

**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:  
October 9, 2023

**Gaucha Group Holdings, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
State of  
Incorporation

**001-40075**  
Commission  
File Number

**52-2158952**  
IRS Employer  
Identification No.

**112 NE 41st Street, Suite 106**  
**Miami, FL 33137**  
Address of principal executive offices

**212-739-7700**  
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 (see General Instruction A.2. below):

- ☐ Written communication 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 communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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. ☐

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	VINO	The Nasdaq Stock Market LLC

**Item 1.01 Entry into a Material Definitive Agreement**

As previously reported on our Current Report on Form 8-K filed on February 21, 2023, Gaucha Group Holdings, Inc. (the “Company,” “we,” “us” or “our”), and an institutional investor (the “Holder”) entered into that certain Securities Purchase Agreement, dated as of February 21, 2023 (the “Securities Purchase Agreement”) and the Company issued to the Holder a senior secured convertible note (the “Note”) and warrant to purchase 3,377,099 shares of common stock of the Company (the “Warrant” and together with the Securities Purchase Agreement and the Note, the “Note Documents”). For the full description of the Note Documents, please refer to our Current Report on Form 8-K and the exhibits attached thereto as filed with the SEC on February 21, 2023.

On August 11, 2023, the Company and the Holder entered into an agreement to, among other things, waive certain provisions of the Note (the “Letter Agreement”). For the full description of the Letter Agreement, please refer to our Current Report on Form 8-K and the exhibits attached thereto as filed with the SEC on August 11, 2023.

On October 5, 2023, the Company and the Holder entered into the First Amendment to Senior Secured Convertible Note (the “First Amendment”) which amends the Note and lowers the Floor Price from \$2.70 to \$0.40.

On October 9, 2023, the Company and the Holder entered into the Second Amendment to Senior Secured Convertible Note (the “Second Amendment”) which amends the Note and reiterates that the issuance of shares pursuant to the Note, Note Documents, First Amendment and Second Amendment are subject to compliance with Nasdaq Rule 5635.

All terms not defined herein shall refer to the defined terms in the Note Documents.

The foregoing description of the Second Amendment is a summary only, does not purport to be complete and is qualified in its entirety by the full text of the document, a copy

of which is attached as Exhibit 10.1, and incorporated herein by reference.

The representations, warranties and covenants contained in the agreements described in Item 1.01 of this Current Report on Form 8-K are not intended to be a source of factual, business or operational information about the Company; were made only for purposes of such agreements and as of specific dates; were solely for the benefit of the parties to such agreements and may be subject to limitations agreed upon by the parties, including being qualified by disclosures for the purpose of allocating contractual risk between the parties instead of establishing matters as facts; and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors or security holders. Accordingly, investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties.

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### **Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference into this Item 2.03 in its entirety.

### **Item 3.02 Unregistered Sales of Equity Securities.**

The information set forth in Item 1.01 of this Current Report on Form 8-K with respect to the Second Amendment is incorporated by reference into Item 3.02 of this Current Report on Form 8-K.

The shares of common stock that have been and may be issued under the Note Documents, the Letter Agreement, the First Amendment, and the Second Amendment are being offered and sold in a transaction exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), in reliance on Section 4(a)(2) thereof and/or Rule 506(b) of Regulation D thereunder. The Company filed a Form D with the SEC on or about March 3, 2023.

### **Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

10.1 104	<a href="#"><u>Second Amendment to Senior Secured Convertible Note, dated as of October 9, 2023, by and among Gaucho Group Holdings, Inc. and the holder listed therein</u></a> 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 caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 10th day of October 2023.

**Gaucho Group Holdings, Inc.**

By: /s/ Scott L. Mathis

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Scott L. Mathis, President & CEO

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## SECOND AMENDMENT TO SENIOR SECURED CONVERTIBLE NOTE

This Second Amendment to Senior Secured Convertible Note (this “Amendment”) dated as of October 9, 2023 (the “Effective Date”) is entered into by and between Gaucha Group Holdings Inc., a Delaware corporation (the “Company”), and [REDACTED] (the “Purchaser”).

### RECITALS

A. The Purchaser and the Company entered into that certain Securities Purchase Agreement dated as of February 21, 2023 (the “Original Agreement”), pursuant to which the Company agreed to sell and issue to the Purchaser, in a series of closings, a senior secured convertible note, as amended on October 5, 2023 (the “Original Note”), convertible into shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), in a principal amount of \$5,617,978 and warrants (the “Warrants”) to purchase shares of the Company’s Common Stock.

B. Pursuant to the Original Agreement, the Company issued to the Purchaser the Original Note in a principal amount of \$5,617,978, and a Warrant to purchase up to 3,377,099 shares of Common Stock, on February 21, 2023.

C. The Purchaser and the Company desire to amend the Original Note pursuant to and in accordance with the terms set forth herein.

D. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Original Note and Original Agreement.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and the covenants and agreements herein contained, and for other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

#### 1. Amendment.

(a) Section 3(d)(ii) of the Original Note is hereby amended and restated in its respective entirety as follows:

Principal Market Regulation. The Company shall not issue any shares of Common Stock upon conversion of this Note or otherwise pursuant to the terms of this Note if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion of the Notes or otherwise pursuant to the terms of this Note (as the case may be) without breaching the Company’s obligations under the rules or regulations of the Principal Market (the number of shares which may be issued without violating such rules and regulations, including rules related to the aggregate of offerings under NASDAQ Listing Rule 5635(d), the “Exchange Cap”), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Holder. Until such approval or such written opinion is obtained, no Buyer shall be issued in the aggregate, upon conversion or exercise (as the case may be) of any Notes or otherwise pursuant to the terms of the Notes, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap as of the Issuance Date multiplied by (ii) the quotient of (1) the original principal amount of Notes issued to such Buyer pursuant to the Securities Purchase Agreement on the Closing Date (as defined in the Securities Purchase Agreement) divided by (2) the aggregate original principal amount of all Notes issued to the Buyers pursuant to the Securities Purchase Agreement on the Closing Date (with respect to each Buyer, the “Exchange Cap Allocation”). In the event that any Buyer shall sell or otherwise transfer any of such Buyer’s Notes, the transferee shall be allocated a pro rata portion of such Buyer’s Exchange Cap Allocation with respect to such portion of such Notes so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation so allocated to such transferee. Upon conversion in full of a holder’s Notes, the difference (if any) between such holder’s Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder upon such holder’s conversion in full of such Notes shall be allocated, to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the shares of Common Stock underlying the Notes then held by each such holder of Notes. At any time after the Stockholder Meeting Deadline (as defined in the Securities Purchase Agreement), in the event that the Company is prohibited from issuing shares of Common Stock pursuant to this Section 3(d)(i) (the “Exchange Cap Shares”), the Company shall pay cash in exchange for the cancellation of such portion of this Note convertible into such Exchange Cap Shares at a price equal to the sum of (i) the product of (x) such number of Exchange Cap Shares and (y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Conversion Notice with respect to such Exchange Cap Shares to the Company and ending on the date of such issuance and payment under this Section 3(d)(i) and (ii) to the extent of any Buy-In related thereto, any Buy-In Payment Amount, any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection therewith (collectively, the “Exchange Cap Share Cancellation Amount”).

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#### 2. Miscellaneous.

(a) Waivers and Amendments. Any provision of this Amendment may be amended, waived or modified only upon the written consent of the Company and the Purchaser.

(b) Entire Agreement. This Amendment together with the Original Note constitutes the entire agreement of the Company and the Purchaser with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the Company and Purchaser with respect to the subject matter hereof. Except as amended by this Amendment, the Original Note shall continue in full force and effect.

(c) Note in Full Force and Effect. Except as expressly modified as contemplated hereby, the Original Note, and all of the other Transaction Documents, as currently in effect, is hereby confirmed to be in full force and effect in accordance with its terms and is hereby ratified and confirmed. In furtherance thereof, the Company hereby affirms the continued effectiveness of all security interests granted by the Company, its subsidiaries and any other affiliates, as applicable, under the Transaction Documents, until the Note has been repaid, in full. This Amendment is intended by the parties to constitute an amendment and modification to, and otherwise to constitute a continuation of, the Note, and is not intended by either party and shall not be construed to constitute a novation thereof or of any obligation of any party thereunder.

(d) Counterparts. This Amendment may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Facsimile copies of signed signature pages will be deemed binding originals.

*[Remainder of page intentionally left blank; signature page follows.]*

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IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above.

GAUCHO GROUP HOLDINGS INC.,  
a Delaware corporation

Name:

Signature Page to Second Amendment to Original Note

PURCHASER:

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Signature Page to Second Amendment to Original Note