

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended September 30, 2021

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: 000-49799

**OVERSTOCK.COM, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**799 West Coliseum Way  
Midvale**

**Utah**  
(Address of principal executive offices)

**87-0634302**  
(I.R.S. Employer Identification Number)

**84047**  
(Zip Code)

**(801) 947-3100**

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value	OSTK	NASDAQ Global Market

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

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

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

43,014,524 shares of the registrant's common stock, par value \$0.0001, are outstanding on October 29, 2021.

**OVERSTOCK.COM, INC.**  
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**For the Quarterly Period Ended September 30, 2021**

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## Special Cautionary Note Regarding Forward-Looking Statements

*This Report on Form 10-Q and the documents incorporated herein by reference, as well as other public documents and statements our officers and representatives may make from time to time, contain forward-looking statements within the meaning of the federal securities laws. These statements are therefore entitled to the protection of the safe harbor provisions of these laws. You can find many of these statements by looking for words such as "may," "would," "could," "should," "will," "expect," "anticipate," "predict," "project," "potential," "continue," "contemplate," "seek," "assume," "believe," "intend," "plan," "forecast," "goal," "estimate," or other similar expressions which identify these forward-looking statements.*

*These forward-looking statements involve risks and uncertainties and relate to future events or our future financial or operating performance. These forward-looking statements are not historical facts, and are based on current expectations, estimates and projections about our industry and business, and on management's beliefs and certain assumptions made by management, many of which, by their nature, are inherently uncertain and beyond our control. Accordingly, you are cautioned that any such forward-looking statements are not guarantees of future performance and are subject to assumptions, risks and uncertainties that are difficult to predict, and that actual results may be materially different from the results expressed or implied by any of our forward-looking statements.*

*Actual events or results may differ materially from those contemplated by our forward-looking statements for a variety of reasons, including among others:*

- the impact that the COVID-19 pandemic, or other wide-spread disease or illness, may have on our business and the industries in which we operate, including the impact that our business may experience at such time as the pandemic or other health risks subside;*
- the impact that any litigation, claims, or regulatory matters could have on our business, financial condition, results of operations, and cash flows;*
- any increases in the price of importing into the U.S. the types of merchandise we sell in our retail business or other supply chain challenges that limit our access to merchandise we sell in our retail business;*
- any difficulties we may encounter as a result of our reliance on third-parties that we do not control for the performance of critical functions material to our business;*
- any inability to convert new customers into repeat customers or maintain increased sales volumes, in particular at such time as the pandemic subsides;*
- any downturn in the U.S. housing industry or other changes in U.S. and global economic conditions or U.S. consumer spending;*
- any inability to generate and maintain unpaid natural traffic to our website;*
- any inability to attract and/or retain key personnel;*
- the impact that any government policies, mandates, or regulations, including those created in response to COVID-19, could have on our business;*
- any inability of Pelion to successfully manage the Medici Ventures Fund limited partnership or our direct minority interest in tZERO;*
- our exposure to cyber security risks, risks of data loss and other security breaches;*
- any strategic transactions, restructurings or other changes we may make to our business;*
- the risk that the amount of deferred tax assets we consider realizable could be reduced if estimates of future taxable income during the carryforward period are reduced;*
- any challenges that result in the unavailability of our Website or reduced performance of our transaction systems;*
- the possibility that we are unable to protect our proprietary technology and to obtain trademark protection for our marks;*
- current and future claims of intellectual property infringement to which we are subject;*
- the commercial, competitive, technical, operational, financial, regulatory, legal, reputational, marketing and other obstacles Pelion faces in trying to create economic success for the blockchain assets held within the Medici Ventures Fund it manages;*
- any losses or issues we may encounter as a consequence of accepting or holding bitcoin or other cryptocurrencies;*
- the adequacy of our liquidity and our ability to fund our capital requirements;*
- the possibility that the cost of our current insurance policies may increase significantly or fail to adequately protect us as expected; and*
- the other risks described in this report or in our other public filings.*

*In evaluating all forward-looking statements, you should specifically consider the risks outlined above and in this Report, especially under the headings "Special Cautionary Note Regarding Forward-Looking Statements," "Risk Factors," "Legal Proceedings," and "Management's Discussion and Analysis of Financial Condition and Results of Operations." These factors may cause our actual results to differ materially from those contemplated by any forward-looking statement. Although we believe that our expectations reflected in the forward-looking statements are reasonable, we cannot guarantee or offer any assurance of future results, levels of activity, performance or achievements or other future events. Our forward-looking statements contained in this report speak only as of the date of this report and, except as required by law, we undertake no obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this report or any changes in our expectations or any change in any events, conditions or circumstances on which any of our forward-looking statements are based.*

## PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS (UNAUDITED)

**Overstock.com, Inc.**  
**Consolidated Balance Sheets (Unaudited)**  
**(in thousands, except per share data)**

	September 30, 2021	December 31, 2020
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 512,188	\$ 495,425
Restricted cash	228	1,197
Accounts receivable, net of allowance for credit losses of \$2,227 and \$1,417	25,172	22,867
Inventories	5,782	6,243
Prepays and other current assets	21,302	22,879
Current assets of discontinued operations	—	34,129
Total current assets	564,672	582,740
Property and equipment, net	109,784	113,767
Deferred tax assets, net	37,955	37
Goodwill	6,160	6,160
Equity securities, including securities measured at fair value of \$100,706 and \$1,127	330,196	1,412
Operating lease right-of-use assets	13,367	17,297
Other long-term assets, net	2,783	2,646
Long-term assets of discontinued operations	—	106,155
Total assets	\$ 1,064,917	\$ 830,214
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 124,763	\$ 109,759
Accrued liabilities	103,898	123,646
Unearned revenue	65,206	72,165
Operating lease liabilities, current	5,157	5,152
Other current liabilities	3,454	2,935
Current liabilities of discontinued operations	—	13,924
Total current liabilities	302,478	327,581
Long-term debt, net	38,837	41,334
Operating lease liabilities, non-current	9,095	13,206
Other long-term liabilities	5,393	4,082
Long-term liabilities of discontinued operations	—	7,685
Total liabilities	355,803	393,888
Commitments and contingencies (Note 8)		

*Continued on the following page*

**See accompanying notes to unaudited consolidated financial statements.**

**Overstock.com, Inc.**  
**Consolidated Balance Sheets (Unaudited)**  
**(in thousands, except per share data)**

	<u>September 30,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
Stockholders' equity:		
Preferred stock, \$0.0001 par value, authorized shares - 5,000		
Series A-1, issued and outstanding - 4,204 and 4,204	—	—
Series B, issued and outstanding - 357 and 357	—	—
Common stock, \$0.0001 par value, authorized shares - 100,000		
Issued shares - 46,610 and 46,331		
Outstanding shares - 43,014 and 42,768	4	4
Additional paid-in capital	957,060	970,873
Accumulated deficit	(168,803)	(525,233)
Accumulated other comprehensive loss	(541)	(553)
Treasury stock at cost - 3,596 and 3,563	(78,606)	(71,399)
Equity attributable to stockholders of Overstock.com, Inc.	709,114	373,692
Equity attributable to noncontrolling interests	—	62,634
Total stockholders' equity	709,114	436,326
Total liabilities and stockholders' equity	<u>\$ 1,064,917</u>	<u>\$ 830,214</u>

**See accompanying notes to unaudited consolidated financial statements.**

**Overstock.com, Inc.**  
**Consolidated Statements of Income (Unaudited)**  
(in thousands, except per share data)

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Net revenue	\$ 689,390	\$ 717,695	\$ 2,143,787	\$ 1,824,249
Cost of goods sold	532,682	548,982	1,658,729	1,403,418
Gross profit	156,708	168,713	485,058	420,831
Operating expenses				
Sales and marketing	75,650	71,292	234,460	186,852
Technology	31,178	29,934	92,084	86,278
General and administrative	21,031	28,625	66,562	73,347
Total operating expenses	127,859	129,851	393,106	346,477
Operating income	28,849	38,862	91,952	74,354
Interest expense, net	(139)	(264)	(424)	(639)
Other income (expense), net	(79)	59	(7)	18
Income from continuing operations before income taxes	28,631	38,657	91,521	73,733
Provision (benefit) for income taxes	(1,795)	753	(47,328)	1,756
Income from continuing operations	30,426	37,904	138,849	71,977
Income (loss) from discontinued operations, net of income taxes	—	(16,678)	217,246	(35,935)
Consolidated net income	\$ 30,426	\$ 21,226	\$ 356,095	\$ 36,042
Less: Net loss attributable to noncontrolling interests—discontinued operations	—	(2,165)	(335)	(7,372)
Net income attributable to stockholders of Overstock.com, Inc.	\$ 30,426	\$ 23,391	\$ 356,430	\$ 43,414
Consolidated net income per share of common stock:				
Net income (loss) attributable to common shares—basic				
Continuing operations	\$ 0.64	\$ 0.81	\$ 2.91	\$ 1.66
Discontinued operations	—	(0.31)	4.58	(0.66)
Total	\$ 0.64	\$ 0.50	\$ 7.49	\$ 1.00
Net income (loss) attributable to common shares—diluted				
Continuing operations	\$ 0.63	\$ 0.81	\$ 2.89	\$ 1.65
Discontinued operations	—	(0.31)	4.54	(0.66)
Total	\$ 0.63	\$ 0.50	\$ 7.43	\$ 0.99
Weighted average shares of common stock outstanding:				
Basic	43,014	41,595	42,970	40,697
Diluted	43,324	42,202	43,320	41,030

**See accompanying notes to unaudited consolidated financial statements.**

**Overstock.com, Inc.**  
**Consolidated Statements of Comprehensive Income (Unaudited)**  
**(in thousands)**

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Consolidated net income	\$ 30,426	\$ 21,226	\$ 356,095	\$ 36,042
Other comprehensive income				
Unrealized gain on cash flow hedges, net of expense for taxes of \$0, \$0, \$0, and \$0	4	4	12	12
Other comprehensive income	4	4	12	12
Comprehensive income	30,430	21,230	356,107	36,054
Less: Comprehensive loss attributable to noncontrolling interests—discontinued operations	—	(2,165)	(335)	(7,372)
Comprehensive income attributable to stockholders of Overstock.com, Inc.	<u>\$ 30,430</u>	<u>\$ 23,395</u>	<u>\$ 356,442</u>	<u>\$ 43,426</u>

**See accompanying notes to unaudited consolidated financial statements.**



**Overstock.com, Inc.**  
**Consolidated Statements of Changes in Stockholders' Equity (Unaudited)**  
(in thousands)

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
<b>Equity attributable to stockholders of Overstock.com, Inc.</b>				
Shares of common stock issued				
Balance at beginning of period	46,607	43,885	46,331	42,790
Common stock issued upon vesting of restricted stock	3	17	279	696
Common stock sold through offerings	—	2,415	—	2,831
Balance at end of period	46,610	46,317	46,610	46,317
Shares of treasury stock				
Balance at beginning of period	3,595	3,553	3,563	3,326
Tax withholding upon vesting of restricted stock	1	6	80	233
Sale of treasury stock	—	—	(47)	—
Balance at end of period	3,596	3,559	3,596	3,559
Total shares of common stock outstanding	43,014	42,758	43,014	42,758
Common stock	\$ 4	\$ 4	\$ 4	\$ 4
Number of Series A-1 preferred shares issued and outstanding	4,204	4,204	4,204	4,204
Number of Series B preferred shares issued and outstanding	357	357	357	357
Preferred stock	\$ —	\$ —	\$ —	\$ —
Additional paid-in capital				
Balance at beginning of period	\$ 954,518	\$ 770,984	\$ 970,873	\$ 764,845
Stock-based compensation to employees and directors	2,542	2,623	8,216	8,356
Common stock sold through offerings, net	—	192,692	—	192,692
Sale of treasury stock	—	—	2,726	—
Subsidiary equity award tender offer	—	—	(2,130)	—
Change in noncontrolling interest ownership	—	—	(22,625)	—
Other	—	—	—	406
Balance at end of period	\$ 957,060	\$ 966,299	\$ 957,060	\$ 966,299
Accumulated deficit				
Balance at beginning of period	\$ (199,229)	\$ (560,480)	\$ (525,233)	\$ (580,390)
Net income attributable to stockholders of Overstock.com, Inc.	30,426	23,391	356,430	43,414
Other	—	—	—	(113)
Balance at end of period	\$ (168,803)	\$ (537,089)	\$ (168,803)	\$ (537,089)

*Continued on the following page*

**See accompanying notes to unaudited consolidated financial statements.**

**Overstock.com, Inc.**  
**Consolidated Statements of Changes in Stockholders' Equity (Unaudited)**  
(in thousands)

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
<b>Accumulated other comprehensive loss</b>				
Balance at beginning of period	\$ (545)	\$ (560)	\$ (553)	\$ (568)
Net other comprehensive income	4	4	12	12
Balance at end of period	\$ (541)	\$ (556)	\$ (541)	\$ (556)
<b>Treasury stock</b>				
Balance at beginning of period	\$ (78,568)	\$ (70,537)	\$ (71,399)	\$ (68,807)
Tax withholding upon vesting of restricted stock	(38)	(587)	(7,850)	(2,317)
Sale of treasury stock	—	—	643	—
Balance at end of period	(78,606)	(71,124)	(78,606)	(71,124)
Total equity attributable to stockholders of Overstock.com, Inc.	\$ 709,114	\$ 357,534	\$ 709,114	\$ 357,534
<b>Equity attributable to noncontrolling interests</b>				
Balance at beginning of period	\$ —	\$ 63,937	\$ 62,634	\$ 62,771
Paid in capital for noncontrolling interest	—	—	—	5,000
Net loss attributable to noncontrolling interests	—	(2,165)	(335)	(7,372)
Change in noncontrolling interest ownership	—	—	22,625	—
Deconsolidation of subsidiaries	—	—	(84,924)	1,837
Other	—	—	—	(464)
Total equity attributable to noncontrolling interests	\$ —	\$ 61,772	\$ —	\$ 61,772
<b>Total stockholders' equity</b>	<b>\$ 709,114</b>	<b>\$ 419,306</b>	<b>\$ 709,114</b>	<b>\$ 419,306</b>

See accompanying notes to unaudited consolidated financial statements.

**Overstock.com, Inc.**  
**Consolidated Statements of Cash Flows (Unaudited)**  
**(in thousands)**

	<b>Nine months ended September 30,</b>	
	<b>2021</b>	<b>2020</b>
<b>Cash flows from operating activities:</b>		
Consolidated net income	\$ 356,095	\$ 36,042
(Income) loss from discontinued operations, net of income taxes	(217,246)	35,935
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Depreciation and amortization	14,332	16,288
Non-cash operating lease cost	3,758	3,781
Stock-based compensation to employees and directors	7,649	6,201
Increase in deferred income taxes, net	(51,749)	35
Other non-cash adjustments	1,400	(59)
Changes in operating assets and liabilities:		
Accounts receivable, net	(2,305)	(12,368)
Inventories	461	(1,027)
Prepays and other current assets	3,259	(85)
Other long-term assets, net	(1,050)	(137)
Accounts payable	14,831	44,011
Accrued liabilities	(19,945)	57,619
Unearned revenue	(6,959)	37,403
Operating lease liabilities	(3,891)	(4,756)
Other long-term liabilities	1,444	2,941
Net cash provided by continuing operating activities	100,084	221,824
Net cash used in discontinued operating activities	(17,128)	(23,114)
Net cash provided by operating activities	82,956	198,710
<b>Cash flows from investing activities:</b>		
Contributions for capital calls	(41,122)	—
Expenditures for property and equipment	(9,658)	(12,008)
Other investing activities, net	(1,281)	(161)
Net cash used in continuing investing activities	(52,061)	(12,169)
Net cash used in discontinued investing activities	(29,703)	(3,262)
Net cash used in investing activities	(81,764)	(15,431)

*Continued on the following page*

**See accompanying notes to unaudited consolidated financial statements.**

**Overstock.com, Inc.**  
**Consolidated Statements of Cash Flows (Unaudited)**  
**(in thousands)**

	<b>Nine months ended</b>	
	<b>September 30,</b>	
	<b>2021</b>	<b>2020</b>
<b>Cash flows from financing activities:</b>		
Payments on long-term debt	(2,191)	(1,566)
Proceeds from long-term debt	—	47,500
Proceeds from sale of common stock, net of offering costs	—	195,540
Payments of taxes withheld upon vesting of restricted stock	(7,850)	(2,317)
Other financing activities, net	(1)	(5,054)
Net cash provided by (used in) continuing financing activities	(10,042)	234,103
Net cash provided by discontinued financing activities	2,085	—
Net cash provided by (used in) financing activities	(7,957)	234,103
Net increase (decrease) in cash, cash equivalents, and restricted cash	(6,765)	417,382
Cash, cash equivalents, and restricted cash, beginning of period, inclusive of cash balances of discontinued operations	519,181	114,898
Cash, cash equivalents, and restricted cash, end of period, inclusive of cash balances of discontinued operations	512,416	532,280
Less: Cash, cash equivalents, and restricted cash of discontinued operations	—	17,113
Cash, cash equivalents, and restricted cash, end of period	<u>\$ 512,416</u>	<u>\$ 515,167</u>

**See accompanying notes to unaudited consolidated financial statements.**

**Overstock.com, Inc.**  
**Notes to Unaudited Consolidated Financial Statements**

**1. DESCRIPTION OF BUSINESS**

Overstock.com, Inc. is an online retailer and technology company. It is a leading e-commerce retailer offering customers a wide selection of quality brands for the home at smart value, including furniture, décor, area rugs, bedding and bath, home improvement, outdoor, and kitchen and dining items, among others. The online shopping site, which receives tens of millions of visits per month, provides customers access to millions of products from third-party partners. As used herein, "Overstock," "the Company," "we," "our" and similar terms include Overstock.com, Inc. and its wholly-owned subsidiaries, unless the context indicates otherwise. As used herein, the term "Website" refers to the Company's internet websites located at [www.overstock.com](http://www.overstock.com), [www.o.co](http://www.o.co), [www.overstock.ca](http://www.overstock.ca), and [www.overstockgovernment.com](http://www.overstockgovernment.com) and the Company's mobile app.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*Basis of Presentation*

We have prepared the accompanying unaudited consolidated financial statements pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States ("GAAP") have been omitted in accordance with the rules and regulations of the SEC. These financial statements should be read in conjunction with our audited annual consolidated financial statements and related notes included in our Annual Report on Form 10-K for the year ended December 31, 2020. There have been no significant changes to our significant accounting policies disclosed in Note 2—Accounting Policies, included in Part II, Item 8, Financial Statements and Supplementary Data, of our Annual Report on Form 10-K for the year ended December 31, 2020, except as disclosed below.

The accompanying unaudited consolidated financial statements reflect all adjustments, consisting only of normal recurring adjustments, which are, in our opinion, necessary for a fair presentation of results for the interim periods presented. The results of operations for the three and nine months ended September 30, 2021 are not necessarily indicative of the results to be expected for any future period or the full fiscal year, due to seasonality and other factors.

On April 23, 2021, we entered into a Limited Partnership Agreement (the "Limited Partnership Agreement") with Pelion MV GP, L.L.C. ("Pelion"), in connection with the closing (the "Medici Closing") of the Transaction Agreement dated January 25, 2021 between the Company, Medici Ventures, Inc. ("Medici Ventures"), Pelion, and Pelion, Inc. (the "Transaction Agreement"). In connection with the execution of the Limited Partnership Agreement, Pelion acquired control over Medici Ventures and its blockchain assets. As a result of this transaction, we performed an assessment of control under the variable interest entity ("VIE") model and determined that effective as of the Medici Closing, we held a variable interest in both Medici Ventures and tZERO Group, Inc. ("tZERO") (collectively, the "Disposal Group"), both of which meet the definition of variable interest entities; however, we are not the primary beneficiary of either entity for purposes of consolidation. Accordingly, we deconsolidated the Disposal Group's consolidated net assets and noncontrolling interest from our consolidated financial statements and results beginning on April 23, 2021, the date that control ceased. The Disposal Group met the criteria to be reported as held for sale and discontinued operations as of March 31, 2021. As a result of closing the transaction during the second quarter of 2021, the Disposal Group's operating results for the periods prior to deconsolidation have been reflected in our consolidated statements of income as discontinued operations for all periods presented. Additionally, the related assets and liabilities of the Disposal Group associated with the prior periods are classified as discontinued operations in our consolidated balance sheets. The majority of the Disposal Group was previously included in the Medici Ventures and tZERO reportable segments, and the remainder was included in Other. Effective as of the first quarter of fiscal year 2021, the Company has one reportable segment: Retail. See Note 14—Business Segments for additional segment information.

Unless otherwise specified, disclosures in these consolidated financial statements reflect continuing operations only. Certain prior period data, primarily related to discontinued operations, have been reclassified in the consolidated financial statements and accompanying notes to conform to the current period presentation. See Note 3—Discontinued Operations for further information.

### *Principles of consolidation*

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

### *Use of estimates*

The preparation of financial statements in conformity with GAAP requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent liabilities in our consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, receivables valuation, revenue recognition, Club O and gift card breakage, sales returns, vendor incentive discount offers, inventory valuation, depreciable lives and valuation of property and equipment, and internally-developed software, goodwill valuation, intangible asset valuation, equity securities valuation, income taxes, stock-based compensation, performance-based compensation, self-funded health insurance liabilities, and contingencies.

Our estimates involving, among other items, forecasted revenues, sales volume, pricing, cost and availability of inventory, consumer demand and spending habits, the continued operations of our supply chain and logistics network, and the overall impact of social distancing on our workforce are even more difficult to estimate as a result of uncertainties associated with the scope and duration of the global novel coronavirus ("COVID-19") pandemic and various actions taken by governmental authorities, private businesses, and other third parties in response to the pandemic, the ongoing economic effect of the pandemic and the post-pandemic economic recovery. Although these estimates are based on our best knowledge of current events and actions that we may undertake in the future, the variability of these factors depends on a number of conditions, including uncertainty associated with the COVID-19 pandemic and the post-pandemic economic recovery, how long these conditions will persist, ongoing developments related to the production, approval and distribution of vaccines, the emergence and spread of new variants of the virus (including variants that may be more contagious and/or impact the effectiveness of existing vaccines), and additional measures that may be introduced or reintroduced by governments or private parties or the effect any such additional measures may have on our business and thus our accounting estimates may change from period to period. To the extent there are differences between these estimates and actual results, our consolidated financial statements may be materially affected.

### *Initial valuation of retained noncontrolling interest in former subsidiaries*

We measured our retained noncontrolling interest in former subsidiaries at fair value at the date of deconsolidation. In the absence of quoted market prices (e.g., a privately held entity), the fair value was determined in good faith under our valuation policy and process using generally accepted valuation approaches. We utilized an independent third party valuation firm to assist us in determining the fair values of our retained noncontrolling interest in former subsidiaries using a combination of a market approach and income approach. The market approach relied upon a comparison with guideline public companies or guideline transactions and entails selecting relevant financial information of the subject company, and capitalizing those amounts using valuation multiples that are based on empirical market observations. The income approach relied upon an analysis of its projected economic earnings discounted to present value (discounted cash flows). The fair value determination of our retained noncontrolling interest required the use of significant unobservable inputs (Level 3 inputs) as shown in the table within Note 3—Discontinued Operations. Due to the inherent uncertainty of determining the fair value of Level 3 securities that do not have a readily available market value, the determination of fair value required significant judgment or estimation and changes in the estimates and assumptions used in the valuation models could materially affect the determination of fair value for these assets. See Note 3—Discontinued Operations for further information.

### *Income taxes*

We recognize deferred tax assets to the extent that we believe these assets are more likely than not to be realized. In evaluating our ability to recover our deferred tax assets within the jurisdiction from which they arise, we consider all available positive and negative evidence, including results of recent operations, projected future taxable income, scheduled reversals of our deferred tax liabilities, and tax planning strategies.

We record uncertain tax positions in accordance with ASC 740 on the basis of a two-step process whereby (1) we determine whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (2) for those tax positions that meet the more-likely-than-not recognition threshold, we recognize the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority.

We recognize interest and penalties related to unrecognized tax benefits within the income tax expense line in the accompanying consolidated income statements. Accrued interest and penalties are included within the related tax liability line in our consolidated balance sheets.

#### *Recently adopted accounting standards*

In December 2019, the FASB issued ASU 2019-12, *Income Taxes ("Topic 740")—Simplifying the Accounting for Income Taxes*, which removes certain exceptions to the general principles in Topic 740 and amends existing guidance to improve consistent application. We adopted the changes under the new standard on January 1, 2021. The implementation of ASU 2019-12 did not have a material impact on our consolidated financial statements and disclosures.

In January 2020, the FASB issued ASU 2020-01, *Investments—Equity Securities (Topic 321), Investments—Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815): Clarifying the Interactions between Topic 321, Topic 323, and Topic 815*, which clarifies the interaction of the accounting for equity securities under Topic 321, the accounting for equity method investments in Topic 323, and the accounting for certain forward contracts and purchased options in Topic 815. We adopted the changes under the new standard on January 1, 2021. The implementation of ASU 2020-01 did not have a material impact on our consolidated financial statements and disclosures.

In October 2020, the FASB issued ASU 2020-10, *Codification Improvements*, which amends and provides Codification improvements in order to either clarify the Codification or correct unintended application of guidance that are not expected to have a significant effect on current accounting practice or create a significant administrative cost to most entities. We adopted the changes under the new standard on January 1, 2021. The implementation of ASU 2020-10 did not have a material impact on our consolidated financial statements and disclosures.

### **3. DISCONTINUED OPERATIONS**

On January 25, 2021, we entered into the Transaction Agreement with Medici Ventures, Pelion, and Pelion, Inc., pursuant to which the parties agreed, among other things, that: (i) Medici Ventures would convert to a Delaware limited partnership (the "Partnership"), (ii) pursuant to the terms and subject to the conditions of a Limited Partnership Agreement which was entered into on the date of the Medici Closing, Pelion would become the sole general partner of the Partnership, and we (along with any other stockholders of Medici Ventures at the time of the Medici Closing), would become the limited partners of the Partnership, (iii) prior to the Medici Closing, Overstock would convert the outstanding intercompany debt owed to us by Medici Ventures into shares of common stock in Medici Ventures; and (iv) prior to the Medici Closing, Overstock would convert the outstanding intercompany debt owed to us by tZERO into shares of common stock in tZERO, in each case, on the terms and subject to the conditions set forth in the Transaction Agreement and the relevant definitive agreements to be entered into in connection therewith. Pursuant to the terms of the Limited Partnership Agreement, we and any other partners subsequently admitted to the Partnership agreed to make a capital commitment of \$45 million to the Partnership in proportion to our equity interest in the Partnership in order to fund the Partnership's capital needs. The term of the Partnership is eight years. The debt conversion outlined in (iii) and (iv) above was completed during the quarter ended March 31, 2021, following which Medici Ventures and Overstock held approximately 42% and 41%, respectively, of tZERO's outstanding common stock.

The Transaction Agreement represents a strategic shift for Overstock and a substantive change in the purpose and design of Medici Ventures and its interplay with Overstock's overall business objectives. The Board of Directors has determined that it is in the best interest of Overstock and its shareholders to have the Overstock management team focus on Overstock's core e-commerce home furnishings business and strategies. Accordingly, after six years of committed effort to advance blockchain technology, Overstock has determined that the Medici Ventures businesses will be better served under the management of Pelion, a professional asset manager with technology expertise in early-stage companies. From and after the Medici Closing, Pelion has sole authority and responsibility regarding investing decisions, appointing board members of the portfolio companies, and exercising all shareholder rights for assets held by the Partnership, with the intent of generating capital appreciation for the held entities and investment income for the partners.

On April 23, 2021, we entered into the Limited Partnership Agreement with Pelion, as part of the Medici Closing, pursuant to which Pelion became the sole general partner, holding a 1% equity interest in the Partnership, and Overstock became a limited partner, holding a 99% equity interest in the Partnership. The Partnership meets the definition of an investment company under ASC Subtopic 946 - *Financial Services - Investment Companies*. As a result of this transaction, we performed an assessment of control under the VIE model and determined that upon closing of the transaction, we held a variable interest in both Medici Ventures and tZERO which meet the definition of variable interest entities; however, we are not

the primary beneficiary of either entity for purposes of consolidation as we do not have the power (either explicit or implicit), through voting rights or similar rights, to direct the activities of the Partnership or tZERO that most significantly impact its economic performance. Pelion was not a related party at the time of the transaction and apart from their capacity as the general partner of the Partnership, we have no other relationship with them. We may not voluntarily withdraw from the Partnership without the consent of the general partner or upon certain limited events as outlined in the Limited Partnership Agreement. Any proceeds from the sales of assets by the Partnership will be allocated on an asset-by-asset basis to the partners of the Partnership in accordance with the Limited Partnership Agreement following such events.

At the transaction date, our retained equity interest in the Partnership and our direct minority interest in tZERO had a fair value of \$288.8 million, inclusive of \$3.4 million of capital calls funded at the transaction date. The fair value of these equity securities at the transaction date was estimated by taking the mid-point from a valuation range using a weighting of multiple valuation techniques on the underlying components of the equity securities to calculate a fair value for the whole, including discounted cash flow models and market transactional data, both of which incorporate significant unobservable inputs (Level 3). Approximately \$149.9 million of the total \$288.8 million Level 3 equity securities have been valued using unadjusted inputs that have not been internally developed by management, including third-party transactions and quotations. The significant unobservable inputs used in the \$288.8 million fair value measurement of these Level 3 equity securities at the transaction date are summarized as follows:

Valuation technique	Unobservable inputs	Range (1)	Weighted average (2)
Market approach	Enterprise value to revenue multiple	0.88x	0.88x
Discounted cash flows - exit multiple	Discount rate	9.0% - 35.0%	32.4%
	Enterprise value to revenue multiple	0.75x - 5.00x	4.40x
	Projected terminal year	2023 - 2027	2025
	Annual revenue growth rate	1.3% - 124.0%	109.4%
	Annual EBITDA % of revenues	5.2% - 41.2%	36.3%
Discounted cash flows - perpetual growth	Discount rate	30.0%	30.0%
	Projected terminal year	2028	2028
	Perpetual revenue growth rate	3.0%	3.0%
	Annual revenue growth rate	25.7%	25.7%
	Annual EBITDA % of revenues	14.9%	14.9%

- (1) — The range for the Annual revenue growth rate and Annual EBITDA % of revenues are based on the weighted average metrics for the annual periods of the separate cash flow models for the respective component.
- (2) — Unobservable inputs were weighted by the relative fair value based on the fair value of the underlying components subjected to the identified valuation technique. For projected terminal year, the amount represents the median of the inputs and is not a weighted average.

We recognized a \$243.5 million gain upon deconsolidation of these entities which primarily relates to the remeasurement of our retained equity method interest in the Partnership and our direct minority interest in tZERO at fair value, which was included in our consolidated statements of income as part of Income (loss) from discontinued operations, net of income taxes. We completed the entire funding of our \$44.6 million capital commitment consistent with our proportional ownership interest, which was completed and funded in the second quarter of 2021.

Our retained equity interest in these entities are classified as equity method securities as we are deemed to have significant influence, but not control, over these entities through holding more than a 20% interest in the entity. We will record our proportionate share of the Partnership's reported net income or loss, which reflects the fair value changes of the underlying investments of the Partnership and any other operating income or losses of the Partnership, in Other income (expense), net in our consolidated statements of income with corresponding adjustments to the carrying value of the asset. There is no difference between the carrying amount of our investment in the Partnership and the amount of underlying equity we have in the Partnership's net assets. We have elected to apply the fair value option for valuing our retained direct minority interest in tZERO in future reporting periods as we determined that accounting for our direct equity interest in tZERO under the fair value option would approximate the same valuation approach used by the Partnership for valuing our indirect interest in tZERO



through the Partnership and would be the most meaningful and transparent option for evaluating our continued exposure to the economics of tZERO.

As of September 30, 2021, our 99% equity interest in the Partnership and the 40% direct minority interest in tZERO had a carrying value of \$329.2 million which is included in Equity securities on our consolidated balance sheets, of which, \$99.7 million is valued under the fair value option. This investment is valued using Level 3 inputs, which represents 98.9% of assets measured at fair value. This amount also constitutes our maximum exposure to loss as a result of our involvement in these entities as we have no additional financing obligations to these entities. There were no changes in the valuation of our equity interest in tZERO between the recognition date of April 23, 2021 and the period ended September 30, 2021. The operations of the Partnership post transaction date include a loss from operations of \$718,000 through the period ended September 30, 2021. There were \$711,000 of equity method losses due to this loss associated with our equity interest in the Partnership through the period ended September 30, 2021 that was recorded in Other income (expense), net on our consolidated statements of income.

Results of discontinued operations through the transaction date were as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Net revenue	\$ —	\$ 13,956	\$ 17,394	\$ 41,519
Cost of goods sold	—	11,901	13,716	35,860
Gross profit	—	2,055	3,678	5,659
Operating expenses				
Technology	—	5,050	7,133	15,180
Selling, general, and administrative	—	6,318	13,509	22,385
Total operating expenses	—	11,368	20,642	37,565
Operating loss from discontinued operations	—	(9,313)	(16,964)	(31,906)
Interest income, net	—	87	192	560
Other income (loss), net	—	(7,585)	4,081	(5,032)
Gain on deconsolidation	—	—	243,541	—
Income (loss) from discontinued operations before income taxes	—	(16,811)	230,850	(36,378)
Provision (benefit) for income taxes	—	(133)	13,604	(443)
Net income (loss) from discontinued operations	\$ —	\$ (16,678)	\$ 217,246	\$ (35,935)
Less: Net loss attributable to noncontrolling interests from discontinued operations	—	(2,165)	(335)	(7,372)
Net income (loss) from discontinued operations attributable to stockholders of Overstock.com, Inc.	\$ —	\$ (14,513)	\$ 217,581	\$ (28,563)

Assets and liabilities of discontinued operations were as follows (in thousands):

	September 30, 2021	December 31, 2020
Cash and cash equivalents	\$ —	\$ 21,075
Other current assets	—	13,054
<b>Total current assets of discontinued operations</b>	<b>\$ —</b>	<b>\$ 34,129</b>
Property and equipment, net	\$ —	\$ 8,783
Intangible assets, net	—	13,852
Goodwill	—	28,790
Equity securities	—	45,878
Operating lease right-of-use assets	—	7,226
Other long-term assets, net	—	1,626
<b>Total long-term assets of discontinued operations</b>	<b>\$ —</b>	<b>\$ 106,155</b>
Accounts payable and accrued liabilities	\$ —	\$ 11,939
Other current liabilities	—	1,985
<b>Total current liabilities of discontinued operations</b>	<b>\$ —</b>	<b>\$ 13,924</b>
Operating lease liabilities, non-current	—	7,099
Other long-term liabilities	—	586
<b>Total long-term liabilities of discontinued operations</b>	<b>\$ —</b>	<b>\$ 7,685</b>

#### 4. FAIR VALUE MEASUREMENT

The following tables summarize our assets and liabilities measured at fair value on a recurring basis using the following levels of inputs (in thousands):

	Fair Value Measurements at September 30, 2021			
	Total	Level 1	Level 2	Level 3
<b>Assets:</b>				
Equity securities, at fair value	\$ 100,706	\$ 983	\$ —	\$ 99,723
Trading securities held in a "rabbi trust" (1)	165	165	—	—
Total assets	<u>\$ 100,871</u>	<u>\$ 1,148</u>	<u>\$ —</u>	<u>\$ 99,723</u>
<b>Liabilities:</b>				
Deferred compensation accrual "rabbi trust" (2)	\$ 178	\$ 178	\$ —	\$ —
Total liabilities	<u>\$ 178</u>	<u>\$ 178</u>	<u>\$ —</u>	<u>\$ —</u>

	Fair Value Measurements at December 31, 2020			
	Total	Level 1	Level 2	Level 3
<b>Assets:</b>				
Equity securities, at fair value	\$ 1,127	\$ 1,127	\$ —	\$ —
Trading securities held in a "rabbi trust" (1)	139	139	—	—
Total assets	<u>\$ 1,266</u>	<u>\$ 1,266</u>	<u>\$ —</u>	<u>\$ —</u>
<b>Liabilities:</b>				
Deferred compensation accrual "rabbi trust" (2)	\$ 148	\$ 148	\$ —	\$ —
Total liabilities	<u>\$ 148</u>	<u>\$ 148</u>	<u>\$ —</u>	<u>\$ —</u>

(1) — Trading securities held in a rabbi trust are included in Prepaids and other current assets and Other long-term assets, net in the consolidated balance sheets.

(2) — Non-qualified deferred compensation in a rabbi trust is included in Accrued liabilities and Other long-term liabilities in the consolidated balance sheets.

## 5. PROPERTY AND EQUIPMENT, NET

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

	September 30, 2021	December 31, 2020
Computer hardware and software, including internal-use software and website development	\$ 221,783	\$ 213,124
Building	69,245	69,245
Furniture and equipment	11,860	12,165
Land	12,781	12,781
Leasehold improvements	2,620	3,049
Building machinery and equipment	9,809	9,793
Land improvements	7,025	7,010
	<u>335,123</u>	<u>327,167</u>
Less: accumulated depreciation	(225,339)	(213,400)
Total property and equipment, net	<u>\$ 109,784</u>	<u>\$ 113,767</u>

Capitalized costs associated with internal-use software and website development, both developed internally and acquired externally, and depreciation of costs for the same periods associated with internal-use software and website development consist of the following (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Capitalized internal-use software and website development	\$ 1,925	\$ 3,003	\$ 5,387	\$ 8,589
Depreciation of internal-use software and website development	1,907	2,497	5,489	7,353

Depreciation expense is classified within the corresponding operating expense categories on our consolidated statements of income as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Cost of goods sold	\$ 148	\$ 159	\$ 449	\$ 526
Technology	3,210	3,650	10,679	10,987
General and administrative	1,000	1,478	3,134	4,689
Total depreciation	<u>\$ 4,358</u>	<u>\$ 5,287</u>	<u>\$ 14,262</u>	<u>\$ 16,202</u>

## 6. BORROWINGS

### 2020 loan agreements

In March 2020, we entered into two loan agreements. The loan agreements provide a \$34.5 million Senior Note, carrying interest at an annual rate of 4.242%, and a \$13.0 million Mezzanine Note, carrying interest at an annual rate of 5.002%. The loans carry a blended annual interest rate of 4.45%. The Senior Note is for a 10-year term (stated maturity date is March 6, 2030) and requires interest only payments, with the principal amount and any then unpaid interest due and payable at the end of the 10-year term. The Mezzanine Note has a stated 10-year term, though the agreement requires principal and interest payments monthly over approximately a 46-month payment period. Our debt issuance costs and debt discount are amortized using the straight-line basis which approximates the effective interest method.

As of September 30, 2021, the total outstanding debt on these loans was \$42.1 million, net of \$526,000 in capitalized debt issuance costs, and the total amount of the current portion of these loans included in Other current liabilities on our consolidated balance sheets was \$3.3 million.

Further, Overstock serves as a guarantor under the Senior Note (the "Senior Note Guaranty") and the Mezzanine Note (the "Mezzanine Note Guaranty"). Both loans include certain financial and non-financial covenants and are secured by our corporate headquarters and the related land and rank senior to stockholders. Overstock has agreed under the Senior Note Guaranty to, among other things, maintain, until all of the obligations guaranteed by Overstock under the Senior Note Guaranty have been paid in full, (i) a net worth in excess of \$30 million and minimum liquid assets of \$3 million for so long as the Mezzanine Note is outstanding, and (ii) a net worth in excess of \$15 million and minimum liquid assets of \$1 million from and after the date the Mezzanine Note has been paid in full. Overstock has also agreed under the Mezzanine Note Guaranty to, among other things, maintain a net worth in excess of \$30 million and minimum liquid assets of \$3 million until all obligations guaranteed by Overstock under the Mezzanine Note Guaranty have been paid in full.

We are in compliance with our debt covenants and continue to monitor our ongoing compliance with our debt covenants.

## 7. LEASES

We have operating leases for warehouses, office space, and data centers. Our leases have remaining lease terms of one year to six years, some of which may include options to extend the leases perpetually, and some of which may include options to terminate the leases within one year.

The components of lease expenses were as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Operating lease cost	\$ 1,457	\$ 1,456	\$ 5,095	\$ 4,776
Variable lease cost	513	325	1,229	1,198

The following table provides a summary of other information related to leases (in thousands):

	Nine months ended September 30,	
	2021	2020
Cash payments included in operating cash flows from lease arrangements	\$ 5,007	\$ 5,689
Right-of-use assets obtained in exchange for new operating lease liabilities	355	5,091
Derecognition of right-of-use assets due to reassessment of lease term	527	666

The following table provides supplemental balance sheet information related to leases:

	September 30, 2021	December 31, 2020
Weighted-average remaining lease term—operating leases	2.96 years	3.57 years
Weighted-average discount rate—operating leases	7 %	7 %

Maturity of lease liabilities under our non-cancellable operating leases as of September 30, 2021, are as follows (in thousands):

<b>Payments due by period</b>		<b>Amount</b>
2021 (Remainder)	\$	1,496
2022		5,914
2023		4,638
2024		2,773
2025		665
Thereafter		333
Total lease payments		15,819
Less interest		1,567
Present value of lease liabilities	\$	14,252

## 8. COMMITMENTS AND CONTINGENCIES

### *Legal proceedings and contingencies*

From time to time, we are involved in litigation concerning consumer protection, employment, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. In connection with such litigation, we have been in the past and we may be in the future subject to significant damages. In some instances, other parties may have contractual indemnification obligations to us. However, such contractual obligations may prove unenforceable or non-collectible, and if we cannot enforce or collect on indemnification obligations, we may bear the full responsibility for damages, fees, and costs resulting from such litigation. We may also be subject to penalties and equitable remedies that could force us to alter important business practices. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. The nature of the loss contingencies relating to claims that have been asserted against us are described below.

In September 2009, SpeedTrack, Inc. sued us along with 27 other defendants in the United States District Court in the Northern District of California, alleging that we infringed on a patent covering search and categorization software. We believe that certain third-party vendors of products and services sold to us are contractually obligated to indemnify us, and we have tendered defense of the case to an indemnitor who accepted the defense. In April 2016, the court entered an order partially dismissing the claims against us. In May 2016, the plaintiff filed an amended complaint and we filed an answer. In March 2020, the court entered a judgment of non-infringement in our favor and against the plaintiff. In June 2020, the plaintiff filed an appeal to the United States District Court of Appeals for the Federal Circuit. In June 2021, the United States District Court of Appeals for the Federal Circuit affirmed the lower court's judgment of non-infringement and issued a ruling in our favor and against the plaintiff. The deadline to file an appeal with the United States Supreme Court has now passed and the ruling of the lower court dismissing the case is final.

As previously disclosed, in February 2018, the Division of Enforcement of the SEC informed tZERO, and subsequently informed us, that it was conducting an investigation and requested that we and tZERO voluntarily provide certain information and documents related to tZERO and the tZERO security token offering. In December 2018, we received a follow-up request from the SEC relating to GSR Capital Ltd., a Cayman Islands exempted company. In October 2019, we received a subpoena from the SEC requiring us to produce documents and other information related to the Series A-1 preferred stock dividend we announced to stockholders in June 2019 (discussed below in Note 10—Stockholders' Equity) and requesting copies of 10b5-1 plans entered into by certain officers and directors. In December 2019, we received a subpoena from the SEC requesting documents related to the GSR transaction and the alternative trading system run by tZERO ATS, LLC. Also in December 2019, we received a subpoena from the SEC requesting our insider trading policies as well as certain employment and consulting agreements. We also received requests from the SEC for our communications with our former Chief Executive Officer and Director, Patrick Byrne, and the matters referenced in the December 2019 subpoenas. In May 2020, we received a subpoena from the SEC requesting additional data related to the tZERO ATS. In January 2021, we received a subpoena from the SEC requesting information regarding our Retail guidance in 2019 and certain communications with current and former

executives, board members, and investors. We are cooperating with the SEC's investigations, have provided all documents requested in the voluntary requests and the 2019 and 2020 subpoenas, and continue to provide documents requested in the 2021 subpoena.

On September 27, 2019, a purported securities class action lawsuit was filed against us and our former Chief Executive Officer and former Chief Financial Officer in the United States District Court of Utah, alleging violations under Section 10(b), Rule 10b-5, Section 20(a), Section 20(A) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). On October 8, 2019, October 17, 2019, October 31, 2019, and November 20, 2019, four similar lawsuits were filed in the same court also naming us and the above referenced former executives as defendants, bringing similar claims under the Exchange Act, and seeking similar relief. These cases were consolidated into a single lawsuit in December 2019. The Court appointed The Mangrove Partners Master Fund Ltd. as lead plaintiff in January 2020. In March 2020, an amended consolidated complaint was filed against us, our President, our former Chief Executive Officer, and our former Chief Financial Officer. We filed a motion to dismiss and on September 28, 2020, the court granted our motion and entered judgment in our favor. The plaintiffs filed a motion to amend their complaint on October 23, 2020 and filed a notice of appeal on October 26, 2020. The United States District Court of Utah granted the plaintiffs' motion to amend their complaint on January 6, 2021 and the Tenth Circuit Court dismissed the plaintiffs' appeal on January 8, 2021. We filed a motion to dismiss plaintiffs' amended complaint, and on September 20, 2021, the court granted our motion and entered judgment in our favor. On October 18, 2021, the plaintiffs filed a Notice of Appeal, appealing the ruling of the court to the United States Court of Appeals for the Tenth Circuit. No estimates of the possible losses or range of losses can be made at this time. We intend to continue to vigorously defend this consolidated action.

On November 22, 2019, a shareholder derivative suit was filed against us and certain past and present directors and officers of ours in the United States District Court for the District of Delaware, with allegations that include: (i) breach of fiduciary duties, (ii) unjust enrichment, (iii) insider selling and misappropriation of the Company's information, and (iv) contribution under Sections 10(b) and 21D of the Exchange Act. On December 17, 2019, a similar lawsuit was filed in the same court, naming the same defendants, bringing similar claims, and seeking similar relief. These cases were consolidated into a single lawsuit in January 2020. In March 2020, the court entered a stay on litigation, pending the outcome of the securities class action motion to dismiss. The case remains stayed pending the outcome of the plaintiffs' appeal to the United States Court of Appeals for the Tenth Circuit. No estimates of the possible losses or range of losses can be made at this time. We intend to vigorously defend these actions.

On April 23, 2020, a putative class action lawsuit was filed against us in the Circuit Court of the County of St. Louis, State of Missouri, alleging that we over-collected taxes on products sold into the state of Missouri. We removed the case to United States District Court, Eastern District of Missouri on May 22, 2020, and on February 9, 2021, the case against us was dismissed. On March 1, 2021, a putative class action lawsuit was filed against us in the Circuit Court of the County of St. Louis, State of Missouri, alleging similar allegations to the April 23, 2020 putative class action lawsuit that was dismissed, that we over-collected taxes on products sold into the state of Missouri. We filed a motion to compel arbitration, which was denied on October 13, 2021. No estimates of the possible losses or range of losses can be made at this time. We intend to vigorously defend this action.

We establish liabilities when a particular contingency is probable and estimable. At September 30, 2021 and December 31, 2020, we have accrued \$145,000 and \$1.8 million, respectively, which are included in Accrued liabilities in our consolidated balance sheets. It is reasonably possible that the actual losses may exceed our accrued liabilities.

## 9. INDEMNIFICATIONS AND GUARANTEES

During our normal course of business, we have made certain indemnities, commitments, and guarantees under which we may be required to make payments in relation to certain transactions. These indemnities include, but are not limited to, indemnities we entered into in favor of Loan Core Capital Funding Corporation LLC under our building loan agreements, various lessors in connection with facility leases for certain claims arising from such facility or lease, the environmental indemnity we entered into in favor of the lenders under our prior loan agreements, customary indemnification arrangements in underwriting agreements and similar agreements, and indemnities to our directors and officers to the maximum extent permitted under the laws of the State of Delaware. The duration of these indemnities, commitments, and guarantees varies, and in certain cases, is indefinite. In addition, the majority of these indemnities, commitments, and guarantees do not provide for any limitation of the maximum potential future payments we could be obligated to make. As such, we are unable to estimate with any reasonableness our potential exposure under these items. We have not recorded any liability for these indemnities, commitments, and guarantees in the accompanying consolidated balance sheets. We do, however, accrue for losses for any known contingent liability, including those that may arise from indemnification provisions, when future payment is both probable and reasonably estimable.

## 10. STOCKHOLDERS' EQUITY

### *Common stock*

Each share of common stock has the right to one vote. The holders of common stock are also entitled to receive dividends declared by the Board of Directors out of funds legally available, subject to prior rights of holders of all classes of stock outstanding having priority rights as to dividends.

On May 19, 2020, we completed the distribution of our announced digital dividend (the "Dividend") payable in shares of our Series A-1 preferred stock. The Dividend was paid out at a ratio of 1:10, so that one share of Series A-1 preferred stock was issued for every ten shares of OSTK common stock, for every ten shares of Series A-1 preferred stock, and for every ten shares of Series B preferred stock held by all holders of such shares as of April 27, 2020, the record date for the Dividend. The number of shares of Series A-1 preferred stock declared as a stock dividend was 4,085,445 as of March 31, 2020 and the number of shares distributed was 4,079,030 on May 19, 2020.

### *Preferred stock*

Each share of our Series A-1 preferred stock and our Series B preferred stock (collectively, the "preferred shares"), except as required by law, are intended to have voting and dividend rights similar to those of one share of common stock. Preferred shares rank senior to common stock with respect to dividends. Holders of the preferred shares are entitled to an annual cash dividend of \$0.16 per share, in preference to any dividend payment to the holders of the common stock, out of funds of the Company legally available for payment of dividends and subject to declaration by our Board of Directors. Holders of the preferred shares are also entitled to participate in any cash dividends we pay to the holders of the common stock and are also entitled to participate in non-cash dividends we pay to holders of the common stock, subject to potentially different treatment if we effect a stock dividend, stock split, or combination of the common stock. There are no arrearages in cumulative preferred dividends. We declared or accumulated a cash dividend of \$0.16 per share to the holders of our preferred stock during 2020 and 2021.

Neither the Series A-1 preferred stock nor Series B preferred stock is required to be converted into or exchanged for shares of our common stock or any other entity; however, at our sole discretion, we have the right to convert the Series A-1 preferred stock into Series B preferred stock at any time on a one-to-one basis. In the event of any liquidation, any amount available for distribution to stockholders after payment of all liabilities will be distributed proportionately, with each share of Series A-1 preferred stock and each share of Series B preferred stock being treated as though it were a share of our common stock. If we are party to any merger or consolidation in which our common stock is changed into or exchanged for stock or other securities of any other person (or the Company) or cash or any other property (or a right to receive the foregoing), we will use all commercially reasonable efforts to cause each outstanding share of the preferred stock to be treated as if such share were an additional outstanding share of common stock in connection with any such transaction. Neither the Series A-1 preferred stock nor the Series B preferred stock is registered under the Exchange Act.

### Common Stock Offering

We completed a public offering of our common stock on August 14, 2020 and issued 2,415,000 shares of our common stock pursuant to an underwriting agreement, dated August 11, 2020, for proceeds totaling \$192.7 million, net of \$11.4 million in offering costs.

### JonesTrading Sales Agreement

We entered into an Amended and Restated Capital on Demand<sup>TM</sup> Sales Agreement (the "Sales Agreement"), dated June 26, 2020 with JonesTrading Institutional Services LLC ("JonesTrading") and D.A. Davidson & Co. ("D.A. Davidson"), under which we may conduct "at the market" sales of our common stock. Under the Sales Agreement, JonesTrading and D.A. Davidson, acting as our agents, may offer our common stock in the market on a daily basis or otherwise as we request from time to time. We have no obligation to sell additional shares under the Sales Agreement, but we may do so from time to time. For the nine months ended September 30, 2021, we did not sell any shares of our common stock pursuant to the Sales Agreement. For the nine months ended September 30, 2020, we received \$2.8 million of proceeds that was included in Accounts receivable, net on our consolidated balance sheet at December 31, 2019 for the sale of an aggregate of 415,904 shares of our common stock under the prior iteration of the agreement that were executed in late December 2019. As of September 30, 2021, we had \$150.0 million available under our "at the market" sales program.

### Common Stock Repurchase Program

On August 17, 2021, we announced that our Board of Directors has approved a stock repurchase program (the "Repurchase Program"), pursuant to which we may, from time to time, purchase shares of our outstanding common stock for an aggregate repurchase price not to exceed \$100.0 million at any time through December 31, 2023. Repurchases under the Repurchase Program may be effected through open market purchases. The Repurchase Committee designated by the Board of Directors will determine the actual timing, number, and value of any shares repurchased under the Repurchase Program in its discretion using factors including, but not limited to, our stock price and trading volume, general market conditions, and the ongoing assessment of our capital needs. There is no assurance of the number or aggregate price of any shares that we will repurchase. The Repurchase Program may be extended, suspended, or terminated at any time by the Board of Directors. As of September 30, 2021, we had not effected any purchases under the Repurchase Program.

## 11. STOCK-BASED AWARDS

We have equity incentive plans that provide for the grant to employees and board members of stock-based awards, including restricted stock. Employee accounting applies to awards granted by the Company to its own employees. Stock-based compensation expense is classified within the corresponding operating expense categories on our consolidated statements of income as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Cost of goods sold	\$ 27	\$ 50	\$ 58	\$ 153
Sales and marketing	89	(76)	684	621
Technology	959	304	2,482	1,345
General and administrative	1,467	1,290	4,425	4,082
Total stock-based compensation	\$ 2,542	\$ 1,568	\$ 7,649	\$ 6,201

When an award is forfeited prior to the vesting date, we recognize an adjustment for the previously recognized expense in the period of the forfeiture.

### Overstock restricted stock awards

The Overstock.com, Inc. Amended and Restated 2005 Equity Incentive Plan (the "Plan") provides for the grant of incentive stock options to employees and directors of the Company, as well as restricted stock units and other types of equity



awards of the Company. These restricted stock awards generally vest over three years at 33.3% at the end of the first year, 33.3% at the end of the second year and 33.4% at the end of the third year, subject to the recipient's continuing service to us.

The cost of restricted stock units is determined using the fair value of our common stock on the date of the grant and compensation expense is either recognized on a straight-line basis over the vesting schedule or on an accelerated schedule when vesting of restricted stock awards exceeds a straight-line basis. The cumulative amount of compensation expense recognized at any point in time is at least equal to the portion of the grant date fair value of the award that is vested at that date.

The following table summarizes restricted stock award activity during the nine months ended September 30, 2021 (in thousands, except per share data):

	<b>Nine months ended September 30, 2021</b>	
	<b>Units</b>	<b>Weighted Average Grant Date Fair Value</b>
Outstanding—beginning of year	639	\$ 17.98
Granted at fair value	297	87.92
Vested	(279)	24.87
Forfeited	(64)	51.16
Outstanding—end of period	<u>593</u>	<u>\$ 46.21</u>

#### *Employee Stock Purchase Plan*

On February 4, 2021 and May 13, 2021, our Board of Directors and stockholders, respectively, approved the Overstock.com, Inc. 2021 Employee Stock Purchase Plan (the "2021 ESPP"). The 2021 ESPP grants our eligible employees a right to purchase shares of our common stock at a discount through payroll deductions of up to 25% of eligible compensation, subject to a cap of \$21,250 in any calendar year. The 2021 ESPP provides for consecutive 24-month offering periods beginning March 1 and September 1 of each year. Each offering period shall consist of four consecutive six-month purchase periods. The first offering period under the 2021 ESPP commenced on September 1, 2021, with the first purchase date occurring on March 1, 2022.

On each purchase date, participating employees will purchase shares of our common stock at a price per share equal to 85% of the lesser of the fair market value of our common stock on (i) the offering date of the offering period or (ii) the purchase date (the "look-back" period). If the stock price of our common stock on any purchase date in an offering period is lower than the stock price on the offering date of that offering period, every participant in the offering will automatically be withdrawn from the offering after the purchase of shares on such purchase date and automatically enrolled in a new offering period commencing immediately subsequent to such purchase date.

The maximum number of shares of common stock that may be issued under the 2021 ESPP in aggregate is 3,000,000 shares. No shares were purchased during the nine months ended September 30, 2021. The 2021 ESPP is considered a compensatory plan and the fair value of the discount and the look-back period will be estimated using the Black-Scholes option pricing model and expense will be recognized straight-line over the 24-month offering period. For the three and nine months ended September 30, 2021, we recognized \$234,000 in share-based compensation expense related to the 2021 ESPP, which is included in the stock compensation expense table above combined with the expense associated with our restricted stock units.

**12. REVENUE AND CONTRACT LIABILITY***Unearned Revenue*

The following table provides information about unearned revenue from contracts with customers, including significant changes in unearned revenue balances during the periods presented (in thousands):

	<b>Amount</b>
Unearned revenue at December 31, 2019	\$ 41,116
Increase due to deferral of revenue at period end	66,070
Decrease due to beginning contract liabilities recognized as revenue	(35,021)
Unearned revenue at December 31, 2020	72,165
Increase due to deferral of revenue at period end	55,938
Decrease due to beginning contract liabilities recognized as revenue	(62,897)
Unearned revenue at September 30, 2021	\$ 65,206

Our total unearned revenue related to outstanding Club O Reward dollars was \$10.1 million and \$8.6 million at September 30, 2021 and December 31, 2020, respectively. Breakage income related to Club O Reward dollars and gift cards is recognized in Net revenue in our consolidated statements of income. Breakage included in revenue was \$2.5 million and \$1.6 million for the three months ended September 30, 2021 and 2020 and \$5.3 million and \$3.8 million for the nine months ended September 30, 2021 and 2020. The timing of revenue recognition of these reward dollars is driven by actual customer activities, such as redemptions and expirations.

*Sales returns allowance*

The following table provides additions to and deductions from the sales returns allowance, which is included in our Accrued liabilities balance in our consolidated balance sheets (in thousands):

	<b>Amount</b>
Allowance for returns at December 31, 2019	\$ 11,106
Additions to the allowance	204,810
Deductions from the allowance	(196,726)
Allowance for returns at December 31, 2020	19,190
Additions to the allowance	185,097
Deductions from the allowance	(187,905)
Allowance for returns at September 30, 2021	\$ 16,382

**13. NET INCOME PER SHARE**

Our Series A-1 preferred stock and Series B preferred stock (collectively, the "preferred shares") are considered participating securities, and as a result, net income per share is calculated using the two-class method. Under this method, we give effect to preferred dividends and then allocate remaining net income attributable to our stockholders to both common shares and participating securities (based on the percentages outstanding) in determining net income per common share.

Basic net income per common share is computed by dividing net income attributable to common shares (after allocating between common shares and participating securities) by the weighted average number of common shares outstanding during the period.

Diluted net income per share is computed by dividing net income attributable to common shares (after allocating between participating securities and common shares) by the weighted average number of common and potential common shares outstanding during the period (after allocating total dilutive shares between our common shares outstanding and our preferred shares outstanding). Potential common shares, comprising incremental common shares issuable upon the exercise of stock

options, warrants, the employee stock purchase plan, and restricted stock awards are included in the calculation of diluted net income per common share to the extent such shares are dilutive.

The following table sets forth the computation of basic and diluted net income per common share for the periods indicated (in thousands, except per share data):

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
<b>Numerator:</b>				
Income from continuing operations	\$ 30,426	\$ 37,904	\$ 138,849	\$ 71,977
Less: Preferred stock dividends—declared and accumulated	182	179	547	376
Undistributed income from continuing operations	30,244	37,725	138,302	71,601
Less: Undistributed income allocated to participating securities	2,899	3,727	13,269	4,130
Net income from continuing operations attributable to common stockholders	<u>\$ 27,345</u>	<u>\$ 33,998</u>	<u>\$ 125,033</u>	<u>\$ 67,471</u>
Income (loss) from discontinued operations	\$ —	\$ (14,513)	\$ 217,581	\$ (28,563)
Less: Undistributed income (loss) allocated to participating securities	—	(1,434)	20,876	(1,648)
Net income (loss) from discontinued operations attributable to common stockholders	—	(13,079)	196,705	(26,915)
Net income attributable to common stockholders	<u>\$ 27,345</u>	<u>\$ 20,919</u>	<u>\$ 321,738</u>	<u>\$ 40,556</u>
<b>Denominator:</b>				
Weighted average shares of common stock outstanding—basic	43,014	41,595	42,970	40,697
Effect of dilutive securities:				
Restricted stock awards	310	607	350	333
Weighted average shares of common stock outstanding—diluted	<u>43,324</u>	<u>42,202</u>	<u>43,320</u>	<u>41,030</u>
<b>Net income from continuing operations per share of common stock:</b>				
Basic	<u>\$ 0.64</u>	<u>\$ 0.81</u>	<u>\$ 2.91</u>	<u>\$ 1.66</u>
Diluted	<u>\$ 0.63</u>	<u>\$ 0.81</u>	<u>\$ 2.89</u>	<u>\$ 1.65</u>
<b>Net income (loss) from discontinued operations per share of common stock:</b>				
Basic	<u>\$ —</u>	<u>\$ (0.31)</u>	<u>\$ 4.58</u>	<u>\$ (0.66)</u>
Diluted	<u>\$ —</u>	<u>\$ (0.31)</u>	<u>\$ 4.54</u>	<u>\$ (0.66)</u>
<b>Net income per share of common stock:</b>				
Basic	<u>\$ 0.64</u>	<u>\$ 0.50</u>	<u>\$ 7.49</u>	<u>\$ 1.00</u>
Diluted	<u>\$ 0.63</u>	<u>\$ 0.50</u>	<u>\$ 7.43</u>	<u>\$ 0.99</u>

The following shares were excluded from the calculation of diluted shares outstanding as their effect would have been anti-dilutive (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Restricted stock units	2	4	189	302
Employee stock purchase plan	46	—	15	—

## 14. BUSINESS SEGMENTS

We evaluated our reportable segments in accordance with ASC Topic 280 *Segment Reporting* based on how we manage our business. At the conclusion of this evaluation, we concluded that we have one reportable segment, Retail, which primarily consists of amounts earned through e-commerce product sales through our Website. All corporate support costs (administrative functions such as finance, human resources, and legal) are allocated to our single reportable segment. The results of that segment are shown on our consolidated statements of income as continuing operations. As a result of the transactions discussed in Note 3—Discontinued Operations, our tZERO and Medici Ventures reportable segments became a part of the Disposal Group and discontinued operations.

For the three and nine months ended September 30, 2021 and 2020, substantially all of our revenues were attributable to customers in the United States. At September 30, 2021 and December 31, 2020, substantially all our property and equipment were located in the United States.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion provides information that we believe to be relevant to an understanding of our consolidated financial condition and results of operations. The statements in this section regarding industry outlook, our expectations regarding the performance of our business and any other non-historical statements are forward-looking statements. Our actual results may differ materially from those contained in or implied by any forward-looking statements contained herein. These forward-looking statements are subject to numerous risks and uncertainties, including, but not limited to, the risks and uncertainties described in "Special Cautionary Note Regarding Forward Looking Statements" and in Part II, Item 1A, "Risk Factors" included in this Quarterly Report on Form 10-Q. You should read the following discussion together with our consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q and with the sections entitled "Special Cautionary Note Regarding Forward-Looking Statements," Part I, Item 1A, "Risk Factors," and our consolidated financial statements and related notes included in our Annual Report on Form 10-K for the year ended December 31, 2020.*

We are an online retailer and technology company. As used herein, "Overstock," "the Company," "we," "our" and similar terms include Overstock.com, Inc. and our majority-owned subsidiaries, unless the context indicates otherwise.

### Overview

Overstock seeks to provide goods to furnish and accessorize "Dream Homes for All," particularly for our target customers—consumers who seek smart value on quality, stylish merchandise at competitive prices, and who want an easy shopping experience. We believe that the furniture and home furnishings market, which is highly fragmented and has traditionally been served by brick and mortar stores, will continue transitioning to online sales, particularly as millennials and younger generations start families and move into new homes. As a result of the COVID-19 pandemic, consumers migrated to online shopping. We regularly update our product assortment to meet the evolving preferences of our customers and current trends. Our products include furniture, décor, area rugs, bedding and bath, home improvement, outdoor, and kitchen and dining items, among others. We sell our products and services primarily through our internet websites located at [www.overstock.com](http://www.overstock.com), [www.o.co](http://www.o.co), [www.overstock.ca](http://www.overstock.ca), and [www.overstockgovernment.com](http://www.overstockgovernment.com) (referred to collectively as the "Website") and through our mobile app. Nearly all our retail sales through our Website were from transactions in which we fulfilled orders through our network of manufacturers, distributors and other suppliers ("partners") selling on our Website. Our use of the term "partner" does not mean that we have formed any legal partnerships with any of our retail partners. We provide our partners with access to a large customer base and a proprietary technology platform and services for order fulfillment, customer service, returns handling, and other services. Our supply chain allows us to ship directly to our customers from our suppliers or from our warehouses.

## Strategies for our Business

Our business initiatives enable our long-term focus on our three brand pillars, "Product Findability," "Smart Value," and "Easy Delivery and Support." Current initiatives for the business include:

- *Improve Product Findability* – Directly supporting our "Product Findability" brand pillar by improving customer search and navigation through refinement of our taxonomy and attribute infrastructure with the goal of enhanced search relevancy and recommendations.
- *Grow Canada Market Share* – Expanding geographical engagement to grow our Canadian customer base by providing a wholesale change in our Canadian "Smart Value" and "Easy Delivery and Support" customer shopping experience.
- *Grow Government Market Share* – Improving our Government website with more competitive market features and products that offer an intuitive procurement experience, and provide the flexibility to expand the platform to additional government customers.
- *Improve Enterprise Platform* – Improving our data strategy to connect high-quality, intuitive data with our business users to enable faster insights. Additionally, embracing the public cloud in order to promote greater resilience for the business in the event of unforeseen circumstances.

## Financial Reporting Presentation Relating to the Pelion Transaction

Unless otherwise specified, disclosures throughout Management's Discussion and Analysis of Financial Conditions, Results of Operations, and Liquidity and Capital Resources, reflect continuing operations only. See Note 3—Discontinued Operations in the Notes to Unaudited Consolidated Financial Statements included in Item 1, Part I, Financial Statements (Unaudited) of this Quarterly Report on Form 10-Q for further information.

## Executive Commentary

*This executive commentary is intended to provide investors with a view of our business through the eyes of our management. As an executive commentary, it necessarily focuses on selected aspects of our business. This executive commentary is intended as a supplement to, but not a substitute for, the more detailed discussion of our business included elsewhere herein. Investors are cautioned to read our entire "Management's Discussion and Analysis of Financial Condition and Results of Operations," as well as our interim and audited financial statements, and the discussion of our business and risk factors and other information included elsewhere or incorporated in this report. This executive commentary includes forward-looking statements, and investors are cautioned to read "Special Cautionary Note Regarding Forward-Looking Statements."*

Revenue decreased 3.9% for the three months ended September 30, 2021, compared to the same period in 2020. This decrease was primarily due to a 22% decrease in the number of customer orders, partially offset by a 24% increase in average order value driven by a continued product mix shift into home furniture categories. This decreased order activity was largely driven by tapering of the accelerated customer growth we experienced at the peak of the COVID-19 pandemic related to restrictions in the third quarter of 2020. While we observed acceleration of new customer acquisition and demand for our products and resulting sales during the peak of the pandemic, we cannot estimate the impact that the ongoing COVID-19 pandemic, the intensity of additional waves of the pandemic or the subsiding of the pandemic and return to prior patterns of economic activity will have on our business in the future due to the unpredictable nature of the ultimate development and duration of the COVID-19 pandemic.

Gross profit decreased 7.1% for the three months ended September 30, 2021, compared to the same period in 2020, primarily due to lower sales and a decrease in gross margin. Gross margin decreased to 22.7% for the three months ended September 30, 2021, compared to 23.5% for the same period in 2020, primarily due to the one-time benefits realized in 2020 such as lower promotional discounting environment and fees charged to partners due to unmet contractual service levels, partially offset by increased advertising revenue and lower returns activity.

Sales and marketing expenses as a percentage of revenue increased from 9.9% for the three months ended September 30, 2020 to 11.0% for the three months ended September 30, 2021, primarily due to increased spending on paid listing advertisements and keywords to support our customer acquisition strategy, partially offset by less broadcast media spend and gained leverage in staff-related expenses.

Technology expenses totaled \$31.2 million for the three months ended September 30, 2021, a \$1.2 million increase compared to the three months ended September 30, 2020, primarily due to staff-related costs to support strategic initiatives and increased cloud adoption.

General and administrative expenses decreased \$7.6 million for the three months ended September 30, 2021 compared to the three months ended September 30, 2020, primarily driven by a reduction in staff-related expenses, including accrued bonus, consulting expenses, and facilities-related expenses.

Our consolidated cash and cash equivalents balance increased from \$495.4 million as of December 31, 2020, to \$512.2 million as of September 30, 2021.

#### **Additional commentary related to COVID-19**

Overstock has continued to respond to the challenges and opportunities created by the COVID-19 pandemic. In fiscal year 2020, we saw a substantial year-over-year increase in our Website traffic, number of new customers, and customer demand, particularly in our home furniture and furnishings categories. While many of our key metrics remain positive, some have receded from the elevated 2020 levels during the third quarter of 2021. Our online-only platform and partner network with thousands of fulfillment centers have enabled us to meet the increase in demand. Our three warehouses have remained operational based on our sustained implementation of sound safety measures, including staggered shifts and social distancing. These measures are updated based on CDC guidelines. There remain continued challenges throughout the supply chain in factory production capacity, inbound freight delays, as well as carrier delivery constraints and fulfillment performance from some suppliers. We have evaluated and implemented a phased re-entry plan for our offices; most of our corporate employees continue to work from home without incident throughout the re-entry period. We cannot predict how the COVID-19 pandemic, including the spread of variants thereof, or the vaccination rate will unfold in the coming months, regionally, nationally and internationally. Nevertheless, the challenges arising from the pandemic have not adversely affected our liquidity, revenues, or capacity to service our debt, nor have these conditions required us to reduce our capital expenditures.

**Results of Operations****Comparisons of Three Months Ended September 30, 2021 to Three Months Ended September 30, 2020, and Nine Months Ended September 30, 2021 to Nine Months Ended September 30, 2020.****Net revenue, cost of goods sold, gross profit and gross margin**

The following table reflects our net revenue, cost of goods sold, and gross profit for the three and nine months ended September 30, 2021 and 2020 (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Net revenue	\$ 689,390	\$ 717,695	\$ 2,143,787	\$ 1,824,249
Cost of goods sold				
Product costs and other cost of goods sold	506,234	519,842	1,576,696	1,331,612
Fulfillment and related costs	26,448	29,140	82,033	71,806
Total cost of goods sold	532,682	548,982	1,658,729	1,403,418
Gross profit	\$ 156,708	\$ 168,713	\$ 485,058	\$ 420,831
Year-over-year percentage growth				
Net revenue	(3.9)%		17.5 %	
Gross profit	(7.1)%		15.3 %	
Percent of total net revenue				
Cost of goods sold				
Product costs and other cost of goods sold	73.4 %	72.4 %	73.5 %	73.0 %
Fulfillment and related costs	3.8 %	4.1 %	3.8 %	3.9 %
Total cost of goods sold	77.3 %	76.5 %	77.4 %	76.9 %
Gross margin	22.7 %	23.5 %	22.6 %	23.1 %

The 3.9% decrease in net revenue for the three months ended September 30, 2021, as compared to the same period in 2020, was primarily due to a 22% decrease in the number of customer orders, partially offset by a 24% increase in average order value driven by a continued product mix shift into home furniture categories. This decreased order activity was largely driven by tapering of the accelerated customer growth we experienced at the peak of the COVID-19 pandemic related to restrictions in the third quarter of 2020.

The 17.5% increase in net revenue for the nine months ended September 30, 2021, as compared to the same period in 2020, was primarily due to increased retail product sales resulting from a 24% increase in average order value driven by a continued product mix shift into home furniture categories, partially offset by a 5% decrease in customer orders.

We cannot estimate the impact that the ongoing COVID-19 pandemic, the intensity of additional waves of the pandemic or the subsiding of the pandemic and return to prior patterns of economic activity will have on our business in the future due to the unpredictable nature of the ultimate development and duration of the COVID-19 pandemic.

International net revenues were less than 1% of total net revenues for each of the three and nine months ended September 30, 2021 and 2020.

### Change in estimate of average transit times (days)

Our revenue related to merchandise sales is recognized upon delivery to our customers. As we ship high volumes of packages through multiple carriers, it is not practical for us to track the actual delivery date of each shipment. Therefore, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times. We review and update our estimates on a quarterly basis based on our actual transit time experience. However, actual shipping times may differ from our estimates, which can be further impacted by uncertainty, volatility, and any disruption to our carriers caused by the COVID-19 pandemic.

The following table shows the effect that hypothetical changes in the estimate of average shipping transit times would have had on the reported amount of revenue and income before income taxes for the three months ended September 30, 2021 (in thousands):

Change in the Estimate of Average Transit Times (Days)	Three months ended September 30, 2021	
	Increase (Decrease) Revenue	Increase (Decrease) Income Before Income Taxes
2	\$ (19,896)	\$ (3,784)
1	\$ (13,802)	\$ (2,663)
As reported	As reported	As reported
-1	\$ 7,955	\$ 1,524
-2	\$ 14,587	\$ 2,789

Our overall gross margins fluctuate based on changes in supplier cost and/or sales price, including competitive pricing; inventory management decisions; sales coupons and promotions; product mix of sales; and operational and fulfillment costs. Fulfillment costs include all warehousing costs, including fixed overhead and variable handling costs (excluding packaging costs), as well as merchant processing fees associated with customer payments made by credit cards and other payment methods and other variable fees, and customer service costs, all of which we include as costs in calculating gross margin. We believe that some companies in our industry, including some of our competitors, account for fulfillment costs within operating expenses, and therefore exclude fulfillment costs from gross margin. As a result, our gross margin may not be directly comparable to others in our industry.

Fulfillment costs as a percentage of sales may vary due to several factors, such as our ability to manage costs at our warehouses, significant changes in the number of units received and fulfilled, the extent to which we use third-party fulfillment services and warehouses, and our ability to effectively manage customer service costs and merchant fees. Fulfillment and related costs remained relatively consistent as a percentage of revenue during the three and nine months ended September 30, 2021 as compared to the same period in 2020.

Gross margins for the past seven quarterly periods and fiscal year ending 2020 were:

	Q1 2020	Q2 2020	Q3 2020	Q4 2020	FY 2020	Q1 2021	Q2 2021	Q3 2021
Gross margin	21.9 %	23.2 %	23.5 %	22.5 %	22.9 %	23.3 %	22.0 %	22.7 %

Gross profit for the three months ended September 30, 2021 decreased 7.1% compared to the same period in 2020, due to lower sales and a decrease in gross margin. Gross margin decreased to 22.7% for the three months ended September 30, 2021, compared to 23.5% for the same period in 2020, primarily due to the one-time benefits realized in 2020 such as lower promotional discounting environment and fees charged to partners due to unmet contractual service levels. The decrease was partially offset by increased advertising revenue and lower returns activity.

Gross profit for the nine months ended September 30, 2021 increased 15.3% compared to the same period in 2020, primarily due to sales volume. Gross margin decreased to 22.6% for the nine months ended September 30, 2021, compared to 23.1% for the same period in 2020, primarily due to one-time benefits realized in 2020 such as lower promotional discounting environment and fees charged to partners due to unmet contractual service levels.



**Operating expenses***Sales and marketing expenses*

We use a variety of methods to target our consumer audience, including online campaigns, such as advertising through text ads, product listing ads, display ads, native ads, affiliate marketing programs, e-mail, direct mail, video ads, and social media campaigns. We also do brand advertising through linear and streaming television.

Costs associated with our discounted shipping and other promotions, such as coupons, are not included in sales and marketing expense. Rather, they are accounted for as a reduction in revenue as they reduce the amount of consideration we expect to receive in exchange for goods or services and therefore affect net revenues and gross margin. We consider discounted shipping and other promotions, such as our policy for free shipping on orders, as an effective marketing tool.

The following table reflects our sales and marketing expenses for the three and nine months ended September 30, 2021 and 2020 (in thousands):

	<b>Three months ended September 30,</b>		<b>Nine months ended September 30,</b>	
	<b>2021</b>	<b>2020</b>	<b>2021</b>	<b>2020</b>
Sales and marketing expenses	\$ 75,650	\$ 71,292	\$ 234,460	\$ 186,852
Advertising expense included in sales and marketing expenses	\$ 72,356	\$ 67,322	\$ 224,223	\$ 174,910
<b>Year-over-year percentage growth</b>				
Sales and marketing expenses	6.1 %		25.5 %	
Advertising expense included in sales and marketing expenses	7.5 %		28.2 %	
<b>Percentage of net revenues</b>				
Sales and marketing expenses	11.0 %	9.9 %	10.9 %	10.2 %
Advertising expense included in sales and marketing expenses	10.5 %	9.4 %	10.5 %	9.6 %

The 110 basis point increase in sales and marketing expenses as a percent of net revenues for the three months ended September 30, 2021, as compared to the same period in 2020, was primarily due to increased spending on paid listing advertisements and keywords to support our customer acquisition strategy, partially offset by less broadcast media spend and gained leverage in staff-related expenses.

The 70 basis point increase in sales and marketing expenses as a percent of net revenues for the nine months ended September 30, 2021, as compared to the same period in 2020, was primarily due to increased spending on paid listing advertisements and keywords to support our customer acquisition strategy, partially offset by less broadcast media spend and gained leverage in staff-related expenses.

*Technology expenses*

We seek to deploy our capital resources efficiently in technology, including web services, customer support solutions, website search, expansion of new and existing product categories, and in technology to enhance the customer experience, including using machine learning, improving our process efficiency, modernizing and expanding our systems, and supporting and expanding our logistics infrastructure. We expect to continue to incur technology expenses to support these initiatives and these expenditures may continue to be material.

The frequency and variety of cyberattacks on our Website, our corporate systems, our partners, and on third parties we use to support our technology continues to increase. The impact of such attacks, their costs, and the costs we incur to protect ourselves against future attacks have not been material to date. However, we consider the risk introduced by cyberattacks to be serious and will continue to incur costs related to efforts to protect ourselves against them.

The following table reflects our technology expenses for the three and nine months ended September 30, 2021 and 2020 (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Technology expenses	\$ 31,178	\$ 29,934	\$ 92,084	\$ 86,278
Year-over-year percentage growth				
Technology expenses	4.2 %		6.7 %	
Technology expenses as a percent of net revenues	4.5 %	4.2 %	4.3 %	4.7 %

The \$1.2 million increase in technology expenses for the three months ended September 30, 2021, as compared to the same period in 2020, was primarily due to staff-related costs to support strategic initiatives and increased cloud adoption.

The \$5.8 million increase in technology expenses for the nine months ended September 30, 2021, as compared to the same period in 2020, was primarily due to staff-related costs to support strategic initiatives and increased cloud adoption.

#### *General and administrative expenses*

The following table reflects our general and administrative expenses for the three and nine months ended September 30, 2021 and 2020 (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
General and administrative expenses	\$ 21,031	\$ 28,625	\$ 66,562	\$ 73,347
Year-over-year percentage growth				
General and administrative expenses	(26.5)%		(9.3)%	
General and administrative expenses as a percent of net revenues	3.1 %	4.0 %	3.1 %	4.0 %

The \$7.6 million decrease in general and administrative expenses for the three months ended September 30, 2021, as compared to the same period in 2020, was primarily driven by a reduction in staff-related expenses, including accrued bonus, consulting expenses, and facilities-related expenses.

The \$6.8 million decrease in general and administrative expenses for the nine months ended September 30, 2021, as compared to the same period in 2020, was primarily driven by reduction in staff-related expenses, including accrued bonus and reduced discretionary consulting spend, partially offset by a beneficial \$8.6 million reversal of a legal settlement accrual in 2020 and a \$2.5 million legal settlement realized in 2020.

#### **Income taxes**

Our income tax provision for interim periods is determined using an estimate of our annual effective tax rate adjusted for discrete items, if any, for relevant interim periods. We update our estimate of the annual effective tax rate each quarter and make cumulative adjustments if our estimated annual effective tax rate changes.

Our quarterly tax provision and our quarterly estimate of our annual effective tax rate are subject to significant variations due to several factors including: variability in predicting our pre-tax and taxable income as well as the mix of jurisdictions to which those items relate, relative changes in expenses or losses for which tax benefits are limited or not recognized, how we do business, fluctuations in our stock price, economic outlook, political climate, and other conditions such as the COVID-19 pandemic. In addition, changes in laws, regulations, and administrative practices will impact our rate. Our effective tax rate can be volatile based on the amount of pre-tax income. For example, the impact of discrete items on our effective tax rate is greater when pre-tax income is lower.

Our provision (benefit) for income tax for the three months ended September 30, 2021 and 2020 was \$(1.8) million and \$753,000, respectively. Our provision (benefit) for income tax for the nine months ended September 30, 2021 and 2020 was \$(47.3) million and \$1.8 million, respectively. The tax benefit increased during the three and nine months ended September 30, 2021 primarily due to the valuation allowance release for certain federal and state deferred tax assets. The effective tax rate for the nine months ended September 30, 2021 and 2020 was (51.7)% and 2.4%, respectively. Our high effective tax rate for the nine months ended September 30, 2021 is primarily attributable to the valuation allowance release for certain federal and state deferred tax assets.

Each quarter we assess the recoverability of our deferred tax assets under ASC Topic 740. We assess available positive and negative evidence to estimate whether we will generate sufficient future taxable income to use our existing deferred tax assets. We have no carryback ability, and therefore we must rely on future taxable income, including tax planning strategies and future reversals of taxable temporary differences, to support their realizability. In our assessment for the period ended June 30, 2021, we concluded it is more likely than not that our deferred tax assets related to United States federal income and all states with the exception of Utah will be realizable; therefore, we released approximately \$47.0 million of our valuation allowance. When a change in valuation allowance is recognized during an interim period, a portion of the valuation allowance to be reversed must be allocated to the remaining interim periods. As customary with an interim release, driven by changes in estimated reversals for the remainder of the year, we released an additional \$4.4 million of valuation allowance during the period ended September 30, 2021. We still maintain a valuation allowance against our deferred tax assets for capital losses and the state of Utah where not supported by future reversals of taxable temporary differences, because of the uncertainty regarding the realizability of these deferred tax assets. We will continue to monitor the need for a valuation allowance against our remaining deferred tax assets on a quarterly basis.

We are subject to taxation in the United States and multiple state and foreign jurisdictions. Tax years beginning in 2016 are subject to examination by taxing authorities, although net operating loss and credit carryforwards from all years are subject to examinations and adjustments for at least three years following the year in which the attributes are used.

## Liquidity and Capital Resources

### Overview

We believe that our cash and cash equivalents currently on hand and expected cash flows from future operations will be sufficient to continue operations for at least the next twelve months. We continue to monitor, evaluate, and manage our operating plans, forecasts, and liquidity in light of the most recent developments driven by the COVID-19 pandemic. We proactively seek opportunities to improve the efficiency of our operations and have in the past and may in the future take steps to realize internal cost savings, including aligning our staffing needs based on our current and expected future levels of operations and process streamlining.

### Current sources of liquidity

Our principal sources of liquidity are existing cash and cash equivalents and accounts receivables, net. At September 30, 2021, we had cash and cash equivalents of \$512.2 million and accounts receivables, net of \$25.2 million.

At September 30, 2021, we had \$150.0 million available under our "at the market" sales program which permits us to conduct "at the market" sales of our common stock under the Sales Agreement.

Cash flow information is as follows (in thousands):

	Nine months ended September 30,	
	2021	2020
<b>Cash provided by (used in):</b>		
Operating activities	\$ 100,084	\$ 221,824
Investing activities	(52,061)	(12,169)
Financing activities	(10,042)	234,103

*Operating activities*

Cash received from customers generally corresponds to our net revenues as our customers primarily use credit cards to buy from us, causing our receivables from these sales transactions to settle quickly. We have payment terms with our partners that generally extend beyond the amount of time necessary to collect proceeds from our customers. As a result of increased online shopping migration from the COVID-19 pandemic, we saw our retail revenue accelerate beginning in the second half of March 2020, as customers turned to online shopping, which caused our cash, cash equivalents and accounts receivable balances to increase compared to balances prior to the pandemic. Due to uncertainty surrounding the COVID-19 pandemic, we are unable to predict the duration of such favorable conditions and their sustained impact on cash flows. We continue to monitor, evaluate, and manage our operating plans, forecasts, and liquidity in light of the most recent developments driven by the COVID-19 pandemic.

The \$100.1 million of net cash provided by continuing operating activities during the nine months ended September 30, 2021 was primarily due to income from continuing operations adjusted for non-cash items of \$114.2 million offset by cash used in changes in operating assets and liabilities of \$14.2 million.

The \$221.8 million of net cash provided by continuing operating activities during the nine months ended September 30, 2020 was primarily due to income from continuing operations adjusted for non-cash items of \$98.2 million and cash provided by changes in operating assets and liabilities of \$123.6 million.

*Investing activities*

For the nine months ended September 30, 2021, investing activities resulted in a net cash outflow of \$52.1 million, primarily due to \$41.1 million of contributions for capital calls relating to our limited partnership interest in the Medici Ventures Fund and \$9.7 million of expenditures for property and equipment.

For the nine months ended September 30, 2020, investing activities resulted in a net cash outflow of \$12.2 million, primarily due to \$12.0 million of expenditures for property and equipment.

*Financing activities*

For the nine months ended September 30, 2021, financing activities resulted in a net cash outflow of \$10.0 million primarily due to \$7.9 million for payment of taxes withheld upon vesting of restricted stock.

For the nine months ended September 30, 2020, financing activities resulted in a net cash inflow of \$234.1 million primarily due to \$47.5 million in proceeds from long-term debt and \$195.5 million in net proceeds primarily from our common stock offering executed during August 2020.

**Contractual Obligations and Commitments**

The following table summarizes our contractual obligations as of September 30, 2021 and the effect such obligations and commitments are expected to have on our liquidity and cash flow in future periods (in thousands):

<b>Contractual Obligations</b>	<b>Total</b>	<b>Less than 1 year</b>	<b>1-3 years</b>	<b>3-5 years</b>	<b>More than 5 years</b>
Operating leases (1)	\$ 15,819	\$ 5,977	\$ 8,142	\$ 1,555	\$ 145
Loan agreements (2)	55,910	5,264	7,987	2,968	39,691
<b>Total contractual cash obligations</b>	<b>\$ 71,729</b>	<b>\$ 11,241</b>	<b>\$ 16,129</b>	<b>\$ 4,523</b>	<b>\$ 39,836</b>

- (1) — Represents the future minimum lease payments under non-cancellable operating leases. For information regarding our operating lease obligations, see Note 7—Leases, in the Notes to Unaudited Consolidated Financial Statements included in Item 1, Part I, Financial Statements (Unaudited) of this Quarterly Report on Form 10-Q.
- (2) — Represents future interest and principal payments on the financing agreements with Loan Core Capital Funding Corporation LLC. For information regarding our financing agreements, see Note 6—Borrowings, in the Notes to Unaudited Consolidated Financial Statements included in Item 1, Part I, Financial Statements (Unaudited) of this Quarterly Report on Form 10-Q.

## **Tax contingencies**

We are involved in various tax matters, the outcomes of which are uncertain. As of September 30, 2021, accrued tax contingencies were \$2.8 million. Changes in state, federal, and foreign tax laws may increase our tax contingencies. The timing of the resolution of income tax contingencies is highly uncertain, and the amounts ultimately paid, if any, upon resolution of issues raised by the taxing authorities may differ from the amounts accrued. It is reasonably possible that within the next 12 months we will receive additional assessments by various tax authorities. These assessments may or may not result in changes to our contingencies related to positions on prior years' tax filings.

## **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures, or capital resources that would be material to investors.

## **Critical Accounting Policies and Estimates**

The preparation of our financial statements requires that we make estimates and judgments. We base these on historical experience and on other assumptions that we believe to be reasonable. There have been no material changes to our critical accounting policies and estimates as compared to the critical accounting policies and estimates described in Note 2—Accounting Policies, included in Part II, Item 8, Financial Statements and Supplementary Data, of our Annual Report on Form 10-K for the year ended December 31, 2020, except for the additions of our critical accounting policy regarding our assessment of control under the VIE model for the retained noncontrolling interests resulting from the deconsolidation of our Medici subsidiaries, which is discussed in Note 2—Summary of Significant Accounting Policies, *Basis of Presentation*, and our critical accounting policy and estimates for the initial valuation of our retained noncontrolling interests in deconsolidated former subsidiaries, which is discussed in Note 2—Summary of Significant Accounting Policies, *Initial valuation of retained noncontrolling interest in former subsidiaries*.

## **Government Regulation**

We are subject to a wide variety of laws, rules, mandates, and regulations, some of which apply or may apply to us as a result of our retail business, and others of which apply to us for other reasons, such as our status as a publicly held company or the places in which we sell certain types or amounts of products. Our retail business is subject to general business regulations and laws, as well as regulations and laws specifically governing the Internet, e-commerce, and other services we offer. Existing and future laws and regulations may result in increasing expense and may impede our growth. Applicable and potentially applicable regulations and laws include regulations and laws regarding taxation, privacy, data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, environmental regulation, electronic contracts and other communications, competition, consumer protection, employment, import and export matters, information reporting requirements, access to our services and facilities, the design and operation of websites, health, safety, and sanitation standards, the characteristics and quality of products and services, product labeling and unfair and deceptive trade practices.

Our efforts to expand our retail business outside of the U.S. expose us to foreign and additional U.S. laws and regulations, including but not limited to, laws and regulations relating to taxation, business licensing or certification requirements, advertising practices, online services, the use of cryptocurrency, the importation of specified or proscribed items, importation quotas, consumer protection, intellectual property rights, consumer and data protection, privacy, encryption, restrictions on pricing or discounts, and the U.S. Foreign Corrupt Practices Act and other applicable U.S. and foreign laws prohibiting corrupt payments to government officials and other third parties.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to market risk for the effect of interest rate changes, foreign currency fluctuations, and changes in the market values of our securities. Information relating to quantitative and qualitative disclosures about these market risks is set forth below.

#### **Interest Rate Sensitivity**

The fair value of our cash and cash equivalents (highly-liquid instruments with a remaining maturity of 90 days or less at the date of purchase) would not be significantly affected by either an increase or decrease in interest rates due mainly to the short-term nature of these instruments.

Our loan agreements carry a fixed blended annual interest rate of 4.45%. Since the Notes bear interest at a fixed rate, we have no direct financial statement risk associated with changes in interest rates.

#### **Foreign Currency Risk**

Most of our sales and operating expenses are denominated in U.S. dollars, and therefore, our total revenue and operating expenses are not currently subject to significant foreign currency risk.

#### **Investment Risk**

The fair values of our equity securities may be subject to fluctuations due to volatility of the stock market in general, investment-specific circumstances, and changes in general economic conditions. Volatile market conditions arising from the COVID-19 pandemic may result in significant changes in the value of our equity securities. At September 30, 2021, our recorded value in equity securities in public and private companies was \$330.2 million, of which \$983,000 relates to publicly traded companies, recorded at fair value, which are subject to market price volatility. We have elected to account for certain of our equity method securities using the fair value option. Our assessment includes a review of recent operating results and trends, recent sales/acquisitions of the equity securities, and other publicly available data. Valuations of private companies are inherently more complex due to the lack of readily available market data. As such, we believe that market sensitivities are not practicable.

## **ITEM 4. CONTROLS AND PROCEDURES**

### **Disclosure Controls and Procedures**

We maintain disclosure controls and procedures, as such term is defined in Rule 13a-15(e) and 15d-15(e) of the Exchange Act. The term disclosure controls and procedures means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

### **Evaluation of Disclosure Controls and Procedures**

We carried out an evaluation required by the Exchange Act, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

### **Limitations on Disclosure Controls and Procedures**

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

### **Changes in Disclosure Controls and Procedures and Internal Control Over Financial Reporting**

There were no changes in either our disclosure controls and procedures or our internal control over financial reporting that occurred during the quarter ended September 30, 2021, that have materially affected, or are reasonably likely to materially affect, our disclosure controls and procedures or our internal control over financial reporting. We have not experienced any material impact to our disclosure controls and procedures or our internal controls over financial reporting despite the fact that most of our corporate employees are working remotely due to the COVID-19 pandemic. We are continually monitoring and assessing the COVID-19 situation on our internal controls to minimize the impact on their design and operating effectiveness.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

From time to time, we are involved in, or become subject to litigation or other legal proceedings concerning consumer protection, employment, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. We also prosecute lawsuits to enforce our legal rights. In connection with such litigation or other legal proceedings, we have been in the past and we may be in the future subject to significant damages, associated costs, or equitable remedies relating to the operation of our business. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. For additional details, see the information set forth under Item 1 of Part I, Financial Statements—Note 8—Commitments and Contingencies, subheading Legal Proceedings and Contingencies, contained in the Notes to Unaudited Consolidated Financial Statements of this Quarterly Report on Form 10-Q, which is incorporated by reference in answer to this Item.

### ITEM 1A. RISK FACTORS

*Any investment in our securities involves a high degree of risk. Please consider the following risk factors carefully. If any one or more of the following risks were to occur, it could have a material adverse effect on our business, prospects, financial condition and results of operations, and the market price of our securities could decrease significantly. Statements below to the effect that an event could or would harm our business (or have an adverse effect on our business or similar statements) mean that the event could or would have a material adverse effect on our business, prospects, financial condition and results of operations, which in turn could or would have a material adverse effect on the market price of our securities. Many of the risks we face involve more than one type of risk. Consequently, you should read all of the risk factors below carefully, as well as the risk factors described in our Form 10-K for the year ended December 31, 2020, and in any reports we file with the SEC after we file this Form 10-Q, before deciding whether to purchase or hold our securities. We have included risk factors contained in our Form 10-Q for the quarter ended June 30, 2021, with appropriate revisions, and have added new risk factors. We have not repeated risk factors contained in our Form 10-K for the year ended December 31, 2020, which are incorporated herein by reference. The occurrence of any of these risks could harm our business, the trading price of our securities could decline, and investors could lose part or all of their investment.*

Other than the risk factors set forth below, there are no material changes from the risk factors previously disclosed in Part I - Item 1A - "Risk Factors," of our Annual Report on Form 10-K for the year ended December 31, 2020.

***The changing job market, the loss of key personnel, or any inability to attract and retain additional key personnel could affect our ability to successfully grow our business.***

Our performance is substantially dependent on the continued service and performance of our senior management and other key personnel. Our performance also depends on our ability to retain and motivate our officers and key employees. Given the current labor shortage and labor migration in the U.S., and more businesses allowing employees to work remotely, we are forced to compete with businesses in other locations and states to attract and retain key employees from a smaller pool of qualified individuals. Some key employees may also leave to work for businesses that have declared they will not require employees to return to the office. The loss of, or the inability to retain the services of, key employees for any reason, could harm our business. Our future success depends on our ability to identify, attract, hire, train, retain and motivate highly-skilled personnel. Our failure to attract and retain the personnel necessary to successfully operate our business could have a material adverse effect on our financial results, business and prospects.

***The continuing impacts of COVID-19 could have technology and security consequences, could result in policies, mandates, or regulations that apply unevenly to businesses, could cause employee fatigue, and could negatively impact our operations.***

In light of the ongoing COVID-19 pandemic, many of our employees and contractors continue to work remotely. Additional risks are inherent when employees and contractors work remotely, including risks that third-party internet and phone service providers may not provide adequate services for employees and contractors to perform their responsibilities, risks that hardware, software, or other technological problems or failures could prevent employees or contractors from performing their responsibilities and could take an excessive amount of time to resolve and risks that employees and contractors may not be trained as effectively or monitored as closely from remote locations, creating greater risks for the security of confidential information. Additionally, government policies, mandates, or regulations created in response to COVID-19 could apply unevenly to businesses, whether based on business size, industry, or some other reason, which could make certain businesses



less desirable for employment and could impair our ability to attract and/or retain key employees. Employees may leave to work for businesses that have declared they will not require employees to return to the office. Employees may also become fatigued by the work-from-home setting and may become less productive or look for employment that is not work-from-home. Any such occurrences could have a material negative impact on the business.

***We may be required to recognize losses relating to our direct and indirect equity interests in startup businesses.***

We hold direct and indirect noncontrolling interests in several companies that are in the startup or development stages. Many of these interests are in companies held within the Medici Ventures Fund, over which we have no control. Noncontrolling interests and passive investments are inherently risky because we may not have the ability to influence business decisions. Further, these interests are inherently risky because the markets for the technologies or products these companies are developing are typically in the early stages, unproven, and may never materialize. These companies may abandon, modify, or alter their product and service mix and overall strategy, whether due to COVID-19 or otherwise. Additionally, since these interests are in companies that are in the early startup or development stages, even if their technology or products are viable, they may not be able to obtain the capital or resources necessary to successfully bring their technology or products to market. Furthermore, the economic impact of the COVID-19 pandemic may limit the ability for these entities to raise capital in the future. Furthermore, we have no assurance that the technology or products of companies we have funded would be successful, even if they were brought to market. We may in the future recognize losses related to these interests. Any such losses could be material and could have a material adverse effect on our financial results and business.

***We recently reversed the valuation allowance for a significant portion of our deferred tax assets, and we may not be able to realize these assets in the future. Our deferred tax assets may also be subject to additional valuation allowances, which could adversely affect our operating results.***

Determining whether a valuation allowance for deferred tax assets is appropriate requires judgment and an evaluation of all positive and negative evidence. At each reporting period, we assess the need for, or the sufficiency of, a valuation allowance against deferred tax assets. At June 30, 2021, based on the weight of all the positive and negative evidence, we concluded that it was more likely than not that we will realize certain federal and state net deferred tax assets based on future taxable income. Therefore, we reversed the valuation allowance on those deferred tax assets at June 30, 2021.

Our conclusion that it is more likely than not that we will realize certain federal and state net deferred tax assets is primarily based on our estimate of future taxable income. Our estimate of future taxable income is based on internal projections which primarily consider historical performance, but also include various internal estimates and assumptions as well as certain external data. We believe all of these inputs to be reasonable, although inherently subject to judgment. If actual results differ significantly from these estimates of future taxable income, we may need to reestablish a valuation allowance for some or all of our deferred tax assets. Establishing an allowance on our net deferred tax assets could have a material adverse effect on our financial condition and operating results.

## **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

### *Unregistered issuance of equity securities*

None.

### *Issuer purchases of equity securities*

None.

### *Limitations upon the payment of dividends*

None.

## **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

## **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

None.

**ITEM 6. EXHIBITS**

(a)	Exhibit Number	Exhibit Description
	10.1*	<a href="#">First Amendment, dated August 30, 2021, to the Medici Ventures, L.P. Limited Partnership Agreement, dated April 23, 2021, between Overstock.com, Inc., and Pelion MV GP, L.L.C.</a>
	31.1*	<a href="#">Exhibit 31.1 Certification of Chief Executive Officer</a>
	31.2*	<a href="#">Exhibit 31.2 Certification of Chief Financial Officer</a>
	32.1**	<a href="#">Exhibit 32.1 Section 1350 Certification of Chief Executive Officer</a>
	32.2**	<a href="#">Exhibit 32.2 Section 1350 Certification of Chief Financial Officer</a>
	101	Attached as Exhibit 101 to this report are the following documents formatted in XBRL (Extensible Business Reporting Language): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Operations, (iii) Consolidated Statements of Comprehensive Income (Loss), (iv) Consolidated Statements of Cash Flows, (v) Consolidated Statements of Stockholders' Equity, and (vi) Notes to Consolidated Financial Statements.
	104	The cover page from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2021, formatted in Inline XBRL (included as Exhibit 101).

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\* Filed herewith.

\*\* Furnished herewith.

**SIGNATURE**

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.

Date: November 4, 2021

**OVERSTOCK.COM, INC.**

/s/ ADRIANNE B. LEE

Adrienne B. Lee

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

**FIRST AMENDMENT TO THE  
LIMITED PARTNERSHIP AGREEMENT OF  
MEDICI VENTURES, L.P.**

This **FIRST AMENDMENT** (this “**Amendment**”) to the Limited Partnership Agreement of Medici Ventures, L.P. (the “**Partnership**”), dated as of April 23, 2021 (the “**Agreement**”), is made and entered into effective as of August 30, 2021, by and among **PELION MV GP, L.L.C.** (the “**General Partner**”) and each of the undersigned Limited Partners of the Partnership. Capitalized terms used but not otherwise defined herein have the meanings given them in the Agreement.

**WHEREAS**, the undersigned parties desire to amend the Agreement pursuant to paragraph 14.11 of the Agreement.

**NOW, THEREFORE**, in consideration of the mutual agreements, covenants, and considerations contained herein, the receipt of which are hereby acknowledged, the undersigned parties, intending to be legally bound, hereby agree as follows:

1. Paragraph 11.1(a) of the Agreement is hereby amended and restated to read in its entirety as follows (with additional text reflected by **bold, double underscoring** and deletions reflected by ~~strike through~~):

“(a) The books and records of the Partnership shall be kept in accordance with the provisions of this Agreement and, subject to paragraph 11.1(b), otherwise in accordance with generally accepted accounting principles consistently applied, and shall be audited at the end of each fiscal year by an independent public accountant of recognized national standing selected by the General Partner. The Partnership’s fiscal year shall **end each year on September 30th** ~~be the calendar year~~ unless a different fiscal year is required by applicable Treasury Regulations.”

2. Paragraph 11.2 of the Agreement is hereby amended and restated to read in its entirety as follows (with additional text reflected by **bold, double underscoring** and deletions reflected by ~~strike through~~):

“**11.2 Supervision; Inspection of Books.** Proper and complete books of account of the Partnership, copies of the Partnership’s federal, state and local tax returns for each **calendar year (which shall be the Partnership’s “taxable year” within the meaning of the Code)** ~~fiscal year~~, the Schedule of Partners set forth in *Exhibit A*, this Agreement and the Partnership’s Certificate of Limited Partnership shall be kept under the supervision of the General Partner at the principal office of the Partnership. Such books and records shall be open to inspection by the Limited Partners, or their accredited representatives, at any reasonable time during normal business hours after reasonable advance notice. The General Partner shall retain a copy of such books and records for at least five (5) years after the final liquidation of the Partnership.”

3. Paragraph 11.5(a) of the Agreement is hereby amended and restated to read in its entirety as follows (with additional text reflected by **bold, double underscoring** and deletions reflected by ~~strike through~~):

“(a) The General Partner shall cause the Partnership’s federal, state and local tax returns and Internal Revenue Service Form 1065, Schedule K-1, to be prepared and delivered to the Limited Partners within ninety (90) days after the close of **each calendar year prior to the final liquidation of the Partnership** ~~the Partnership’s fiscal year~~.”

4. Paragraph 13.1 of the Agreement is hereby amended and restated to read in its entirety as follows (with additional text reflected by **bold, double underscoring** and deletions reflected by ~~strikethrough~~):

“**13.1 Accounting Period.** An Accounting Period shall be (i) a **calendar** ~~fiscal~~-year if there are no changes in the Partners’ respective interests in the Profits or Losses of the Partnership during such ~~calendar~~ **calendar**-year except on the first day thereof, or (ii) any other period beginning on the first day of a ~~calendar~~ **calendar**-year, or any other day during a ~~calendar~~ **calendar**-year upon which occurs a change in such respective interests, and ending on the last day of a ~~calendar~~ **calendar**-year, or on the day preceding an earlier day upon which any change in such respective interests shall occur. If there are changes in the Partners’ respective interests in the Partnership during the ~~calendar~~ **calendar**-year, the General Partner may treat each such change as occurring at the end of the month or quarter in which such change occurs.

5. To the extent that this Amendment conflicts with the terms of the Agreement, the terms of this Amendment shall control. Otherwise all of the terms and conditions of the Agreement shall continue in full force and effect. Each of the undersigned hereby consents to a restatement of the Agreement to incorporate this Amendment and ratifies any action undertaken by the General Partner prior to the adoption of this Amendment that is consistent with the terms of this Amendment. This Amendment shall be governed by and construed under the laws of the State of Delaware. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. This Amendment may be executed and delivered by facsimile transmission.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

**GENERAL PARTNER:**

**PELION MV GP, L.L.C.**

By: /s/ Blake Modersitzki  
Manager

**LIMITED PARTNER:**

**OVERSTOCK.COM, INC.**

(Name of Limited Partner)

By: /s/ Jonathan E. Johnson III  
Name: Jonathan E. Johnson  
Title: Chief Executive Officer

## CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Jonathan E. Johnson III, certify that:

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

Date: November 4, 2021

/s/ JONATHAN E. JOHNSON III

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Jonathan E. Johnson III  
Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Adrienne B. Lee, certify that:

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

Date: November 4, 2021

/s/ ADRIANNE B. LEE

Adrienne B. Lee

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)



**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**

**PURSUANT TO**

**18 U.S.C. SECTION 1350,**

**AS ADOPTED PURSUANT TO**

**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jonathan E. Johnson III, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Overstock.com, Inc. on Form 10-Q for the quarter ended September 30, 2021 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Overstock.com, Inc.

Date: November 4, 2021

/s/ JONATHAN E. JOHNSON III

Jonathan E. Johnson III

Chief Executive Officer

(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER**

**PURSUANT TO**

**18 U.S.C. SECTION 1350,**

**AS ADOPTED PURSUANT TO**

**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Adrienne B. Lee, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Overstock.com, Inc. on Form 10-Q for the quarter ended September 30, 2021 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Overstock.com, Inc.

Date: November 4, 2021

/s/ ADRIANNE B. LEE

Adrienne B. Lee

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)