

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

FORM 8-K

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 23, 2022**

AKERNA CORP.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-39096

(Commission File Number)

83-2242651

(IRS Employer
Identification No.)

1550 Larimer Street, #246, Denver, Colorado

(Address of principal executive offices)

80202

(Zip Code)

Registrant's telephone number, including area code: **(888) 932-6537**

(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 (see General Instruction A.2. below):

- 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:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	KERN	NASDAQ Capital Market
Warrants to purchase one share of Common Stock	KERNW	NASDAQ Capital 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.

Item 1.01 Entry into a Material Definitive Agreement

On May 23, 2022, Akerna Corp. (“Akerna” or the “Company”) entered into an amending agreement (the “Amendment”) to the Amended and Restated Stock Purchase Agreement, dated as of October 1, 2021 (the “Original Agreement”), by and among the Company, The Nav People, Inc., a Delaware corporation d/b/a “365 Cannabis”) (the “365 Cannabis”) and Matthew Dredge, Ian Humphries, Jeff Kiehn, David Walker and Quartermain Investment Holdings Ltd. (collectively, the “Sellers”).

Pursuant to the Amendment, Section 2.04(a) of the Original Agreement was amended to provide that the Sellers could elect to have the potential earn-out payment described therein paid in cash or in shares of the Company or in any combination thereof. The Original Agreement previously had provided that the Company could elect whether to pay the earn-out payment in cash or in shares of the Company. Under the Amendment, if a Seller elects to have any portion of the earn-out payment paid in cash such amount payable will be reduced by 25%. Further, Section 2.04(b) of the Original Agreement was amended to reflect the administrative handling of the earn-out payment to the Sellers in cash or shares of the Company.

Pursuant to the Amendment, Section 2.06 of the Original Agreement was amended to require that \$100,000 the Second Post-Closing Payment (as defined in the Original Agreement) will be made at the end of June 2022 on the same day on which the Buyer’s end-of-month payroll is run and on each of the next four months thereafter, in each such month on the same day on which the Buyer’s end-of-month payroll is run.

Item 2.05 Costs Associated with Exit or Disposal Activities.

On May 25, 2022, the Company announced its implementation of certain expense reduction measures, approved by the Company’s board of directors on May 24, 2022, including a reduction of the Company’s workforce by 59 full-time employees, or approximately 33% of the Company. The corporate restructuring follows the Company’s recent decision to address liquidity concerns in part by focusing its initiatives on its enterprise business and new market expansion of the SMB business.

As a result of the corporate restructuring, the company anticipates reporting \$690,000 in total costs in its second quarter of 2022 to implement the reduction in force, including the following cost elements: \$630,000 in severance and associated payroll taxes; \$40,000 in legal costs; and \$20,000 in employee insurance benefits. Of the total cost, \$440,000 in salaries, payroll taxes and benefits costs would have been reported in its second quarter if the reduction in force had not been implemented. The corporate restructuring is expected to be substantially completed by the end of the second quarter of 2022. The estimates of costs that the Company expects to incur and the timing thereof are subject to a number of assumptions and actual results may differ. The Company may also incur other charges or cash expenditures not currently contemplated in connection with the corporate restructuring. This estimate may change due to future changes in the Company’s stock price. If the Company subsequently determines that it will incur additional material restructuring costs or charges or there are material differences from the ranges provided, the Company will file an amendment to this Current Report on Form 8-K (this “Current Report”) to disclose any such material costs, charges or differences.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

On May 24, 2022, the Company received a letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC (“Nasdaq”) indicating that, based upon the closing bid price of the Company’s common stock, par value \$0.0001 per share (“Common Stock”), for the last 30 consecutive business days, the Company is not currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on The Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2) (the “Notice”).

The Notice has no immediate effect on the continued listing status of the Company’s Common Stock on The Nasdaq Capital Market, and, therefore, the Company’s listing remains fully effective.

The Company is provided a compliance period of 180 calendar days from the date of the Notice, or until November 21, 2022, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A). If at any time before November 21, 2022, the closing bid price of the Company’s Common Stock closes at or above \$1.00 per share for a minimum of 10 consecutive business days, subject to Nasdaq’s discretion to extend this period pursuant to Nasdaq Listing Rule 5810(c)(3)(G) to 20 consecutive business days, Nasdaq will provide written notification that the Company has achieved compliance with the minimum bid price requirement, and the matter would be resolved. If the Company does not regain compliance during the compliance period ending November 21, 2022, then Nasdaq may grant the Company a second 180 calendar day period to regain compliance, provided the Company meets the continued listing requirement for market value of publicly-held shares and all other initial listing standards for The Nasdaq Capital Market, other than the minimum closing bid price requirement, and notifies Nasdaq of its intent to cure the deficiency.

The Company will continue to monitor the closing bid price of its Common Stock and seek to regain compliance with all applicable Nasdaq requirements within the allotted compliance periods. If the Company does not regain compliance within the allotted compliance periods, including any extensions that may be granted by Nasdaq, Nasdaq will provide notice that the Company's Common Stock will be subject to delisting. The Company would then be entitled to appeal that determination to a Nasdaq hearings panel. There can be no assurance that the Company will regain compliance with the minimum bid price requirement during the 180-day compliance period, secure a second period of 180 days to regain compliance or maintain compliance with the other Nasdaq listing requirements.

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

On May 25, 2022, the stockholders of the Company approved an amendment to the Company's Amended and Restated 2019 Long Term Incentive Plan (the "Incentive Plan") to increase the number of shares available under the Incentive Plan by 2,934,962 shares of common stock of the Company.

The above description of the amended provisions of the Incentive Plan is qualified in its entirety by the amended Incentive Plan, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

On May 27, 2022, in relation the Company's corporate restructuring, the Company's executive leadership team agreed to 25% reduction in salary. As a result, the salaries of Jessica Billingsley, Chief Executive Officer, David McCullough, Chief Technology Officer, and Raymond Thompson, Special Advisor to the Chief Executive Officer, have been reduced by 25%.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On May 27, 2022, the Company filed an amendment to its Amended and Restated Certificate of Incorporation to amend Article 4 thereof to increase the number of authorized shares of common stock, par value \$0.001, from 75,000,000 shares to 150,000,000 shares.

The first sentence of Article 4 which previously read:

"FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 80,000,000, of which 75,000,000 shares shall be common stock of the par value \$0.0001 per share ("Common Stock") and 5,000,000 shares shall be preferred stock of the par value of \$0.0001 per share ("Preferred Stock")."

Will now read:

"FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 155,000,000, of which 150,000,000 shares shall be common stock of the par value \$0.0001 per share ("Common Stock") and 5,000,000 shares shall be preferred stock of the par value of \$0.0001 per share ("Preferred Stock")."

The Amendment to the Amended and Restated Certificate of Incorporation is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

Item 5.07. Submission of Matters to a Vote of Security Holders.

On May 25, 2022, the Company reconvened its 2022 annual meeting of stockholders (the "Annual Meeting"). The matters submitted for a vote and the related results are set forth below. A more detailed description of each proposal is set forth in the Company's proxy statement on Schedule 14A, as filed with the Commission on April 19, 2022. A total of 23,353,671 shares of common stock of the Company were represented at the Annual Meeting, in person or by proxy, being approximately 67% of the outstanding voting securities of the Company as of the record date for the Annual Meeting on March 31, 2022 and representing a quorum for the conduct of business at the Annual Meeting.

The voting results were as follows:

Proposal One – Election of Class I Directors

All directors nominated were elected as Class I directors to the Company’s board of directors.

	For	Against	Withhold	Broker Non-Vote
(1) Matthew Kane	11,530,030	0	4,206,440	7,617,201
(2) Tahira Rehmatullah	11,769,399	0	3,967,071	7,617,201

Proposal Two– Ratification of the Appointment of Auditors

By a resolution passed, the appointment of Marcum LLP, as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2022, was ratified by the stockholders.

For	Against	Abstain	Broker Non-Vote
20,500,645	2,275,016	578,010	0

Proposal Three - Approval of the Convertible Note Nasdaq 20% Cap Removal Proposal, as described in the Proxy Statement

For	Against	Abstain	Broker Non-Vote
12,806,143	2,781,926	148,401	7,617,201

Proposal Four - Approval of the 365 Nasdaq 20% Cap Removal Proposal, as described in the Proxy Statement

For	Against	Abstain	Broker Non-Vote
12,806,722	2,785,213	144,535	7,617,201

Proposal Five – Approval of the Amendment to the Company’s Amended and Restated Certificate of Incorporation to Increase Authorized Capital from 75,000,000 Shares of Common Stock to 150,000,000 Shares.

For	Against	Abstain	Broker Non-Vote
17,599,087	5,614,622	139,962	0

Proposal Six – Approval of the Amendment to the Company’s 2019 Long Term Incentive Stock Plan to Increase Shares Available under the Plan by 2,934,962 Shares.

For	Against	Abstain	Broker Non-Vote
10,915,913	4,278,739	541,818	7,617,201

All matters before the stockholders being approved, Proposal 7 was not necessary and was not voted on at the reconvened Annual Meeting.

Item 8.01. Other Events.

On May 27, 2022, the Company issued a press release announcing the corporate restructuring. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

3.1	Amendment to the Amended and Restated Certificate of Incorporation
10.1	Amended 2019 Long Term Incentive Plan (incorporated by reference to Appendix C to the Company's definitive proxy statement on Schedule 14A as filed with the Commission on April 19, 2022)
99.1	Press release issued by Akerna Corp. on May 27, 2022
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

Forward-Looking Statements

Certain statements made in this report are “forward-looking statements” within the meaning of the “safe harbor” provisions of the United States Private Securities Litigation Reform Act of 1995. When used in this press release, the words “estimates,” “projected,” “expects,” “anticipates,” “forecasts,” “plans,” “intends,” “believes,” “seeks,” “may,” “will,” “should,” “future,” “propose” and variations of these words or similar expressions (or the negative versions of such words or expressions) are intended to identify forward-looking statements. Such forward-looking statements include but are not limited to statements regarding the estimates of costs regarding the corporate restructuring. These forward-looking statements are not guarantees of future performance, conditions or results, and involve a number of significant known and unknown risks, uncertainties, assumptions, and other important factors, many of which are outside Akerna’s control, that could cause actual results or outcomes to differ materially from those discussed in the forward-looking statements. Important factors, among others that may affect actual results or outcomes, include risks and uncertainties disclosed from time to time in Akerna’s filings with the U.S. Securities and Exchange Commission, including those under the heading “Risk Factors” in the Company’s latest annual report on Form 10-K filed on March 31, 2022 and in its subsequent reports. You are cautioned not to place undue reliance on forward-looking statements. All information herein speaks only as of the date hereof, in the case of information about Akerna, or the date of such information, in the case of information from persons other than Akerna. Akerna undertakes no duty to update or revise the information contained herein.

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.

Dated: May 27, 2022

AKERNA CORP.

By: /s/ Jessica Billingsley

Name: Jessica Billingsley

Title: Chief Executive Officer

**FIRST
CERTIFICATE OF AMENDMENT
TO
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AKERNA CORP.**

Akerna Corp. (the “**Corporation**”), a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the “**DGCL**”), does hereby certify:

FIRST: That at a meeting of the Board of Directors of the Corporation (the “**Board**”) resolutions were duly adopted authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware amendments (the “**Amendment**”) to the Corporation’s amended and restated certificate of incorporation (the “**Certificate of Incorporation**”) to increase the Corporation’s authorized shares of common stock from 75,000,000 to 150,000,000.

SECOND:

1. The FOURTH Article of the Corporation’s Certificate of Incorporation is hereby amended to read in its entirety as follows:

“FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 155,000,000, of which 150,000,000 shares shall be common stock of the par value \$0.0001 per share (“Common Stock”) and 5,000,000 shares shall be preferred stock of the par value of \$0.0001 per share (“Preferred Stock”).

A. Preferred Stock. The Board of Directors is expressly granted authority to issue shares of the Preferred Stock, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series (a “Preferred Stock Designation”) and as may be permitted by the DGCL. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, without a separate vote of the holders of the Preferred Stock, or any series thereof, unless a vote of any such holders is required pursuant to any Preferred Stock Designation.

B. Common Stock. (1) Except as otherwise required by law or as otherwise provided in any Preferred Stock Designation, the holders of the Common Stock shall exclusively possess all voting power and each share of Common Stock shall have one vote.

(2) Subject to the prior rights of all classes or series of stock at the time outstanding having prior rights as to dividends or other distributions, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property, or stock as may be declared on the Common Stock by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in all such dividends and other distributions.

(3) Subject to the prior rights of creditors of the Corporation and the holders of all classes or series of stock at the time outstanding having prior rights as to distributions upon liquidation, dissolution or winding up of the Corporation, in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of shares of Common Stock shall be entitled to receive their ratable and proportionate share of the remaining assets of the Corporation.

(4) No holder of shares of Common Stock shall have cumulative voting rights.

(5) No holder of shares of Common Stock shall be entitled to preemptive or subscription rights pursuant to this Amended and Restated Certificate of Incorporation.

C. Power to Sell and Purchase Shares. Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock herein or hereafter authorized to such persons, and for such consideration and for such corporate purposes, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class, and as otherwise permitted by law. Subject to the requirements of applicable law, the Corporation shall have the power to purchase any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration and for such corporate purposes, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class, and as otherwise permitted by law.”

THIRD: That pursuant to a resolution of the Board, a meeting of the stockholders of the Corporation was duly called and held upon notice in accordance with Section 222 of the DGCL at which meeting the necessary number of shares as required by statute were voted in favor of the Amendment.

FOURTH: That the aforesaid Amendment was duly adopted in accordance with the applicable provisions of Section 242 of the DGCL.

FIFTH: The foregoing amendment shall be effective upon filing of this Certificate of Amendment.

SIXTH: Except as herein amended, the Corporation’s Certificate of Incorporation shall remain in full force and effect.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by a duly authorized officer on this May 27, 2022.

AKERNA CORP.

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer



Akerna Announces Corporate Restructuring

Consolidation, Headcount, and Reductions Expected to Yield Material Annualized Cost Savings, effective July 1, 2022

Denver, CO — **May 27, 2022** — Akerna Corp. (Nasdaq: KERN) (“Akerna”), a leading enterprise software company and developer of one of the most comprehensive technology infrastructures, ecosystems, and compliance engines powering the global cannabis industry, today announced that the Company is implementing a plan to reduce its workforce and operating costs in order to focus its resources, accelerate its path to profitability, and create stakeholder value.

“Our sales performance in 2022 has thus far met our expectations. We believe we are showing signs of progress with revenue now at a run rate of \$27m at last filing,” commented Jessica Billingsley, Akerna’s Chief Executive Officer. “While we believe we can continue to grow revenue and continue to reduce expenses over time, we have made the decision to focus our initiatives on our enterprise business and new market expansion of our SMB business, at least until the market conditions and the regulatory environment are in more favorable territory.

“We can see a path to positive cash flows and profitability, and the board and the management team are committed to getting there on an accelerated timetable. While we continue to deal with liquidity concerns, our headcount reduction and additional cost savings measures represent a material annual cost savings. As part of this restructure, executive leadership team has also collectively agreed to a 25% reduction in salary to help support the company’s cost savings initiatives. As we noted on our last earnings call, bookings have been strong and our CARR is \$21.1 million, and we are looking to continue to grow our top-line through a combination of enterprise wins as well as the opportunity we see in new market expansion from the SMB side of the business,” added Ms. Billingsley.

As a result of the corporate restructuring, the company anticipates reporting \$690,000 in total costs in its second quarter of 2022 to implement the reduction in force, including the following cost elements: \$630,000 in severance and associated payroll taxes; \$40,000 in legal costs; and \$20,000 in employee insurance benefits. Of the total cost, \$440,000 in salaries, payroll taxes and benefits costs would have been reported in its second quarter if the reduction in force had not been implemented.

Forward-Looking Statements

Certain statements made in this report are “forward-looking statements” within the meaning of the “safe harbor” provisions of the United States Private Securities Litigation Reform Act of 1995. When used in this press release, the words “estimates,” “projected,” “expects,” “anticipates,” “forecasts,” “plans,” “intends,” “believes,” “seeks,” “may,” “will,” “should,” “future,” “propose” and variations of these words or similar expressions (or the negative versions of such words or expressions) are intended to identify forward-looking statements. Such forward-looking statements include but are not limited to statements regarding our belief that we can continue to grow revenue and reduce costs, our belief that there is a pathway to positive cash flows and profitability, our belief that we can grow our top-line through enterprise wins and expansion into new markets and any statement regarding the future operating results of the Company. These forward-looking statements are not guarantees of future performance, conditions or results, and involve a number of significant known and unknown risks, uncertainties, assumptions, and other important factors, many of which are outside Akerna’s control, that could cause actual results or outcomes to differ materially from those discussed in the forward-looking statements. Important factors, among others that may affect actual results or outcomes, include our ability to continue as a going concern given our current liquidity risks and the risks and uncertainties disclosed from time to time in Akerna’s filings with the U.S. Securities and Exchange Commission, including those under the heading “Risk Factors” in the Company’s latest annual report on Form 10-K filed on March 31, 2022 and in its subsequent reports. You are cautioned not to place undue reliance on forward-looking statements. All information herein speaks only as of the date hereof, in the case of information about Akerna, or the date of such information, in the case of information from persons other than Akerna. Akerna undertakes no duty to update or revise the information contained herein.

About Akerna

Akerna (Nasdaq: KERN) is an enterprise SaaS company focused on compliantly serving the cannabis, hemp, and CBD industry. First launched in 2010, Akerna has tracked more than \$30 billion in cannabis sales to date and is the first cannabis software company listed on Nasdaq. Using connected data and information to propel the cannabis industry forward, Akerna empowers businesses, governments, patients, and consumers to make smart decisions.

The Company's cornerstone technology, MJ Platform, one of the world's leading cannabis infrastructure as a service platform, powers retailers, manufacturers, brands, distributors, and cultivators. Akerna also offers a complete suite of professional consulting services and data analytics for businesses as well as solo sciences, Leaf Data Systems, Trellis, Ample Organics, Viridian Sciences and 365 Cannabis.

To be included on the Company's email distribution list, please sign up at <https://ir.akerna.com/news-events/email-alerts>

For more information, visit <https://www.akerna.com/>.

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