only by Grantee. Notwithstanding the foregoing, by delivering written notice to the Company, in a form satisfactory to the Administrator, Grantee may designate a third party who, in the event of Grantee's death, will thereafter be entitled to exercise the Option.

11. Option Not an Employment Contract. Neither the Option nor this Agreement is an employment or service contract, and nothing in this Agreement or the Grant Notice creates or will be deemed to create in any way whatsoever any right or obligation on Grantee's part to continue in the employment or service of the Company or a Related Entity, or of the Company or a Related Entity to continue Grantee's employment or service, or interferes with or limits in any way the right of the Company or a Related Entity to terminate Grantee's employment or service at any time or for any reason in accordance with the Applicable Laws.

12. Adjustments. Subject to any required action by the stockholders of the Company, the number of Shares covered by the Option and the Exercise Price, as well as any other terms that the Administrator determines require adjustment, shall be proportionately adjusted for (i) any increase or decrease in the number of issued and outstanding Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Shares, or similar transaction affecting the Shares, (ii) any other increase or decrease in the number of issued and outstanding Shares effected without receipt of consideration by the Company, or (iii) any other transaction with respect to the Company's Common Stock including a corporate merger, consolidation, acquisition of property or stock, separation (including a spin-off or other distribution of stock or property), reorganization, liquidation (whether partial or complete) or any similar transaction; provided, however that conversion of any convertible securities of the

Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator and its determination shall be final, binding and conclusive. Except as the Administrator determines, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason hereof shall be made with respect to, the number of Shares subject to the Option or the Exercise Price. No adjustments shall be made for dividends paid in cash or in property other than Common Stock of the Company, nor shall cash dividends or dividend equivalents accrue or be paid in respect of the Option.

13. Administration of Option. This Agreement and the Option shall be administered by the Board. To the extent permitted by the Applicable Laws, the Board may delegate by resolution any or all of its powers under this Agreement to one or more Committees. All references in this Agreement to the "**Administrator**" shall mean the Board or a Committee referred to in this paragraph, to the extent that the Board's powers or authority under this Agreement have been delegated to such Committee. The Board may retain the authority to concurrently administer this Agreement and the Option with any Committee and may, at any time, revest in the Board some or all of the powers previously delegated. The Administrator shall have full discretionary authority to construe and interpret the terms of this Agreement and to determine all facts necessary to administer this Agreement and the Option. All decisions by the Administrator shall be made in the Administrator's sole discretion and shall be final and binding on all persons having or claiming any interest in this Agreement or the Option.

14. No Effect on Retirement and Other Benefit Plans. Except as specifically provided in a retirement or other benefit plan of the Company or a Related Entity, the Option shall not be deemed compensation for purposes of computing benefits or contributions under any retirement plan of the Company or a Related Entity, and shall not affect any benefits under any other benefit plan of the Company or a Related Entity, in each case, whether such plan is now or hereafter existing.

15. Electronic Delivery. The Administrator may decide to deliver any documents related to the Option through an online or electronic system established and maintained by the Company or another third party designated by the Company or to request Grantee's acceptance of the Option by electronic means. By accepting the Option, Grantee consents to receive such documents by electronic delivery and agrees to participate in the Option through an online or electronic system established and maintained by the Company or another third party designated by the Company, and such consent shall remain in effect throughout Grantee's Continuous Service with the Company and any Related Entity and thereafter until withdrawn in writing by Grantee.

16. Data Privacy. The Administrator may decide to collect, use and transfer, in electronic or other form, personal data as described in this Agreement for the exclusive purpose of implementing, administering and managing the Option. By accepting the Option, Grantee acknowledges that the Company holds certain personal information about Grantee, including, but not limited to, name, home address and telephone number, date of birth, social security number or other identification number, salary, nationality, job title, details of all equity awards awarded, cancelled, exercised, vested or unvested, for the purpose of implementing, administering and managing the Option (the "**Data**"). Grantee further acknowledges that Data may be transferred to any third parties assisting in the implementation, administration and management of the Option

and that these third parties may be located in jurisdictions that may have different data privacy laws and protections, and Grantee authorizes such third parties to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing the Option, including any requisite transfer of such Data as may be required to a broker or other third party with whom the recipient or the Company may elect to deposit any Shares acquired pursuant to the Option.

17. Application of Section 409A. The Option and this Agreement shall be interpreted to be exempt from the requirements of Section 409A pursuant to Treas. Reg. § 1.409A-1(b)(5)(i). Notwithstanding anything in this Agreement to the contrary, Grantee will be solely responsible for the tax consequences of the Option, and in no event will the Company have any responsibility or liability if the Option does not meet any applicable requirements of Section 409A. Although the Company intends to administer the Option and this Agreement to prevent taxation under Section 409A, the Company does not represent or warrant that the Option or this Agreement complies with any provision of federal, state, local or other tax law. If, upon Grantee's separation from service, Grantee is a "specified employee" within the meaning of Section 409A, any payment that is subject to Section 409A and triggered by a separation from service and would otherwise be paid within six months after Grantee's separation from service will instead be paid in the seventh month following Grantee's separation from service (to the extent required by Section 409A(a)(2)(B)(i)).

18. Grantee Acknowledgement. Grantee acknowledges and agrees that the Option is granted in full satisfaction of Grantee's right, if any, to an equity award under any offer letter, employment agreement or similar letter, agreement, or communication from the Company or any Related Entity.

19. Definitions.

(a) "**Administrator**" has the meaning set forth in Section 13.

(b) "**Agreement**" means this Inducement Stock Option Award Agreement, including any amendments thereto.

(c) "**Applicable Laws**" means the legal requirements relating to the Option under applicable provisions of federal and state securities laws, the corporate laws of Delaware, and, to the extent other than Delaware, the corporate law of the state of the Company's incorporation, the Code, the rules of any applicable stock exchange or national market system, and the rules of any non-U.S. jurisdiction applicable to the Option.

(d) "**Board**" means the Board of Directors of the Company.

(e) "**Cause**" means, with respect to the termination by the Company or a Related Entity of Grantee's Continuous Service:

(i) that such termination is for "Cause" as such term (or word of like import) is expressly defined in a then-effective written employment agreement, consulting agreement, service agreement or other similar agreement between Grantee and the Company or such Related Entity, provided, however, that with regard to any agreement that defines "Cause"

on the occurrence of or in connection with a Corporate Transaction, such definition of "Cause" shall not apply until a Corporate Transaction actually occurs; or

(ii) in the absence of such then-effective written agreement and definition, is based on, in the determination of the Administrator: (A) Grantee's performance of any act, or failure to perform any act, in bad faith and to the detriment of the Company or a Related Entity; (B) Grantee's dishonesty, intentional misconduct or material breach of any agreement with the Company or a Related Entity; (C) Grantee's material breach of any noncompetition, confidentiality or similar agreement with the Company or a Related Entity, as determined under such agreement; (D) Grantee's commission of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; (E) Grantee's engaging in acts or omissions constituting gross negligence, misconduct or a willful violation of a Company or a Related Entity policy which is or is reasonably expected to be materially injurious to the Company and/or a Related Entity; or (F) Grantee's failure to follow the reasonable instructions of the Board or Grantee's direct supervisor, which failure, if curable, is not cured within 10 days after notice to Grantee or, if cured, recurs within 180 days.

(f) "**Code**" means the Internal Revenue Code of 1986, as amended, or any successor statute.

(g) "**Committee**" means the Compensation Committee of the Board or another committee appointed by the Board to administer the Option in accordance with Section 14.

(h) "**Common Stock**" means the Company's voting common stock, $0.0001 par value per share.

(i) "**Company**" means Eyenovia, Inc., a Delaware corporation, or any successor entity that assumes the Option in connection with a Corporate Transaction.

(j) "**Continuous Service**" means that Grantee's provision of services to the Company or a Related Entity is not interrupted or terminated. In jurisdictions requiring notice in advance of an effective termination as an employee or other service provider, Continuous Service shall be deemed terminated upon the actual cessation of providing services to the Company or a Related Entity notwithstanding any required notice period that must be fulfilled before a termination can be effective under Applicable Laws. Grantee's Continuous Service shall be deemed to have terminated either upon an actual termination of Continuous Service or upon the entity for which Grantee provides services ceasing to be a Related Entity. Continuous Service shall not be considered interrupted in the case of (i) any approved leave of absence, (ii) transfers among the Company, any Related Entity, or any successor, or (iii) any change in status as an employee or other service provider as long as the individual remains in the service of the Company or a Related Entity.

(k) "**Corporate Transaction**" means any of the following transactions, provided, however, that the Administrator shall determine under parts (iv) and (v) whether multiple transactions are related, and its determination shall be final, binding and conclusive:

(i) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the state in which the Company is incorporated;

(ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company;

(iii) the complete liquidation or dissolution of the Company;

(iv) any reverse merger or series of related transactions culminating in a reverse merger (including, but not limited to, a tender offer followed by a reverse merger) in which the Company is the surviving entity but (A) the Shares outstanding immediately prior to such merger are converted or exchanged by virtue of the merger into other property, whether in the form of securities, cash or otherwise, or (B) in which securities possessing more than 50% of the total combined voting power of the Company's outstanding securities are transferred to a person or persons different from those who held such securities immediately prior to such merger or the initial transaction culminating in such merger; or

(v) acquisition in a single or series of related transactions by any person or related group of persons (other than the Company or by a Company-sponsored employee benefit plan) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act of 1934, as amended) of securities possessing more than 50% of the total combined voting power of the Company's outstanding securities.

(l) "**Date of Grant**" means the Date of Grant shown on the Grant Notice.

(m) "**Disability**" means a "disability" (or word of like import) as defined under the long-term disability policy of the Company or the Related Entity to which Grantee provides services regardless of whether Grantee is covered by such policy. If the Company or the Related Entity to which Grantee provides service does not have a long-term disability plan in place, "Disability" means that Grantee is unable to carry out the responsibilities and functions of the position held by Grantee by reason of any medically determinable physical or mental impairment for a period of not less than 90 consecutive days. Grantee will not be considered to have incurred a Disability unless he or she furnishes proof of such impairment sufficient to satisfy the Administrator.

(n) "**Exercise Price**" means the Exercise Price per Share shown on the Grant Notice.

(o) "**Expiration Date**" means the Expiration Date shown on the Grant Notice.

(p) "**Fair Market Value**" means, as of any date, the value of the Common Stock determined as follows.

(i) If the Common Stock is listed on one or more established stock exchanges or national market systems, including without limitation The Nasdaq Global Select Market, The Nasdaq Global Market, or The Nasdaq Capital Market of The Nasdaq Stock Market LLC, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no

sales were reported) as quoted on the principal exchange or system on which the Common Stock is listed (as determined by the Administrator) on the date of determination (or, if no closing sales price or closing bid was reported on that date, as applicable, on the last trading date such closing sales price or closing bid was reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted on an automated quotation system (including the OTC Bulletin Board) or by a recognized securities dealer, its Fair Market Value shall be the closing sales price for such stock as quoted on such system or by such securities dealer on the date of determination, but if selling prices are not reported, the Fair Market Value of a Share shall be the mean between the high bid and low asked prices for the Common Stock on the date of determination (or, if no such prices were reported on that date, on the last date such prices were reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock of the type described in (i) and (ii), above, the Fair Market Value thereof shall be determined by the Administrator in good faith by application of a reasonable valuation method consistently applied and taking into consideration all available information material to the value of the Company in a manner in compliance with Section 409A.

(q) "**Grant Notice**" means the accompanying Notice of Inducement Stock Option Grant, including any amendments thereto.

(r) "**Grantee**" has the meaning set forth in the introductory paragraph of this Agreement.

(s) "**Notice of Exercise**" has the meaning set forth in Section 5 of this Agreement.

(t) "**Option**" has the meaning set forth in Section 1 of this Agreement.

(u) "**Parent**" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(v) "**Purchase Price**" has the meaning set forth in Section 6 of this Agreement.

(w) "**Related Entity**" means any Parent or Subsidiary of the Company.

(x) "**Section 409A**" means Section 409A of the Code and the Treasury Regulations and other guidance issued thereunder by the United States Department of the Treasury.

(y) "**Share**" means a share of the Common Stock.

(z) "**Subsidiary**" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

(aa) "**Tax Obligations**" means all income tax, social insurance, payroll tax, fringe benefits tax, or other tax-related liabilities related to the Option, as determined under the Applicable Laws.

20. Miscellaneous.

(a) Notices. Any notice, demand or request required or permitted to be given pursuant to the terms of this Agreement will be in writing and will be deemed given when delivered personally, one day after deposit with a recognized international delivery service (such as FedEx), or three days after deposit in the U.S. mail, first class, certified or registered, return receipt requested, with postage prepaid, in each case addressed to the parties at the addresses of the parties set forth in the Grant Notice or such other address as a party may designate by notifying the other in writing.

(b) Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding upon, the Company and its successors and assigns and upon Grantee, Grantee's executor, personal representative(s), distributees, administrators, permitted transferees, permitted assignees, beneficiaries, and legatee(s), as applicable, whether or not any such person will have become a party to this Agreement and have agreed in writing to be joined herein and be bound by the terms hereof.

(c) Severability. The provisions of this Agreement are severable, and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, then the remaining provisions will nevertheless be binding and enforceable.

(d) Amendment. Neither this Agreement nor the Grant Notice may be amended unless the amendment is agreed to in writing by both Grantee and the Company.

(e) Choice of Law. This Agreement will be construed and enforced in accordance with and governed by the laws of the State of Delaware, without giving effect to the choice of law rules of any jurisdiction.

(f) Entire Agreement. This Agreement, along with the Grant Notice, constitutes the entire agreement between the parties hereto with regard to the subject matter hereof, and supersedes any other agreements, representations or understandings (whether oral or written and whether express or implied) that relate to such subject matter.

(g) Construction. Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

EXHIBIT A

EYENOVIA, INC.
INDUCEMENT STOCK OPTION AWARD
NOTICE OF EXERCISE

Eyenovia, Inc.

_____

_____
Attention: Chief Executive Officer

Date of Exercise: _____

1. **Exercise of Option.** This constitutes notice to Eyenovia, Inc. (the "**Company**") that, pursuant to the Inducement Stock Option Award Agreement, dated _____ (the "**Award Agreement**"), I elect to purchase the number of Shares set forth below for the price set forth below.

Number of Shares as to which Option is exercised (the "**Optioned Shares**"):	_____
Exercise Price per Share:	_____
Total Purchase Price:	_____

2. **Delivery of Payment.** With this notice, I hereby deliver to the Company the full Purchase Price for the Optioned Shares, in a form permitted by the Award Agreement.

3. **Representations.** By signing and delivering this notice to the Company, I acknowledge that I am the holder of the Option exercised by this notice and have full power and authority to exercise the Option. I further represent that I have received, read, and understood the Award Agreement, and I confirm my agreement to abide by and be bound by their terms and conditions. Capitalized terms used and not otherwise defined in this notice will have the meanings ascribed to those terms in the Award Agreement.

4. **Compliance with Securities Laws.** Notwithstanding any other provision of the Award Agreement to the contrary, the exercise of any rights to purchase any Optioned Shares is expressly conditioned upon compliance with the Securities Act of 1933, as amended (the "**Securities Act**"), all applicable state securities laws and all applicable requirements of any stock exchange or over the counter market on which the Company's Common Stock may be listed or traded at the time of exercise and transfer. I agree to cooperate with the Company to ensure compliance with such laws. I further understand that the Optioned Shares cannot be resold and must be held indefinitely unless they are registered under the Securities Act or unless an exemption from such registration is available and that the certificate(s) representing the Optioned Shares may bear a legend to that effect. I understand that the Company is under no obligation to register the Optioned Shares and that an exemption may not be available or may not permit me to transfer Optioned Shares in the amounts or at the times I may desire.

5. **Tax Withholding.** I acknowledge that my exercise of the Option may result in Tax Obligations which require the Company to withhold certain amounts to satisfy federal, state, local, and/or foreign taxes. I agree to satisfy such tax withholding obligations as described in Section 9 of the Award Agreement.

6. **Rights as Stockholder.** While the Company will endeavor to process this notice in a timely manner, I acknowledge that, until the issuance of the Optioned Shares (or, in the Company's discretion, in un-certificated form, upon the books of the Company's transfer agent) and my satisfaction of any other conditions imposed by the Company pursuant to the Award Agreement, no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Optioned Shares, notwithstanding the exercise of my Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date of issuance of the Optioned Shares.

7. **Tax Consultation.** I understand that I may experience adverse tax consequences as a result of my exercise of the Option or my disposition of the Optioned Shares. I represent that I have consulted with any tax consultants I deem advisable in connection with the exercise of the Option and/or the disposition of the Optioned Shares and that I am not relying on the Company or its officers, representatives, or agents for any tax advice.

8. **Interpretation.** Any dispute regarding the interpretation of this notice will be resolved by the Committee in its discretion, and the Committee's determination will be final and binding on all parties.

9. **Entire Agreement.** The Award Agreement under which the Optioned Shares were granted is incorporated herein by reference and, together with this notice, constitute the entire agreement of the parties with respect to the subject matter of this notice.

GRANTEE:

_____

Print Name: _____

Address: _____

_____

_____

Exhibit 10.8

INDEMNIFICATION AND ADVANCEMENT AGREEMENT

This Indemnification and Advancement Agreement ("**Agreement**") is made as of , 2024 by and between Eyenovia, Inc., a Delaware corporation (the "**Company**"), and [name], [a member of the Board of Directors/an officer/an employee/an agent] of the Company ("**Indemnitee**"). This Agreement supersedes and replaces any and all previous Agreements between the Company and Indemnitee covering indemnification and advancement of expenses.

RECITALS

WHEREAS, the Board of Directors of the Company (the "**Board**") believes that highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers, or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification and advancement of expenses against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Third Amended and Restated Certificate of Incorporation (as amended, the "**Charter**") and the Second Amended and Restated Bylaws (the "**Bylaws**") of the Company require indemnification of the officers and directors of the Company, and the Bylaws permit indemnification of employees and agents of the Company to the extent not prohibited by the DGCL or other applicable law. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the "**DGCL**"). The Charter, the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of its board of directors, officers, and other persons with respect to indemnification and advancement of expenses;

WHEREAS, the uncertainties relating to such insurance, to indemnification, and to advancement of expenses may increase the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to, and in furtherance of, the Charter, the Bylaws, and any resolutions adopted pursuant thereto, as well as any rights of Indemnitee under any directors' and officers' liability insurance policy, and is not a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee may not be willing to serve or continue to serve as an officer, director or employee without adequate additional protection, and the Company desires Indemnitee to serve or continue to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified and be advanced expenses, if that becomes necessary.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve or continue to serve as a [director/officer/employee/agent] of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law). This Agreement does not create any obligation on the Company to continue Indemnitee in such position and is not an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee.

Section 2. Definitions. As used in this Agreement:

(a) "**Agent**" means any person who is authorized by the Company or an Enterprise to act for or represent the interests of the Company or an Enterprise, respectively.

(b) A "**Change in Control**" occurs upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities unless the change in relative beneficial ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. Change in Board of Directors. During any period of three (3) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv) of this Agreement) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

iv. Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

v. Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

vi. For purposes of this Section 2(b), the following terms have the following meanings:

1 "**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time.

2 "**Person**" has the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person excludes (i) the Company, (ii) any trustee or other

fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

3 "**Beneficial Owner**" has the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner excludes any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(c) "**Corporate Status**" describes the status of a person who is or was acting as a director, officer, employee, fiduciary, or Agent of the Company or an Enterprise.

(d) "**Delaware Court**" means the Court of Chancery of the State of Delaware.

(e) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(f) "**Enterprise**" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity for which Indemnitee is or was serving at the request of the Company as a director, officer, employee, or Agent.

(g) "**Expenses**" includes all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 14(d) of this Agreement only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise. Expenses, however, do not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(h) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements) or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(i) "**Proceeding**" includes any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing, or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, regulatory, or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is, or will be involved as a party, potential party, non-party witness, or otherwise by reason of Indemnitee's Corporate Status or by reason of any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee's part while acting pursuant to Indemnitee's Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. A Proceeding also includes a situation the Indemnitee believes in good faith may lead to, or culminate in, the institution of a Proceeding.

Section 3. Indemnity in Third-Party Proceedings. The Company will indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that Indemnitee's conduct was unlawful.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company will indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. The Company will not indemnify Indemnitee for Expenses under this Section 4 related to any claim, issue or matter in a Proceeding for which Indemnitee has been finally adjudged by a court to be liable to the Company, unless, and only to the extent that, the Delaware Court or any court in which the Proceeding was brought determines upon application by Indemnitee that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection with any Proceeding to the extent that Indemnitee is successful, on the merits or otherwise. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement and to the fullest extent permitted by applicable law, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding to which Indemnitee is not a party but to which Indemnitee is a witness, deponent, interviewee, or otherwise asked to participate, by reason of Indemnitee's Corporate Status.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company will indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification. Notwithstanding any limitation in Sections 3, 4, or 5 of this Agreement, the Company will indemnify Indemnitee to the fullest extent permitted by applicable law (including but not limited to, the DGCL and any amendments to or replacements of the DGCL adopted after the date of this Agreement that expand the Company's ability to indemnify its officers, directors, employees or Agents) if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor). No indemnification shall be available under this Section 8 on account of Indemnitee's conduct that constitutes a breach of Indemnitee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law.

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Company is not obligated under this Agreement to make any Indemnification payment to Indemnitee in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of Indemnitee under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for (i) an accounting or disgorgement of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of federal, state or local statutory law or common law, if Indemnitee is held liable therefore (including pursuant to any settlement arrangements), (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements) or (iii) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or the compensation committee of the Board, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act;

(c) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, Agents or other indemnitees, unless (i) the Board authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) the Proceeding or part of the Proceeding is to enforce Indemnitee's rights to indemnification or advancement, of Expenses, including a Proceeding (or any part of a Proceeding) initiated pursuant to Section 14 of this Agreement, or (iv) otherwise required by applicable law; or

(d) if prohibited by applicable law.

Section 10. Advances of Expenses.

(a) The Company will advance, to the extent not prohibited by law (as determined by a court of competent jurisdiction in a final adjudication not subject to further appeal), the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee or any Proceeding (or any part of any Proceeding) initiated by Indemnitee if (i) the Proceeding or part of any Proceeding is to enforce Indemnitee's rights to obtain indemnification or advancement of Expenses from the Company or an Enterprise, including a proceeding initiated pursuant to Section 14 or (ii) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation. The Company will advance the Expenses within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding eligible for advancement of expenses.

(b) Advances will be unsecured and interest free. Indemnitee undertakes to repay the amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company, thus Indemnitee qualifies for advances upon the execution of this Agreement and delivery to the Company. No other form of undertaking is required other than the execution of this Agreement. The Company will make advances without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement.

(c) Notwithstanding the foregoing, unless otherwise determined pursuant to Section 15(a) of this Agreement, no advance shall be made by the Company to Indemnitee (except by reason of the fact that Indemnitee is or was a director of the Company, in which event this paragraph shall not apply) in any Proceeding if a determination is reasonably and promptly made (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (ii) by a committee of Disinterested Directors designated by majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (iii) if there are no such Disinterested

Directors or, if such Disinterested Directors so direct, by written opinion provided by Independent Counsel selected by the Board, that facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that Indemnitee acted in bad faith or in a manner that Indemnitee did not believe to be in or not opposed to the best interests of the Company.

Section 11. Procedure for Notification of Claim for Indemnification or Advancement.

(a) Indemnitee will notify the Company in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. Indemnitee will include in the written notification to the Company a description of the nature of the Proceeding. Indemnitee's failure to notify the Company will not relieve the Company from any obligation it may have to Indemnitee under this Agreement, and any delay in so notifying the Company will not constitute a waiver by Indemnitee of any rights under this Agreement. The Secretary of the Company will, promptly upon receipt of such a request for indemnification or advancement, advise the Board in writing that Indemnitee has requested indemnification or advancement. Indemnitee agrees to choose counsel that is a member of the approved list of panel counsel under the Company's applicable directors' and officers' insurance policy, should the applicable policy provide for a panel of approved counsel.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

Section 12. Procedure Upon Application for Indemnification.

(a) Unless a Change of Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made:

i. by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;

ii. by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board;

iii. if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by written opinion provided by Independent Counsel selected by the Board; or

iv. if so directed by the Board, by the stockholders of the Company.

(b) If a Change in Control has occurred, the determination of Indemnitee's entitlement to indemnification will be made by written opinion provided by Independent Counsel selected by Indemnitee (unless Indemnitee requests such selection be made by the Board).

(c) The party selecting Independent Counsel pursuant to Section 10(c) of this Agreement or subsection (a)(iii) or (b) of this Section 12 will provide written notice of the selection to the other party. The notified party may, within ten (10) days after receiving written notice of the selection of Independent Counsel, deliver to the selecting party a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection will set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected will act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within thirty (30) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) of this Agreement and the final disposition of the Proceeding, Independent Counsel has not been selected or, if selected, any objection to such selection has not been resolved, either the Company or Indemnitee may petition the Delaware Court for the appointment as Independent Counsel of a person selected by such court or by such other person as such court designates. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel will be

discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. The Company will advance and pay any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making the indemnification determination irrespective of the determination as to Indemnitee's entitlement to indemnification and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing of the determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied and providing a copy of any written opinion provided to the Board by Independent Counsel.

(e) If it is determined that Indemnitee is entitled to indemnification, the Company will make payment to Indemnitee within thirty (30) days after such determination.

Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification under this Agreement, the person, persons, or entity making such determination will, to the fullest extent not prohibited by law, presume Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Company will, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper under the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, will be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If a claim for indemnification or advancement of expenses pursuant to this Agreement is not paid by the Company or on its behalf within ninety (90) days after receipt by the Company of Indemnitee's written request therefor pursuant to Section 11(a) of this Agreement, Indemnitee will be entitled to an adjudication by a court of competent jurisdiction of Indemnitee's entitlement to such indemnification or advancement of expenses. Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of any claim or Proceeding.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, will not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee will be deemed to have acted in good faith if Indemnitee acted based on the records or books of account of the Company, its subsidiaries, or an Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Company, its subsidiaries, or an Enterprise in the course of their duties, or on the advice of legal counsel for the Company, its subsidiaries, or an Enterprise or on information or records given or reports made to the Company or an Enterprise by an independent certified public accountant or by an appraiser, financial advisor or other expert selected with reasonable care by or on behalf of the Company, its subsidiaries, or an Enterprise. Further, Indemnitee will be deemed to have acted in a manner "not opposed to the best interests of the Company," as referred to in this Agreement, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan. The provisions of this Section 13(d) are

not exclusive and do not limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any other person affiliated with the Company or an Enterprise (including, but not limited to, a director, officer, trustee, partner, managing member, Agent or employee) may not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

Section 14. Remedies of Indemnitee.

(a) Subject to the last sentence of Section 13(b) of this Agreement, Indemnitee may commence litigation against the Company in the Delaware Court of Chancery to obtain indemnification or advancement of Expenses provided by this Agreement in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) the Company does not advance Expenses pursuant to Section 10 of this Agreement, (iii) the Company does not indemnify Indemnitee pursuant to Section 5 or 6 or the second to last sentence of Section 12(d) of this Agreement within thirty (30) days after receipt by the Company of a written request therefor, (iv) the Company does not indemnify Indemnitee pursuant to Section 3, 4, 7, or 8 of this Agreement within thirty (30) days after a determination has been made that Indemnitee is entitled to indemnification. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence such Proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such Proceeding pursuant to this Section 14(a); provided, however, that the foregoing clause does not apply in respect of a Proceeding brought by Indemnitee to enforce Indemnitee's rights under Section 5 of this Agreement. The Company will not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 will be conducted in all respects as a *de novo* trial, or arbitration, on the merits and Indemnitee may not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14 the Company will have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be, and will not introduce evidence of the determination made pursuant to Section 12 of this Agreement.

(c) If a determination is made pursuant to Section 12 of this Agreement that Indemnitee is entitled to indemnification, the Company will be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14 unless (i) a misstatement is made of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with Indemnitee's request for indemnification, or (ii) the Company is prohibited from indemnifying Indemnitee under applicable law.

(d) The Company is precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding, or enforceable and will stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(e) It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee under this Agreement. The Company, to the fullest extent permitted by law, will (within thirty (30) days after receipt by the Company of a written request therefor) advance to Indemnitee such Expenses which are incurred by Indemnitee in connection with a Proceeding concerning this Agreement, Indemnitee's other rights to indemnification or advancement of Expenses from the Company, or concerning any directors' and officers' liability insurance policies maintained by the Company, and will indemnify Indemnitee against any and all such Expenses unless the court determines that each of the Indemnitee's claims in such Proceeding were made in bad faith or frivolous, or that Indemnitee is not entitled to

be indemnified by the Company under the provisions of this Agreement, the Charter, the Bylaws, applicable law or otherwise.

Section 15. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The indemnification and advancement of Expenses provided by this Agreement are not exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of stockholders or Disinterested Directors or otherwise. The indemnification and advancement of Expenses provided by this Agreement may not be limited or restricted by any amendment, alteration or repeal of this Agreement in any way with respect to any action taken or omitted by Indemnitee in Indemnitee's Corporate Status occurring prior to any amendment, alteration or repeal of this Agreement. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Charter, Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy is cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by one or more Persons with whom or which Indemnitee may be associated.

i. The Company hereby acknowledges and agrees:

1) the Company is the indemnitor of first resort with respect to any request for indemnification or advancement of Expenses made pursuant to this Agreement concerning any Proceeding arising from or related to Indemnitee's Corporate Status with the Company;

2) the Company is primarily liable for all indemnification or advancement of Expenses obligations for any Proceeding arising from or related to Indemnitee's Corporate Status, whether created by law, organizational or constituent documents, contract (including this Agreement) or otherwise;

3) any obligation of any other Persons with whom or which Indemnitee may be associated to indemnify Indemnitee and/or advance Expenses to Indemnitee in respect of any proceeding are secondary to the Company's obligations;

4) the Company will indemnify Indemnitee and advance Expenses to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated or an insurer of any such Person; and

ii. the Company irrevocably waives, relinquishes and releases (A) any other Person with whom or which Indemnitee may be associated from any claim of contribution, subrogation, reimbursement, exoneration or indemnification, or any other recovery of any kind in respect of amounts paid by the Company to Indemnitee pursuant to this Agreement, whether or not such claim, remedy or right arises in equity or under contract, statute or common law.

iii. In the event any other Person with whom or which Indemnitee may be associated or their insurers advances or extinguishes any liability or loss for Indemnitee, the payor has a right of subrogation against the Company or its insurers for all amounts so paid which would otherwise be payable by the Company or its insurers under this Agreement. In no event will payment by any other Person with whom or which Indemnitee may be associated or their insurers affect the obligations of the Company hereunder or shift primary liability for the Company's obligation to indemnify or advance of Expenses to any other Person with whom or which Indemnitee may be associated.

iv. Any indemnification or advancement of Expenses provided by any other Person with whom or which Indemnitee may be associated is specifically in excess over the Company's obligation to indemnify and advance Expenses or any valid and collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Company.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or Agents of the Company or an Enterprise, the Indemnitee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or Agent under such policy or policies, including coverage in the event the Company does not or cannot, for any reason, indemnify or advance Expenses to Indemnitee as required by this Agreement. If, at the time of the receipt of a notice of a claim pursuant to this Agreement, the Company has director and officer liability insurance in effect, the Company will give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company will thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Indemnitee agrees to assist the Company's efforts to cause the insurers to pay such amounts and will comply with the terms of such policies, including selection of approved panel counsel, if required. In the event of a Change in Control or the Company's becoming insolvent, the Company shall maintain in force any and all insurance policies then maintained by the Company in providing insurance—directors' and officers' liability, fiduciary, employment practices or otherwise—in respect of the individual directors and officers of the Company, for a fixed period of six years thereafter (a "**Tail Policy**"). Such coverage shall be non-cancellable and shall be placed and serviced for the duration of its term by the Company's incumbent insurance broker. Such broker shall place the Tail Policy with the incumbent insurance carriers using the policies that were in place at the time of the Change in Control (unless the incumbent carriers will not offer such policies, in which case the Tail Policy placed by the Company's insurance broker shall be substantially comparable in scope and amount as the expiring policies, and the insurance carriers for the Tail Policy shall have an AM Best rating that is the same or better than the AM Best ratings of the expiring policies).

(d) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee for any Proceeding concerning Indemnitee's Corporate Status with an Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise. The Company and Indemnitee intend that any such Enterprise (and its insurers) be the indemnitor of first resort with respect to indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise. The Company's obligation to indemnify and advance Expenses to Indemnitee is secondary to the obligations the Enterprise or its insurers owe to Indemnitee. Indemnitee agrees to take all reasonably necessary and desirable action to obtain from an Enterprise indemnification and advancement of Expenses for any Proceeding related to or arising from Indemnitee's Corporate Status with such Enterprise.

(e) In the event of any payment made by the Company under this Agreement, the Company will be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee from any Enterprise or insurance carrier. Indemnitee will execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

Section 16. Duration of Agreement. All the rights and privileges afforded by this Agreement, including the right to indemnification and the advancement of legal fees provided under this Agreement, shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity pertaining to an indemnifiable event even though Indemnitee may have ceased to serve in such capacity at the time of any Proceeding. The indemnification and advancement of Expenses rights provided by or granted pursuant to this Agreement will(i) be binding upon and enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), (ii) continue as to an Indemnitee who has ceased to be a director, officer, employee or Agent of the Company or of any other Enterprise, and (iii) inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 17. Severability. If any provision or provisions of this Agreement is held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of

this Agreement (including without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby and will remain enforceable to the fullest extent permitted by law; (b) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 18. Interpretation. Any ambiguity in the terms of this Agreement will be resolved in favor of Indemnitee and in a manner to provide the maximum indemnification and advancement of Expenses permitted by law. The Company and Indemnitee intend that this Agreement provide to the fullest extent permitted by law for indemnification and advancement of Expenses in excess of that expressly provided, without limitation, by the Charter, the Bylaws, vote of the Company's stockholders or Disinterested Directors, or applicable law.

Section 19. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer, employee, or Agent of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director, officer, employee, or Agent of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Charter, the Bylaws, any directors' and officers' insurance maintained by the Company, and applicable law, is not a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

Section 20. Modification and Waiver. No supplement, modification or amendment of this Agreement is binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement will be deemed to constitute a waiver of any other provision of this Agreement nor will any waiver constitute a continuing waiver.

Section 21. Notice by Indemnitee. Indemnitee agrees to promptly notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company does not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 22. Notices. All notices, requests, demands and other communications under this Agreement will be in writing and will be deemed to have been duly given if (a) delivered by hand to the other party, (b) sent by reputable overnight courier to the other party or (c) sent by electronic mail, with receipt of oral confirmation that such communication has been received:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee provides to the Company.

(b) If to the Company to:

Name:	Eyenovia, Inc.
Address:	295 Madison Avenue, Suite 2400 New York, NY 10017
Attention:	Corporate Secretary
Email:	ajones@eyenovia.com

or to any other address as may have been furnished to Indemnitee by the Company.

Section 23. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and Agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 24. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties are governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or Proceeding arising out of or in connection with this Agreement may be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or Proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or Proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or Proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 25. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 26. Headings. The headings of this Agreement are inserted for convenience only and do not constitute part of this Agreement or affect the construction thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

EYENOVIA, INC.	INDEMNITEE
By: _____	_____
Name:	Name:
Title:	Address: _____
	_____
	_____
	Email: _____

[Signature Page to Indemnification Agreement]

Exhibit 31.1

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

I, Michael Rowe, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Eyenovia, Inc. for the quarterly period ended September 30, 2024;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

Date: November 12, 2024

/s/ Michael Rowe
Name: Michael Rowe
Title Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF THE PRINCIPAL FINANCIAL AND ACCOUNTING OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Andrew Jones, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Eyenovia, Inc. for the quarterly period ended September 30, 2024;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

Date: November 12, 2024

/s/ Andrew Jones
Name: Andrew Jones
Title Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.1

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

In connection with the quarterly report of Eyenovia, Inc. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Rowe, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to 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: November 12, 2024

/s/ Michael Rowe
Name: Michael Rowe
Title Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

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

In connection with the quarterly report of Eyenovia, Inc. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Andrew Jones, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to 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: November 12, 2024

/s/ Andrew Jones
Name: Andrew Jones
Title Chief Financial Officer
(Principal Financial and Accounting Officer)