

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 8-K/A  
(Amendment No. 1)**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 3, 2024

**KUBIENT, INC.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**

(State or other jurisdiction of incorporation)

**001-37875**

(Commission File Number)

**82-1808844**

(IRS Employer Identification No.)

**500 7th Avenue, 8th Floor  
New York, New York**

(Address of principal executive offices)

**10018**

(Zip Code)

**(800) 409-9456**

(Registrant's Telephone Number, Including Area Code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock	KBNT	OTC Expert Market
Common Stock Purchase Warrants	KBNTW	OTC Expert Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

## EXPLANATORY NOTE

The original Current Report on Form 8-K (the “Original 8-K”) filed by the Company (defined below) with the U.S. Securities and Exchange Commission on May 8, 2024 was inadvertently filed with certain numbers omitted from the Company’s disclosure under Item 2.05 of the Original 8-K. This Amendment No.1 to the Original 8-K is being filed solely for the purpose of inserting the omitted numbers into the relevant disclosure under Item 2.05 hereof. No other changes have been made to the original report.

### **Item 2.05 Costs Associated with Exit or Disposal Activities.**

On May 3, 2024, Kubient, Inc. (the “Company”) implemented an approximately 50% reduction in the Company’s workforce, or two people. The reduction in workforce is intended to reduce the Company’s operating costs in connection with the potential wind-down of the Company’s business.

The Company expects to recognize restructuring charges in connection with the workforce reduction plan with respect to severance payments and benefits. Severance and benefit continuation charges are estimated to be approximately \$243,000 and are expected to be recognized primarily in the second quarter of 2024. The Company expects the organizational change will reduce current annualized payroll and benefit expenses by up to \$485,000.

### **Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On May 3, 2024 (the “Separation Date”), as part of the reduction in workforce plan described above in Item 2.05, the Company terminated the employment of Mitchell Berg as Chief Technology Officer of the Company without cause.

In connection with Mr. Berg’s departure, the Company plans to enter into a separation agreement and general release (the “Separation Agreement”) with Mr. Berg that will include the severance payments and other benefits to which Mr. Berg is entitled pursuant to his current employment agreement with the Company. Pursuant to the proposed Separation Agreement, Mr. Berg will receive severance equal to six months of Mr. Berg’s base salary in effect on the Separation Date, in the total gross amount of \$150,000, less applicable taxes and withholdings, and reimbursement of COBRA premiums for healthcare insurance coverage for up to six months to the extent Mr. Berg is eligible for and elects COBRA coverage. The Company’s proposed Separation Agreement also contains a general release of claims by Mr. Berg, as well as a customary cooperation clause in order to ensure a smooth transition after Mr. Berg’s departure.

The foregoing description of the Separation Agreement does not purport to be complete and is qualified in its entirety by reference to the Separation Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

#### *Forward-Looking Statements Disclaimer*

The disclosure contained in this Current Report on Form 8-K contains forward-looking statements concerning the expected charges and costs associated with the reduction in workforce as well as the Company’s strategic initiatives plans. These forward-looking statements involve risks and uncertainties. Facts that could cause actual results to differ materially from the statements included in this Current Report on Form 8-K include difficulties encountered in implementing the planned workforce reductions such as litigation or other claims arising out of the reduction. Further information on potential factors that could affect the Company’s future financial results are included in the Company’s Registration Statement on Form S-1 filed with the Securities and Exchange Commission on December 21, 2020.

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**Item 9.01. Exhibits.**

**(d) Exhibits**

Exhibit No.	Exhibit
<a href="#">10.1</a>	Separation Agreement and General Release with Mitchell Berg
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**KUBIENT, INC.**

Dated: May 14, 2024

By: /s/ Elisabeth DeMarse

Elisabeth DeMarse

Interim Chief Executive Officer

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SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (this "Agreement") is entered into between Kubient, Inc., together with its existing and future direct and indirect subsidiaries and controlled affiliates (the "Company"), and Mitchell Berg ("Employee") (each individually, a "Party," and collectively, the "Parties"). The Parties hereby agree as follows:

1. Separation of Employment. Employee hereby acknowledges that Employee's employment with the Company terminated effective May 3, 2024 (the "Separation Date").
2. Accrued Obligations and Benefits. In accordance with the Employment Agreement between Employee and Company dated November 18, 2021 (the "Employment Agreement"), and regardless of whether Employee enters into this Agreement, within ten (10) days of the Separation Date Employee will receive the monies contemplated in Section 4(b) of the Employment Agreement. Provided Employee was already enrolled in the Company's group healthcare insurance benefit plans during employment, Employee's coverage under such plans will end as of the last day of the month in which the Separation Date occurs. If Employee wishes to continue healthcare insurance benefits coverage beyond such date at his own expense, Employee must timely elect such coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). Except as expressly provided in the Restricted Stock Unit Award Agreement (dated February 15, 2022), between the Company and Employee (the "Award Agreement") or in this Agreement, Employee will receive no additional compensation, bonus, severance, commissions, equity or other benefits on or after the Separation Date. Employee expressly acknowledges that Employee did not earn an Annual Bonus in the fiscal year prior to the fiscal year in which the Separation Date occurs that has not yet been paid. Further, Employee acknowledges that he has not earned an Annual Bonus for the current fiscal year. As such, Employee acknowledges that no Annual Bonus is due to Employee under the terms of Section 4(c)(iv) of the Employment Agreement. Additionally, employee acknowledges that he was not awarded and is not entitled to any "PSUs" under the Performance Share Award Agreement dated February 15, 2022 (the "PSU Agreement") and any rights or obligations under the PSU Agreement are hereby forfeited and terminated.
3. Survival of Post-Termination Rights and Obligations. Employee acknowledges and understands that the Parties' post-termination obligations and rights under (a) the Confidential Information, Invention Assignment and Arbitration Agreement entered into by and between the Parties on November 23, 2021 (the "CIAAA"), (b) the Employment Agreement, and (c) the Award Agreement shall survive the termination of Employee's employment with the Company and shall remain in full force and effect hereafter.
4. Consideration to Employee. Pursuant to the terms of this Agreement and Section 4(c) of the Employment Agreement, Employee is receiving certain severance and other benefits to which Employee would not otherwise be entitled. In exchange for promises by Employee in this Agreement, including but not limited to a release of claims and promise to cooperate post-termination, and provided that this Agreement is timely signed by Employee, returned to the Company, and not revoked as set forth in Section 15 of this Agreement, the Company shall provide to Employee the following consideration (collectively, the "Consideration"):

a. COBRA Subsidy. If Employee timely and properly elects healthcare insurance continuation coverage under COBRA, timely pays the applicable COBRA premium directly to the COBRA administrator, and remits documentation of Employee's payment of the applicable COBRA premium to Elisabeth DeMarse at Elisabeth.DeMarse@kubient.com, with a copy to Asaf Weitzman at Asaf.Weitzman@kubient.com, no later than thirty (30) days after Employee pays the applicable COBRA premium, then the Company shall reimburse Employee for the difference between the monthly COBRA premium paid by Employee for Employee and Employee's dependents and the monthly premium amount paid by Employee for such coverage prior to the Separation Date ("COBRA Subsidy"). Such COBRA Subsidy shall be paid to Employee by the last day of each month immediately following the month in which Employee timely remits documentation to the Company evidencing the premium payment paid by Employee. Employee shall be eligible to receive such COBRA Subsidy until the earliest of: (i) the sixth (6th) month following the month in which the Separation Date occurs; (ii) the date Employee is no longer eligible to receive COBRA continuation coverage; and (iii) the date on which Employee becomes eligible to receive similar coverage from another employer or other source. Employee agrees to notify the Company immediately if Employee becomes covered by a group health plan of a subsequent employer.

b. Lump Severance Payment. The Company shall pay Employee the total gross amount of **ONE HUNDRED FIFTY THOUSAND and 00/100 DOLLARS (\$150,000.00)**, representing the equivalent of six (6) months of Employee's base salary at the rate in effect immediately prior to the Separation Date, less applicable taxes and withholdings, in a single lump sum within thirty (30) days following the Effective Date of this Agreement (as defined in Section 15 below).

5. Release. In exchange for the Consideration described in Section 4 above, Employee, on behalf of Employee and Employee's representatives, heirs, successors and assigns, hereby completely releases and forever discharges the Company and any past, present, and future parent companies, subsidiaries, divisions, and affiliates of the Company, and its and their past, present, and future shareholders, officers, directors, members, agents, employees, attorneys, insurers, employee benefit plans, and their administrators, successors, and assigns (collectively, "Released Parties") from all claims, rights, demands, actions, obligations, and liabilities of every kind, known or unknown, which Employee may now have or has ever had up through the date Employee signs this Agreement (the "Release"). This Release includes, but is not limited to, all claims arising out of Employee's employment with the Company and the termination of that employment, whether based on tort, contract (express or implied) (including, but not limited to, the Employment Agreement, the Award Agreement, and the PSU Agreement), or any federal, state, or local law, regulation, or ordinance (collectively, "Released Claims"). By way of example only, Released Claims include any claims arising under Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* (the "ADEA"), the Older Worker's Benefit Protection Act, the Post Civil War Civil Rights Acts (42 USC §§ 1981-1988), the Civil Rights Act of 1991, the Equal Pay Act, the Occupational Safety and Health Act, the Americans with Disabilities Act, the Uniformed Services Employment and Reemployment Rights Act, the Davis-Bacon Act, the Walsh-Healey Act, the Employee Retirement Income Security Act (other than claims for vested benefits), Executive Order 11246, the Worker Adjustment and Retraining Notification Act, the Sarbanes-Oxley Act, and any other federal, state, or local statute, regulation or ordinance governing the employment relationship. This Release further includes any claims asserting negligent or intentional infliction of emotional distress; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; fraud; defamation; invasion of privacy; claims related to disability; any and all claims for wages, commissions, compensation, reimbursement, disbursements, bonuses, benefits, equity, vacation, and/or penalties; and any other claims arising under or related to employment laws or regulations. Employee likewise releases the Released Parties from any and all obligations for attorneys' fees and other legal costs incurred in regard to the above claims or otherwise. This Release covers all waivable claims, including those not specifically mentioned in this Agreement.

6. Waiver of Unknown Claims. The Parties understand and agree the Release in Section 5 above includes not only claims presently known to Employee, but also all unknown or unanticipated claims, rights, demands, actions, obligations, and liabilities of every kind that are covered by the Release. Employee understands that Employee may later discover facts different from what Employee now believes to be true, which, if known, could have materially affected Employee's decision to sign this Agreement, but Employee nevertheless waives any claims or rights based on such different or additional facts.

7. No Claims Filed; Covenant Not to Sue. Employee affirms that Employee has not filed nor caused to be filed, and is not presently a party to, any lawsuits or arbitrations against any of the Released Parties in any forum; provided, however, that nothing in this Section 7 shall be interpreted as requiring Employee to disclose any claims, complaints, or communications Employee has made, or information Employee has disclosed, to the U.S. Securities and Exchange Commission ("SEC") concerning actual or possible violations of securities law. Employee also promises not to sue or participate in any lawsuit or arbitration against the Company or any of the other Released Parties, either individually or as a class member or a claimant in a collective action, alleging any claim covered by the Release in Section 5 above. Nothing in this Section 7 prevents Employee from filing a suit to (a) enforce this Agreement or (b) challenge its validity under the ADEA. Consequences of breaching this Section 7 are described below in Section 14.

8. Release Exclusions and Additional Employee Protections. Nothing in the Release in Section 5 above or anything else in this Agreement limits or otherwise affects: rights to any vested retirement benefits or other accrued benefits to which Employee is already entitled; claims for workers' or unemployment compensation; claims that arise after the date Employee signs this Agreement; claims to enforce this Agreement; and any other claims that cannot lawfully be waived. In addition, nothing in any part of this Agreement limits Employee's rights to: file a charge with, provide information to, testify to or before, or participate in an investigation or proceeding conducted by, any federal, state, or local government agency responsible for enforcing any law; report possible violations of any law or regulation to any such agency; make other disclosures protected under whistleblower provisions of any law or regulation; or disclose or discuss a sexual assault or sexual harassment dispute arising after this Agreement is signed by Employee. Notwithstanding the above, Employee expressly waives all rights to recover money or other individual relief in connection with any administrative or court action related in any way to any claim covered by the Release in Section 5 above, whether brought by Employee or on Employee's behalf. However, Employee may recover money properly awarded by the SEC as a reward for providing information to that agency.

9. Non-Disparagement. Employee agrees and warrants that at no time in the future will the Employee make any statements (orally or in writing, including, without limitation, whether in fiction or nonfiction) or take any actions which in any way disparage or defame any of the Released Parties, or in any way, directly or indirectly, cause or encourage the making of such statements, or the taking of such actions by anyone else, including but not limited to other current or former employees of the Company (except as outlined in Section 8 above).

10. Taxes and Indemnification. Employee agrees to pay all taxes (other than Company's share of payroll taxes) found to be owed based upon the Consideration provided to Employee under this Agreement and to indemnify and hold the Company harmless for any federal, state and local tax liability (including taxes, interest, penalties or the like, and required withholdings), which may be asserted against or imposed upon the Released Parties by any taxing authority related to such Consideration due to Employee's non-payment of taxes for which Employee is legally responsible. Employee understands and agrees that the Company may file any necessary tax documentation regarding the Consideration provided to Employee under this Agreement. Employee and the Company acknowledge that nothing herein constitutes tax advice to the other Party.

11. Employee Representations. Employee represents and warrants that Employee has: (a) been paid all compensation owed for all hours worked, including, but not limited to, any overtime and bonus if applicable; (b) received all the requested leave and leave benefits and protections for which Employee was eligible under the Family and Medical Leave Act or otherwise; and (c) not suffered any on-the-job injury for which Employee has not already filed a claim. In addition, it is Company policy to encourage reporting within the Company all possible violations of any law, and no one has interfered with Employee's reporting of any such violations. Employee further represents that: (i) Employee has not alleged any claim against the Company or any other Released Parties, the factual foundation for which involves sexual harassment under applicable law; and (ii) no part of the Consideration pursuant to this Agreement is a payment related to sexual harassment or sexual abuse as set forth in Section 162(q) of the Internal Revenue Code.

12. Cooperation. Employee agrees that following the Separation Date, Employee will cooperate fully with the Company in connection with: (a) any defense, prosecution, or investigation of claims or demands by or against third parties; and (b) any matters arising from or related to events during Employee's employment by the Company. In addition, Employee agrees to execute any documents required to carry out the terms of this Agreement. Such cooperation includes, without limitation, being available to the Company upon reasonable notice, without subpoena, to provide truthful and accurate information in witness interviews plus deposition and trial testimony. The Company will reimburse Employee for reasonable out-of-pocket expenses incurred in connection with any such cooperation (excluding forgone wages, salary, or other compensation) and will make reasonable efforts to accommodate Employee's scheduling needs.

13. Non-Admission. This Agreement is intended to facilitate an amicable separation of Employee's employment with the Company and is not intended and shall not be construed as an admission of wrongdoing by either Party.



14. Effect of Breach; Return of Consideration; Attorney's Fees. If Employee breaches the surviving terms of the CIAAA, the Employment Agreement, or Sections 7, 9, 11, 12, 17, or 22 of this Agreement, the Company's obligations to provide Employee the Consideration above shall cease immediately except for \$200, and Employee will be required to repay to the Company the entire Consideration received by Employee except for \$200; alternatively, the Company may at its option forego the remedy above and instead require Employee to pay the Company's legal costs incurred in enforcing the CIAAA, the Employment Agreement, and/or this Agreement, including its reasonable attorneys' fees. Further, nothing in this Agreement prevents the Company from pursuing an injunction to enforce the surviving terms of the CIAAA, the Employment Agreement, or Sections 7, 9, 11, 12, 17, or 22 of this Agreement. Nothing in this Section 14 is intended to, nor shall be construed to apply to any contrary rights of Employee under the ADEA.

15. Time to Consult, Consider and Revoke; Effective Date. By this Agreement, Employee has been advised to consult with an attorney before signing this Agreement. Employee acknowledges and understands that the Release in Section 5 above effectively waives all claims under the ADEA, and agrees that this Agreement complies with the OWBPA. Employee also acknowledges the Company has provided Employee with the disclosure required under 29 U.S.C. § 626(F)(1)(H). Employee further acknowledges that Employee has had the opportunity to consider this Agreement and the disclosure for forty-five (45) days before signing this Agreement, although Employee had the option to sign it sooner. Any material or non-material changes made to this Agreement after Employee receives this Agreement do not restart the running of the 45-day review period. Employee has seven (7) days in which to revoke this Agreement after signing it if Employee wishes (the "Revocation Period"). To revoke this Agreement, Employee must send the Company a written notice of revocation addressed to Elisabeth DeMarse, Interim CEO and President of the Board of Directors, via email at: Elisabeth.DeMarse@kubient.com, before the Revocation Period expires, with the original notice of revocation sent via U.S. Mail to Ms. DeMarse at Kubient, Inc., 500 7<sup>th</sup> Avenue, 8<sup>th</sup> Floor, New York, NY 10018, postmarked no later than the last day of the Revocation Period. This Agreement shall become effective on the eighth (8<sup>th</sup>) day after the date Employee signs this Agreement, provided that Employee has not timely revoked it (the "Effective Date"). In the event Employee fails to timely sign this Agreement, or revokes this Agreement within seven days after having signed it, the Company's obligations under this Agreement shall be null and void. Employee acknowledges and understands that the Company is not obligated to provide the Consideration to Employee until after the Effective Date.

16. Integration; Modification. Employee acknowledges that this Agreement, the CIAAA, the Employment Agreement, and the Award Agreement constitute the entire agreement between the Parties pertaining to the subject matter hereof, and supersede any other agreements and understandings among Employee, the Company and any other Released Parties, whether written or oral, express or implied, regarding Employee's employment, termination, and benefits. Employee has not relied on any statement or promises by anyone other than those contained in this Agreement and has entered into this Agreement knowingly without reliance upon any other representation, promise, or inducement not set forth herein. This Agreement shall not be modified unless in writing and signed by both the Company and Employee.

17. Transfer of Claims. Employee has not assigned, transferred, or purported to assign or transfer to any person or entity any claims released under Section 5 above. Employee agrees to indemnify and hold the Released Parties harmless against all rights, claims, warranties, demands, debts, obligations, liabilities, costs, legal costs (including attorneys' fees), or judgments based on or arising out of any such assignment or transfer. Employee further warrants that nothing prohibits Employee from entering into this Agreement.

18. Binding Effect. This Agreement shall bind and inure to the benefit of the Parties' representatives, agents, successors, assigns, heirs, attorneys, current and future affiliates, and predecessors, as well as any of the Released Parties. This Agreement shall not benefit any other person or entity except as specified in this Agreement.

19. Sufficiency of Consideration; Severability. Employee agrees that the Consideration provided to Employee hereunder is good and valuable consideration for Employee's signing of this Agreement. Should a court of competent jurisdiction determine that the Release in Section 5 above is invalid, void or unenforceable, then Employee agrees the Company's obligations under this Agreement are null and void and Employee shall return to the Company the Consideration. If any other provisions in this Agreement are held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force. In the event of a final, non-reviewable, non-appealable determination that any provision in this Agreement (in either case, whether in whole or in part) is void or constitutes an unreasonable restriction against Employee, such provision shall not be rendered void but shall be deemed modified or reformed by the court to the minimum extent necessary to make such provision enforceable for the longest duration and the greatest scope as may constitute a reasonable restriction under the circumstances. Nothing in this paragraph is intended to, nor shall be construed to apply to any contrary rights of Employee under the ADEA.

20. Governing Law, Interpretation, Arbitration. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of law principles. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any Party for any reason. Any and all disputes between the Parties arising from or related to this Agreement shall be resolved solely and exclusively by final and binding arbitration held in New York County, New York through Judicial Arbitration & Mediation Services ("JAMS") in the same manner contemplated for resolution of claims arising under the Employment Agreement, as set forth in Section 8 of the Employment Agreement.

21. Representation by Counsel. The Parties acknowledge that (a) they have had the opportunity to consult counsel in regard to this Agreement, and (b) they have read and understand this Agreement and are fully aware of its legal effects.

22. Return of Company Property. Employee represents that on or before the Separation Date, Employee returned to the Company all Company property in Employee's possession or control, including without limitation, all books, manuals, records, reports, notes, contracts, lists, blueprints, and other documents, or materials, or copies thereof (including computer files), keys, building card keys, company credit cards, telephone calling cards, computer hardware and software, laptop computers, docking stations, cellular and portable telephone equipment, and all other proprietary information relating to the business of the Company or its subsidiaries or affiliates.

23. No Waiver. No waiver of any claim for breach of rights under this Agreement shall be deemed a broader waiver unless the broader waiver is acknowledged in a writing executed by the waiving Party.

24. Headings; Electronic Transmissions; Counterparts. Headings in this Agreement are for reference purposes only and shall not in any way affect this Agreement's meaning or interpretation. This Agreement may be executed in several counterparts and by electronic transmissions (e-mail, facsimile and/or scanner) and all so executed copies shall constitute one Agreement, binding on all the Parties hereto, even though the Parties are not signatories to the original or same counterpart.

25. Acceptance. To accept this Agreement, Employee must sign and date below and return this Agreement within forty-five (45) days to Elisabeth DeMarse, Interim CEO and President of the Board of Directors, Kubient, Inc., 500 7<sup>th</sup> Avenue, 8<sup>th</sup> Floor, New York, NY 10018, email at Elisabeth.DeMarse@kubient.com.

[SIGNATURES ON FOLLOWING PAGE]

Employee represents and warrants that Employee has read this Agreement in its entirety, has been offered forty-five (45) days to review this Agreement, has been advised to consult with an attorney, fully understands all the terms of this Agreement, and voluntarily and knowingly accepts those terms.

**EMPLOYEE**

**COMPANY**

**KUBIENT, INC.**

Mitchell Berg \_\_\_\_\_  
Mitchell Berg

By: Elisabeth DeMarse \_\_\_\_\_  
Elisabeth DeMarse, Interim CEO and President of the Board of Directors

Date: \_\_\_\_\_

Date: \_\_\_\_\_