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

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**FORM 10-Q**

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[Mark One]

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

For the Quarterly Period Ended June 30, 2023

OR

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

Commission File No. 001-33057

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**CATALYST PHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

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

**355 Alhambra Circle  
Suite 801  
Coral Gables, Florida**  
(Address of principal executive offices)

**76-0837053**  
(IRS Employer  
Identification No.)

**33134**  
(Zip Code)

**Registrant's telephone number, including area code: (305) 420-3200**

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

<u>Title of Each Class</u>	<u>Ticker Symbol</u>	<u>Name of Exchange on Which Registered</u>
Common Stock, par value \$0.001 per share	CPRX	NASDAQ Capital Market

Indicate by checkmark 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 report(s)), 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 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 definitions of "accelerated filer", "large accelerated filer", "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer	<input type="checkbox"/>	Accelerated Filer	<input checked="" 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 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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date 106,582,857 shares of common stock, \$0.001 par value per share, were outstanding as of August 7, 2023.

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CATALYST PHARMACEUTICALS, INC.

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**CATALYST PHARMACEUTICALS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
*(in thousands, except share data)*

	<u>June 30, 2023</u>	<u>December 31, 2022</u>
<b>ASSETS</b>		
Current Assets:		
Cash and cash equivalents	\$ 178,787	\$ 298,395
Accounts receivable, net	42,796	10,439
Inventory	10,751	6,805
Prepaid expenses and other current assets	8,634	5,167
Total current assets	240,968	320,806
Operating lease right-of-use asset	2,641	2,770
Property and equipment, net	1,203	847
License and acquired intangibles, net	175,595	32,471
Deferred tax assets, net	23,489	18,736
Total assets	<u>\$ 443,896</u>	<u>\$ 375,630</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current Liabilities:		
Accounts payable	\$ 4,421	\$ 3,975
Accrued expenses and other liabilities	48,082	53,613
Total current liabilities	52,503	57,588
Operating lease liability, net of current portion	3,376	3,557
Other non-current liabilities	12,723	14,064
Total liabilities	68,602	75,209
Commitments and contingencies (Note 12)		
Stockholders' equity:		
Preferred stock, \$0.001 par value, 5,000,000 shares authorized: none issued and outstanding at June 30, 2023 and December 31, 2022	—	—
Common stock, \$0.001 par value, 200,000,000 shares authorized; 106,501,259 shares and 105,263,031 shares issued and outstanding at June 30, 2023 and December 31, 2022, respectively	107	105
Additional paid-in capital	257,976	250,430
Retained earnings	117,192	49,862
Accumulated other comprehensive income (loss) (Note 4)	19	24
Total stockholders' equity	375,294	300,421
Total liabilities and stockholders' equity	<u>\$ 443,896</u>	<u>\$ 375,630</u>

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

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**CATALYST PHARMACEUTICALS, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (unaudited)**  
*(in thousands, except share data)*

	For the Three Months Ended		For the Six Months Ended	
	June 30,		June 30,	
	2023	2022	2023	2022
Revenues:				
Product revenue, net	\$ 99,477	\$ 53,049	\$ 184,781	\$ 96,082
License and other revenue	105	64	167	120
Total revenues	<u>99,582</u>	<u>53,113</u>	<u>184,948</u>	<u>96,202</u>
Operating costs and expenses:				
Cost of sales (a)	12,045	7,643	21,991	13,533
Research and development	3,954	3,983	7,516	7,386
Selling, general and administrative (a)	28,396	12,918	58,114	29,348
Amortization of intangible assets	8,488	—	15,019	—
Total operating costs and expenses	<u>52,883</u>	<u>24,544</u>	<u>102,640</u>	<u>50,267</u>
Operating income	46,699	28,569	82,308	45,935
Other income (expense), net	1,813	(324)	3,517	(231)
Net income before income taxes	48,512	28,245	85,825	45,704
Income tax provision	10,750	6,626	18,495	10,844
Net income	<u>\$ 37,762</u>	<u>\$ 21,619</u>	<u>\$ 67,330</u>	<u>\$ 34,860</u>
Net income per share:				
Basic	<u>\$ 0.36</u>	<u>\$ 0.21</u>	<u>\$ 0.64</u>	<u>\$ 0.34</u>
Diluted	<u>\$ 0.33</u>	<u>\$ 0.20</u>	<u>\$ 0.59</u>	<u>\$ 0.32</u>
Weighted average shares outstanding:				
Basic	<u>106,258,790</u>	<u>102,795,600</u>	<u>105,911,936</u>	<u>102,788,719</u>
Diluted	<u>113,673,534</u>	<u>109,264,730</u>	<u>113,840,155</u>	<u>109,149,185</u>
Net income	\$ 37,762	\$ 21,619	\$ 67,330	\$ 34,860
Other comprehensive income (Note 4):				
Unrealized gain (loss) on available-for-sale securities, net of tax of (\$3), (\$101), \$2 and (\$7), respectively	8	323	(5)	18
Comprehensive income	<u>\$ 37,770</u>	<u>\$ 21,942</u>	<u>\$ 67,325</u>	<u>\$ 34,878</u>

(a) exclusive of amortization of intangible assets

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

**CATALYST PHARMACEUTICALS, INC.**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (unaudited)**  
**For the three and six months ended June 30, 2023 and 2022**  
*(in thousands)*

	Preferred Stock	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total
		Shares	Amount				
<b>Balance at December 31, 2022</b>	\$ —	105,263	\$ 105	\$250,430	\$ 49,862	\$ 24	\$300,421
Issuance of stock options for services	—	—	—	2,177	—	—	2,177
Exercise of stock options for common stock	—	548	1	1,269	—	—	1,270
Amortization of restricted stock for services	—	—	—	715	—	—	715
Issuance of common stock upon vesting of restricted stock units, net	—	127	—	(477)	—	—	(477)
Other comprehensive gain (loss)	—	—	—	—	—	(13)	(13)
Net income	—	—	—	—	29,568	—	29,568
<b>Balance at March 31, 2023</b>	—	105,938	106	254,114	79,430	11	333,661
Issuance of stock options for services	—	—	—	2,576	—	—	2,576
Exercise of stock options for common stock	—	557	1	616	—	—	617
Amortization of restricted stock for services	—	—	—	722	—	—	722
Issuance of common stock upon vesting of restricted stock units, net	—	6	—	(52)	—	—	(52)
Other comprehensive gain (loss)	—	—	—	—	—	8	8
Net income	—	—	—	—	37,762	—	37,762
<b>Balance at June 30, 2023</b>	\$ —	106,501	\$ 107	\$257,976	\$117,192	\$ 19	\$375,294

	Preferred Stock	Common Stock		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income (Loss)	Total
		Shares	Amount				
<b>Balance at December 31, 2021</b>	\$ —	102,993	\$ 103	\$233,186	\$ (26,310)	\$ (148)	\$206,831
Issuance of stock options for services	—	—	—	1,623	—	—	1,623
Exercise of stock options for common stock	—	364	—	1,102	—	—	1,102
Amortization of restricted stock for services	—	—	—	280	—	—	280
Repurchase of common stock	—	(400)	—	—	(2,551)	—	(2,551)
Other comprehensive gain (loss)	—	—	—	—	—	(305)	(305)
Net income	—	—	—	—	13,241	—	13,241
<b>Balance at March 31, 2022</b>	—	102,957	103	236,191	(15,620)	(453)	220,221
Issuance of stock options for services	—	—	—	1,594	—	—	1,594
Exercise of stock options for common stock	—	345	—	1,282	—	—	1,282
Amortization of restricted stock for services	—	—	—	429	—	—	429
Repurchase of common stock	—	(600)	—	—	(4,356)	—	(4,356)
Issuance of common stock upon vesting of restricted stock units, net	—	7	—	(20)	—	—	(20)
Other comprehensive gain (loss)	—	—	—	—	—	323	323
Net income	—	—	—	—	21,619	—	21,619
<b>Balance at June 30, 2022</b>	\$ —	102,709	\$ 103	\$239,476	\$ 1,643	\$ (130)	\$241,092

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

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**CATALYST PHARMACEUTICALS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS (unaudited)**  
*(in thousands)*

	<b>For the Six Months Ended June 30,</b>	
	<b>2023</b>	<b>2022</b>
<b>Operating Activities:</b>		
Net income	\$ 67,330	\$ 34,860
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation	151	71
Stock-based compensation	6,190	3,926
Amortization of intangible assets	15,019	—
Deferred taxes	(4,758)	2,718
Change in accrued interest and accretion of discount on investments	—	9
Reduction in the carrying amount of right-of-use asset	129	122
Realized loss on sale of available-for-sale securities	—	633
Acquired inventory samples expensed from asset acquisition	130	—
(Increase) decrease in:		
Accounts receivable, net	(32,357)	(2,968)
Inventory	154	20
Prepaid expenses and other current assets	(1,891)	18
Increase (decrease) in:		
Accounts payable	446	(453)
Accrued expenses and other liabilities	(7,553)	(4,137)
Operating lease liability	(166)	(150)
Net cash provided by (used in) operating activities	<u>42,824</u>	<u>34,669</u>
<b>Investing Activities:</b>		
Purchases of property and equipment	(74)	(29)
Payment in connection with asset acquisition	(162,293)	—
Proceeds from sale of available-for-sale securities	—	9,370
Net cash provided by (used in) investing activities	<u>(162,367)</u>	<u>9,341</u>
<b>Financing Activities:</b>		
Payment of employee withholding tax related to stock-based compensation	(529)	(20)
Proceeds from exercise of stock options	1,887	2,384
Repurchase of common stock	—	(6,907)
Payment of liabilities arising from asset acquisition	(1,423)	—
Net cash provided by (used in) financing activities	<u>(65)</u>	<u>(4,543)</u>
Net increase (decrease) in cash and cash equivalents	(119,608)	39,467
Cash and cash equivalents – beginning of period	298,395	171,445
Cash and cash equivalents – end of period	<u>\$ 178,787</u>	<u>\$ 210,912</u>
<b>Supplemental disclosures of cash flow information:</b>		
Cash paid for income taxes	\$ 27,821	\$ 5,844
<b>Non-cash investing and financing activities:</b>		
Liabilities arising from asset acquisition	\$ 1,915	\$ —

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

**CATALYST PHARMACEUTICALS, INC.**  
**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

**1. Organization and Description of Business.**

Catalyst Pharmaceuticals, Inc. and subsidiary (collectively, the Company) is a commercial-stage biopharmaceutical company focused on in-licensing, developing, and commercializing novel medicines for patients living with rare diseases and diseases that are difficult to treat. With exceptional patient focus, the Company is committed to developing and commercializing innovative first-in-class medicines that address rare neurological and epileptic diseases.

The Company's New Drug Application for FIRDAPSE<sup>®</sup> (amifampridine) Tablets 10 mg for the treatment of adults with Lambert-Eaton myasthenic syndrome (LEMS) was approved in 2018 by the U.S. Food & Drug Administration (FDA), and FIRDAPSE<sup>®</sup> is commercially available in the United States as a treatment for adults with LEMS. Further, Canada's national healthcare regulatory agency, Health Canada, approved the use of FIRDAPSE<sup>®</sup> for the treatment of adult patients in Canada with LEMS in 2020 and FIRDAPSE<sup>®</sup> is commercially available in Canada for the treatment of patients with LEMS through a license and supply agreement with KYE Pharmaceuticals. Finally, in the third quarter of 2022, the FDA approved the Company's sNDA approving an expansion of the FIRDAPSE<sup>®</sup> label to include pediatric patients (ages six and older).

On December 17, 2022, the Company entered into an asset purchase agreement with Eisai Co., Ltd. (Eisai) for the acquisition of the United States rights to FYCOMPA<sup>®</sup> (perampanel) CIII, a prescription medication used alone or in combination with other medicines to treat focal onset seizures with or without secondarily generalized seizures in people with epilepsy aged four and older and with other medicines to treat primary generalized tonic-clonic seizures in people with epilepsy aged 12 and older. The Company closed the acquisition of FYCOMPA<sup>®</sup> on January 24, 2023 and the Company is marketing FYCOMPA<sup>®</sup> in the United States.

Since inception, the Company has devoted substantially all its efforts to business planning, research and development, recruiting management and technical staff, acquiring operating assets, raising capital, and selling its products. The Company incurred operating losses in each period from inception and started reporting operating income during the year ended December 31, 2019. The Company has been able to fund its cash needs to date through offerings of its securities and from revenues from sales of its products. See Note 15 (Stockholders' Equity).

*Capital Resources*

Based on forecasts of available cash, the Company believes that it has sufficient resources to support the currently anticipated operations for at least the next 12 months from the date of this report.

The Company may raise funds in the future through public or private equity offerings, debt financings, corporate collaborations, governmental research grants or other means. The Company may also seek to raise new capital to fund additional business development activities, even if it has sufficient funds for its planned operations. Any sale by the Company of additional equity or convertible debt securities could result in dilution to the Company's current stockholders. There can be no assurance that any required additional funding will be available to the Company at all or available on terms acceptable to the Company. Further, to the extent that the Company raises additional funds through collaborative arrangements, it may be necessary to relinquish some rights to the Company's drug candidates or grant sublicenses on terms that are not favorable to the Company. If the Company is not able to secure additional funding when needed, the Company may have to delay, reduce the scope of, or eliminate one or more research and development programs, which could have an adverse effect on the Company's business.

*Risks and Uncertainties*

There are numerous aspects of the coronavirus (COVID-19) pandemic that have adversely affected the Company's business since the beginning of the pandemic. The Company closely monitors the impact of the pandemic on all aspects of its business and takes steps, wherever possible, to lessen those impacts. However, the Company is unable to predict the impact that the coronavirus pandemic will have on its business in future periods.

**2. Basis of Presentation and Significant Accounting Policies.**

- a. INTERIM FINANCIAL STATEMENTS.** The accompanying unaudited interim consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP), and pursuant to the rules and regulations of the Securities and Exchange Commission (SEC) for reporting of interim financial information. Pursuant to such rules and regulations, certain information and note disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been omitted. The consolidated balance sheet as of December 31, 2022 included in this Form 10-Q was derived from the audited financial statements and does not include all disclosures required by U.S. GAAP.

In the opinion of management, the accompanying unaudited interim consolidated financial statements of the Company contain all adjustments (consisting of only normal recurring adjustments) necessary to present fairly the financial position of the Company as of the dates and for the periods presented. Accordingly, these consolidated statements should be read in conjunction with the financial statements and notes thereto for the year ended December 31, 2022 included in the 2022 Annual Report on Form 10-K filed by the Company with the SEC. The results of operations for the six months ended June 30, 2023 are not necessarily indicative of the results to be expected for any future period or for the full 2023 fiscal year.

- b. PRINCIPLES OF CONSOLIDATION.** The consolidated financial statements include the Company's accounts and those of its wholly-owned subsidiary, Catalyst Pharmaceuticals Ireland, Ltd. (Catalyst Ireland). All intercompany accounts and transactions have been eliminated in consolidation. Catalyst Ireland was organized in 2017.
- c. USE OF ESTIMATES.** The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.
- d. CASH AND CASH EQUIVALENTS.** The Company considers all highly liquid instruments, purchased with an original maturity of three months or less, to be cash equivalents. Cash equivalents consist mainly of money market funds and U.S. Treasuries. The Company has substantially all its cash and cash equivalents deposited with one financial institution. These amounts exceed federally insured limits.
- e. INVESTMENTS.** The Company invests in high credit-quality instruments in order to obtain higher yields on its cash available for investments. At June 30, 2023 and December 31, 2022, investments consisted of U.S. Treasuries. Such investments are not insured by the Federal Deposit Insurance Corporation.

The U.S. Treasuries held at June 30, 2023 are classified as available-for-sale securities. The Company classifies U.S. Treasuries with stated maturities of greater than three months and less than one year in short-term investments. U.S. Treasuries with stated maturities greater than one year are classified as non-current investments in its consolidated balance sheets. There are no short-term or non-current investments as of June 30, 2023 and December 31, 2022.

The Company records available-for-sale securities at fair value with unrealized gains and losses reported in accumulated other comprehensive income (loss) (in stockholders' equity). Realized gains and losses are included in other income, net in the consolidated statements of operations and comprehensive income, and are derived using the specific identification method for determining the cost of securities sold. Interest income is recognized when earned and is included in other income, net in the consolidated statements of operations and comprehensive income. The Company recognizes a charge when the declines in the fair value below the amortized cost basis of its available-for-sale securities are judged to be as a result of a credit loss. The Company considers various factors in determining whether to recognize an allowance for credit losses including whether the Company intends to sell the security or whether it is more likely than not that the Company would be required to sell the security before recovery of the amortized cost basis. If the unrealized loss of an available-for-sale debt security is determined to be a result of a credit loss the Company would recognize an allowance and the corresponding credit loss would be included in the consolidated statements of operations and comprehensive income. The Company has not recorded an allowance for credit loss on its available-for-sale securities. See Note 3 (Investments).

- f. ACCOUNTS RECEIVABLE, NET.** Accounts receivable is recorded net of customer allowance for distribution fees, trade discounts, prompt payment discounts, chargebacks and expected credit losses. Allowances for distribution fees, trade discounts, prompt payment discounts and chargebacks are based on contractual terms. The Company estimates the allowance for expected credit losses based on existing contractual payment terms, actual payment patterns of its customers, current and future economic and market conditions and individual customer circumstances. At June 30, 2023 and December 31, 2022, the Company determined that an allowance for expected credit losses was not required. No accounts were written off during the periods presented.

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### 2. Basis of Presentation and Significant Accounting Policies (continued).

- g. **INVENTORY.** Inventories are stated at the lower of cost or net realizable value. Inventories consist of raw materials, work-in-process and finished goods. Costs to be capitalized as inventories primarily include third party manufacturing costs and other overhead costs. Cost is determined using a standard cost method, which approximates actual cost, and assumes a first-in, first out (FIFO) flow of goods. If information becomes available that suggests that inventories may not be realizable, the Company may be required to expense a portion or all of the previously capitalized inventories.

Products that have been approved by the FDA or other regulatory authorities, such as FIRDAPSE<sup>®</sup> and FYCOMPA<sup>®</sup>, are also used in clinical programs to assess the safety and efficacy of the products for usage in treating diseases that have not been approved by the FDA or other regulatory authorities. The forms of FIRDAPSE<sup>®</sup> and FYCOMPA<sup>®</sup> utilized for both commercial and clinical programs is identical and, as a result, the inventory has an “alternative future use” as defined in authoritative guidance. Raw materials associated with clinical development programs are included in inventory and charged to research and development expense when the product enters the research and development process and no longer can be used for commercial purposes and, therefore, does not have an “alternative future use”.

The Company evaluates for potential excess inventory by analyzing current and future product demand relative to the remaining product shelf life. The Company builds demand forecasts by considering factors such as, but not limited to, overall market potential, market share, market acceptance, and patient usage.

- h. **PREPAID EXPENSES AND OTHER CURRENT ASSETS.** Prepaid expenses and other current assets consist primarily of prepaid manufacturing, prepaid tax, prepaid insurance, prepaid subscription fees, prepaid research fees, prepaid commercialization expenses, prepaid co-pay assistance program, amounts due from collaborative and license arrangements and prepaid conference and travel expenses. Prepaid research fees consist of advances for the Company’s product development activities, including contracts for pre-clinical studies, clinical trials and studies, regulatory affairs and consulting. Prepaid manufacturing consists of advances for the Company’s drug manufacturing activities. Such advances are recorded as expense as the related goods are received or the related services are performed.

- i. **PROPERTY AND EQUIPMENT, NET.** Property and equipment are recorded at cost less accumulated depreciation. Depreciation is calculated to amortize the depreciable assets over their useful lives using the straight-line method and commences when the asset is placed in service. Leasehold improvements are amortized on a straight-line basis over the term of the lease or the estimated life of the improvement, whichever is shorter. Useful lives generally range from three to five years for computer equipment and software, from five to seven years for furniture and equipment, and from five to ten years for leasehold improvements. Expenditures for repairs and maintenance are charged to expenses as incurred.

- j. **BUSINESS COMBINATIONS AND ASSET ACQUISITIONS.** The Company evaluates acquisitions of assets and other similar transactions to assess whether or not the transaction should be accounted for as a business combination or asset acquisition by first applying a screen to determine if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets. If the screen is met, the transaction is accounted for as an asset acquisition. If the screen is not met, further determination is required as to whether or not the Company has acquired inputs and processes that have the ability to create outputs, which would meet the requirements of a business. If determined to be an asset acquisition, the Company accounts for the transaction under ASC 805-50, which requires the acquiring entity in an asset acquisition to recognize assets acquired and liabilities assumed based on the cost to the acquiring entity on a relative fair value basis, which includes transaction costs in addition to consideration given. Goodwill is not recognized in an asset acquisition and any excess consideration transferred over the fair value of the net assets acquired is allocated to the identifiable assets based on relative fair values. Contingent consideration payments in asset acquisitions are recognized when the contingency is resolved and the consideration is paid or becomes payable.

Refer to Notes 12 (Commitments and Contingencies) and 13 (Agreements) for further discussion on the Company’s exclusive license agreement with Jacobus Pharmaceutical Company, Inc (Jacobus), for the rights to develop and commercialize RUZURGI<sup>®</sup> in the United States and Mexico, which the Company accounted for as an asset acquisition under ASC 805-50. Refer to Note 13 (Agreements) for further discussion on the Company’s acquisition of the U.S. rights of FYCOMPA<sup>®</sup> from Eisai Co., Ltd, which the Company accounted for as an asset acquisition under ASC 805-50. See also Note 17 (Subsequent Events) for a discussion of the Company’s recent acquisition of a license in North America for vamorolone.

- k. **INTANGIBLE ASSETS, NET.** Identifiable intangible assets with a finite life are comprised of licensed rights and other acquired intangible assets and are amortized on a straight-line basis over the respective estimated useful life.

The Company reviews intangible assets with finite lives for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If indicators of impairment exist, an impairment test is performed to assess the recoverability of the affected assets by determining whether the carrying amount of such assets exceeds the undiscounted expected future cash flows. If the affected assets are deemed not recoverable, the Company would estimate the fair value of the assets and record an impairment loss.

2. **Basis of Presentation and Significant Accounting Policies (continued).**

- i. FAIR VALUE OF FINANCIAL INSTRUMENTS.** The Company’s financial instruments consist of cash and cash equivalents, investments, accounts receivable, accounts payable, and accrued expenses and other liabilities. At June 30, 2023 and December 31, 2022, the fair value of these instruments approximated their carrying value.
- m. FAIR VALUE MEASUREMENTS.** Current Financial Accounting Standards Board (FASB) fair value guidance emphasizes that fair value is a market-based measurement, not an entity-specific measurement. Therefore, a fair value measurement should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, current FASB guidance establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity’s own assumptions that it believes market participants would use in pricing assets or liabilities (unobservable inputs classified within Level 3 of the hierarchy).

Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date. Level 2 inputs are inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs may include quoted prices for similar assets and liabilities in active markets, as well as inputs that are observable for the asset or liability (other than quoted prices), such as interest rates, foreign exchange rates, and yield curves that are observable at commonly quoted intervals. Level 3 inputs are unobservable inputs for the asset or liability, which are typically based on an entity’s own assumptions, as there is little, if any, related market activity.

In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on the lowest level input that is significant to the fair value measurement in its entirety. The Company’s assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

<b>Fair Value Measurements at Reporting Date Using (in thousands)</b>				
	<b>Balances as of June 30, 2023</b>	<b>Quoted Prices in Active Markets for Identical Assets/Liabilities (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>
<i>Cash and cash equivalents:</i>				
Money market funds	\$ 68,210	\$ 68,210	\$ —	\$ —
U.S. Treasuries	\$ 91,716	\$ 91,716	\$ —	\$ —
	<b>Balances as of December 31, 2022</b>	<b>Quoted Prices in Active Markets for Identical Assets/Liabilities (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>
<i>Cash and cash equivalents:</i>				
Money market funds	\$ 168,853	\$ 168,853	\$ —	\$ —
U.S. Treasuries	\$ 105,442	\$ 105,442	\$ —	\$ —

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### 2. Basis of Presentation and Significant Accounting Policies (continued).

- n. **OPERATING LEASES.** The Company determines if an arrangement is a lease at inception. Operating leases are included in operating lease right-of-use (ROU) assets, other current liabilities, and operating lease liabilities on its consolidated balance sheets. Operating lease ROU assets and operating lease liabilities are recognized based on the present value of the future minimum lease payments over the lease term at commencement date. As the Company's lease does not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at commencement date in determining the present value of future payments. The operating lease ROU asset also includes any lease payments made and excludes lease incentives and initial direct costs incurred. The Company's lease term includes options to extend or terminate the lease, however, these options are not considered in the lease term as the Company is not reasonably certain that it will exercise these options. Lease expense for minimum lease payments is recognized on a straight-line basis over the lease term. The Company has a lease agreement with lease and non-lease components, which are accounted for separately.
- o. **SHARE REPURCHASES.** In March 2021, the Company's Board of Directors approved a share repurchase program that authorizes the repurchase of up to \$40 million of the Company's common stock.

The Company accounts for share repurchases by charging the excess of the repurchase price over the repurchased common stock's par value entirely to retained earnings. All repurchased shares are retired and become authorized but unissued shares. The Company accrues for the shares purchased under the share repurchase plan based on the trade date. The Company may terminate or modify its share repurchase program at any time.

- p. **REVENUE RECOGNITION.**

#### ***Product Revenues:***

To determine revenue recognition for arrangements that are within the scope of Accounting Standards Codification (ASC) Topic 606 – Revenue from Contracts with Customers (Topic 606), the Company performs the following five steps: (i) identify the contract(s) with a customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations in the contract, and (v) recognize revenue when (or as) the entity satisfies a performance obligation. The Company assesses the goods or services promised within each contract and determines those that are performance obligations by assessing whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied. For a complete discussion of accounting for product revenue, see Product Revenue, Net below.

The Company also may generate revenues from payments received under collaborative and license agreements. Collaborative and license agreement payments may include nonrefundable fees at the inception of the agreements, contingent payments for specific achievements designated in the agreements, and/or net profit-sharing payments on sales of products resulting from the collaborative and license arrangements. For a complete discussion of accounting for collaborative and licensing arrangements, see Revenues from Collaboration and Licensing Arrangements below.

The Company recognizes revenue when its customer for FIRDAPSE<sup>®</sup> and its customers for FYCOMPA<sup>®</sup> obtain title of the promised goods, in an amount that reflects the consideration to which the Company expects to be entitled in exchange for these goods. For FIRDAPSE<sup>®</sup>, subsequent to receiving FDA approval, the Company entered into an arrangement with one distributor (the Customer), which is the exclusive distributor of FIRDAPSE<sup>®</sup> in the United States. The Customer subsequently resells FIRDAPSE<sup>®</sup> to a small group of exclusive specialty pharmacies (SPs) whose dispensing activities for patients with specific payors may result in government-mandated or privately negotiated rebate obligations for the Company with respect to the purchase of FIRDAPSE<sup>®</sup>. The Company sells FYCOMPA<sup>®</sup>, through a Transition Service Agreement with Eisai, directly to major wholesalers, specialty pharmaceutical distributors, managed care organizations, and government agencies. FYCOMPA<sup>®</sup> customer contracts generally consist of both a master agreement, which is signed by the Company and its customer, and a customer submitted purchase order, which is governed by the terms and conditions of the master agreement. These customers purchase FYCOMPA<sup>®</sup> product, through the Transition Service Agreement, by direct channel sales from the Company or by indirect channel sales through various distribution channels.

**Product Revenue, Net:** The Company sells FIRDAPSE<sup>®</sup> to the Customer (its exclusive distributor) who subsequently resells FIRDAPSE<sup>®</sup> to both a small group of SPs who have exclusive contracts with the Company to distribute the Company's products to patients and potentially to medical centers or hospitals on an emergency basis. The Company sells FYCOMPA<sup>®</sup>, through the Transition Service Agreement, directly to customers subject to both master agreements and purchase orders. In addition to the distribution agreement with its Customer and FYCOMPA<sup>®</sup> customer contracts, the Company enters into arrangements with health care providers and payors that provide for government-mandated and/or privately negotiated rebates, chargebacks, and discounts with respect to the purchase of the Company's products.

**2. Basis of Presentation and Significant Accounting Policies (continued).**

The Company recognizes revenue on product sales when the Customer obtains control of the Company’s product, which occurs at a point in time (upon delivery or upon dispense to patient). Product revenue is recorded net of applicable reserves for variable consideration, including discounts and allowances. The Company’s payment terms range between 15 and 30 days.

Shipping and handling costs for product shipments occur prior to the customer obtaining control of the goods and are recorded in cost of sales.

If taxes should be collected from the Customer relating to product sales and remitted to governmental authorities, they will be excluded from revenue. The Company expenses incremental costs of obtaining a contract when incurred if the expected amortization period of the asset that the Company would have recognized is one year or less. However, no such costs were incurred during the three and six months ended June 30, 2023 and 2022.

During the three and six months ended June 30, 2023 and 2022, substantially all of the Company’s product revenues were from sales to customers in the United States.

The following table summarizes the Company’s net product revenue disaggregated by product (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2023	2022	2023	2022
FIRDAPSE <sup>®</sup>	\$ 64,898	\$ 53,049	\$ 122,424	\$ 96,082
FYCOMPA <sup>®</sup>	34,579	—	62,357	—
Total product revenue, net	\$ 99,477	\$ 53,049	\$ 184,781	\$ 96,082

**Reserves for Variable Consideration:** Revenue from product sales is recorded at the net sales price (transaction price), which includes estimates of variable consideration for which reserves are established. Components of variable consideration include trade discounts and allowances, prompt payment discounts, product returns, provider chargebacks and discounts, government rebates, and other incentives, such as voluntary patient assistance, and other allowances that are offered within contracts between the Company and its Customer, its FYCOMPA<sup>®</sup> customers, payors, and other indirect customers relating to the Company’s sale of its products. These reserves, as detailed below, are based on the amounts earned, or to be claimed on the related sales, and are classified as reductions of accounts receivable (if the amount is payable to the Customer or its FYCOMPA<sup>®</sup> customers) or a current liability (if the amount is payable to a party other than the Customer or FYCOMPA<sup>®</sup> customers).

These estimates take into consideration a range of possible outcomes which are probability-weighted in accordance with the expected value method in Topic 606 for relevant factors such as current contractual and statutory requirements, specific known market events and trends, industry data, and forecasted Customer buying and payment patterns. Overall, these reserves reflect the Company’s best estimates of the amount of consideration to which it is entitled based on the terms of the respective underlying contracts.

The amount of variable consideration which is included in the transaction price may be constrained and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized under the contract will not occur in a future period. The Company’s analyses also contemplates application of the constraint in accordance with the guidance, under which it determined a material reversal of revenue would not occur in a future period for the estimates detailed below as of June 30, 2023 and, therefore, the transaction price was not reduced further during the three and six months ended June 30, 2023 and 2022. Actual amounts of consideration ultimately received may differ from the Company’s estimates. If actual results in the future vary from the Company’s estimates, the Company will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known.

**Trade Discounts, Allowances and Wholesaler Fees:** The Company provides its Customer and its FYCOMPA<sup>®</sup> customers with a discount that is explicitly stated in its contract and is recorded as a reduction of revenue in the period the related product revenue is recognized. In addition, the Company receives sales order management, transactional data and distribution services from the Customer. To the extent the services received are distinct from the sale of FIRDAPSE<sup>®</sup> to its Customer and the sale of FYCOMPA<sup>®</sup> to its customers, these payments are classified in selling, general and administrative expenses in the Company’s consolidated statements of operations and comprehensive income. However, if the Company has determined such services received are not distinct from the Company’s sale of products to the Customer or to its FYCOMPA<sup>®</sup> customers, these payments have been recorded as a reduction of revenue within the consolidated statements of operations and comprehensive income through June 30, 2023 and 2022, as well as a reduction to accounts receivable, net on the consolidated balance sheets.

2. **Basis of Presentation and Significant Accounting Policies (continued).**

**Prompt Payment Discounts:** The Company provides its Customer and FYCOMPA<sup>®</sup> customers with prompt payment discounts which may result in adjustments to the price that is invoiced for the product transferred, in the case that payments are made within a defined period. The prompt payment discount reserve is based on actual invoice sales and contractual discount rates. Reserves for prompt payment discounts are included in accounts receivable, net on the consolidated balance sheets.

**Funded Co-pay Assistance Program:** The Company contracts with a third-party to manage the co-pay assistance program intended to provide financial assistance to qualified commercially-insured patients. The calculation of the accrual for co-pay assistance is based on an estimate of claims and the cost per claim that the Company expects to receive associated with its products, that have been recognized as revenue, but remains in the distribution channel at the end of each reporting period. These payments are considered payable to the third-party vendor and the related reserve is recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability which is included in accrued expenses and other current liabilities in the consolidated balance sheets.

**Product Returns:** Consistent with industry practice, the Company offers the SPs, the Customer, and its FYCOMPA<sup>®</sup> customers limited product return rights for damaged and expiring product, provided it is within a specified period around the product expiration date as set forth in the applicable individual distribution or master agreement. The Company estimates the amount of its product sales that may be returned by its Customer or its FYCOMPA<sup>®</sup> customers and records this estimate as a reduction of revenue in the period the related product revenue is recognized. The Company currently estimates product return liabilities using available industry data and its own sales information, including its visibility into the inventory remaining in the distribution channel. These payments are considered payable to the third-party vendor and the related reserve is recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability which is included in accrued expenses and other current liabilities in the consolidated balance sheets. The Company has an insignificant amount of returns to date and believes that returns of its products will continue to be minimal.

**Provider Chargebacks and Discounts:** Chargebacks for fees and discounts to providers represent the estimated obligations resulting from contractual commitments to sell products to qualified healthcare providers at prices lower than the list prices charged to the Customer, who directly purchases the product from the Company. The Customer charges the Company for the difference between what they paid for the product and the ultimate selling price to the qualified healthcare providers. The Company also participates in programs with government entities and other parties, including covered entities under the 340B Drug Pricing Program, whereby pricing on FYCOMPA<sup>®</sup> is extended below wholesaler list price to participating entities (the FYCOMPA<sup>®</sup> Participants). These entities purchase FYCOMPA<sup>®</sup> through wholesalers at the lower program price and the wholesalers then charge the Company the difference between their acquisition cost and the lower program price.

These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue, net and accounts receivable, net. Chargeback amounts are generally determined at the time of resale to the qualified healthcare provider by the Customer or at the time of a resale to a FYCOMPA<sup>®</sup> Participant by a wholesaler, and the Company generally issues credits for such amounts within a few weeks of the Customer's or wholesalers' notification to the Company of the resale. Reserves for chargebacks consist primarily of chargebacks that the Customer or wholesalers have claimed, but for which the Company has not yet issued a credit.

**Government Rebates:** The Company is subject to discount obligations under state Medicaid, Medicare and other government programs. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability, which is included in accrued expenses and other current liabilities on the consolidated balance sheets. For Medicare, the Company also estimates the number of patients in the prescription drug coverage gap for whom the Company will owe an additional liability under the Medicare Part D program.

The Company's liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but which remains in the distribution channel inventories at the end of each reporting period.

2. **Basis of Presentation and Significant Accounting Policies (continued).**

**Bridge and Patient Assistance Programs:** The Company provides FIRDAPSE<sup>®</sup> free of charge to uninsured patients who satisfy pre-established criteria for either the Bridge Program or the Patient Assistance Program. Patients who meet the Bridge Program eligibility criteria and are transitioning from investigational product while they are waiting for a coverage determination, or later, for patients whose access is threatened by the complications arising from a change of insurer may receive a temporary supply of free FIRDAPSE<sup>®</sup> while the Company is determining the patient's third-party insurance, prescription drug benefit or other third-party coverage for FIRDAPSE<sup>®</sup>. The Patient Assistance Program provides FIRDAPSE<sup>®</sup> or FYCOMPA<sup>®</sup> free of charge for longer periods of time for those who are uninsured or functionally uninsured with respect to FIRDAPSE<sup>®</sup> or FYCOMPA<sup>®</sup> because they are unable to obtain coverage from their payor despite having health insurance, to the extent allowed by applicable law.

The Company provides FYCOMPA<sup>®</sup> free of charge to uninsured patients who satisfy pre-established criteria through a Patient Assistance Program. In addition, Catalyst provides programs to assist patients through the process for obtaining reimbursement approval for their FYCOMPA<sup>®</sup> prescriptions from their insurers. Catalyst also provides support for patients using FYCOMPA<sup>®</sup> through an Instant Savings Card Program.

The Company does not recognize any revenue related to these free products and the associated costs are classified in selling, general and administrative expenses in the Company's consolidated statements of operations and comprehensive income.

**Revenues from Collaboration and Licensing Arrangements:**

The Company analyzes license and collaboration arrangements pursuant to FASB ASC Topic 808, Collaborative Arrangement Guidance and Consideration (Topic 808), to assess whether such arrangements, or transactions between arrangement participants, involve joint operating activities performed by parties that are both active participants in the activities and exposed to significant risks and rewards dependent on the commercial success of such activities or are more akin to a vendor-customer relationship. In making this evaluation, the Company considers whether the activities of the collaboration are considered to be distinct and deemed to be within the scope of the collaborative arrangement guidance or if they are more reflective of a vendor-customer relationship and, therefore, within the scope of Topic 606. This assessment is performed throughout the life of the arrangement based on changes in the responsibilities of all parties in the arrangement.

For elements of collaboration arrangements that are not accounted for pursuant to guidance in Topic 606, an appropriate recognition method is determined and applied consistently, generally by analogy to the revenue from contracts with customers guidance.

The Company evaluates the performance obligations promised in the contract that are based on goods and services that will be transferred to the customer and determines whether those obligations are both (i) capable of being distinct and (ii) distinct in the context of the contract. Goods or services that meet these criteria are considered distinct performance obligations. The Company estimates the transaction price based on the amount expected to be received for transferring the promised goods or services in the contract. The consideration may include fixed consideration or variable consideration.

The agreements provide for milestone payments upon achievement of development and regulatory events. The Company accounts for milestone payments as variable consideration in accordance with Topic 606. At the inception of each arrangement that includes variable consideration, the Company evaluates the amount of potential transaction price and the likelihood that the transaction price will be received. The Company utilizes either the most likely amount method or expected value method to estimate the amount expected to be received based on which method best predicts the amount expected to be received. The amount of variable consideration that is included in the transaction price may be constrained and is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. Arrangements that include rights to additional goods or services that are exercisable at a customer's discretion are generally considered options. The Company assesses if these options provide a material right to the customer and, if so, these options are considered performance obligations.

After contract inception, the transaction price is reassessed at every period end and updated for changes such as resolution of uncertain events. Any change in the overall transaction price is allocated to the performance obligations based on the same methodology used at contract inception.

The Company recognizes sales-based royalties or net profit-sharing when the later of (a) the subsequent sale occurs, or (b) the performance obligation to which the sales-based royalty or net profit-sharing has been allocated has been satisfied.

Payments to and from the collaborator are presented in the statement of operations based on the nature of the Company's business operations, the nature of the arrangement, including the contractual terms, and the nature of the payments.

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### 2. Basis of Presentation and Significant Accounting Policies (continued).

Refer to Note 11 (Collaborative and Licensing Arrangements), for further discussion on the Company's collaborative and licensing arrangements.

- q. **RESEARCH AND DEVELOPMENT.** Costs incurred in connection with research and development activities are expensed as incurred. These costs consist of direct and indirect costs associated with specific projects, as well as fees paid to various entities that perform research related services for the Company.
- r. **ADVERTISING EXPENSE.** Advertising costs are expensed as incurred. The company incurred approximately \$2.0 million and \$3.7 million in advertising costs during the three and six months ended June 30, 2023, respectively, and approximately \$0.8 million and \$1.5 million during the three and six months ended June 30, 2022, respectively, which are included in selling, general and administrative expenses in the Company's consolidated statements of operations and comprehensive income.
- s. **STOCK-BASED COMPENSATION.** The Company recognizes expense in the consolidated statements of operations for the grant date fair value of all stock-based payments to employees, directors and consultants, including grants of stock options and other share-based awards. For stock options, the Company uses the Black-Scholes option valuation model, the single-option award approach, and the straight-line attribution method. Using this approach, compensation cost is amortized on a straight-line basis over the vesting period of each respective stock option, generally one to three years. Forfeitures are recognized as a reduction of stock-based compensation expense as they occur.
- t. **CONCENTRATION OF RISK.** The financial instruments that potentially subject the Company to concentration of credit risk are cash equivalents (i.e., money market funds), investments and accounts receivable, net. The Company places its cash and cash equivalents with high-credit quality financial institutions. These amounts at times may exceed federally insured limits. The Company has not experienced any credit losses in these accounts.

The Company sells its product, FIRDAPSE<sup>®</sup>, in the United States through an exclusive distributor (its Customer) to SPs. Therefore, its distributor and SPs account for principally all of its trade receivables and net product revenues. The creditworthiness of its Customer is continuously monitored, and the Company has internal policies regarding customer credit limits. The Company estimates an allowance for expected credit loss primarily based on the credit worthiness of its Customer, historical payment patterns, aging of receivable balances and general economic conditions.

As of June 30, 2023, the Company had two products, which makes it difficult to evaluate its current business, predict its future prospects, and forecast financial performance and growth. The Company had invested a significant portion of its efforts and financial resources in the development and commercialization of its lead product, FIRDAPSE<sup>®</sup>. The Company expects FIRDAPSE<sup>®</sup> and the recently acquired product FYCOMPA<sup>®</sup> to constitute virtually all of the Company's product revenue for the foreseeable future.

The Company relies exclusively on third parties to formulate and manufacture FIRDAPSE<sup>®</sup>, FYCOMPA<sup>®</sup> and any future drug candidates. The commercialization of FIRDAPSE<sup>®</sup>, FYCOMPA<sup>®</sup>, and any other drug candidates, if approved, could be stopped, delayed or made less profitable if those third parties fail to provide sufficient quantities of product or fail to do so at acceptable quality levels or prices. The Company does not intend to establish its own manufacturing facilities. The Company is using the same third-party contractors to manufacture, supply, store and distribute drug supplies for clinical trials and for the commercialization of FIRDAPSE<sup>®</sup>. It also relies on Eisai as its sole source of supply for FYCOMPA<sup>®</sup>. If the Company is unable to continue its relationships with one or more of these third-party contractors, it could experience delays in the development or commercialization efforts as it locates and qualifies new manufacturers. The Company intends to rely on one or more third-party contractors to manufacture the commercial supply of its drugs.

- u. **ROYALTIES.** Royalties incurred in connection with the Company's license agreement for FIRDAPSE<sup>®</sup>, as disclosed in Note 13 (Agreements), are expensed to cost of sales as revenue from product sales is recognized.

Royalties incurred in connection with the Company's license agreement for RUZURGI<sup>®</sup>, as disclosed in Note 13 (Agreements), are expensed to cost of sales as revenue from product sales is recognized for any royalties in excess of the minimum annual royalty payment from the effective date of the agreement through 2025. The minimum royalty payment that exists annually for calendar years from the Effective Date through 2025 of \$3 million are included in the purchase price of the agreement.

- v. **INCOME TAXES.** The Company utilizes the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between the financial reporting and tax basis of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized.

**2. Basis of Presentation and Significant Accounting Policies (continued).**

The Company recognizes the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority. The Company is subject to income taxes in the U.S. federal jurisdiction and various state jurisdictions. Tax regulations within each jurisdiction are subject to the interpretation of the related tax laws and regulations and require significant judgment to apply. The Company is not subject to U.S. federal, state and local tax examinations by tax authorities for years before 2019. If the Company were to subsequently record an unrecognized tax benefit, associated penalties and tax related interest expense would be reported as a component of income tax expense.

- w. **COMPREHENSIVE INCOME.** U.S. GAAP requires that all components of comprehensive income be reported in the financial statements in the period in which they are recognized. Comprehensive income is net income, plus certain other items that are recorded directly into stockholders' equity. The Company's comprehensive income is shown on the consolidated statements of operations and comprehensive income for the three and six months ended June 30, 2023 and 2022, and is comprised of net unrealized gains (losses) on the Company's available-for-sale securities.
- x. **NET INCOME PER COMMON SHARE.** Basic net income per share is computed by dividing net income for the period by the weighted average number of common shares outstanding during the period. With regard to common stock subject to vesting requirements, the calculation includes only the vested portion of such stock and units.

Diluted net income per common share is computed by dividing net income by the weighted average number of common shares outstanding, increased by the assumed conversion of other potentially dilutive securities during the period.

The following table reconciles basic and diluted weighted average common shares:

	<b>For the Three Months Ended June 30,</b>		<b>For the Six Months Ended June 30,</b>	
	<b>2023</b>	<b>2022</b>	<b>2023</b>	<b>2022</b>
Basic weighted average common shares outstanding	106,258,790	102,795,600	105,911,936	102,788,719
Effect of dilutive securities	7,414,744	6,469,130	7,928,219	6,360,466
Diluted weighted average common shares outstanding	<u>113,673,534</u>	<u>109,264,730</u>	<u>113,840,155</u>	<u>109,149,185</u>

Outstanding common stock equivalents totaling approximately 2.0 million were excluded from the calculation of diluted net income per common share for both the three and six months ended June 30, 2023, as their effect would be anti-dilutive. For both the three and six months ended June 30, 2022, approximately 2.2 million shares of common stock were excluded from the calculation of diluted net income per common share as their effect would be anti-dilutive.

- y. **SEGMENT INFORMATION.** Management has determined that the Company operates in one reportable segment, which is the development and commercialization of drug products.
- z. **RECLASSIFICATIONS.** Certain prior year amounts in the consolidated financial statements have been reclassified to conform to the current year presentation.
- aa. **RECENTLY ISSUED ACCOUNTING STANDARDS.** The Company did not adopt any accounting standards during the three and six months ended June 30, 2023.

[Table of Contents](#)**3. Investments.**

Available-for-sale investments by security type were as follows (in thousands):

	Estimated Fair Value	Gross Unrealized Gains	Gross Unrealized Losses	Amortized Cost
<b>At June 30, 2023:</b>				
U.S. Treasuries - Cash equivalents	\$ 91,716	\$ 25	\$ —	\$ 91,691
Total	<u>\$ 91,716</u>	<u>\$ 25</u>	<u>\$ —</u>	<u>\$ 91,691</u>
<b>At December 31, 2022:</b>				
U.S. Treasuries - Cash equivalents	\$105,442	\$ 32	\$ —	\$105,410
Total	<u>\$105,442</u>	<u>\$ 32</u>	<u>\$ —</u>	<u>\$105,410</u>

There were no realized gains or losses from available-for-sale securities during the three and six months ended June 30, 2023. There were realized losses from sale of available-for-sale securities of \$633 thousand during the three and six months ended June 30, 2022.

The estimated fair values of available-for-sale securities at June 30, 2022, by contractual maturity, are summarized as follows (in thousands):

	June 30, 2023
Due in one year or less	<u>\$ 91,716</u>

**4. Accumulated Other Comprehensive Income (Loss).**

The following table summarizes the changes in accumulated other comprehensive income (loss), net of tax from unrealized gains (losses) on available-for-sale securities (in thousands), the Company's only component of accumulated other comprehensive income (loss) for the three and six months ended June 30, 2023 and 2022.

There were no reclassifications out of accumulated other comprehensive income (loss) during the three and six months ended June 30, 2023. The amount reclassified out of accumulated other comprehensive income (loss), net of tax and into net income during the three and six months ended June 30, 2022, was solely due to a realized loss from sale of available-for-sale securities.

	Total Accumulated Other Comprehensive Income (Loss)
<b>Balance at March 31, 2023</b>	<u>\$ 11</u>
Other comprehensive loss before reclassifications	8
Amount reclassified from accumulated other comprehensive income	—
Net current period other comprehensive gain (loss)	8
<b>Balance at June 30, 2023</b>	<u>\$ 19</u>
<b>Balance at December 31, 2022</b>	<u>\$ 24</u>
Other comprehensive loss before reclassifications	(5)
Amount reclassified from accumulated other comprehensive income	—
Net current period other comprehensive gain (loss)	(5)
<b>Balance at June 30, 2023</b>	<u>\$ 19</u>

4. **Accumulated Other Comprehensive Income (Loss) (continued).**

	<b>Total Accumulated Other Comprehensive Income (Loss)</b>
<b>Balance at March 31, 2022</b>	<b>\$ (453)</b>
Other comprehensive loss before reclassifications	(310)
Amount reclassified from accumulated other comprehensive income	633
Net current period other comprehensive gain (loss)	323
<b>Balance at June 30, 2022</b>	<b>\$ (130)</b>
<b>Balance at December 31, 2021</b>	<b>\$ (148)</b>
Other comprehensive loss before reclassifications	(615)
Amount reclassified from accumulated other comprehensive income	633
Net current period other comprehensive gain (loss)	18
<b>Balance at June 30, 2022</b>	<b>\$ (130)</b>

5. **Inventory.**

Inventory consists of the following (in thousands):

	<b>June 30, 2023</b>	<b>December 31, 2022</b>
Raw materials	\$ —	\$ —
Work-in-process	4,881	5,543
Finished goods	5,870	1,262
Total inventory	<u>\$ 10,751</u>	<u>\$ 6,805</u>

6. **Prepaid Expenses and Other Current Assets.**

Prepaid expenses and other current assets consist of the following (in thousands):

	<b>June 30, 2023</b>	<b>December 31, 2022</b>
Prepaid manufacturing costs	\$ 2,020	\$ 1,147
Prepaid tax	347	44
Prepaid insurance	627	1,224
Prepaid subscriptions fees	1,362	808
Prepaid research fees	915	178
Prepaid commercialization expenses	1,699	592
Due from collaborative and licensing arrangements	179	354
Prepaid conference and travel expenses	602	234
Prepaid co-pay assistance program	701	97
Other	182	489
Total prepaid expenses and other current assets	<u>\$ 8,634</u>	<u>\$ 5,167</u>

[Table of Contents](#)**7. Operating Leases.**

The Company has an operating lease agreement for its corporate office. The lease includes an option to extend the lease for up to 5 years and options to terminate the lease within 6 and 7.6 years. There are no obligations under finance leases.

The Company entered into an agreement in May 2020 that amended its lease for its office facilities. Under the amended lease, the Company's leased space increased from approximately 7,800 square feet of space to approximately 10,700 square feet of space. The amended lease commenced in March 2021 when construction of the asset was completed and space became available for use. Consequently, the Company recorded the effects of the amended lease during the first quarter of 2021.

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

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2023	2022	2023	2022
Operating lease cost	\$ 108	\$ 108	\$ 216	\$ 216

Supplemental cash flow information related to lease was as follows (in thousands):

	For the Six Months Ended June 30,	
	2023	2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows	\$ 252	\$ 245
Right-of-use assets obtained in exchange for lease obligations:		
Operating lease	\$ 45	\$ 45

Supplemental balance sheet information related to lease was as follows (in thousands):

	June 30, 2023	December 31, 2022
Operating lease right-of-use assets	\$ 2,641	\$ 2,770
Other current liabilities	\$ 353	\$ 337
Operating lease liabilities, net of current portion	3,376	3,557
Total operating lease liabilities	\$ 3,729	\$ 3,894

As of June 30, 2023 and December 31, 2022, the weighted average remaining lease term was 7.8 years and 8.3 years, respectively. The weighted average discount rate used to determine the operating lease liabilities was 4.51% as of June 30, 2023 and December 31, 2022.

Remaining payments of lease liabilities as of June 30, 2023 were as follows (in thousands):

2023 (remaining six months)	\$ 255
2024	522
2025	537
2026	553
2027	570
Thereafter	2,027
Total lease payments	4,464
Less: imputed interest	(735)
Total	\$3,729

Rent expense was approximately \$0.1 million and \$0.2 million for both the three and six months ended June 30, 2023 and 2022, respectively.

[Table of Contents](#)**8. Property and Equipment, Net.**

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

	<b>June 30, 2023</b>	<b>December 31, 2022</b>
Computer equipment	\$ 51	\$ 51
Furniture and equipment	296	222
Leasehold improvements	980	980
Software	433	—
Less: Accumulated depreciation	(557)	(406)
Total property and equipment, net	<u>\$ 1,203</u>	<u>\$ 847</u>

**9. License and Acquired Intangibles, Net.**

The following table presents the Company's intangible assets at June 30, 2023 (in thousands):

	<b>Gross Carrying Value</b>	<b>Accumulated Amortization</b>	<b>Net Carrying Value</b>
<i>Intangible assets:</i>			
License and acquired intangibles for RUZURGI®	\$ 33,569	\$ 2,258	\$ 31,311
License and acquired intangibles for FYCOMPA®	158,143	13,859	144,284
Total	<u>\$ 191,712</u>	<u>\$ 16,117</u>	<u>\$ 175,595</u>

The following table presents the Company's intangible assets at December 31, 2022 (in thousands):

	<b>Gross Carrying Value</b>	<b>Accumulated Amortization</b>	<b>Net Carrying Value</b>
<i>Intangible assets:</i>			
License and acquired intangibles for RUZURGI®	\$ 33,569	\$ 1,098	\$ 32,471
Total	<u>\$ 33,569</u>	<u>\$ 1,098</u>	<u>\$ 32,471</u>

The Company amortizes its definite-lived intangible assets using the straight-line method, which is considered the best estimate of economic benefit, over its estimated useful life. The useful lives for RUZURGI® and FYCOMPA® are approximately 14.5 years and 5 years, respectively.

The Company recorded approximately \$0.6 million and \$1.2 million in amortization expense related to the licensed and acquired intangibles for RUZURGI® during the three and six months ended June 30, 2023, within selling, general and administrative expenses in the consolidated statements of operations and comprehensive income. The Company recorded approximately \$7.9 million and \$13.9 million in amortization expense related to the licensed and acquired intangibles for FYCOMPA® during the three and six months ended June 30, 2023, within cost of sales in the consolidated statement of operations and comprehensive income. There was no amortization expense recorded during the three and six months ended June 30, 2022. Amortization of both the FYCOMPA® and RUZURGI® intangible assets are reported together as amortization of intangible assets in the consolidated statements of operations and comprehensive income.

The following table presents future amortization expense the Company expects for its intangible assets (in thousands):

2023 (remaining six months)	\$ 16,974
2024	33,949
2025	33,949
2026	33,949
2027	33,949
Thereafter	22,825
Total	<u>\$175,595</u>

At June 30, 2023 and December 31, 2022, the weighted average amortization period remaining for intangible assets was 6.2 years and 14.0 years, respectively.

If all or a portion of the intangible assets are deemed not recoverable, the Company would estimate the fair value of the assets and record an impairment loss. There were no impairment charges recognized on definite-lived intangibles for the three and six months ended June 30, 2023 or 2022.

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### 10. Accrued Expenses and Other Liabilities.

Accrued expenses and other liabilities consist of the following (in thousands):

	<u>June 30, 2023</u>	<u>December 31, 2022</u>
Accrued preclinical and clinical trial expenses	\$ 1,025	\$ 479
Accrued professional fees	3,641	1,619
Accrued compensation and benefits	4,348	5,132
Accrued license fees	13,026	20,444
Accrued purchases	240	154
Operating lease liability	353	337
Accrued variable consideration	7,628	3,381
Accrued income tax	4,551	8,702
Due to licensor	12,815	13,127
Other	455	238
Current accrued expenses and other liabilities	<u>48,082</u>	<u>53,613</u>
Lease liability – non-current	3,376	3,557
Due to licensor – non-current	12,723	14,064
Non-current accrued expenses and other liabilities	<u>16,099</u>	<u>17,621</u>
Total accrued expenses and other liabilities	<u>\$ 64,181</u>	<u>\$ 71,234</u>

### 11. Collaborative and Licensing Arrangements.

#### *Endo*

In December 2018, the Company entered into a collaboration and license agreement (Collaboration) with Endo, for the further development and commercialization of generic Sabril® (vigabatrin) tablets through Endo's U.S. Generic Pharmaceuticals segment, doing business as Par Pharmaceutical (Par). Under the Collaboration, Endo assumes all development, manufacturing, clinical, regulatory, sales and marketing costs under the collaboration, while the Company is responsible for exercising commercially reasonable efforts to develop, or cause the development of, a final finished, stable dosage form of generic Sabril® tablets.

Under the terms of the Collaboration, the Company has received an up-front payment, and will receive a milestone payment, and a sharing of defined net profits upon commercialization from Endo consisting of a mid-double digit percent of net sales of generic Sabril®. The Company has also agreed to a sharing of certain development expenses. Unless terminated earlier in accordance with its terms, the collaboration continues in effect until the date that is ten years following the commercial launch of the product.

The Company evaluated the license agreement with Endo to determine whether it is a collaborative arrangement for purposes of Topic 808. As the Company shares in the significant risks and rewards, the Company has concluded that this is a collaborative arrangement. As developing a final finished dosage form of a generic product in exchange for consideration is not an output of the Company's ongoing activities, Endo does not represent a contract with a customer. However, Topic 808 does not provide guidance on the recognition of consideration exchanged or accounting for the obligations that may arise between the parties. The Company concluded that ASC Topic 730, *Research and Development*, should be applied by analogy to payments between the parties during the development activities and Topic 606 for the milestone payment and sharing of defined net profits upon commercialization.

The collaborative agreement included a nonrefundable upfront license fee that was recognized upon receipt following execution of the collaborative arrangement for vigabatrin tablets.

The collaborative agreement provides for a \$2.0 million milestone payment on the commercial launch of the product by Endo/Par. As of June 30, 2023 and 2022, no milestone payments have been earned.

There were no revenues from this collaborative arrangement for the three and six months ended June 30, 2023 or 2022. There were no expenses incurred, net, in connection with the collaborative arrangement for the three and six months ended June 30, 2023 or 2022.

#### *KYE Pharmaceuticals Inc.*

In August 2020, the Company entered into a collaboration and license agreement with KYE Pharmaceuticals Inc. (KYE), for the commercialization of FIRDAPSE® in Canada.

## 11. Collaborative and Licensing Arrangements (continued).

Under the agreement, Catalyst granted KYE an exclusive license to commercialize and market FIRDAPSE® in Canada. KYE assumes all selling and marketing costs under the collaboration, while the Company is responsible for supply of FIRDAPSE® based on the collaboration partner's purchase orders.

Under the terms of the agreement, the Company will receive an up-front payment, received payment upon transfer of Marketing Authorization and delivery of commercial product, received payment for supply of FIRDAPSE®, will receive milestone payments, and a sharing of defined net profits upon commercialization from KYE consisting of a mid-double-digit percent of net sales of FIRDAPSE®. The Company has also agreed to a sharing of certain development expenses. Unless terminated earlier in accordance with its terms, the collaboration continues in effect until the date that is ten years following the commercial launch of the product in Canada.

This agreement is in form identified as a collaborative agreement and the Company has concluded for accounting purposes that it also represents a contract with a customer. This is because the Company grants to KYE a license and provides supply of FIRDAPSE® in exchange for consideration, which are outputs of the Company's ongoing activities. Accordingly, the Company has concluded that this collaborative arrangement will be accounted for pursuant to Topic 606.

The collaborative agreement included a nonrefundable upfront license fee that was recognized upon transfer of the license based on a determination that the right is provided as the intellectual property exists at the point in time in which the license is granted.

Under the arrangement, the Company will receive profit-sharing reports within nine days after quarter end from KYE. Revenue from sales of FIRDAPSE® by KYE is recognized in the quarter in which the sales occurred.

Revenues from the arrangement with KYE for the three and six months ended June 30, 2023 and 2022 were not material. Revenue is included in product revenue, net and license and other revenue in the accompanying consolidated statements of operations and comprehensive income. Expenses incurred, net have been included in selling, general and administrative expenses in the accompanying consolidated statements of operations and comprehensive income.

### *DyDo Pharma, Inc.*

On June 28, 2021, the Company entered into a license agreement with DyDo Pharma, Inc. (DyDo), for the development and commercialization of FIRDAPSE® in Japan.

Under the agreement, DyDo has joint rights to develop FIRDAPSE®, and exclusive rights to commercialize the product, in Japan. DyDo is responsible for funding all clinical, regulatory, marketing and commercialization activities in Japan, while the Company is responsible for clinical and commercial supply based on purchase orders, as well as providing support to DyDo in its efforts to obtain regulatory approval for the product from the Japanese regulatory authorities.

Under the terms of the agreement, the Company has earned an up-front payment and may earn further development and sales milestones for FIRDAPSE®, as well as revenue on product supplied to DyDo.

The Company has concluded that this license agreement will be accounted for pursuant to Topic 606. The agreement included a nonrefundable upfront license fee that was recognized upon the effective date of the agreement as the intellectual property exists at the point in time in which the right to the license is granted. The Company determined the granting of the right to the license is distinct from the supply of FIRDAPSE® and represents a separate performance obligation in the agreement.

The agreement includes milestones that are considered a sales-based royalty in which the license is deemed to be the predominant item to which these milestones relate. Revenue will be recognized when the later of (a) the subsequent sale occurs, or (b) the performance obligation to which the sales-based royalty has been allocated has been satisfied. Additionally, the agreement includes regulatory milestone payments which represent variable consideration, and due to uncertainty are fully constrained and only recognized when the uncertainty is subsequently resolved. For clinical and commercial supply of the product, the Company will recognize revenue when the Customer obtains control of the Company's product, which will occur at a point in time which is generally at time of shipment.

There were revenues of \$0.3 million and \$0.5 million in revenue from the arrangement with DyDo for the three and six months ended June 30, 2023, respectively, which is included in product revenue, net in the accompanying consolidated statements of operations and comprehensive income. There were revenues of \$0.5 million from the arrangement with DyDo for the three and six months ended June 30, 2022, which is included in product revenue, net in the accompanying consolidated statements of operations and comprehensive income. As of June 30, 2023, no milestone payments have been earned.

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### 12. Commitments and Contingencies.

In May 2019, the FDA approved a New Drug Application (NDA) for RUZURGI<sup>®</sup>, Jacobus Pharmaceuticals' version of amifampridine (3,4-DAP), for the treatment of pediatric LEMS patients (ages 6 to under 17). In June 2019 the Company filed suit against the FDA and several related parties challenging this approval and related drug labeling. Jacobus later intervened in the case. The Company's complaint, which was filed in the federal district court for the Southern District of Florida, alleged that the FDA's approval of RUZURGI<sup>®</sup> violated multiple provisions of FDA regulations regarding labeling, resulting in misbranding in violation of the Federal Food, Drug, and Cosmetic Act (FDCA); violated the Company's statutory rights to Orphan Drug Exclusivity and New Chemical Entity Exclusivity under the FDCA; and was in multiple other respects arbitrary, capricious, and contrary to law, in violation of the Administrative Procedure Act. Among other remedies, the suit sought an order vacating the FDA's approval of RUZURGI<sup>®</sup>.

On July 30, 2020, the Magistrate Judge considering this lawsuit filed a Report and Recommendation in which she recommended to the District Judge handling the case that she grant the FDA's and Jacobus' motions for summary judgment and deny the Company's motion for summary judgment. On September 29, 2020, the District Judge adopted the Report and Recommendation of the Magistrate Judge, granted the FDA's and Jacobus' motions for summary judgment, and dismissed the Company's case. The Company appealed the District Court's decision to the U.S. Court of Appeals for the 11<sup>th</sup> Circuit. The case was fully briefed in early 2021, and oral argument was held in March 2021.

On September 30, 2021, a three-judge panel of 11<sup>th</sup> Circuit judges issued a unanimous decision overturning the District Court's decision. The appellate court adopted the Company's argument that the FDA's approval of RUZURGI<sup>®</sup> violated the Company's rights to Orphan Drug Exclusivity and remanded the case to the District Court with orders to enter summary judgment in the Company's favor. In November 2021, Jacobus filed a motion seeking rehearing of the case from the full 11<sup>th</sup> Circuit, which motion was denied in January 2022. Further, in January 2022, Jacobus filed motions with both the 11<sup>th</sup> Circuit and the U.S. Supreme Court seeking a stay of the 11<sup>th</sup> Circuit's ruling indicating that it would seek a review of the 11<sup>th</sup> Circuit's decision from the U.S. Supreme Court. Both stay motions were denied, and on January 28, 2022, the 11<sup>th</sup> Circuit issued a mandate directing the District Court to enter summary judgment in the Company's favor. The District Court entered that order on January 31, 2022. On February 1, 2022, the FDA informed Jacobus that, consistent with the Court of Appeals for the Eleventh Circuit's September 30, 2021, decision in favor of Catalyst, the final approval of the RUZURGI<sup>®</sup> NDA was switched to a tentative approval until the 7-year orphan-drug exclusivity (ODE) for FIRDAPSE<sup>®</sup> has expired.

On July 11, 2022, the Company settled certain of its disputes with Jacobus. In connection with the settlement, the Company licensed the rights to develop and commercialize RUZURGI<sup>®</sup> in the United States and Mexico (the Territory). Simultaneously, the Company purchased, among other intellectual property rights, Jacobus' U.S. patents related to RUZURGI<sup>®</sup>, its new drug applications in the United States for RUZURGI<sup>®</sup>, and certain RUZURGI<sup>®</sup> inventory previously manufactured by Jacobus. At the same time, the Company received a license from Jacobus for use of its know-how related to the manufacture of RUZURGI<sup>®</sup>. Further, the Company settled its patent case against Jacobus, which was dismissed without prejudice. Finally, Jacobus agreed that until the later of (i) the expiration of the royalty term or (ii) December 31, 2034, Jacobus and its affiliates, will not, directly or indirectly, research, develop, manufacture, commercialize, distribute, use or otherwise exploit any product competitive to FIRDAPSE<sup>®</sup> or RUZURGI<sup>®</sup> in the Territory, and Laura Jacobus, the sole shareholder of Jacobus, and two of Jacobus' other officers, also signed individual non-competition agreements containing the same terms.

In connection with the settlement with Jacobus, the Company agreed to pay the following consideration to Jacobus:

- \$30 million of cash, of which \$10 million was paid at the closing of the settlement on July 11, 2022 and the balance of which will be paid over the next two years, on the first and second anniversary of closing. See Note 17 (Subsequent Events);
- An annual royalty on our net sales (as defined in the License and Asset Purchase Agreement between Catalyst and Jacobus) of amifampridine products in the United States equal to: (a) for calendar years 2022 through 2025, 1.5% (with a minimum annual royalty of \$3.0 million per year), and (b) for calendar years 2026 through the expiration of the last to expire of the Company's FIRDAPSE<sup>®</sup> patents in the United States, 2.5% (with a minimum annual royalty of \$5 million per year); provided, however, that the royalty rate may be reduced and the minimum annual royalty may be eliminated under certain circumstances; and
- If the Company were to receive a priority review voucher for FIRDAPSE<sup>®</sup> or RUZURGI<sup>®</sup> in the future, 50% of the consideration paid by a third party to acquire that voucher will be paid to Jacobus.

Royalties will be trued up at the end of the year to the extent that royalties on net sales are below the minimum royalty.

## 12. Commitments and Contingencies (continued).

The Company's New Drug Submission filing for FIRDAPSE<sup>®</sup> for the symptomatic treatment of LEMS was approved when Health Canada issued a Notice of Compliance, or NOC, on July 31, 2020. In August 2020, the Company entered into a license agreement with KYE Pharmaceuticals, or KYE, pursuant to which the Company licensed to KYE the Canadian rights for FIRDAPSE<sup>®</sup> for the treatment of LEMS. On August 10, 2020, Health Canada issued a NOC to Medunik (Jacobus' licensee in Canada for RUZURGI<sup>®</sup>) for the treatment of LEMS. Shortly thereafter, the Company initiated a legal proceeding in Canada seeking judicial review of Health Canada's decision to issue the NOC for RUZURGI<sup>®</sup> as incorrect and unreasonable under Canadian law due to Medunik's use of Catalyst's protected data in its application. After two decisions by the trial judge to quash the RUZURGI<sup>®</sup> approval and remand the matter back to Health Canada, the Canadian Federal Appellate Court overturned the trial judge's decision. The Minister subsequently reapproved RUZURGI<sup>®</sup>'s NOC for Canada.

In January 2023, the Company received Paragraph IV Certification Notice Letters from three generic drug manufacturers advising that they had each submitted an Abbreviated New Drug Application (ANDA) to the FDA seeking authorization from the FDA to manufacture, use or sell a generic version of FIRDAPSE<sup>®</sup> in the United States. The notice letters each alleged that the six patents listed in the FDA Orange Book covering FIRDAPSE<sup>®</sup> are not valid, not enforceable, and/or will not be infringed by the commercial manufacture, use or sale of the proposed product described in these ANDA submissions. Under the FDCA, as amended by the Drug Price Competition and Patent Term Restoration Act of 1984, as amended, the Company had 45 days from receipt of the notice letters to commence patent infringement lawsuits against these generic drug manufacturers in a federal district court to trigger a stay precluding the FDA from approving any ANDA until May 2026 or entry of judgment holding the patents invalid, unenforceable, or not infringed, whichever occurs first. In that regard, after conducting the necessary due diligence, the Company filed lawsuits on March 1, 2023 in the U.S. District Court for the District of New Jersey against each of the three generic drug manufacturers who notified the Company of their ANDA submissions, thus triggering the stay.

On February 20, 2023, the Company received a Paragraph IV Certification Notice Letter from a company that appears to have filed the first ANDA for the oral suspension formulation for FYCOMPA<sup>®</sup>. The same company sent a similar letter to the Company later in February with a similar certification for the tablet formulation for FYCOMPA<sup>®</sup>, the fourth such certification for this formulation. Both of these letters were paragraph IV certifications of non-infringement, non-validity, and unenforceability to the '497 patent for FYCOMPA<sup>®</sup> but each application, like the previous Paragraph IV notices from ANDA filers, for FYCOMPA<sup>®</sup> tablets does not challenge the '571 patent. Similar to the actions with the FIRDAPSE<sup>®</sup> Paragraph IV Certifications described above, after due diligence the Company filed lawsuits on April 5, 2023 in the U.S. District Court for the District of New Jersey against the drug manufacturer who notified the Company of their ANDA submissions for both FYCOMPA<sup>®</sup> formulations, thus triggering the 30 month stay for each application.

Additionally, from time to time the Company may become involved in legal proceedings arising in the ordinary course of business. Except as set forth above, the Company believes that there is no other litigation pending at this time that could have, individually or in the aggregate, a material adverse effect on its results of operations, financial condition, or cash flows.

## 13. Agreements.

- a. **LICENSE AGREEMENT FOR FIRDAPSE<sup>®</sup>.** On October 26, 2012, the Company entered into a license agreement with BioMarin Pharmaceutical, Inc. (BioMarin) for the North American rights to FIRDAPSE<sup>®</sup>. Under the license agreement, the Company pays: (i) royalties to the licensor for seven years from the first commercial sale of FIRDAPSE<sup>®</sup> equal to 7% of net sales (as defined in the license agreement) in North America for any calendar year for sales up to \$100 million, and 10% of net sales in North America in any calendar year in excess of \$100 million; and (ii) royalties to the third-party licensor of the rights sublicensed to the Company for seven years from the first commercial sale of FIRDAPSE<sup>®</sup> equal to 7% of net sales (as defined in the license agreement between BioMarin and the third-party licensor) in any calendar year for the duration of any regulatory exclusivity within a territory and 3.5% for territories in any calendar year in territories without regulatory exclusivity.

On May 29, 2019, the Company and BioMarin entered into an amendment to the Company's license agreement for FIRDAPSE<sup>®</sup>. Under the amendment, the Company has expanded its commercial territory for FIRDAPSE<sup>®</sup>, which originally was comprised of North America, to include Japan. Additionally, the Company has an option to further expand its territory under the license agreement to include most of Asia, as well as Central and South America, upon the achievement of certain milestones in Japan. Under the amendment, the Company will pay royalties to our licensor on net sales in Japan of a similar percentage to the royalties that the Company is currently paying under its original license agreement for North America.

In January 2020, the Company was advised that BioMarin has transferred certain rights under the license agreement to SERB S.A.

**13. Agreements (continued).**

- b. **LICENSE AGREEMENT FOR RUZURGI®.** On July 11, 2022 (the Effective Date), the Company entered into an exclusive license agreement with Jacobus Pharmaceutical Company, Inc. (Jacobus), for the rights to develop and commercialize RUZURGI® in the United States and Mexico.

Pursuant to the terms of the license agreement, the Company paid Jacobus a \$10 million up-front payment on the Effective Date and will pay an additional \$10 million on the first annual anniversary of the Effective Date (July 11, 2023), another \$10 million on the second annual anniversary of the Effective Date (July 11, 2024) and tiered royalty payments on net sales (as defined in the license agreement) of all of the Company's products in the United States that range from 1.25% to 2.5% based on whether there is a competing product or generic version of FIRDAPSE® being marketed or sold in the United States. See Note 17 (Subsequent Events).

A minimum royalty payment exists annually for calendar years from the Effective Date through 2025 of \$3 million, provided that such minimum annual royalty payment shall be prorated in the first calendar year of the agreement. As these minimum payments are both probable and estimable, they are included in the purchase price of the agreement and any royalties in excess of this amount will be charged to cost of sales as revenue from product sales is recognized. A minimum royalty payment exists annually for calendar years from 2026 through the expiration of the royalty term (which ends when there is no valid claim under the Company's FIRDAPSE® patents in the United States) of \$5 million unless a competing product or generic version of FIRDAPSE® is being marketed or sold in the United States. If these minimum payments become probable in the future, the Company would recognize a contingent liability at that time with an offset to the value of the intangible asset acquired. Any royalties in excess of this amount will be charged to cost of sales as revenue from product sales is recognized. Royalties over the minimum, if any, will be paid based on the agreement terms on a quarterly basis.

Assets acquired as part of the license agreement include among other intellectual property rights, Jacobus' U.S. patents related to RUZURGI®, its new drug applications in the United States for RUZURGI®, its Trademark for RUZURGI®, the Orphan Drug Designation for RUZURGI® and a license from Jacobus for use of its know-how related to the manufacture of RUZURGI®.

Additionally, the Company also purchased from Jacobus approximately \$4.1 million of RUZURGI® inventory previously manufactured by Jacobus, which were recorded as an expense in research and development expenses in the consolidated statement of operations and comprehensive income for the third quarter of 2022.

Under business combination guidance, the screen test states that if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets, the set is not considered a business and is accounted for as an asset acquisition. The Company has determined that the screen test was not met. However, the Company determined that the acquisition did not meet the definition of a business under ASC 805, Business Combination. The Company believes that the licensing agreement and other assets acquired from Jacobus are similar and considered them all to be intangible assets with the exception of the inventory acquired. As the screen test was not met, further determination was required to determine that the Company had not acquired inputs and processes that have the ability to create outputs, which would meet the requirements of a business, and therefore, determined that this was an asset acquisition. The Company accounted for the Jacobus license agreement as an asset acquisition under ASC 805-50, which requires the acquiring entity in an asset acquisition to recognize assets acquired and liabilities assumed based on the cost to the acquiring entity on a relative fair value basis, which includes consideration given.

The total purchase price was allocated to the acquired assets based on their relative fair values, as follows (in thousands):

License and acquired intangibles	\$33,569
Acquired research and development inventory expensed from asset acquisition	4,130
Total purchase price	<u>\$37,699</u>

The straight-line method is used to amortize the license and acquired intangibles, as disclosed in Note 9 (License and Acquired Intangibles, Net).

**13. Agreements (continued).**

- c. **ACQUISITION OF U.S. RIGHTS FOR FYCOMPA®.** On January 24, 2023, the Company acquired the U.S. Rights for FYCOMPA® (perampanel) CIII a commercial stage epilepsy asset, from Eisai Co., Ltd. (Eisai). The aggregate consideration for the acquisition was \$164.2 million in cash and certain liabilities.

Eisai is also eligible to receive a contingent payment of \$25 million if a certain regulatory milestone is met. As meeting the regulatory milestone was not probable, the Company did not recognize any amount related to the milestone payments in the purchase price. Additionally, after the loss of patent exclusivity for FYCOMPA®, the Company may be obligated to pay certain royalties to Eisai on net sales of FYCOMPA®. As the Transaction is accounted for as an asset acquisition under U.S. GAAP, the Company opted to recognize the royalty payments in cost of sales as revenue from product sales is recognized.

Royalties commencing on loss of exclusivity for each calendar year during the royalty term equal to 12% on net sales greater than \$10 million and less than \$100 million, 17% on net sales of greater than \$100 million and less than \$125 million and 22% on net sales greater than \$125 million prior to the date of generic entry. Royalties equal to 6% on net sales greater than \$10 million and less than \$100 million, 8.5% on net sales of greater than \$100 million and less than \$125 million and 11% on net sales greater than \$125 million after the date of generic entry.

The following table summarizes the aggregate amount paid for the assets acquired by the Company in connection with the acquisition of FYCOMPA® (in thousands):

Base cash payment	\$160,000
Cash paid for pro-rated prepaid expenses	1,576
Reimbursement on base purchase price <sup>(i)</sup>	(3,238)
Transaction costs <sup>(ii)</sup>	5,870
<b>Total purchase consideration</b>	<b><u>\$164,208</u></b>

- (i) Recorded in prepaid expenses and other current assets in the accompanying consolidated balance sheet as of the acquisition date and reimbursement was fully applied as of June 30, 2023
- (ii) \$0.8 million of transaction expenses is recorded in accrued expenses and other liabilities in the accompanying consolidated balance sheet as of June 30, 2023, and the remaining \$5.1 million has been paid in cash

The acquisition of FYCOMPA® has been accounted for as an asset acquisition in accordance with FASB ASC 805-50. The Company accounted for the acquisition of FYCOMPA® as an asset acquisition because substantially all of the fair value of the assets acquired is concentrated in a single asset, the FYCOMPA® product rights. The FYCOMPA® products rights consist of certain patents and trademarks, at-market contracts and regulatory approvals, marketing assets, and other records, and are considered a single asset as they are inextricably linked. ASC 805-10-55-5A includes a screen test, which provides that if substantially all of the fair value of the assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets, the assets acquired are not considered to be a business. ASC 805 requires the acquiring entity in an asset acquisition to recognize assets acquired and liabilities assumed based on the cost to the acquiring entity on a relative fair value basis, which includes consideration given.

The total purchase price was allocated to the acquired assets based on their relative fair values, as follows (in thousands):

Inventory	\$ 4,100
Prepaid expenses and other current assets (samples)	130
Prepaid commercialization expenses	1,576
Property and equipment, net	433
License and acquired intangibles for FYCOMPA®	158,143
Accrued preclinical and clinical trial expenses	(174)
<b>Total purchase consideration</b>	<b><u>\$164,208</u></b>

The straight-line method is used to amortize the license and acquired intangibles, as disclosed in Note 9 (License and Acquired Intangibles, Net).

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### 13. Agreements (continued).

- d. **AGREEMENTS FOR DRUG MANUFACTURING, DEVELOPMENT, PRECLINICAL AND CLINICAL STUDIES.** The Company has entered into agreements with contract manufacturers for the manufacture of commercial drug and drug and study placebo for the Company's trials and studies, with contract research organizations (CRO) to conduct and monitor the Company's trials and studies and with various entities for laboratories and other testing related to the Company's trials and studies. The contractual terms of the agreements vary, but most require certain advances as well as payments based on the achievement of milestones. Further, these agreements are cancellable at any time, but obligate the Company to reimburse the providers for any time or costs incurred through the date of termination.

### 14. Income Taxes.

The Company's effective income tax rate was 21.5% and 23.7% for the six months ended June 30, 2023 and 2022, respectively. Differences in the effective tax and the statutory federal income tax rate of 21% are driven by state income taxes and anticipated annual permanent differences and offset by the orphan drug credit claimed.

The Company had no uncertain tax positions as of June 30, 2023 and December 31, 2022.

### 15. Stockholders' Equity.

#### *Preferred Stock*

The Company has 5,000,000 shares of authorized preferred stock, \$0.001 par value per share, at June 30, 2023 and December 31, 2022. No shares of preferred stock were outstanding at June 30, 2023 and December 31, 2022.

#### *Common Stock*

The Company has 200,000,000 shares of authorized common stock, par value \$0.001 per share. At June 30, 2023 and December 31, 2022, 106,501,259 and 105,263,031 shares, respectively, of common stock were issued and outstanding. Each holder of common stock is entitled to one vote of each share of common stock held of record on all matters on which stockholders generally are entitled to vote.

#### *Share Repurchases*

In March 2021, the Company's Board of Directors approved a share repurchase program that authorizes the repurchase of up to \$40 million of the Company's common stock, pursuant to a repurchase plan under Rule 10b-18 of the Securities Act. The share repurchase program commenced on March 22, 2021. During the three and six months ended June 30, 2023, no shares were repurchased. During the three and six months ended June 30, 2022, 600 thousand shares and 1.0 million shares were repurchased for an aggregate purchase price of approximately \$4.4 million and \$6.9 million, respectively (\$7.26 and \$6.91 average price per share, respectively).

#### *2020 Shelf Registration Statement*

On July 23, 2020, the Company filed a shelf registration statement with the SEC to sell up to \$200 million of common stock, preferred stock, warrants to purchase common stock, debt securities and units consisting of one or more of such securities (the "2020 Shelf Registration Statement"). The 2020 Shelf Registration Statement (file no. 333-240052) was declared effective by the SEC on July 31, 2020. As of the date of this report, no offerings have been completed under the Company's 2020 Shelf Registration Statement. See Note 17 (Subsequent Events).

### 16. Stock Compensation.

For the three and six months ended June 30, 2023 and 2022, the Company recorded stock-based compensation expense as follows (in thousands):

	Three months ended		Six months ended	
	June 30,	June 30,	June 30,	June 30,
	2023	2022	2023	2022
Research and development	\$ 351	\$ 425	\$ 690	\$ 857
Selling, general and administrative	2,947	1,598	5,500	3,069
Total stock-based compensation	<u>\$ 3,298</u>	<u>\$ 2,023</u>	<u>\$6,190</u>	<u>\$3,926</u>

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### **16. Stock Compensation (continued).**

#### ***Stock Options***

As of June 30, 2023, there were outstanding stock options to purchase 12,220,073 shares of common stock, of which stock options to purchase 7,967,046 shares of common stock were exercisable.

During the three and six months ended June 30, 2023, the Company granted seven-year term options to purchase an aggregate of 704,500 and 1,045,000 shares, respectively, of the Company's common stock to employees. The Company recorded stock-based compensation related to stock options totaling \$2.6 million and \$4.8 million, respectively, during the three and six months ended June 30, 2023.

During the three and six months ended June 30, 2022, the Company granted seven-year term options to purchase an aggregate of 33,000 and 443,000 shares, respectively, of the Company's common stock to employees. The Company recorded stock-based compensation related to stock options totaling \$1.6 million and \$3.2 million, respectively, during the three and six months ended June 30, 2022.

During the three and six months ended June 30, 2023, options to purchase 556,909 shares and 1,104,866 shares, respectively, of the Company's common stock were exercised, with proceeds of \$0.6 million and \$1.9 million respectively, to the Company.

During the three and six months ended June 30, 2022, options to purchase 345,593 shares and 709,365 shares, respectively, of the Company's common stock were exercised, with proceeds of \$1.3 million and \$2.4 million respectively, to the Company.

As of June 30, 2023, there was approximately \$22.1 million of unrecognized compensation expense related to non-vested stock option awards granted under the 2014 and 2018 Stock Incentive Plans. The cost is expected to be recognized over a weighted average period of approximately 2.4 years.

#### ***Restricted Stock Units***

There were no grants of restricted stock units to employees or directors during the three or six months ended June 30, 2023. There were no grants of restricted stock units to employees or directors during the three months ended June 30, 2022. The Company granted 474,500 restricted stock units during the six months ended June 30, 2022. During the three and six months ended June 30, 2023, the Company recorded non-cash stock-based compensation expense related to restricted stock units totaling \$0.7 million and \$1.4 million, respectively. During the three and six months ended June 30, 2022, the Company recorded non-cash stock-based compensation expense related to restricted stock units totaling \$0.4 million and \$0.7 million, respectively.

As of June 30, 2023, there was approximately \$6.1 million of unrecognized compensation expense related to non-vested restricted stock units granted under the 2018 Stock Incentive Plan. The cost is expected to be recognized over a weighted average period of approximately 2.2 years.

### **17. Subsequent Events.**

In July 2023, the Company completed its acquisition from Santhera Pharmaceuticals Holdings (Santhera) of an exclusive license for North America for vamorolone, a potential treatment for patients suffering with Duchenne Muscular Dystrophy (DMD). The license is for exclusive commercial rights in the U.S., Canada, and Mexico, as well as the right of first negotiation in Europe and Japan should Santhera pursue partnership opportunities. Additionally, the Company will hold North American rights for any future approved indications of vamorolone. Vamorolone is not currently approved for sale in the U.S. Vamorolone has received FDA Orphan Drug and Fast Track designations and has been granted a Prescription Drug User Fee Act (PDUFA) action date of October 26, 2023. The Company made an all-cash initial payment of \$75 million at the closing of the acquisition to acquire the license. Simultaneously, the Company made a strategic equity investment into Santhera by acquiring 1,414,688 of Santhera's post reverse-split ordinary shares (representing approximately 11.26% of Santhera's outstanding ordinary shares following the transaction) at an investment price of CHF 9.477 per share (corresponding to a mutually agreed volume-weighted average price prior to signing), with the approximately \$15 million USD in equity investment proceeds to be used by Santhera for Phase IV studies in DMD and further development of additional indications for vamorolone. The Company may also be obligated under certain circumstances to make milestone payments and to pay royalties to Santhera.

Given that the transaction recently closed, except as discussed below, the preliminary accounting is in process and is incomplete as of this filing date. However, based on the Company's analysis to date, it expects that the initial payment to Santhera of \$75 million in connection with the license will be expensed to R&D during the third quarter of 2023.

The Company's Chief Executive Officer has informed the Board of Directors that he intends to retire as CEO by the end of 2023. The Company's Board of Directors has hired a nationally recognized search firm to assist in a search to source a new CEO.

Subsequent to June 30, 2023, the Company paid \$10 million to Jacobus Pharmaceutical Company, Inc. for the first anniversary payment due in connection with its July 2022 acquisition of RUZURGI®.

Subsequent to June 30, 2023, during July 2023 the 2020 Shelf Registration expired.

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

### Introduction

Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) is intended to provide an understanding of our financial condition, changes in financial condition and results of operations. The discussion and analysis is organized as follows:

- Overview. This section provides a general description of our business and information about our business that we believe is important in understanding our financial condition and results of operations.
- Basis of Presentation. This section provides information about key accounting estimates and policies that we followed in preparing our consolidated financial statements for the second quarter of fiscal 2023.
- Critical Accounting Policies and Estimates. This section discusses those accounting policies that are both considered important to our financial condition and results of operations and require significant judgment and estimates on the part of management in their application. All of our significant accounting policies, including the critical accounting policies, are also summarized in the notes to our interim consolidated financial statements that are included in this report.
- Results of Operations. This section provides an analysis of our results of operations for the three and six months ended June 30, 2023 as compared to the three and six months ended June 30, 2022.
- Liquidity and Capital Resources. This section provides an analysis of our cash flows, capital resources, off-balance sheet arrangements and our outstanding commitments, if any.
- Caution Concerning Forward-Looking Statements. This section discusses how certain forward-looking statements made throughout this MD&A and in other sections of this report are based on management's present expectations about future events and are inherently susceptible to uncertainty and changes in circumstance.

### OVERVIEW

We are a commercial-stage patient-centric biopharmaceutical company focused on in-licensing, developing and commercializing novel high-quality medicines for patients living with rare diseases and diseases that are difficult to treat. With exceptional patient focus, we are committed to developing a robust pipeline of cutting-edge, best-in-class medicines for treating rare and difficult to treat diseases. We are dedicated to making a meaningful impact on the lives of those suffering from rare and difficult to treat diseases, and we believe in putting patients first in everything we do.

Our flagship U.S. commercial product is FIRDAPSE® (amifampridine) Tablets 10 mg, approved for the treatment of Lambert-Eaton myasthenic syndrome, or LEMS, for adults and for children ages six and up. Further, on January 24, 2023, we closed our acquisition of FYCOMPA® and are now also marketing that product in the United States. FYCOMPA® (perampanel) CIII is a prescription medication used alone or with other medicines to treat focal onset seizures with or without secondarily generalized seizures in people with epilepsy aged four and older and with other medicines to treat primary generalized tonic-clonic seizures in people with epilepsy aged 12 and older. Finally, on July 18, 2023, we closed our acquisition of an exclusive license for North America for vamorolone, a promising best-in-class dissociative anti-inflammatory steroid treatment for patients suffering from Duchenne Muscular Dystrophy (DMD). Vamorolone has received FDA Orphan Drug and Fast Track designations and has been granted a Prescription Drug User Fee Act (PDUFA) action date of October 26, 2023. Assuming regulatory approval on the PDUFA date, we expect to launch vamorolone in the first quarter of 2024, of which there can be no assurance.

#### FIRDAPSE®

On November 28, 2018, we received approval from the United States Food and Drug Administration (FDA) of our new drug application (NDA) for FIRDAPSE® Tablets 10 mg for the treatment of adult patients (ages 17 and above) with LEMS, and in January 2019, we launched FIRDAPSE® in the United States. Further, on September 29, 2022, the FDA approved our supplemental NDA (sNDA) to expand the indicated age range for FIRDAPSE® Tablets 10 mg to include pediatric patients, six years of age and older for the treatment of LEMS.

We sell FIRDAPSE® through a field force experienced in neurologic, central nervous system or rare disease products consisting at this time of approximately 29 field personnel, including sales (Regional Account Managers), thought-leader liaisons, patient assistance and insurance navigation support (Patient Access Liaisons), and payor reimbursement (National Account Managers). We also have a field-based force of six medical science liaisons who are helping educate the medical communities and patients about LEMS and our programs supporting patients and access to FIRDAPSE®.

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Additionally, we have contracted with an experienced inside sales agency that works to generate leads through telemarketing to targeted physicians. This inside sales agency allows our sales efforts to not only reach the neuromuscular specialists who regularly treat LEMS patients, but also the roughly 9,000 neurology and neuromuscular healthcare providers that may be treating a LEMS patient who can benefit from FIRDAPSE®. We also use non-personal promotion to reach the 20,000 neurologists who are potential LEMS treaters and the 16,000 oncologists who might be treating a LEMS patient with small cell lung cancer. Further, we continue to make available at no-cost a LEMS voltage gated calcium channel antibody testing program for use by physicians who suspect that one of their patients may have LEMS and wish to reach a definitive diagnosis.

Finally, we are continuing to expand our digital and social media activities to introduce our product and services to potential patients and their healthcare providers. We also work with several rare disease advocacy organizations (including Global Genes and the National Organization for Rare Disorders) to help increase awareness and level of support for patients living with LEMS and to provide education for the physicians who treat these rare diseases and the patients they treat.

We are supporting the distribution of FIRDAPSE® through *Catalyst Pathways*®, our personalized treatment support program for patients who enroll in it. *Catalyst Pathways*® is a single source for personalized treatment support, education and guidance through the challenging dosing and titration regimen required to reach an effective therapeutic dose. It also includes distributing the drug through a very small group of exclusive specialty pharmacies (primarily AnovoRx), which is consistent with the way that most drug products for ultra-orphan diseases are distributed and dispensed to patients. We believe that by using specialty pharmacies in this way, the difficult task of navigating the health care system is far better for the patient needing treatment for their rare disease and the health care community in general.

In order to help patients with LEMS afford their medication, we, like other pharmaceutical companies which are marketing drugs for ultra-orphan conditions, have developed an array of financial assistance programs that are available to reduce patient co-pays and deductibles to a nominal affordable amount. A co-pay assistance program designed to keep out-of-pocket costs to not more than \$10.00 per month (currently less than \$2.00 per month) is available for all LEMS patients with commercial coverage who are prescribed FIRDAPSE®. Our FIRDAPSE® co-pay assistance program is not available to patients enrolled in state or federal healthcare programs, including Medicare, Medicaid, VA, DoD, or TRICARE. However, we are donating, and committed to continuing to donate, money to qualified, independent charitable foundations dedicated to providing assistance to any U.S. LEMS patients in financial need. Subject to compliance with regulatory requirements, our goal is that no LEMS patient is ever denied access to their medication for financial reasons.

In January 2023, we received Paragraph IV Certification Notice Letters from three generic drug manufacturers advising us that they had each submitted an Abbreviated New Drug Application (ANDA) to the FDA seeking authorization from the FDA to manufacture, use or sell a generic version of FIRDAPSE® in the United States. The notice letters each alleged that our six patents listed in the FDA Orange Book covering FIRDAPSE® are not valid, not enforceable, and/or will not be infringed by the commercial manufacture, use or sale of the proposed product described in these ANDA submissions. Under the Federal Food, Drug, and Cosmetic Act (FDCA), as amended by the Drug Price Competition and Patent Term Restoration Act of 1984, as amended, we had 45 days from receipt of the notice letters to commence patent infringement lawsuits against these generic drug manufacturers in a federal district court to trigger a stay precluding the FDA from approving any ANDA until May 2026 or entry of judgment holding the patents invalid, unenforceable, or not infringed, whichever occurs first. In that regard, after conducting the necessary due diligence, we filed lawsuits on March 1, 2023 in the U.S. District Court for the District of New Jersey against each of the three generic drug manufacturers who notified us of their ANDA submissions, thus triggering the stay.

We intend to vigorously protect and defend our intellectual property for FIRDAPSE® and, although there can be no assurance, we believe that our patent estate will protect FIRDAPSE® from generic competition for the life of our patents.

On August 4, 2023, we submitted an sNDA to the FDA seeking an increase in the maximum indicated dose of FIRDAPSE® from 80 mg per day to 100 mg per day. There can be no assurance that the FDA will accept our filing and approve our request.

We are advised by our sub-licensee for FIRDAPSE® in Japan, DyDo Pharma, Inc. (DyDo), that based on a preliminary favorable analysis results of interim data after six months into the safety phase of its registration study to evaluate the efficacy and safety of FIRDAPSE® for the treatment of LEMS, DyDo intends to file an NDA with the PMDA in Japan seeking approval to commercialize the product in Japan by the end of 2023. There can be no assurance that any NDA filing made by DyDo will be approved.

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### *FYCOMPA®*

On December 17, 2022, we entered into an asset purchase agreement with Eisai Co., Ltd. (Eisai) for the acquisition of the U.S. rights to FYCOMPA® (perampanel) CIII. FYCOMPA® is a selective non-competitive antagonist of AMPA receptors, the major subtype of ionotropic glutamate receptors. It was the first, and still the only, drug of its class to be approved for epilepsy. Studies suggest that AMPA receptor antagonism can lead to reduced overstimulation and anticonvulsant effects, as well as inhibiting seizure generation and spread. FYCOMPA® is a controlled substance and is approved with a box warning label.

FYCOMPA® is used to treat partial onset seizures with or without secondarily generalized seizures in adults and children 4 years of age and older. It is also used in combination with other medications to treat primary generalized tonic-clonic seizures (also known as a “grand mal” seizure, a seizure that involves the entire body) in adults and children 12 years of age or older. Perampanel is in a class of medications called anticonvulsants. It works by decreasing abnormal electrical activity in the brain.

On January 24, 2023 we closed our acquisition of the U.S. rights to FYCOMPA®. In connection with the acquisition, we purchased Eisai’s regulatory approvals and documentation, product records, intellectual property, inventory, and other matters relating to the U.S. rights for FYCOMPA®, in exchange for a cash upfront payment of \$160 million, plus \$1.6 million for reimbursement of certain prepayments. We also may be obligated to pay Eisai an additional cash payment of \$25 million if a patent extension for FYCOMPA® is approved by the U.S. Patent and Trademark Office (USPTO). Finally, we agreed to pay Eisai royalty payments after patent protection for FYCOMPA® expires, which royalty payments will be reduced upon generic equivalents to FYCOMPA® entering the market.

In conjunction with the closing of our acquisition of FYCOMPA®, we entered into two additional agreements with Eisai; a Transition Services Agreement and a Supply Agreement. Under the Transition Services Agreement, a U.S. subsidiary of Eisai is providing us with certain transitional services, and under the Supply Agreement, Eisai has agreed to manufacture FYCOMPA® for us for at least seven years at prices listed in the Supply Agreement (to be updated on a yearly basis).

Initially, following the closing of the acquisition, we began marketing FYCOMPA® in the U.S. through Eisai’s U.S. subsidiary under the Transition Services Agreement as we built our FYCOMPA® marketing and sales team, and on May 1, 2023, we took over the marketing program for FYCOMPA®. In that regard, we have hired approximately 34 sales and marketing personnel to support FYCOMPA®, most of whom previously worked in Eisai’s U.S. sales division marketing FYCOMPA®. We also have hired seven medical science liaisons to help us educate the medical community who treat epilepsy and the patients who have epilepsy about their disease and the benefits of FYCOMPA®.

Catalyst is supporting patients using FYCOMPA® through an Instant Savings Card Program. Through the program, eligible commercially insured patients could pay as little as \$10 for their FYCOMPA® co-pay (with a maximum savings of \$1,300 per year). The FYCOMPA® instant savings card program is not available to patients enrolled in state or federal healthcare programs, including Medicare, Medicaid, VA, DoD, or TRICARE.

Patent protection for FYCOMPA® is primarily from two patents listed in the Orange Book. The first, U.S. Patent No. 6,949,571 (the ‘571 patent), will expire no earlier than May 23, 2025, which is the current expiration date for the ‘571 patent that includes the USPTO’s current patent term extension calculation. A request for reconsideration of the agency’s patent term extension calculation to extend the period until June 26, 2026 was recently denied, and the Company is currently exploring its options to potentially obtain that extension. The second FYCOMPA® patent in the Orange Book is U.S. Patent No. 8,772,497 (the ‘497 patent) that expires on July 1, 2026. The ‘497 patent is the one that has been the subject of previous Paragraph IV certifications from three ANDA filers.

On February 20, 2023, Catalyst received a Paragraph IV Certification Notice Letter from a company that appears to have filed the first ANDA for the oral suspension formulation for FYCOMPA®. The same company sent a similar letter to the Company later in February with a similar certification for the tablet formulation for FYCOMPA®, the fourth such certification for this formulation. Both of these letters were paragraph IV certifications of non-infringement, non-validity, and unenforceability to the ‘497 patent for FYCOMPA® but each application, like the previous Paragraph IV notices from ANDA filers, for FYCOMPA® tablets does not challenge the ‘571 patent. Similar to our actions with the FIRDAPSE® Paragraph IV Certifications described above, after due diligence Catalyst filed lawsuits on April 5, 2023 in the U.S. District Court for the District of New Jersey against the drug manufacturer who notified Catalyst of their ANDA submissions for both FYCOMPA® formulations, thus triggering the 30 month stay for each application.

### *Vamorolone*

On June 19, 2023, we entered into a License and Collaboration Agreement (License Agreement) and an Investment Agreement (Investment Agreement) with Santhera Pharmaceuticals Holding, Inc. (Santhera). Under the License Agreement, we contracted to obtain an exclusive North America license, manufacturing and supply agreement for Santhera’s investigational product candidate, vamorolone, a dissociated steroid currently under FDA review for the treatment of DMD. Under the Investment Agreement, we agreed to make a strategic investment into Santhera.

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Both transactions closed on July 18, 2023. Under the License Agreement, upon closing, we made a \$75 million payment to Santhera in return for the exclusive North American license for vamorolone. Additionally, we have agreed to make milestone payments of \$36 million upon approval of Santhera's NDA for vamorolone for DMD. We may also be obligated to pay future regulatory and commercial milestone payments to Santhera tied to FDA approval and calendar year sales of vamorolone, as well as commercial royalties. In addition to the rights to commercialize the product in North America, the License Agreement provides us with the right of first negotiation for vamorolone in Europe and Japan should Santhera pursue partnership opportunities in those territories. Additionally, we will hold the North American rights to any future approved indications for vamorolone. Vamorolone has received FDA Orphan Drug and Fast Track designations and vamorolone for DMD has been granted a PDUFA action date by the FDA of October 26, 2023.

Concurrently with the closing of the License Agreement, we made a strategic investment into Santhera in which we acquired 1,414,688 of Santhera's post-reverse split ordinary shares (representing approximately 11.26% of Santhera's outstanding ordinary shares following the transaction) at an investment price of CHF 9.477 per share (corresponding to a mutually agreed volume weighted average price prior to signing), with the approximately \$15 million investment to be used by Santhera for Phase IV studies of vamorolone in DMD and future development of additional indications for vamorolone.

DMD is a rare inherited X-chromosome-linked disease, which almost exclusively affects males. DMD is characterized by muscle inflammation and damage which are present at birth or shortly thereafter. Inflammation leads to fibrosis of muscle and is clinically manifested by progressive muscle degeneration and weakness. Major milestones in the disease are the loss of ambulation, the loss of self-feeding, the start of assisted ventilation, and the development of cardiomyopathy. DMD reduces life expectancy to before the fourth decade due to respiratory and/or cardiac failure. Corticosteroids are the current standard of care for the treatment of DMD. DMD is the most common childhood onset form of muscular dystrophy and its prevalence is estimated to be 1 in every 3,500 live male births.

Vamorolone is an investigational drug candidate with a mode of action based on binding to the same receptor as glucocorticoids but modifying its downstream activity and as such, is considered a dissociative anti-inflammatory drug. This mechanism has shown the potential to 'dissociate' efficacy from steroid safety concerns and therefore vamorolone could emerge as an alternative to existing corticosteroids, the current standard of care in children and adolescent subjects with DMD. In the pivotal VISION-DMD study, vamorolone met the primary endpoint Time to Stand (TTSTAND) velocity versus placebo ( $p=0.002$ ) at 24 weeks of treatment and showed a good safety and tolerability profile.

Assuming regulatory approval of vamorolone on the PDUFA date, we expect to launch vamorolone in the first quarter of 2024. We anticipate minimal sales and marketing personnel expansion to market vamorolone, with approximately 10 additional commercial team members required, due to the synergy of this product within our existing neuromuscular franchise. We also intend to incorporate vamorolone for DMD into our *Catalyst Pathways*<sup>®</sup> specialty pharmacy program to ensure that patients have access to full patient benefits.

We have established a joint steering committee with Santhera that will oversee the development of vamorolone for additional indications beyond DMD. We have also agreed under the License Agreement to purchase commercial supply of vamorolone from Santhera at agreed upon rates once the drug is approved.

### *Business Development*

We continue to advance our strategic initiatives and portfolio expansion efforts, focusing on broadening and diversifying our rare Neurology product portfolio with innovative therapies that address critical unmet medical needs and expanding the geographical footprint of our existing products. In that regard, we are currently exploring clinically differentiated and adequately de-risked opportunities, with a keen focus on products to treat rare neurological and epileptic diseases. These prospects include evaluating companies with existing commercial drug products or drugs in development, for potential partnerships, licensing, geographical expansion opportunities with our existing products, and/or asset acquisitions. We continue to employ a disciplined, comprehensive, and exhaustive approach to identifying and evaluating opportunities that we believe will add significant value to our company over the near, mid, and long term. However, no additional definitive agreements have been entered into to date, and there can be no assurance that these initiatives will be successful.

### *Capital Resources*

At June 30, 2023, we had cash and cash equivalents of approximately \$179 million. Subsequent to June 30, 2023, we paid (i) approximately \$90 million to Santhera as part of the closing of the transactions described above, and (ii) \$10 million to Jacobus Pharmaceutical Company, Inc. due in connection with our July 2022 acquisition of RUZURGI<sup>®</sup>. Based on our current financial condition and forecasts of available cash, we believe that we have sufficient funds to support our operations for at least the next 12 months.

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There can be no assurance that (i) we will continue to be successful in commercializing FIRDAPSE® and FYCOMPA®, (ii) vamorolone will be approved by the FDA for DMD or any other indication, (iii) if vamorolone is approved, we can successfully commercialize it, and (iv) we will continue to be profitable and cash flow positive. Further, there can be no assurance that if we need additional funding in the future, whether such funding will be available to us on acceptable terms. See “Liquidity and Capital Resources” below for further information on our liquidity and cash flow.

### **Basis of Presentation**

#### *Revenues.*

During the three and six months ended June 30, 2023, we generated revenues from product sales of FIRDAPSE® primarily in the U.S. and FYCOMPA® in the U.S. We expect these revenues to fluctuate in future periods based on our sales of FIRDAPSE® and FYCOMPA®. We received approval from Health Canada on July 31, 2020, for FIRDAPSE® for the symptomatic treatment of LEMS and as of December 31, 2020, we had launched FIRDAPSE® in Canada. During the three and six months ended June 30, 2023, revenues generated under our collaboration agreement with KYE Pharmaceuticals were immaterial. We expect our revenues from the KYE collaboration agreement to fluctuate in future periods based on our collaborator’s ability to sell FIRDAPSE® in Canada.

For the three and six months ended June 30, 2023, we did not generate revenues under our collaborative agreement with Endo. We expect our revenues from the Endo collaborative agreement to fluctuate in future periods based on our collaborator’s ability to meet various regulatory milestones set forth in such agreement.

For the three and six months ended June 30, 2023, we generated \$0.3 million and \$0.5 million, respectively, in revenues from our collaborative agreement with DyDo. We expect our revenue from the DyDo license agreement to fluctuate in future periods based on DyDo’s ability to meet various regulatory milestones set forth in such agreement.

#### *Cost of Sales.*

Cost of sales consists of third-party manufacturing costs, freight, royalties, and indirect overhead costs associated with sales of our products. Cost of sales may also include period costs related to certain inventory manufacturing services, inventory adjustments charges, unabsorbed manufacturing and overhead costs, manufacturing variances and the amortization of FYCOMPA® product rights.

#### *Research and Development Expenses.*

Our research and development expenses consist of costs incurred for company-sponsored research and development activities, as well as support for selected investigator-sponsored research. The major components of research and development costs include preclinical study costs, clinical manufacturing costs, clinical study and trial expenses, insurance coverage for clinical trials, consulting, and other third-party costs, salaries and employee benefits, stock-based compensation expense, supplies and materials, and allocations of various overhead costs related to our product development efforts. Prior to January 2023, all of our research and development resources have been devoted to the development of FIRDAPSE®, CPP-109 (our version of vigabatrin), and formerly CPP-115, and until we acquire or license new products we currently expect that our future development costs will be attributable principally to the continued development of FIRDAPSE®, FYCOMPA® and vamorolone, now that we have acquired a license in North America for that product.

Our cost accruals for clinical studies and trials are based on estimates of the services received and efforts expended pursuant to contracts with numerous clinical study and trial sites and clinical research organizations (CROs). In the normal course of our business we contract with third parties to perform various clinical study and trial activities in the on-going development of potential products. The financial terms of these agreements are subject to negotiation and vary from contract to contract and may result in uneven payment flows. Payments under the contracts depend on factors such as the achievement of certain events or milestones, the successful enrollment of patients, the allocation of responsibilities among the parties to the agreement, and the completion of portions of the clinical study or trial or similar conditions. The objective of our accrual policy is to match the recording of expenses in our consolidated financial statements to the actual services received and efforts expended. As such, expense accruals related to preclinical and clinical studies or trials are recognized based on our estimate of the degree of completion of the event or events specified in the specific study or trial contract. We monitor service provider activities to the extent possible; however, if we underestimate activity levels associated with various studies or trials at a given point in time, we could be required to record significant additional research and development expenses in future periods. Preclinical and clinical study and trial activities require significant up-front expenditures. We anticipate paying significant portions of a study or trial’s cost before they begin and incurring additional expenditures as the study or trial progresses and reaches certain milestones.

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### *Selling, General and Administrative Expenses.*

During 2019, we actively committed funds to developing our commercialization program for FIRDAPSE® and we have continued to incur substantial commercialization expenses, including sales, marketing, patient services, patient advocacy and other commercialization related expenses as we have continued our sales program for FIRDAPSE®. We are also now incurring substantial commercialization expenses for FYCOMPA®.

Our general and administrative expenses consist primarily of salaries and personnel expenses for accounting, corporate, compliance, and administrative functions. Other costs include administrative facility costs, regulatory fees, insurance, and professional fees for legal including litigation cost, information technology, amortization of the RUZURGI® product rights, accounting, and consulting services.

### *Amortization of Intangible Assets.*

Amortization of intangible assets consists of the amortization of the FYCOMPA® product rights, which are amortized using the straight-line method over its estimated useful life of 5 years, and the RUZURGI® product rights, which are amortized using the straight-line method over its estimated useful life of 14.5 years.

### *Stock-Based Compensation.*

We recognize expense for the fair value of all stock-based awards to employees, directors, and consultants in accordance with accounting principles generally accepted in the U.S. (U.S. GAAP). For stock options, we use the Black-Scholes option valuation model in calculating the fair value of the awards.

### *Income Taxes.*

Our effective income tax rate is the ratio of income tax expense (benefit) over our income before income taxes.

### *Recently Issued Accounting Standards.*

For discussion of recently issued accounting standards, please see Note 2, “Basis of Presentation and Significant Accounting Policies,” in the consolidated financial statements included in this report.

## **Critical Accounting Policies and Estimates**

Our discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these consolidated financial statements requires us to make judgments, estimates, and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, as well as the reported revenues and expenses during the reporting periods. For a full discussion of our accounting policies, please refer to Note 2 on the Financial Statements included in our 2022 Annual Report on Form 10-K that we filed with the SEC on March 15, 2023. Our most critical accounting policies and estimates include: accounting for revenue recognition, valuation of intangible assets, stock-based compensation and valuation allowance for deferred tax assets. We continually evaluate our judgments, estimates and assumptions. We base our estimates on the terms of underlying agreements, our expected course of development, historical experience and other factors that we believe are reasonable based on the circumstances, the results of which form our management’s basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates. There have been no material changes to our critical accounting policies and estimates from the information provided in Part II, Item 7, *Management’s Discussion and Analysis of Financial Condition and Results of Operations* included in our 2022 Annual Report on Form 10-K.

## **Results of Operations**

### *Revenues.*

For the three and six months ended June 30, 2023, we recognized \$99.5 million and \$184.8 million, respectively, in net revenue from product sales primarily in the U.S. compared to \$53.0 million and \$96.1 million, respectively, for the three and six months ended June 30, 2022. FIRDAPSE® sales were approximately \$64.9 million and \$122.4 million, respectively, for the three and six months ended June 30, 2023, and FYCOMPA® sales were approximately \$34.6 million for the three months ended June 30, 2023 and \$62.4 million for the period between January 24, 2023 (date of acquisition) and June 30, 2023. All net revenue from product sales during the three and six months ended June 30, 2022 were from sales of FIRDAPSE®.

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The increases of approximately \$46.4 million and \$88.7 million in net product revenues when comparing the three and six months ended June 30, 2023 and 2022, respectively, was due to the acquisition of FYCOMPA<sup>®</sup>, and related product sales, and increases in FIRDAPSE<sup>®</sup> sales volumes of approximately 12% and 16%, respectively, (which included patients who were transferred to FIRDAPSE<sup>®</sup> in the first and second quarter of 2022 when RUZURGI<sup>®</sup> was removed from the market) and net price increases.

For the three and six months ended June 30, 2023, we also recognized \$0.1 million and \$0.2 million, respectively, in license and other revenue, as compared to \$0.1 million during both the three and six months ended June 30, 2022.

### *Cost of Sales.*

Cost of sales was approximately \$12.0 million and \$22.0 million for the three and six months ended June 30, 2023, compared to \$7.6 million and \$13.5 million for the three and six months ended June 30, 2022. Cost of sales in both periods consisted principally of royalty payments, which are based on net revenue as defined in the applicable license agreements. For FIRDAPSE<sup>®</sup>, royalties are payable on the terms set forth below in Liquidity and Capital Resources -*Contractual Obligations and Arrangements*, and increase by 3% when net sales (as defined in the applicable license agreement) exceed \$100 million in any calendar year. Cost of sales for FYCOMPA<sup>®</sup> for the first and second quarters of 2023 consisted of product costs and excludes the amortization of the FYCOMPA<sup>®</sup> intangible assets. See Note 9 of the Notes to Unaudited Consolidated Financial Statements included elsewhere in this report.

### *Amortization of Intangible Assets.*

Amortization of intangible assets was approximately \$8.5 million and \$15.0 million for the three and six months ended June 30, 2023. There was no amortization of intangible assets for the comparable periods in 2022. Amortization of intangible assets consists of the amortization of the FYCOMPA<sup>®</sup> rights, which are amortized using the straight-line method over its estimated useful life of 5 years, and the RUZURGI<sup>®</sup> rights, which are amortized using the straight-line method over its estimated useful life of 14.5 years.

### *Research and Development Expenses.*

Research and development expenses for the three months ended June 30, 2023 and 2022 were approximately \$4.0 million and \$4.0 million, respectively, and represented approximately 7% and 16% of total operating costs and expenses, respectively. Research and development expenses for the three months ended June 30, 2023 and 2022 were as follows (in thousands):

	Three months ended June 30,		Change	
	2023	2022	\$	%
Research and development expenses	\$ 3,603	\$ 3,558	45	1.3
Employee stock-based compensation	351	425	(74)	(17.4)
Total research and development expenses	<u>\$ 3,954</u>	<u>\$ 3,983</u>	<u>(29)</u>	<u>(0.7)</u>

Research and development expenses for the six months ended June 30, 2023 and 2022 were approximately \$7.5 million and \$7.4 million, respectively, and represented approximately 7% and 15% of total operating costs and expenses, respectively. Research and development expenses for the six months ended June 30, 2023 and 2022 were as follows (in thousands):

	Six months ended June 30,		Change	
	2023	2022	\$	%
Research and development expenses	\$6,826	\$6,529	297	4.5
Employee stock-based compensation	690	857	(167)	(19.5)
Total research and development expenses	<u>\$7,516</u>	<u>\$7,386</u>	<u>130</u>	<u>1.8</u>

For FIRDAPSE<sup>®</sup>, research and development expenses remained relatively consistent for the three and six months ended June 30, 2023, when compared to the same periods in 2022. For the three and six months ended June 30, 2023 and 2022, research and development expenses included costs relating to closing out sites for both our MuSK-MG clinical trial and our previously operated expanded access program. During the 2023 period, research and development also included costs related to FYCOMPA<sup>®</sup>.

We expect that research and development expenses will continue to be substantial in 2023 and beyond as we execute on our strategic initiative and portfolio expansion efforts with a keen focus on products to treat rare neurological and epileptic diseases.

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### *Selling, General and Administrative Expenses.*

Selling, general and administrative expenses for the three months ended June 30, 2023 and 2022 were approximately \$28.4 million and \$12.9 million, respectively, and represented approximately 54% and 53% of total operating costs and expenses, respectively. Selling, general and administrative expenses for the three months ended June 30, 2023 and 2022 were as follows (in thousands):

	Three months ended June 30,		Change	
	2023	2022	\$	%
Selling	\$18,312	\$ 7,268	11,044	152.0
General and administrative	7,137	4,052	3,085	76.1
Employee stock-based compensation	2,947	1,598	1,349	84.4
Total selling, general and administrative expenses	<u>\$28,396</u>	<u>\$12,918</u>	<u>15,478</u>	<u>119.8</u>

Selling, general and administrative expenses for the six months ended June 30, 2023 and 2022 were approximately \$58.1 million and \$29.3 million, respectively, and represented approximately 57% and 58% of total operating costs and expenses, respectively. Selling, general and administrative expenses for the six months ended June 30, 2023 and 2022 were as follows (in thousands):

	Six months ended June 30,		Change	
	2023	2022	\$	%
Selling	\$36,076	\$14,058	22,018	156.6
General and administrative	16,538	12,221	4,317	35.3
Employee stock-based compensation	5,500	3,069	2,431	79.2
Total selling, general and administrative expenses	<u>\$58,114</u>	<u>\$29,348</u>	<u>28,766</u>	<u>98.0</u>

For the three and six months ended June 30, 2023, selling, general and administrative expenses increased approximately \$15.5 million and \$28.8 million, respectively, compared to the same periods in 2022. The increase for the six months ended June 30, 2023 was primarily attributable to the direct fees payable under the transition services agreement associated with net product sales of FYCOMPA® of approximately \$13.4 million, increases of approximately \$5.0 million in selling (commercialization) expenses due to the acquisition of FYCOMPA®, which consist primarily of commercial systems implementation costs, hiring of the sales force and supporting personnel, to the timing of our commitments to make contributions to 501(c)(3) organizations supporting LEMS patients of approximately \$1.1 million, and an approximately \$6.8 million increase in employee compensation and stock based compensation related to annual merit increases and the increase in headcount resulting from the acquisition of FYCOMPA®.

We expect that selling, general and administrative expenses will continue to be substantial in future periods as we continue our efforts to increase our revenues from FIRDAPSE®, continue our efforts to market FYCOMPA®, take steps to prepare for the potential commercial launch of vamorolone in 2024, if approved by the FDA, and take steps to continue to expand our business.

### *Stock-Based Compensation.*

Total stock-based compensation for the three and six months ended June 30, 2023 was \$3.3 million and \$6.2 million, respectively, and for the three and six months ended June 30, 2022 was \$2.0 million and \$3.9 million, respectively. In the first half of 2023 and 2022, grants were principally for stock options relating to year-end bonus awards and grants to new employees.

### *Other Income (Expense), Net.*

We reported other income (expense), net in all periods, primarily relating to our investment of our cash and cash equivalents and investments of \$1.8 million and \$3.5 million for the three and six months ended June 30, 2023 and (\$0.3) million and (\$0.2) million for the same periods in 2022, respectively. The increase in other income, net for the three and six months ended June 30, 2023 of approximately \$2.1 million and \$3.7 million when compared to the same period in 2022, respectively, is primarily due to higher yields on investments as well as higher invested balances and a \$0.6 million realized loss from the sale of available-for-sale securities during the three and six months ended June 30, 2022. Other income, net, consists primarily of interest and dividend income.

### *Income Taxes.*

Our effective income tax rate was 21.5% and 23.7% for the six months ended June 30, 2023 and 2022, respectively. Differences in our effective tax and the statutory federal income tax rate of 21% are driven by state income taxes and anticipated annual permanent differences, and offset by the orphan drug credit claimed. Our effective tax rate is affected by many factors, including the number of stock options exercised in any period, and our effective tax rate is likely to fluctuate in future periods (and may be higher in future periods than it was in the first six months of 2023).

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We had no uncertain tax positions as of June 30, 2023 and December 31, 2022.

### *Net Income.*

Our net income was \$37.8 million and \$67.3 million, respectively, for the three and six months ended June 30, 2023 (\$0.36 and \$0.64, respectively, per basic share and \$0.33 and \$0.59, respectively, per diluted share) as compared to net income of \$21.6 million and \$34.9 million, respectively, for the three and six months ended June 30, 2022 (\$0.21 and \$0.34, respectively, per basic share and \$0.20 and \$0.32, respectively, per diluted share).

### **Liquidity and Capital Resources**

Since our inception, we have financed our operations primarily through multiple offerings of our securities, since January 2019, from revenues from product sales of FIRDAPSE<sup>®</sup>, and since January 2023, from revenues from product sales of FYCOMPA<sup>®</sup>. At June 30, 2023 we had cash and cash equivalents aggregating \$178.8 million and working capital of \$188.5 million. At December 31, 2022, we had cash and cash equivalents aggregating \$298.4 million and working capital of \$263.2 million. On January 24, 2023, we used approximately \$162 million of our cash and cash equivalents to acquire the U.S. rights to FYCOMPA<sup>®</sup>. Subsequent to June 30, 2023, we paid (i) approximately \$90 million to Santhera as part of the closing of the transactions described above, and (ii) \$10 million to Jacobus Pharmaceutical Company, Inc. due in connection with our July 2022 acquisition of RUZURGI<sup>®</sup>. At June 30, 2023, substantially all of our cash and cash equivalents were deposited with one financial institution, and such balances were in excess of federally insured limits. Further, as of such date, substantially all such funds were invested in money market accounts and U.S. Treasuries.

Based on forecasts of available cash, we believe that we have sufficient resources to support our currently anticipated operations for at least the next 12 months from the date of this report. There can be no assurance that we will remain profitable or that we will be able to obtain any additional funding that we may require in the future.

In the future, we may require additional working capital to support our operations depending on our future success with FIRDAPSE<sup>®</sup> and FYCOMPA<sup>®</sup> sales, or the products we acquire and continue to develop and whether our results continue to be profitable and cash flow positive. There can be no assurance as to the amount of any such funding that will be required for these purposes or whether any such funding will be available to us if and when it is required.

In that regard, our future funding requirements will depend on many factors, including:

- the cost of diligence in seeking potential acquisitions and of the completion of such acquisitions, if any future acquisitions occur;
- future clinical trial results;
- the scope, rate of progress and cost of our clinical trials and other product development activities;
- the terms and timing of any collaborative, licensing and other arrangements that we may establish;
- the cost and timing of regulatory approvals;
- the cost and delays in product development as a result of any changes in regulatory oversight applicable to our products;
- the level of revenues that we report from sales of FIRDAPSE<sup>®</sup> and FYCOMPA<sup>®</sup>;
- the effect of competition and market developments;
- the cost of filing and potentially prosecuting, defending and enforcing any patent claims and other intellectual property rights; and
- the extent to which we acquire or invest in other products.

We may raise additional funds through public or private equity offerings, debt financings, corporate collaborations or other means. We also may seek governmental grants for a portion of the required funding for our clinical trials and preclinical trials. We may further seek to raise capital to fund additional business development activities, even if we have sufficient funds for our planned operations. Any sale by us of additional equity or convertible debt securities could result in dilution to our stockholders. There can be no assurance that any such required additional funding will be available to us at all or available on terms acceptable to us. Further, to the extent that we raise additional funds through collaborative arrangements, it may be necessary to relinquish some rights to our technologies or grant sublicenses on terms that are not favorable to us. If we are not able to secure additional funding when needed, we may have to delay, reduce the scope of or eliminate one or more research and development programs, which could have an adverse effect on our business.

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On July 23, 2020, we filed a shelf registration statement with the SEC to sell up to \$200 million of common stock, preferred stock, warrants to purchase common stock, debt securities and units consisting of one or more of such securities (the 2020 Shelf Registration Statement). The 2020 Shelf Registration Statement (file no. 333-240052) was declared effective by the SEC on July 31, 2020. No offerings were completed under the 2020 Shelf Registration Statement and during July 2023 the 2020 Shelf Registration expired.

### *Cash Flows.*

Net cash provided by operating activities was \$42.8 million and \$34.7 million, respectively, for the six months ended June 30, 2023 and 2022. During the six months ended June 30, 2023, net cash provided by operating activities was primarily attributable to our net income of \$67.3 million, a decrease of \$0.2 million in inventory, an increase of \$0.4 million in accounts payable and \$21.6 million of non-cash expenses. This was partially offset by increases of \$32.4 million in accounts receivable, net, \$1.9 million in prepaid expenses and other current assets and decreases of \$7.6 million in accrued expenses and other liabilities and \$0.2 million in operating lease liability and \$4.8 million in deferred taxes. The increase in accounts receivable, net, primarily relates to sales of FYCOMPA<sup>®</sup>, which has a longer cash collection cycle than FIRDAPSE<sup>®</sup>. During the six months ended June 30, 2022, net cash provided by operating activities was primarily attributable to our net income of \$34.9 million, \$2.7 million in deferred taxes and \$4.8 million of non-cash expenses. This was partially offset by an increase of \$3.0 million in accounts receivable, net and decreases of \$0.5 million in accounts payable, \$4.1 million in accrued expenses and other liabilities and \$0.1 million in operating lease liability.

Net cash used in investing activities was \$162.4 million for the six months ended June 30, 2023, consisting primarily of payment in connection with the FYCOMPA<sup>®</sup> asset acquisition. Net cash provided by investing activities for the six months ended June 30, 2022 was \$9.3 million and consisted primarily of proceeds from the sale of available-for-sale securities.

Net cash used in financing activities during the six months ended June 30, 2023 was \$0.1 million, consisting primarily of payment of liabilities arising from asset acquisition and payment of employee withholding tax related to stock-based compensation partially offset by proceeds from the exercise of stock options. Net cash used in financing activities during the six months ended June 30, 2022 was \$4.5 million, consisting primarily of repurchases of common stock offset partially by proceeds from exercise of stock options.

### *Contractual Obligations and Arrangements.*

We have entered into the following contractual arrangements with respect to sales of FIRDAPSE<sup>®</sup>:

- *Payments due under our license agreement for FIRDAPSE<sup>®</sup>.* We currently pay the following royalties under our license agreement:
  - Royalties to our licensor for seven years from the first commercial sale of FIRDAPSE<sup>®</sup> equal to 7% of net sales (as defined in the License Agreement) in North America for any calendar year for sales up to \$100 million, and 10% of net sales in North America in any calendar year in excess of \$100 million; and
  - Royalties to the third-party licensor of the rights sublicensed to us from the first commercial sale of FIRDAPSE<sup>®</sup> equal to 7% of net sales (as defined in the License Agreement between BioMarin and the third-party licensor) in any calendar year for the duration of regulatory exclusivity within a territory and 3.5% for territories in any calendar year in territories without regulatory exclusivity.

For the three and six months ended June 30, 2023, we recognized an aggregate of approximately \$9.2 million and \$16.8 million, respectively, of royalties payable under these license agreements, which is included in cost of sales in the accompanying consolidated statements of operations and comprehensive income.

Further, if DyDo is successful in obtaining the right to commercialize FIRDAPSE<sup>®</sup> in Japan, we will pay royalties to our licensor on net sales in Japan equal to a similar percentage to the royalties that we are currently paying under our original license agreement for North America.

- *Payments due to Jacobus.* In connection with our July 2022 settlement with Jacobus, we agreed to pay the following consideration to Jacobus:
  - \$30 million of cash, of which \$10 million was paid at the closing of the settlement on July 11, 2022, an additional \$10 million was paid during July 2023 on the first anniversary of closing and the balance of which will be paid on the second anniversary of closing;
  - An annual royalty on Catalyst's net sales (as defined in the License and Asset Purchase Agreement between Catalyst and Jacobus) of amifampridine products in the United States equal to: (a) for calendar years 2022 through 2025, 1.5% (with a minimum annual royalty of \$3.0 million per year), and (b) for calendar years 2026 through the expiration of the last to expire of Catalyst's FIRDAPSE<sup>®</sup> patents in the United States, 2.5% (with a minimum annual royalty of \$5 million per year); *provided, however*, that the royalty rate may be reduced and the minimum annual royalty may be eliminated under certain circumstances; and

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- If Catalyst were to receive a priority review voucher for FIRDAPSE® or RUZURGI® in the future, 50% of the consideration paid by a third party to acquire that voucher will be paid to Jacobus.

Royalties will be trueed up at the end of the year to the extent that royalties on net sales are below the minimum royalty.

For the three and six months ended June 30, 2023, we recognized an aggregate of approximately \$0.9 million and \$1.7 million, respectively, of royalties payable to Jacobus.

We have entered into the following contractual arrangements with respect to sales of FYCOMPA®:

- *Payments due under our asset purchase agreement for FYCOMPA®.* In connection with our asset purchase agreement with Eisai Co., Ltd. (Eisai):
  - \$160 million upfront cash payment plus \$1.6 million for reimbursement of certain prepayments, which was paid upon closing. Eisai is also eligible to receive a contingent payment of \$25 million if a certain patent related milestone is met;
  - Royalties commencing on loss of exclusivity for each calendar year during the royalty term equal to 12% on net sales greater than \$10 million and less than \$100 million, 17% on net sales of greater than \$100 million and less than \$125 million and 22% on net sales greater than \$125 million prior to the date of generic entry. Royalties equal to 6% on net sales greater than \$10 million and less than \$100 million, 8.5% on net sales of greater than \$100 million and less than \$125 million and 11% on net sales greater than \$125 million after the date of generic entry.
  - Concurrently with the acquisition, the parties entered into two related agreements: (i) a short-term Transition Services Agreement for commercial and manufacturing services and (ii) a long-term Supply Agreement for the manufacturing of FYCOMPA®. Under the Transition Services Agreement, Eisai is providing certain commercial and manufacturing services to the Company for a transition period following the closing of the acquisition. Further, under the Supply Agreement, Eisai will manufacture FYCOMPA® for the Company for a period of seven years (or such longer period as is set forth in the Supply Agreement) following the closing of the acquisition.

We have entered into the following contractual arrangements with respect to vamorolone:

- *Payments due under our license agreement for vamorolone.* In connection with our recent acquisition from Santhera Pharmaceuticals Holdings (Santhera):
  - \$75 million initial cash payment on the closing of the acquisition.
  - Regulatory milestone payment of \$36 million upon regulatory approval by the FDA in the U.S. of an NDA for the product for the treatment of DMD. Additional regulatory milestone payments upon regulatory approval by the FDA in the U.S. of an NDA for the product for the first, second, and third additional indications in the amount of \$50 million, \$45 million, and \$45 million, respectively.
  - Sales-based milestone payments if the applicable amount of net sales of all products in the territory in a single calendar year reach one of more of the net sales threshold levels set forth in the license agreement.
  - Until January 1, 2026, we are obligated to purchase all of the requirements for product solely from Santhera, and Santhera is required to manufacture, supply, and sell product to us at an agreed upon supply price.
  - Simultaneously, we made a strategic equity investment into Santhera by acquiring 1,414,688 of Santhera's post reverse-split ordinary shares (representing approximately 11.26% of Santhera's outstanding ordinary shares following the transaction) at an investment price of CHF 9.477 per share (corresponding to a mutually agreed volume-weighted average price prior to signing), with the approximately \$15 million USD in equity investment proceeds to be used by Santhera for Phase IV studies in DMD and further development of additional indications for vamorolone.

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We also have entered into the following contractual arrangements:

- *Employment agreements.* We have entered into an employment agreement with our Chief Executive Officer that required us to make base salary payments of approximately \$0.7 million in 2023. The agreement expires in November 2024. However, on July 25, 2023, our Chief Executive Officer announced his intention to retire by the end of 2023.
- *Purchase commitment.* We have entered into a purchase commitment with a contract manufacturing organization for approximately \$0.5 million per year. The agreement expires in December 2023.
- *Lease for office space.* We operate our business in leased office space in Coral Gables, Florida. We entered into an agreement in May 2020 that amended our lease for office facilities. Under the amended lease, our leased space increased from approximately 7,800 square feet of office space to approximately 10,700 square feet of office space. We moved into the new space around March 1, 2021 when the space became available for use. We pay annual rent of approximately \$0.5 million.

### *Off-Balance Sheet Arrangements.*

We do not have any off-balance sheet arrangements as such term is defined in rules promulgated by the SEC.

### **Caution Concerning Forward-Looking Statements**

This report contains “forward-looking statements”, as that term is defined in the Private Securities Litigation Reform Act of 1995. These include statements regarding our expectations, beliefs, plans or objectives for future operations and anticipated results of operations. For this purpose, any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the foregoing, “believes”, “anticipates”, “proposes”, “plans”, “expects”, “intends”, “may”, and other similar expressions are intended to identify forward-looking statements. Such statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or other achievements to be materially different from any future results, performances or achievements expressed or implied by such forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in the section entitled “Item 1A – Risk Factors.”

The continued successful commercialization of FIRDAPSE<sup>®</sup> and FYCOMPA<sup>®</sup> are highly uncertain. Factors that will affect our success include the uncertainty of:

- The impact of the COVID-19 pandemic, or any future pandemic, on our business or on the economy generally;
- Whether we will be able to continue to successfully market FIRDAPSE<sup>®</sup> and now successfully market FYCOMPA<sup>®</sup> while maintaining full compliance with applicable federal and state laws, rules and regulations;
- Whether our estimates of the size of the market for FIRDAPSE<sup>®</sup> for the treatment of Lambert-Eaton Myasthenic Syndrome (LEMS) will prove to be accurate;
- Whether we will be able to locate LEMS patients who are undiagnosed or are misdiagnosed with other diseases;
- Whether patients will discontinue from the use of FIRDAPSE<sup>®</sup> and FYCOMPA<sup>®</sup> at rates that are higher than historically experienced or are higher than we project;
- Whether the daily dose of FIRDAPSE<sup>®</sup> taken by patients changes over time and affects our results of operations;
- Whether new FIRDAPSE<sup>®</sup> patients and FYCOMPA<sup>®</sup> patients can be successfully titrated to stable therapy;
- Whether we can continue to market FIRDAPSE<sup>®</sup> and now market FYCOMPA<sup>®</sup> on a profitable and cash flow positive basis;
- Whether we can successfully integrate the team that we have hired to market FYCOMPA<sup>®</sup> into our current business structure;
- Whether the acquisition of FYCOMPA<sup>®</sup> will prove to be accretive to EBITDA and EPS in 2023;
- Whether any revenue or earnings guidance that we provide to the public market will turn out to be accurate;
- Whether payors will reimburse for our products at the price that we charge for our products;
- The ability of our third-party suppliers and contract manufacturers to maintain compliance with current Good Manufacturing Practices (cGMP);
- The ability of those third parties that distribute our products to maintain compliance with applicable law;
- Our ability to maintain compliance with applicable rules relating to our patient assistance programs for FIRDAPSE<sup>®</sup> and FYCOMPA<sup>®</sup>;

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- Our ability to maintain compliance with the applicable rules that relate to our contributions to 501(c)(3) organizations that support LEMS patients;
- The scope of our intellectual property and the outcome of any challenges to our intellectual property, and, conversely, whether any third-party intellectual property presents unanticipated obstacles for FIRDAPSE® or FYCOMPA®;
- Our ability to obtain a favorable resolution of our dispute with the U.S. Patent Office on the term extension for one of our patents listed in the Orange Book for FYCOMPA®;
- Whether there will be a post-closing review by antitrust regulators of our previous acquisition transactions, and the outcome of any such reviews if they occur;
- Whether we will be able to acquire additional drug products under development, complete the research and development required to commercialize such products, and thereafter, if such products are approved for commercialization, successfully market such products;
- Whether our patents will be sufficient to prevent generic competition for FIRDAPSE® after our orphan drug exclusivity for FIRDAPSE® expires;
- Whether we will be successful in our litigation to enforce our patents against the Paragraph IV challengers who have filed relating to FIRDAPSE® or FYCOMPA®;
- The impact on our profits and cash flow of adverse changes in reimbursement and coverage policies from government and private payors such as Medicare, Medicaid, insurance companies, health maintenance organizations and other plan administrators, or the impact of pricing pressures enacted by industry organizations, the federal government or the government of any state, including as a result of increased scrutiny over pharmaceutical pricing or otherwise;
- Changes in the healthcare industry and the effect of political pressure from and actions by the President, Congress and/or medical professionals seeking to reduce prescription drug costs, and changes to the healthcare industry occasioned by any future changes in laws relating to the pricing of drug products, including changes made in the Inflation Reduction Act of 2022, or changes in the healthcare industry generally;
- Whether Santhera's NDA for vamorolone will be approved by the PDUFA date, or at all;
- Whether, if Santhera's NDA for vamorolone is approved, we will be able to successfully commercialize vamorolone in the territory;
- Whether our commercialization of vamorolone, if the drug is approved, will prove accretive to earnings;
- Whether we and Santhera can successfully develop additional indications for vamorolone and obtain the ability to commercialize the product for these additional indications;
- The state of the economy generally and its impact on our business;
- The potential impact of future healthcare reform in the United States, including the Inflation Reduction Act of 2022, and measures being taken worldwide designed to reduce healthcare costs and limit the overall level of government expenditures, including the impact of pricing actions and reduced reimbursement for our product;
- The scope, rate of progress and expense of our clinical trials and studies, pre-clinical studies, proof-of-concept studies, and our other drug development activities, and whether our trials and studies will be successful;
- Our ability to complete any clinical trials and studies that we may undertake on a timely basis and within the budgets we establish for such trials and studies;
- Whether FIRDAPSE® can be successfully commercialized in Canada on a profitable basis through KYE Pharmaceuticals, our collaboration partner in Canada;
- The impact on sales of FIRDAPSE® in the United States if an amifampridine product is purchased in Canada for use in the United States;
- Whether our collaboration partner in Japan, DyDo, will successfully complete the clinical trial in Japan that will be required to seek approval to commercialize FIRDAPSE® in Japan;
- Whether DyDo will be able to obtain approval to commercialize FIRDAPSE® in Japan; and
- Whether our version of vigabatrin tablets will ever be approved by the FDA and successfully marketed by Endo, whether we will earn milestone payments or royalties on sales of our version of generic vigabatrin tablets, and whether Endo's bankruptcy filing will impact these issues.

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Our current plans and objectives are based on assumptions relating to the continued commercialization of FIRDAPSE® and FYCOMPA®, the potential commercialization of vamorolone and on our plans to seek to acquire or in-license additional products. Although we believe that our assumptions are reasonable, any of our assumptions could prove inaccurate. Considering the significant uncertainties inherent in the forward-looking statements we have made herein, which reflect our views only as of the date of this report, you should not place undue reliance upon such statements. We undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

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

Market risk represents the risk of changes in the value of market risk-sensitive instruments caused by fluctuations in interest rates, foreign exchange rates and commodity prices. Changes in these factors could cause fluctuations in our results of operations and cash flows.

Our exposure to interest rate risk is currently confined to our cash and cash equivalents that are from time to time invested in highly liquid money market funds and U.S. Treasuries. The primary objective of our investment activities is to preserve our capital to fund operations. We also seek to maximize income from our investments without assuming significant risk. We do not use derivative financial instruments in our investment portfolio. Our cash and investments policy emphasizes liquidity and preservation of principal over other portfolio considerations.

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

- a. We have carried out an evaluation, under the supervision and with the participation of our management, including 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 Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the Exchange Act). Based on such evaluation, our principal executive officer and principal financial officer have concluded that as of June 30, 2023, our disclosure controls and procedures were effective to ensure that the information required to be disclosed by us in the reports filed or submitted by us under the Exchange Act, was recorded, processed, summarized or reported within the time periods specified in the rules and regulations of the SEC, and include controls and procedures designed to ensure that information required to be disclosed by us in such reports was accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.
- b. During the three months ended June 30, 2023, there were no changes in our internal controls or in other factors that could have a material effect, or are reasonably likely to have a material effect, on our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

#### *Paragraph IV Patent Litigation*

In January 2023, we received Paragraph IV Certification Notice Letters from three generic drug manufacturers advising us that they had each submitted an Abbreviated New Drug Application (ANDA) to the FDA seeking authorization from the FDA to manufacture, use or sell a generic version of FIRDAPSE® in the United States. The notice letters each allege that our six patents listed in the FDA Orange Book covering FIRDAPSE® are not valid, not enforceable, and/or will not be infringed by the commercial manufacture, use or sale of the proposed product described in these ANDA submissions. Under the Federal Food, Drug, and Cosmetic Act, as amended by the Drug Price Competition and Patent Term Restoration Act of 1984, as amended, we had 45 days from receipt of the notice letters to commence patent infringement lawsuits against these generic drug manufacturers in a federal district court to trigger a stay precluding FDA from approving any ANDA until May 2026 or entry of judgment holding the patents invalid, unenforceable, or not infringed, whichever occurs first. In that regard, after conducting the necessary due diligence, we filed lawsuits on March 1, 2023 in the U.S. Federal District Court for the District of New Jersey against each of the three generic drug manufacturers who notified us of their ANDA filings.

We intend to vigorously protect and defend our intellectual property for FIRDAPSE® and, although there can be no assurance, we believe that our patents will protect FIRDAPSE® from generic competition for the life of our patents.

On February 20, 2023, we received a Paragraph IV Certification Notice Letter from a company that appears to have filed the first ANDA for the oral suspension formulation for FYCOMPA®. The same company sent a similar letter to us later in February with a similar certification for the tablet formulation for FYCOMPA®, the fourth such certification for this formulation. Both of these letters were paragraph IV certifications of non-infringement, non-validity, and unenforceability to the '497 patent for FYCOMPA® but each application, like the previous Paragraph IV notices from ANDA filers, for FYCOMPA® tablets does not challenge the '571 patent. Similar to our actions with the FIRDAPSE® Paragraph IV Certifications described above, after due diligence we filed lawsuits on April 5, 2023 in the U.S. District Court for the District of New Jersey against the drug manufacturer who notified us of their ANDA submissions for both FYCOMPA® formulations, thus triggering the 30 month stay for each application.

#### *Other Litigation*

From time to time we may become involved in legal proceedings arising in the ordinary course of business. Other than as set forth above, we believe that there is no litigation pending at this time that could have, individually or in the aggregate, a material adverse effect on our results of operations, financial condition or cash flows.

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### ITEM 1A. RISK FACTORS

There are many factors that affect our business, our financial condition, and the results of our operations. In addition to the information set forth in this quarterly report, you should carefully read and consider “Item 1A. Risk Factors” in Part I, and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, of our 2022 Annual Report on Form 10-K filed with the SEC, which contain a description of significant factors that might cause our actual results of operations in future periods to differ materially from those currently expected or desired.

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

#### Issuer Purchases of Equity Securities

In March 2021, our Board of Directors approved a share repurchase program that authorizes the repurchase of up to \$40 million of our common stock, pursuant to a repurchase program under Rule 10b-18 of the Securities Act (the Share Repurchase Program). The Share Repurchase Program commenced on March 22, 2021.

At present, we are not purchasing shares under our share repurchase program, but rather we are retaining cash for use in our business development activities.

The following table presents information regarding repurchases by us of our common stock under the Share Repurchase Program during the three months ended June 30, 2023:

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid Per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Program</u>	<u>Dollar Value of Shares that May Yet Be Purchased (in thousands)</u>
April 1, 2023 – April 30, 2023	—	\$ —	—	\$ 21,003
May 1, 2023 – May 31, 2023	—	\$ —	—	\$ 21,003
June 1, 2023 – June 30, 2023	—	\$ —	—	\$ 21,003

### ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None

### ITEM 4. MINE SAFETY DISCLOSURE

Not applicable

### ITEM 5. OTHER INFORMATION

Our directors and executive officers may from time to time enter into plans or other arrangements for the purchase or sale of our shares that are intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or may represent a non-Rule 10b5-1 trading arrangement under the Securities Exchange Act of 1934, as amended. During the second quarter of 2023, none of our directors or executive officers adopted, modified, or terminated any “Rule 10b5-1 trading arrangement” or any “non-Rule 10b5-1 trading arrangement”, as each term is defined in Rule 408(e) of Regulation S-K.

On July 25, 2023, we reported that our Chief Executive Officer, Patrick J. McEnany, has advised our Board of Directors of his intention to retire from his position as CEO by the end of 2023. Mr. McEnany will continue to serve as CEO until his replacement is in place and, following his retirement as CEO, Mr. McEnany will continue to serve as non-Executive Chairman of our Board of Directors. Our Board of Directors has retained a nationally recognized executive recruitment firm to initiate the search for Mr. McEnany’s replacement as CEO.

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**ITEM 6. EXHIBITS**

10.1	<a href="#"><u>Amendment to Transition Services Agreement between Eisai Inc., a subsidiary of Eisai and the Company, dated as of July 31, 2023 (certain identified information has been excluded from the exhibit because it both (i) is not material and (ii) would be competitively harmful if publicly disclosed).</u></a>
31.1	<a href="#"><u>Certification of Principal Executive Officer under Section 302 of the Sarbanes-Oxley Act of 2002</u></a>
31.2	<a href="#"><u>Certification of Principal Financial Officer under Section 302 of the Sarbanes-Oxley Act of 2002</u></a>
32.1	<a href="#"><u>Certification of Principal Executive Officer under Section 906 of the Sarbanes-Oxley Act of 2002</u></a>
32.2	<a href="#"><u>Certification of Principal Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002</u></a>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema
101.CAL	XBRL Taxonomy Extension Calculation Linkbase
101.DEF	XBRL Taxonomy Extension Definition Linkbase
101.LAB	XBRL Taxonomy Extension Label Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

**SIGNATURES**

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

**Catalyst Pharmaceuticals, Inc.**

By: /s/ Alicia Grande

\_\_\_\_\_

Alicia Grande

Vice President, Treasurer and Chief Financial Officer

Date: August 9, 2023

**Certain identified information has been excluded from this exhibit because it is both (i) not material, and (ii) would likely cause competitive harm to the registrant if publicly disclosed. [\*\*\*] indicates that information has been redacted.**

### AMENDMENT TO TRANSITION SERVICES AGREEMENT

This Amendment to Transition Services Agreement (this “Amendment”), dated as of July 31, 2023 (the “Effective Date”) is made by and between Eisai Inc., a Delaware corporation (“Seller”) and Catalyst Pharmaceuticals, Inc., a Delaware corporation (“Buyer”). Seller and Buyer are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

### BACKGROUND

- A. Seller and Buyer are parties to that certain Transition Services Agreement, dated January 24, 2023 (the “Agreement”).
- B. Seller and Buyer desire to amend the Agreement to extend the term thereof with respect to the Manufacturing Services and clarify the Parties’ obligations under the Agreement for such extended term.
- C. Accordingly, Seller and Buyer hereby amend the Agreement in accordance with and subject to the terms and conditions set forth below.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agree as follows:

1. Definitions. All capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

2. Amendment to Section 2.10.3.

Section 2.10 of the Agreement is hereby amended by adding the following as Section 2.10.5:

“2.10.5 Bulk Product / API Supply. [\*\*\*]”

Section 2.10.3(c) of the Agreement is hereby amended by replacing each reference to “Initial Transition Period” with “Transition Period”.

3. Amendment to Section 8.1. Section 8.1(c)(i) of the Agreement is hereby amended by replacing “the date that is the last day of the Initial Transition Period” with “March 31, 2024”.

4. Amendment to Schedule 4.1. Schedule 4.1 of the Agreement is hereby replaced with Schedule 4.1 attached hereto as Exhibit A.

5. Service Clarification. [\*\*\*]

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6. Supply Clarification. [\*\*\*]

7. Effect of Amendment. Except as otherwise provided herein, all of the provisions of the Agreement are hereby ratified and confirmed and all the terms, conditions and provisions thereof remain in full force and effect.

8. Miscellaneous. The provisions of Section 9.1 (Force Majeure), Section 9.3 (Assignment), Section 9.4 (No Benefit to Third Parties), Section 9.6 (Severability), Section 9.7 (Governing Law), Section 9.8 (Jurisdiction), Section 9.9 (Service of Process), Section 9.10 (Amendments and Waivers), Section 9.11 (Joint Drafting), and Section 9.12 (Counterparts) of the Agreement shall apply to this Amendment *mutatis mutandis* as if set forth herein.

9. Entire Agreement. This Amendment, together with the Agreement, the Asset Purchase Agreement (including the Schedules and Exhibits expressly contemplated thereby and attached thereto), the Schedules expressly contemplated hereby and attached hereto, the Disclosure Schedules, the Ancillary Agreements, the Confidentiality Agreement and the other agreements, certificates and documents delivered in connection herewith or therewith or otherwise in connection with the transactions contemplated hereby and thereby, contain the entire agreement between the Parties with respect to the transactions contemplated hereby or thereby and supersede all prior agreements, understandings, promises and representations, whether written or oral, between the Parties with respect to the subject matter hereof and thereof.

*[Signature page follows]*

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IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the Effective Date.

**EISAI INC.**

By: /s/ Alex Scott

Name: Alex Scott

Title: EVP, Integrity

**CATALYST PHARMACEUTICALS, INC.**

By: /s/ Patrick J. McEnany

Name: Patrick J. McEnany

Title: Chairman, President and CEO

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**Schedule 2.10.5**

[\*\*\*]

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**Exhibit A**

Schedule 4.1

[\*\*\*]

**Certification of Principal Executive Officer**

I, Patrick J. McEnany, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Catalyst Pharmaceuticals, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15(d)-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 subsidiary, 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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: August 9, 2023

/s/ Patrick J. McEnany

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Patrick J. McEnany  
Chief Executive Officer  
(Principal Executive Officer)

**Certification of Principal Financial Officer**

I, Alicia Grande, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Catalyst Pharmaceuticals, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15(d)-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 subsidiary, 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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: August 9, 2023

/s/ Alicia Grande

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Alicia Grande  
Chief Financial Officer  
(Principal Financial Officer)

**Certification Required by 18 U.S.C. Section 1350**  
**(as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002)**

I, Patrick J. McEnany as Principal Executive Officer of Catalyst Pharmaceuticals, Inc. (the Company), certify, pursuant to 18 U.S.C. Section 1350 (as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002), that to my knowledge:

1. the accompanying Quarterly Report on Form 10-Q of the Company for the quarterly period ended June 30, 2023 (the Report), filed with the U.S. Securities and Exchange Commission, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 9, 2023

/s/ Patrick J. McEnany

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Patrick J. McEnany  
Chief Executive Officer  
(Principal Executive Officer)

**Certification Required by 18 U.S.C. Section 1350**  
**(as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002)**

I, Alicia Grande as Principal Financial Officer of Catalyst Pharmaceuticals, Inc. (the Company), certify, pursuant to 18 U.S.C. Section 1350 (as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002), that to my knowledge:

1. the accompanying Quarterly Report on Form 10-Q of the Company for the quarterly period ended June 30, 2023 (the Report), filed with the U.S. Securities and Exchange Commission, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 9, 2023

/s/ Alicia Grande

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Alicia Grande

Chief Financial Officer

(Principal Financial Officer)