

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

FORM 10-Q

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

For the quarterly period ended September 30, 2023

OR

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

For the transition period from _____ to _____

Commission File Number: 001-35703

PUMA BIOTECHNOLOGY, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0683487
(I.R.S. Employer
Identification Number)

10880 Wilshire Boulevard, Suite 2150, Los Angeles, CA 90024
(Address of principal executive offices) (Zip code)

(424) 248-6500
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	PBVI	The NASDAQ Stock Market LLC (NASDAQ Global Select Market)

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

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

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

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

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

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. 47,571,332 shares of Common Stock, par value \$0.0001 per share, were outstanding as of October 30, 2023



PUMA BIOTECHNOLOGY, INC.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q, (this “Quarterly Report”), contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”). Any statements about our expectations, beliefs, plans, objectives, assumptions, future events or performance are not historical facts and may be forward looking. These forward-looking statements include, but are not limited to, statements about:

- the commercialization of NERLYNX® (neratinib) tablets (“NERLYNX”);
- the development of our other drug candidates, including alisertib, and when we expect to undertake, initiate and complete clinical trials of our product candidates;
- the anticipated timing of regulatory filings;
- the regulatory approval of our drug candidates;
- our use of clinical research organizations and other contractors;
- our ability to find collaborative partners for research, development and commercialization of potential products;
- efforts of our sub-licensees to obtain regulatory approval and commercialize NERLYNX in areas outside the United States;
- our ability to market any of our products;
- our expectations regarding our costs and expenses;
- our anticipated capital requirements and estimates regarding our needs for additional financing;
- our ability to compete against other companies and research institutions;
- our ability to secure adequate protection for our intellectual property;
- our intention and ability to vigorously defend against any litigation to which we are or may become party;
- our ability to in-license additional drugs;
- our ability to attract and retain key personnel; and
- our ability to obtain adequate financing.

These statements are often, but not always, made through the use of words or phrases such as “anticipate,” “estimate,” “plan,” “project,” “continuing,” “ongoing,” “expect,” “believe,” “intend” and similar words or phrases. Accordingly, these statements involve estimates, assumptions and uncertainties that could cause actual results to differ materially from those expressed in them. Discussions containing these forward-looking statements may be found throughout this Quarterly Report, including, in Part I, the section entitled “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.” These forward-looking statements involve risks and uncertainties, including the risks discussed in Part I, Item 1A. “Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2022, and this Quarterly Report on Form 10-Q, that could cause our actual results to differ materially from those in the forward-looking statements. Such risks should be considered in evaluating our prospects and future financial performance. We undertake no obligation to update the forward-looking statements or to reflect events or circumstances after the date of this document.

Part I – FINANCIAL INFORMATION

Item 1. FINANCIAL STATEMENTS

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARY
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)
(unaudited)

	September 30, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 81,800	\$ 76,201
Marketable securities	3,229	4,873
Accounts receivable, net of allowance for credit loss of \$514 and \$0	28,974	40,350
Inventory, net	5,679	4,526
Prepaid expenses, current	3,684	5,902
Other assets, current	1,988	2,429
Total current assets	125,354	134,281
Lease right-of-use assets, net	8,540	11,362
Property and equipment, net	907	1,146
Intangible assets, net	63,305	70,610
Restricted cash, long-term	2,591	2,591
Prepaid expenses and other, long-term	2,908	2,069
Total assets	<u>\$ 203,605</u>	<u>\$ 222,059</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 5,061	\$ 6,440
Accrued expenses, current	33,773	53,034
Accrued in-licensed rights, current	—	12,500
Post-marketing commitment liability, current	1,236	1,370
Lease liabilities, current	4,628	4,140
Current portion of long-term debt	22,664	—
Total current liabilities	67,362	77,484
Accrued expenses, long-term	7,739	7,391
Lease liabilities, long-term	8,296	11,834
Post-marketing commitment liability, long-term	4,832	5,435
Long-term debt, net	76,634	98,307
Total liabilities	164,863	200,451
Commitments and contingencies (Note 12)		
Stockholders' equity:		
Common stock - \$.0001 par value per share; 100,000,000 shares authorized; 47,542,790 shares issued and outstanding at September 30, 2023 and 46,345,660 issued and outstanding at December 31, 2022	5	5
Additional paid-in capital	1,396,173	1,388,358
Accumulated other comprehensive loss	(4)	—
Accumulated deficit	(1,357,432)	(1,366,755)
Total stockholders' equity	38,742	21,608
Total liabilities and stockholders' equity	<u>\$ 203,605</u>	<u>\$ 222,059</u>

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARY
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)
(unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenues:				
Product revenue, net	\$ 51,592	\$ 54,287	\$ 149,937	\$ 146,319
Royalty revenue	4,524	2,815	13,522	16,037
Total revenue	56,116	57,102	163,459	162,356
Operating costs and expenses:				
Cost of sales	13,284	12,495	38,359	38,257
Selling, general and administrative	22,801	23,961	69,749	64,939
Research and development	11,446	11,253	37,509	38,456
Acquired in-process research and development	—	7,000	—	7,000
Total operating costs and expenses	47,531	54,709	145,617	148,652
Income from operations	8,585	2,393	17,842	13,704
Other income (expenses):				
Interest income	689	216	1,886	294
Interest expense	(3,339)	(2,947)	(9,976)	(8,313)
Legal verdict expense	—	(19)	—	(92)
Other income	74	64	118	176
Total other expenses, net	(2,576)	(2,686)	(7,972)	(7,935)
Net income (loss) before income taxes	\$ 6,009	\$ (293)	\$ 9,870	\$ 5,769
Income tax expense	(213)	(67)	(547)	(161)
Net income (loss)	\$ 5,796	\$ (360)	\$ 9,323	\$ 5,608
Net income (loss) per share of common stock—basic	\$ 0.12	\$ (0.01)	\$ 0.20	\$ 0.13
Net income (loss) per share of common stock—diluted	\$ 0.12	\$ (0.01)	\$ 0.20	\$ 0.13
Weighted-average shares of common stock outstanding—basic	47,520,338	45,567,739	46,977,127	44,290,432
Weighted-average shares of common stock outstanding—diluted	47,819,234	45,567,739	47,397,209	44,464,682

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARY
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(in thousands)
(unaudited)

	<u>For the Three Months Ended</u> <u>September 30,</u>		<u>For the Nine Months Ended</u> <u>September 30,</u>	
	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>2022</u>
Net income (loss)	\$ 5,796	\$ (360)	\$ 9,323	\$ 5,608
Other comprehensive income (loss):				
Unrealized gain (loss) on available-for-sale securities, net of tax of \$0	2	\$ —	(4)	2
Comprehensive income (loss)	<u>\$ 5,798</u>	<u>\$ (360)</u>	<u>\$ 9,319</u>	<u>\$ 5,610</u>

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARY
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands, except share data)
(unaudited)

For the Three Months Ended September 30, 2023

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
	Shares	Amount				
Balance at June 30, 2023	46,947,153	\$ 5	\$ 1,393,628	\$ (6)	\$ (1,363,228)	\$ 30,399
Stock-based compensation	—	—	2,545	—	—	2,545
Shares issued or restricted stock units vested under employee stock plans	595,637	—	—	—	—	—
Unrealized gain on available-for-sale securities	—	—	—	2	—	2
Net income	—	—	—	—	5,796	5,796
Balance at September 30, 2023	<u>47,542,790</u>	<u>\$ 5</u>	<u>\$ 1,396,173</u>	<u>\$ (4)</u>	<u>\$ (1,357,432)</u>	<u>\$ 38,742</u>

**For the Three Months Ended September
30, 2022**

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
	Shares	Amount				
Balance at June 30, 2022	45,274,635	\$ 5	\$ 1,380,522	\$ —	\$ (1,360,789)	\$ 19,738
Stock-based compensation	—	—	2,830	—	—	2,830
Shares issued or restricted stock units vested under employee stock plans	334,179	—	—	—	—	—
Issuance costs of approximately \$0.1M for private investments in public equity	—	—	(53)	—	—	(53)
Net loss	—	—	—	—	(360)	(360)
Balance at September 30, 2022	<u>45,608,814</u>	<u>\$ 5</u>	<u>\$ 1,383,299</u>	<u>\$ —</u>	<u>\$ (1,361,149)</u>	<u>\$ 22,155</u>

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARY
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands, except share data)
(unaudited)

For the Nine Months Ended September 30, 2023

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
	Shares	Amount				
Balance at December 31, 2022	46,345,660	\$ 5	\$ 1,388,358	\$ —	\$ (1,366,755)	\$ 21,608
Stock-based compensation	—	—	7,815	—	—	7,815
Shares issued or restricted stock units vested under employee stock plans	1,197,130	—	—	—	—	—
Unrealized loss on available-for-sale securities	—	—	—	(4)	—	(4)
Net income	—	—	—	—	9,323	9,323
Balance at September 30, 2023	47,542,790	\$ 5	\$ 1,396,173	\$ (4)	\$ (1,357,432)	\$ 38,742

**For the Nine Months Ended September
30, 2022**

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
	Shares	Amount				
Balance at December 31, 2021	41,175,507	\$ 4	\$ 1,364,309	\$ (2)	\$ (1,366,757)	\$ (2,446)
Stock-based compensation	—	—	9,198	—	—	9,198
Shares issued or restricted stock units vested under employee stock plans	849,079	—	—	—	—	—
Shares issued under private investments in public equity, net of issuance costs of approximately \$0.2M	3,584,228	1	9,792	—	—	9,793
Unrealized gain on available-for-sale securities	—	—	—	2	—	2
Net income	—	—	—	—	5,608	5,608
Balance at September 30, 2022	45,608,814	\$ 5	\$ 1,383,299	\$ —	\$ (1,361,149)	\$ 22,155

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARY
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	For the Nine Months Ended September	
	2023	2022
Operating activities:		
Net income	\$ 9,323	\$ 5,608
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	8,630	7,387
Stock-based compensation	7,815	9,198
Provision for credit loss	514	—
Disposal of property and equipment	—	1
Loss on impairment of asset	625	—
Changes in operating assets and liabilities:		
Accounts receivable	10,862	4,496
Inventory, net	(1,153)	1,657
Prepaid expenses and other	1,379	3,160
Other current assets	441	(3,663)
Accounts payable	(1,379)	3,753
Operating lease assets and liabilities, net	(853)	(674)
Accrued expenses and other	(18,913)	(53,762)
Post-marketing commitment liability	(737)	(671)
Net cash provided by (used in) operating activities	<u>16,554</u>	<u>(23,510)</u>
Investing activities:		
Purchase of property and equipment	(95)	—
Purchase of available-for-sale securities	(12,511)	—
Maturity of available-for-sale securities	14,151	18,977
Purchase of intangible assets	(12,500)	—
Net cash (used in) provided by investing activities	<u>(10,955)</u>	<u>18,977</u>
Financing activities:		
Gross proceeds from private investments in public equity	—	10,000
Issuance costs associated with private investments in public equity	—	(208)
Net cash provided by financing activities	<u>—</u>	<u>9,792</u>
Net increase in cash, cash equivalents and restricted cash	5,599	5,259
Cash, cash equivalents and restricted cash, beginning of period	78,792	75,292
Cash, cash equivalents and restricted cash, end of period	<u>84,391</u>	<u>80,551</u>
Supplemental disclosures of non-cash investing and financing activities:		
Amounts in accounts payable for acquired in-process research and development	\$ —	\$ 7,000
Supplemental disclosure of cash flow information:		
Interest paid	\$ 8,721	\$ 7,412
Income taxes paid	\$ 491	\$ 141

See Accompanying Notes to the Unaudited Condensed Consolidated Financial Statements

PUMA BIOTECHNOLOGY, INC. AND SUBSIDIARY
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1—Business and Basis of Presentation:

Business:

Puma Biotechnology, Inc., (the “Company”) is a biopharmaceutical company based in Los Angeles, California that develops and commercializes innovative products to enhance cancer care and improve treatment outcomes for patients. The Company is currently commercializing NERLYNX®, an oral version of neratinib (“NERLYNX”), for the treatment of HER2-positive breast cancer. Additionally, the Company recently in-licensed, and is responsible for global development and commercialization of, alisertib. Alisertib is a selective, small molecule inhibitor of aurora kinase A that is designed to disrupt mitosis leading to apoptosis of rapidly proliferating tumor cells dependent on aurora kinase. The Company believes alisertib has potential application in the treatment of a range of different cancer types, including hormone receptor positive breast cancer, triple-negative breast cancer and small cell lung cancer.

The Company has one subsidiary, Puma Biotechnology, B.V., a Netherlands company. In March 2022, the Company dissolved its United Kingdom company, Puma Biotechnology Ltd. These two subsidiaries were originally established for the purpose of legal representation in the European Union (“EU”) and the United Kingdom, respectively. The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated.

The Company has incurred significant operating losses since its inception. While the Company recently reported net income, we cannot assure that we will continue to do so and will need to continue to generate significant revenue to sustain operations and successfully commercialize neratinib. In 2017, the Company received U.S. Food and Drug Administration (“FDA”) approval for its first product, NERLYNX® (neratinib), formerly known as PB272 (neratinib, oral), for the extended adjuvant treatment of adult patients with early stage HER2-overexpressed/amplified breast cancer following adjuvant trastuzumab-based therapy. Following FDA approval in July 2017, NERLYNX became available by prescription in the United States, and the Company commenced commercialization.

In February 2020, NERLYNX was also approved by the FDA in combination with capecitabine for the treatment of adult patients with advanced or metastatic HER2-positive breast cancer who have received two or more prior anti-HER2-based regimens in the metastatic setting.

In 2018, the European Commission (“EC”) granted marketing authorization for NERLYNX in the EU for the extended adjuvant treatment of adult patients with early stage hormone receptor positive HER2-overexpressed/amplified breast cancer and who are less than one year from the completion of prior adjuvant trastuzumab-based therapy.

The Company is required to make substantial payments to Pfizer upon the achievement of certain milestones and has contractual obligations for clinical trial contracts.

The Company has entered into other exclusive sub-license agreements with various parties to pursue regulatory approval, if necessary, and commercialize NERLYNX, if approved, in many regions outside the United States, including Europe (excluding Russia and Ukraine), Australia, Canada, China, Southeast Asia, Israel, South Korea, and various countries and territories in Central and South America. The Company plans to continue to pursue commercialization of NERLYNX in other countries outside the United States, if approved.

In September 2022, the Company entered into an exclusive license agreement with a subsidiary of Takeda Pharmaceutical Company Limited (“Takeda”) to license the worldwide research and development and commercial rights to alisertib, a selective, small-molecule, orally administered inhibitor of aurora kinase A.

The Company has reported net income of approximately \$5.8 million and \$9.3 million for the three and nine months ended September 30, 2023, respectively, and cash flows provided by operations of approximately \$16.6 million for the nine months ended September 30, 2023. The Company’s commercialization, research and development or marketing efforts may require funding in addition to the cash and cash equivalents and marketable securities totaling approximately \$85.0 million at September 30, 2023.

The Company believes that its existing cash and cash equivalents and marketable securities as of September 30, 2023 and proceeds that will become available to the Company through product sales and sub-license payments are sufficient to satisfy its operating cash needs, including amounts due under the Company's Note Purchase Agreement with Athyrium, for at least one year after the filing of the Quarterly Report on Form 10-Q in which these financial statements are included. The Company continues to remain dependent on its ability to obtain sufficient funding to sustain operations and continue to successfully commercialize neratinib in the United States. While the Company has been successful in raising capital in the past, there can be no assurance that it will be able to do so in the future. The Company's ability to obtain funding may be adversely impacted by uncertain market and economic conditions, including the Company's success in commercializing neratinib and unfavorable decisions of regulatory authorities or adverse clinical trial results. The outcome of these matters cannot be predicted at this time. Additionally, the terms of the Company's Note Purchase Agreement place restrictions on the Company's ability to operate the business and on the Company's financial flexibility, and the Company may be unable to achieve the revenue necessary to satisfy the minimum revenue and cash balance covenants as specified in the agreement.

Since its inception through September 30, 2023 the Company's financing has primarily consisted of proceeds from product, royalty and license revenue, public offerings of its common stock, private equity placements, and various debt instruments.

In the opinion of management, the included disclosures are adequate, and the accompanying unaudited condensed consolidated financial statements contain all adjustments necessary for a fair statement of our consolidated financial position as of September 30, 2023. Such adjustments are of a normal and recurring nature and certain reclassifications of previously reported amounts have been made to conform to the current year presentation. The condensed consolidated balance sheet as of December 31, 2022 was derived from audited annual financial statements but does not contain all of the footnote disclosures from the audited annual financial statements. The condensed consolidated results of operations for the quarter ended September 30, 2023 are not necessarily indicative of the consolidated results of operations that may be expected for the fiscal year ending December 31, 2023.

Note 2—Significant Accounting Policies:

The significant accounting policies followed in the preparation of these unaudited consolidated financial statements are as follows:

Principles of Consolidation:

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Segment Reporting:

Management has determined that the Company operates in one business segment, which is the development and commercialization of innovative products to enhance cancer care.

Use of Estimates:

The preparation of consolidated financial statements in conformity with Generally Accepted Accounting Principles ("GAAP") in the United States, requires management to make estimates and assumptions that affect reported amounts of assets and liabilities, and disclosure of contingent assets and liabilities at the date of the balance sheet, and reported amounts of revenues and expenses for the period presented. Accordingly, actual results could differ from those estimates.

Significant estimates include estimates for variable consideration for which reserves were established. These estimates are included in the calculation of net revenues and include trade discounts and allowances, product returns, provider chargebacks and discounts, government rebates, payor rebates, and other incentives, such as voluntary patient assistance, and other allowances that are offered within contracts between the Company and its customers, payors, and other indirect customers relating to the Company's sale of its products.

Reclassification:

Certain prior year amounts have been reclassified for consistency with the current year presentation. These reclassifications had no effect on the reported results of operations. An adjustment to the presentation of operating lease assets and liabilities, net has been made to the Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2022.

Net Income per Share of Common Stock:

Basic net income per share of common stock is computed by dividing net income available to common stockholders by the weighted-average number of shares of common stock outstanding during the periods presented, as required by Accounting Standards Codification (“ASC”), ASC 260, *Earnings per Share*. For purposes of calculating diluted net income per share of common stock, the denominator includes both the weighted-average number of shares of common stock outstanding and the number of dilutive common stock equivalents, such as stock options, restricted stock units (“RSUs”) and warrants. A common stock equivalent is not included in the denominator when calculating diluted earnings per common share if the effect of such common stock equivalent would be anti-dilutive and a net loss is reported.

Our potentially dilutive securities include potential common shares related to our stock options and RSUs granted in connection with the Puma Biotechnology, Inc. 2011 Incentive Award Plan and the Puma Biotechnology, Inc. 2017 Employment Inducement Incentive Award Plan. Diluted earnings per share (“Diluted EPS”) considers the impact of potentially dilutive securities except in periods in which there is a loss because the inclusion of the potential common shares would have an anti-dilutive effect. Diluted EPS excludes the impact of potential common shares related to our stock options in periods in which the option exercise price is greater than the average market price of our common stock for the period. The following potentially dilutive outstanding common stock equivalents for the respective periods were excluded from diluted net income per share because of their anti-dilutive effect:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2023	2022	2023	2022
Options outstanding	4,211,389	4,458,414	4,211,389	4,458,414
Warrant outstanding	2,116,250	2,116,250	2,116,250	2,116,250
Unvested restricted stock units	1,087,224	1,350,925	1,111,286	2,113,930
Totals	7,414,863	7,925,589	7,438,925	8,688,594

The 2,116,250 shares underlying the warrant will not have an impact on our diluted net income per share until the average market price of our common stock exceeds the exercise price of \$16 per share (see Note 10—Stockholders' Equity).

A reconciliation of the numerators and denominators of the basic and diluted net income (loss) per share of common stock computations is as follows (in thousands, except share and per share amounts):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2023	2022	2023	2022
Numerator:				
Net income (loss)	\$ 5,796	\$ (360)	\$ 9,323	\$ 5,608
Denominator:				
Weighted average common stock outstanding for basic net income (loss) per share	47,520,338	45,567,739	46,977,127	44,290,432
Net effect of dilutive common stock equivalents	298,896	—	420,082	174,250
Weighted average common stock outstanding for diluted net income (loss) per share	47,819,234	45,567,739	47,397,209	44,464,682
Net income (loss) per share of common stock				
Basic	\$ 0.12	\$ (0.01)	\$ 0.20	\$ 0.13
Diluted	\$ 0.12	\$ (0.01)	\$ 0.20	\$ 0.13

Revenue Recognition:

Under ASC Topic 606, *Revenue from Contracts with Customers* (“ASC 606”), the Company recognizes revenue when its customer obtains control of the promised goods or services, in an amount that reflects the consideration the entity expects to be entitled in exchange for those goods or services. The Company had no contracts with customers until the FDA approved NERLYNX on July 17, 2017. Subsequent to receiving FDA approval, the Company entered into a limited number of arrangements with specialty pharmacies and specialty distributors in the United States to distribute NERLYNX. These arrangements are the Company’s initial contracts with customers. The Company has determined that these sales channels with customers are similar.

Product Revenue, Net:

The Company sells NERLYNX to a limited number of specialty pharmacies and specialty distributors in the United States. These customers subsequently resell the Company's products to patients and certain medical centers or hospitals. In addition to distribution agreements with these customers, 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.

The Company recognizes revenue on product sales when the specialty pharmacy or specialty distributor, as applicable, obtains control of the Company's product, which occurs at a point in time (upon delivery). Product revenue is recorded net of applicable reserves for variable consideration, including discounts and allowances. The Company's payment terms range between 10 and 68 days.

Product revenue also consists of product sales under sub-license agreements to our sub-licensees, who then sell into their respective international territories.

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 customers 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 nine months ended September 30, 2023 and 2022, respectively.

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, product returns, provider chargebacks and discounts, government rebates, payor rebates, and other incentives, such as voluntary patient assistance, and other allowances that are offered within contracts between the Company and its customers, payors, and other indirect customers relating to the Company's sale of its products. These reserves, as detailed below, are based on the related sales, and are classified as reductions of accounts receivable, net when the right of offset exists in accordance with Accounting Standards Update ("ASU") ASU 2013-1, *Balance Sheet (Topic 210): Clarifying the Scope of Disclosures about Offsetting Assets and Liabilities*, or as a current liability. These estimates take into consideration a range of possible outcomes that are probability-weighted in accordance with the expected value method in ASC 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 that 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 contemplated application of the constraint in accordance with the guidance, under which it determined a significant reversal of revenue would not be probable to occur in a future period for the estimates detailed below as of September 30, 2023, and, therefore, the transaction price was not reduced further during the quarter ended September 30, 2023. 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 and Allowances:

The Company generally provides customers with discounts, which include incentive fees that are explicitly stated in the Company's contracts and are recorded as a reduction of revenue in the period the related product revenue is recognized. The reserve for discounts is established in the same period that the related revenue is recognized, together with reductions to accounts receivable, net on the consolidated balance sheets. In addition, the Company compensates its customers for sales order management, data, and distribution services. The Company has determined such services received to date are not distinct from the Company's sale of products to its customers and, therefore, these payments have been recorded as a reduction of revenue within the condensed consolidated statements of operations.

Product Returns:

Consistent with industry practice, the Company offers the specialty pharmacies and specialty distributors that are its 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 agreement. The Company estimates the amount of its product sales that may be returned by its customers and records this estimate as a reduction of product revenue, net in the period the related product revenue is recognized, as well as a reduction to accounts receivable, net on the consolidated balance sheets. The Company currently estimates product returns using its own sales information, including its visibility into the inventory remaining in the distribution channel. 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 its customers who directly purchase the product from the Company. Customers charge the Company for the difference between what they pay for the product and the ultimate selling price to the qualified healthcare providers. The reserve for chargebacks is established in the same period the related revenue is recognized, resulting in a reduction of product revenue, net and a reduction to accounts receivable, net on the consolidated balance sheets. Chargeback amounts are generally determined at the time of resale to the qualified healthcare provider by customers, and the Company generally issues credits for such amounts within a few weeks of the customer's notification to the Company of the resale.

Chargebacks consist of credits the Company expects to issue for units that remain in the distribution channel at each reporting period-end that the Company expects will be sold to qualified healthcare providers and chargebacks that customers have claimed, but for which the Company has not yet issued a payment.

Government Rebates:

The Company is subject to discount obligations under state Medicaid programs and Medicare. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue, net and the establishment of a current liability, which is included in accrued expenses on the consolidated balance sheets. 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 estimates of future claims that will be made for product that has been recognized as revenue, but which remains in the distribution channel at the end of each reporting period.

Payor Rebates:

The Company contracts with certain private payor organizations, primarily insurance companies and pharmacy benefit managers, for the payment of rebates with respect to utilization of its products. The Company estimates these rebates and records such estimates in the same period the related revenue is recognized, resulting in a reduction of product revenue, net and the establishment of a current liability, which is included in accrued expenses on the consolidated balance sheets.

Other Incentives:

Other incentives the Company offers include voluntary patient assistance programs, such as the co-pay assistance program, which are intended to provide financial assistance to qualified commercially insured patients with prescription drug co-payments required by payors. 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 product that has been recognized as revenue but remains in the distribution channel at the end of each reporting period. The adjustments 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 as a component of accrued expenses on the consolidated balance sheets.

License Revenue:

The Company also recognizes license revenue under certain of the Company's sub-license agreements that are within the scope of ASC 606. The terms of these agreements may contain multiple performance obligations, which may include licenses and research and development activities. The Company evaluates these agreements under ASC 606 to determine the distinct performance obligations. Non-refundable, upfront fees that are not contingent on any future performance and require no consequential continuing involvement by the Company, are recognized as revenue when the license term commences and the licensed data, technology or product is delivered. The Company defers recognition of non-refundable upfront license fees if the performance obligations are not satisfied.

Prior to recognizing revenue, the Company makes estimates of the transaction price, including variable consideration that is subject to a constraint. Amounts of variable consideration are included in the transaction price to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur and when the uncertainty associated with the variable consideration is subsequently resolved.

If there are multiple distinct performance obligations, the Company allocates the transaction price to each distinct performance obligation based on its relative standalone selling price. The standalone selling price is generally determined based on the prices charged to customers or using expected cost-plus margin. Revenue is recognized by measuring the progress toward complete satisfaction of the performance obligations using an input measure.

Since 2018, the Company has entered into sub-license agreements with certain sub-licensees in territories outside of the United States. These sub-licensing agreements grant certain intellectual property rights and set forth various obligations with respect to actions such as development, pursuit and maintenance of regulatory approvals, commercialization and supply of NERLYNX in the sub-licensees' respective territories.

License fees under the sub-license agreements include one-time upfront payments when each sub-license agreement was executed and potential additional one-time milestone payments due to the Company upon successful completion of certain performance obligations, such as achieving regulatory approvals or sales target thresholds, and potential double-digit royalties on sales of the licensed product, calculated as a percentage of net sales of the licensed product throughout each sub-licensee's respective territory.

As of September 30, 2023 the total potential milestone payments that would be due to the Company upon achievement of all respective performance obligations under the sub-license agreements is approximately \$579.8 million. At this time, the Company cannot estimate if or when these milestone-related performance obligations might be achieved.

Royalty Revenue:

For sub-license agreements that are within the scope of ASC 606, the Company recognizes revenue when the related sales occur in accordance with the sales-based royalty exception under ASC 606-10-55-65.

Royalty revenue consists of consideration earned related to international sales of NERLYNX made by the Company's sub-licensees in their respective territories. The Company recognizes royalty revenue when the performance obligations have been satisfied. Royalty revenue was \$4.5 million and \$13.5 million for the three and nine months ended September 30, 2023, respectively, and \$2.8 million and \$16.0 million for the three and nine months ended September 30, 2022, respectively.

Royalty Expenses:

Royalties incurred in connection with the Company's license agreement with Pfizer, as disclosed in Note 12—Commitments and Contingencies, are expensed to cost of sales as revenue from product sales is recognized.

Research and Development Expenses:

Research and development expenses ("R&D expenses") are charged to operations as incurred. The major components of R&D expenses include clinical manufacturing costs, clinical trial expenses, consulting and other third-party costs, salaries and employee benefits, stock-based compensation expense, supplies and materials, and allocations of various overhead costs. Clinical trial expenses include, but are not limited to, investigator fees, site costs, comparator drug costs, and clinical research organization ("CRO") costs. In the normal course of business, the Company contracts with third parties to perform various clinical trial activities in the ongoing development of potential products. The financial terms of these agreements are subject to negotiation and variations 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, the successful enrollment of patients and the completion of portions of the clinical trial or similar conditions. The Company's accruals for clinical trials are based on estimates of the services received and efforts expended pursuant to contracts with numerous clinical trial sites, cooperative groups and CROs. As actual costs become known, the Company adjusts its accruals in that period.

In instances where the Company enters into agreements with third parties for clinical trials and other consulting activities, upfront amounts are recorded to prepaid expenses and other in the accompanying consolidated balance sheets and expensed as services are performed or as the underlying goods are delivered. If the Company does not expect the services to be rendered or goods to be delivered, any remaining capitalized amounts for non-refundable upfront payments are charged to expense immediately. Amounts due under such arrangements may be either fixed fee or fee for service, and may include upfront payments, monthly payments and payments upon the completion of milestones or receipt of deliverables.

Costs related to the acquisition of technology rights and patents for which development work is still in process are charged to operations as incurred and considered a component of R&D expenses.

Acquired In-Process Research and Development Expense:

The Company has acquired, and may continue to acquire, the rights to develop new product candidates. Payments to acquire a new product candidate are immediately expensed as acquired in-process research and development provided that the product candidate has not achieved regulatory approval for marketing and, absent obtaining such approval, has no alternative future use.

Stock-Based Compensation:

Stock Option Awards:

ASC Topic 718, *Compensation-Stock Compensation* ("ASC 718") requires the fair value of all share-based payments to employees and nonemployees, including grants of stock options, to be recognized in the statement of operations over the requisite service period. Under ASC 718, employee and nonemployee option grants are generally valued at the grant date and those valuations do not change once they have been established. The fair value of each option award is estimated on the grant date using the Black-Scholes Option Pricing Method. As allowed by ASC 718, the Company's estimate of expected volatility is based on its average volatilities using its past eight years of publicly traded history. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of grant valuation. Option forfeitures are estimated when the option is granted to reduce the option expense to be recognized over the life of the award. The estimated forfeiture rate considers historical employee turnover rates stratified into employee pools, actual forfeiture experience and other factors. The option expense is adjusted upon the actual forfeiture of a stock option grant and the Company periodically revises the estimated forfeiture rate in subsequent periods if actual forfeitures differ from those estimates. Due to its limited history of stock option exercises, the Company uses the simplified method to determine the expected life of the option grants. Compensation expense related to modified stock options is measured based on the fair value for the awards as of the modification date. Any incremental compensation expense arising from the excess of the fair value of the awards on the modification date compared to the fair value of the awards immediately before the modification date is recognized at the modification date or ratably over the requisite service period, as appropriate.

Restricted Stock Units:

RSUs are valued on the grant date and the fair value of the RSUs is equal to the market price of the Company's common stock on the grant date. The RSU expense is recognized over the requisite service period. When the requisite service period begins prior to the grant date (because the service inception date occurs prior to the grant date), the Company is required to begin recognizing compensation cost before there is a measurement date (i.e., the grant date). The service inception date is the beginning of the requisite service period. If the service inception date precedes the grant date, accrual of compensation cost for periods before the grant date shall be based on the fair value of the award at the reporting date. In the period in which the grant date occurs, cumulative

compensation cost shall be adjusted to reflect the cumulative effect of measuring compensation cost based on fair value at the grant date rather than the fair value previously used at the service inception date (or any subsequent reporting date). RSU forfeitures are estimated when the RSU is granted to reduce the RSU expense to be recognized over the life of the award. The estimated forfeiture rate considers historical employee turnover rates stratified into employee pools, actual forfeiture experience and other factors. The RSU expense is adjusted upon the actual forfeiture of an RSU grant and the Company periodically revises the estimated forfeiture rate in subsequent periods if actual forfeitures differ from those estimates. Compensation expense related to modified restricted stock units is measured based on the fair value for the awards as of the modification date. Any incremental compensation expense arising from the excess of the fair value of the awards on the modification date compared to the fair value of the awards immediately before the modification date is recognized at the modification date or ratably over the requisite service period, as appropriate.

Warrants:

Warrants (see Note 10—Stockholders' Equity) granted to employees and nonemployees are valued at the fair value of the instrument on the grant date and are recognized in the condensed statement of operations over the requisite service period. When the requisite service period precedes the grant date and a market condition exists in the warrant, the Company values the warrant using the Monte Carlo Simulation Method. When the terms of the warrant become fixed, the Company values the warrant using the Black-Scholes Option Pricing Method. As allowed by ASC 718, the Company's estimate of expected volatility is based on its average volatilities using its publicly traded history. The risk-free rate for periods within the contractual life of the warrant is based on the U.S. Treasury yield curve in effect at the time of grant valuation. In determining the value of the warrant until the terms are fixed, the Company factors in the probability of the market condition occurring and several possible scenarios. When the requisite service period precedes the grant date and is deemed to be complete, the Company records the fair value of the warrant at the time of issuance as an equity stock-based compensation transaction. The grant date is determined when all pertinent information, such as exercise price and quantity are known. Compensation expense related to warrant modifications is measured based on the fair value of the warrant as of the modification date. Any incremental compensation expense arising from the excess of the fair value of the warrant on the modification date compared to the fair value of the warrant immediately before the modification date is recognized at the modification date or ratably over the requisite service period, as appropriate.

Income Taxes:

The Company follows ASC Topic 740, *Income Taxes* ("ASC 740"), which requires recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements or tax returns. Under this method, deferred tax assets and liabilities are based on the differences between the consolidated financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. Deferred tax assets are reduced by a valuation allowance to the extent management concludes it is more likely than not that the asset will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The standard addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the consolidated financial statements. Under ASC 740, the Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the tax authorities, based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from such a position should be measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. ASC 740 also provides guidance on de-recognition, classification, interest and penalties on income taxes, accounting in interim periods and requires increased disclosures. As of September 30, 2023 the Company's uncertain tax position reserves include a reserve for its research and development credits.

Legal Contingencies and Expense:

For legal contingencies, the Company accrues a liability for an estimated loss if the potential loss from any claim or legal proceeding is considered probable and the amount can be reasonably estimated. Legal fees and expenses are expensed as incurred based on invoices or estimates provided by legal counsel. The Company periodically evaluates available information, both internal and external, relative to such contingencies and adjusts the accrual as necessary. The Company determines whether a contingency should be disclosed by assessing whether a material loss is deemed reasonably possible. In determining whether a loss should be accrued, the Company evaluates, among other factors, the degree of probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of the loss (see Note 12—Commitments and Contingencies).

Financial Instruments:

The carrying value of financial instruments, such as cash equivalents, accounts receivable and accounts payable, approximate their fair value because of their short-term nature. The carrying value of long-term debt approximates its fair value as the principal amounts outstanding are subject to variable interest rates that are based on market rates, which are regularly reset.

Cash and Cash Equivalents:

The Company classifies all highly liquid instruments with an original maturity of three months or less as cash equivalents.

Restricted Cash:

Restricted cash represents cash held at financial institutions that is pledged as collateral for stand-by letters of credit for lease commitments. The lease-related letters of credit will lapse at the end of the respective lease terms through 2026. At each of periods ending September 30, 2023 and December 31, 2022, the Company had restricted cash in the amount of approximately \$2.6 million.

Investment Securities:

The Company classifies all investment securities (short-term and long-term) as available-for-sale, as the sale of such securities may be required prior to maturity to implement management's strategies. These securities are carried at fair value, with the unrealized gains and losses reported as a component of accumulated other comprehensive income in stockholders' equity until realized. Realized gains and losses from the sale of available-for-sale securities, if any, are determined on a specific identification basis. In accordance with ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, credit losses on available-for-sale securities are reported using an expected loss model and recorded to an allowance. Premiums and discounts are amortized or accreted over the life of the related security as an adjustment to yield using the straight-line method. Interest income is recognized when earned.

Assets Measured at Fair Value on a Recurring Basis:

ASC Topic 820, *Fair Value Measurement* ("ASC 820") provides a single definition of fair value and a common framework for measuring fair value as well as disclosure requirements for fair value measurements used in financial statements. Under ASC 820, fair value is determined based upon the exit price that would be received by a company to sell an asset or paid by a company to transfer a liability in an orderly transaction between market participants, exclusive of any transaction costs. Fair value measurements are determined by either the principal market or the most advantageous market. The principal market is the market with the greatest level of activity and volume for the asset or liability. Absent a principal market to measure fair value, the Company uses the most advantageous market, which is the market from which the Company would receive the highest selling price for the asset or pay the lowest price to settle the liability, after considering transaction costs. However, when using the most advantageous market, transaction costs are only considered to determine which market is the most advantageous and these costs are then excluded when applying a fair value measurement. ASC 820 creates a three-level hierarchy to prioritize the inputs used in the valuation techniques to derive fair values. The basis for fair value measurements for each level within the hierarchy is described below, with Level 1 having the highest priority and Level 3 having the lowest.

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which all significant inputs are observable in active markets.

Level 3: Valuations derived from valuation techniques in which one or more significant inputs are unobservable.

Following are the major categories of assets measured at fair value on a recurring basis as of September 30, 2023 and December 31, 2022, using quoted prices in active markets for identical assets (Level 1), significant other observable inputs (Level 2), and significant unobservable inputs (Level 3) (in thousands):

	Level 1	Level 2	Level 3	Total
September 30, 2023				
Cash equivalents	\$ 35,304	\$ 9,734	\$ —	\$ 45,038
U.S. government	999	—	—	999
Commercial paper	—	2,231	—	2,231
Totals	\$ 36,303	\$ 11,965	\$ —	\$ 48,268
December 31, 2022				
Cash equivalents	\$ 41,673	\$ —	\$ —	\$ 41,673
Commercial paper	—	4,873	—	4,873
Totals	\$ 41,673	\$ 4,873	\$ —	\$ 46,546

The Company's investments in commercial paper, corporate bonds and U.S. government securities are exposed to price fluctuations. The fair value measurements for commercial paper, corporate bonds and U.S. government securities are based upon the quoted prices of similar items in active markets multiplied by the number of securities owned.

The following tables summarize the Company's cash equivalents and short-term investments (in thousands):

	Maturity (in years)	Amortized cost	Unrealized		Estimated fair value
			Gains	Losses	
September 30, 2023					
Cash equivalents		\$ 45,041	\$ —	\$ (3)	\$ 45,038
U.S. government	Less than 1	999	—	—	999
Commercial paper	Less than 1	2,232	—	(1)	2,231
Totals		\$ 48,272	\$ —	\$ (4)	\$ 48,268
December 31, 2022					
Cash equivalents		\$ 41,673	\$ —	\$ —	\$ 41,673
Commercial paper	Less than 1	4,873	—	—	4,873
Totals		\$ 46,546	\$ —	\$ —	\$ 46,546

Concentration of Risk:

Financial instruments, which potentially subject the Company to concentrations of credit risk, principally consist of cash and cash equivalents, marketable securities, and accounts receivable, net. The Company's cash and cash equivalents and restricted cash in excess of the Federal Deposit Insurance Corporation and the Securities Investor Protection Corporation insured limits at September 30, 2023 were approximately \$83.2 million. The Company does not believe it is exposed to any significant credit risk due to the quality nature of the financial instruments in which the money is held. Pursuant to the Company's internal investment policy, investments must be rated A-1/P-1 or better by Standard and Poor's Rating Service and Moody's Investors Service at the time of purchase.

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The Company sells its products in the United States primarily through specialty pharmacies and specialty distributors. Therefore, wholesale distributors and large pharmacy chains account for a large portion of its accounts receivables, net and product revenues, net. The creditworthiness of its customers is continuously monitored, and the Company has internal policies regarding customer credit limits. The Company estimates an allowance for doubtful accounts primarily based on the creditworthiness of its customers, historical payment patterns, aging of receivable balances and general economic conditions.

The Company's success depends on its ability to successfully commercialize NERLYNX. The Company currently has a single product and limited commercial sales experience, which makes it difficult to evaluate its current business, predict its future prospects and forecast financial performance and growth. The Company has invested a significant portion of its efforts and financial resources in the development and commercialization of the lead product, NERLYNX, and expects NERLYNX to constitute the vast majority of product revenue for the foreseeable future.

The Company relies exclusively on third parties to formulate and manufacture NERLYNX and its drug candidates. The commercialization of NERLYNX 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 has no experience in drug formulation or manufacturing and does not intend to establish its own manufacturing facilities. While the drug candidates were being developed by Pfizer, both the drug substance and drug product are manufactured by third-party contractors. The Company is using the same third-party contractors to manufacture, supply, store and distribute drug supplies for clinical trials and the commercialization of NERLYNX and intends to use third party contractors to manufacture, supply, store and distribute drug supplies for its clinical trials of alisertib. 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.

Inventory:

The Company values its inventories at the lower of cost and estimated net realizable value. The Company determines the cost of its inventories, which includes amounts related to materials and manufacturing overhead, on a first-in, first-out basis. The Company performs an assessment of the recoverability of capitalized inventory during each reporting period, and it writes down any excess and obsolete inventories to their estimated realizable value in the period in which the impairment is first identified. Such impairment charges, should they occur, are recorded within cost of sales in the condensed consolidated statements of operations. The determination of whether inventory costs will be realizable requires estimates by management. If actual market conditions are less favorable than projected by management, additional write-downs of inventory may be required.

The Company capitalizes inventory costs associated with the Company's products after regulatory approval, if any, when, based on management's judgment, future commercialization is considered probable, and the future economic benefit is expected to be realized. Inventory that can be used in either the production of clinical or commercial product is recorded as R&D expenses when selected for use in a clinical trial. Starter kits, provided to patients prior to insurance approval, are expensed by the Company to selling, general and administrative expense as incurred.

As of September 30, 2023 and December 31, 2022, the Company's inventory balance consisted primarily of raw materials and work-in-process purchased subsequent to FDA approval of NERLYNX.

	<u>September 30, 2023</u>	<u>December 31, 2022</u>
Raw materials	\$ 1,269	\$ 1,679
Work-in-process (materials, labor and overhead)	3,432	2,661
Finished goods (materials, labor and overhead)	978	186
Total inventories	<u>\$ 5,679</u>	<u>\$ 4,526</u>

Property and Equipment, Net:

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, which is generally three years for computer hardware and software, three years for phone equipment, and seven years for furniture and fixtures. Leasehold improvements are amortized using the straight-line method over the lesser of the useful life or the lease term. Upon retirement or sale, the cost of assets disposed of and the related accumulated depreciation are eliminated from the accounts and any resulting gain or loss is credited or charged to operations. Repair and maintenance costs are expensed as incurred.

The Company reviews its long-lived assets used in operations for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable, as required by ASC Topic 360, *Property, Plant, and Equipment* ("ASC 360"). The Company performs a recoverability test by comparing the sum of the estimated undiscounted cash flows over the life of the asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, the Company would then determine the fair value of the long-lived asset and recognize an impairment loss for the amount in excess of the carrying value.

Leases:

Right-of-use assets ("ROU assets") represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. The assets and lease liabilities are recognized at the lease commencement date based on the estimated present value of fixed lease payments over the lease term. ROU assets are evaluated for impairment using the long-lived assets impairment guidance, as required by ASC 360. A significant indication of impairment of an ROU asset would include a change in the extent or manner in which the asset is being used. The Company must make assumptions which underlie the most significant and subjective estimates in determining whether any impairment exists. Those estimates, and the underlying assumptions, include estimates of future cash flow utilizing market lease rates and determination of fair value. If an ROU asset related to an operating lease is impaired, the carrying value of the ROU asset post-impairment should be amortized on a straight-line basis through the earlier of the end of the useful life of the ROU asset or the end of the lease term. Post impairment, a lessee must calculate the amortization of the ROU asset and interest expense on the lease liability separately, although the sum of the two continues to be presented as a single lease cost. If a lease is planned to be

abandoned with no intention of subleasing, the ROU asset should be assessed for impairment.

Leases will be classified as financing or operating, which will drive the expense recognition pattern. The Company elects to exclude short-term leases if and when the Company has them. For additional information, see Note 5—Leases.

The Company leases office space and copy machines, all of which are operating leases. Most leases include the option to renew, and the exercise of the renewal options is at the Company's sole discretion. Options to extend or terminate a lease are considered in the lease term to the extent that the option is reasonably certain of exercise. The leases do not include options to purchase the leased property. The depreciable life of assets and leasehold improvements is limited by the expected lease term. Covenants imposed by the leases include letters of credit required to be obtained by the lessee.

The incremental borrowing rate ("IBR") represents the rate of interest the Company would expect to pay on a collateralized basis to borrow an amount equal to the lease payments under similar terms. When determinable, the Company uses the rate implicit in the lease to determine the present value of lease payments. As the Company's leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. The Company's average IBR for existing leases as of September 30, 2023 is 10.9%.

License Fees and Intangible Assets:

The Company expenses amounts paid to acquire licenses associated with products under development when the ultimate recoverability of the amounts paid is uncertain and the technology has no alternative future use when acquired. Acquisitions of technology licenses are charged to expense or capitalized based upon the asset achieving technological feasibility in accordance with management's assessment regarding the ultimate recoverability of the amounts paid and the potential for alternative future use. The Company has determined that technological feasibility for its product candidates is reached when the requisite regulatory approvals are obtained to make the product available for sale. The Company capitalizes technology licenses upon reaching technological feasibility.

The Company maintains definite-lived intangible assets related to the license agreement with Pfizer. These assets are amortized over their remaining useful lives, which are estimated based on the shorter of the remaining patent life or the estimated useful life of the underlying product. Intangible assets are amortized using the economic consumption method if anticipated future revenues can be reasonably estimated. The straight-line method is used when future revenues cannot be reasonably estimated. Amortization costs are recorded as part of cost of sales.

In September 2022, the Company entered an exclusive license agreement with Takeda to license the worldwide research and development and commercial rights to alisertib, a selective, small-molecule, orally administered inhibitor of aurora kinase A. The up-front payment of \$7.0 million was expensed as acquired in-process research and development as the product candidate has not achieved regulatory approval for marketing and has no alternative future use.

The Company assesses its intangible assets for impairment if indicators are present or changes in circumstance suggest that impairment may exist. Events that could result in an impairment, or trigger an interim impairment assessment, include the receipt of additional clinical or nonclinical data regarding one of the Company's drug candidates or a potentially competitive drug candidate, changes in the clinical development program for a drug candidate, or new information regarding potential sales for the drug. If impairment indicators are present or changes in circumstance suggest that impairment may exist, the Company performs a recoverability test by comparing the sum of the estimated undiscounted cash flows of each intangible asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, the Company would determine the fair value of the intangible asset and recognize an impairment loss if the carrying value of the intangible asset exceeds its fair value. In connection with the FDA approval of NERLYNX in July 2017, the Company triggered a one-time milestone payment pursuant to its license agreement with Pfizer. In June 2020, the Company entered into a letter agreement with Pfizer relating to the method of payment associated with a milestone payment under the Company's license agreement with Pfizer (see Note 12—Commitments and Contingencies). In addition, the Company reached a commercial milestone by achieving aggregate worldwide net sales of \$250.0 million in calendar year 2022, resulting in a payment to Pfizer of \$12.5 million during the three months ended March 31, 2023. The Company capitalized the milestones as intangible assets and is amortizing the assets to cost of sales on a straight-line basis over the estimated useful life of the licensed patent through 2030. The Company recorded amortization expense related to its intangible assets of approximately \$2.4 million and \$7.3 million and \$2.0 million and \$6.0 million for the three and nine months ended September 30, 2023 and 2022, respectively. As of September 30, 2023 estimated future amortization expense related to the Company's intangible assets is approximately \$2.4 million for the remainder of 2023 and \$9.7 million for each year starting 2024 through 2029, and \$2.4 million for 2030.

Recently Issued Accounting Standards:

In November 2021, the Financial Accounting Standards Board ("FASB") issued ASU No. 2021-10, *Government Assistance (Topic 832)* ("ASU-2021-10"), which enhances disclosure of transactions with governments that are accounted for by applying a grant or contribution model. ASU 2021-10 requires entities to provide information about the nature of the transactions, the related accounting policies used to account for the transactions, the effect of the transactions on an entity's financial statements, and significant terms and conditions associated with the transactions. ASU 2021-10 must be adopted for fiscal years beginning after December 15, 2021. Early adoption is permitted. We adopted this guidance during 2022 and recognized approximately \$3.8 million in payroll tax credits under the Coronavirus Aid Relief Economic Security Act (the "CARES Act"). The entire amount of \$3.8 million had been received by the Company as of March 31, 2023.

Note 3—Accounts Receivable, Net:

Accounts receivable, net consisted of the following (in thousands):

	September 30, 2023	December 31, 2022
Trade accounts receivable	\$ 23,813	\$ 27,600
Royalty revenue receivable	5,675	12,750
Total accounts receivable	<u>\$ 29,488</u>	<u>\$ 40,350</u>
Allowance for credit losses	(514)	—
Total accounts receivable, net	<u>\$ 28,974</u>	<u>\$ 40,350</u>

Trade accounts receivable consist entirely of amounts owed from the Company's customers related to product sales. Royalty revenue receivable represents amounts owed related to royalty revenue recognized based on the Company's sub-licensees' sales in their respective territories in the periods ended September 30, 2023 and December 31, 2022.

For all accounts receivable, the Company recognizes credit losses based on lifetime expected losses to selling, general and administrative expense in the condensed consolidated statements of operations. In determining estimated credit losses, the Company evaluates its historical loss rates, current economic conditions and reasonable and supportable forecasts of future economic conditions.

Note 4—Prepaid Expenses and Other:

Prepaid expenses and other consisted of the following (in thousands):

	September 30, 2023	December 31, 2022
Current:		
CRO services	\$ 6	\$ 431
Other clinical development	826	1,408
Insurance	408	2,318
Professional fees	1,026	300
Other	1,418	1,445
	<u>3,684</u>	<u>5,902</u>
Long-term:		
Other clinical development	168	—
Other	2,740	2,069
	<u>2,908</u>	<u>2,069</u>
Totals	<u>\$ 6,592</u>	<u>\$ 7,971</u>

Other current prepaid amounts consist primarily of deposits, subscriptions/software, and sponsorships. Other long-term prepaid amounts consist primarily of deposits, capitalized sublease commission fees paid, and a sublease tenant improvement allowance, net of amortization.

Note 5—Leases:

In December 2011, the Company entered into a non-cancelable operating lease for office space in Los Angeles, California, which was subsequently amended in November 2012, December 2013, March 2014, July 2015, and December 2017. The initial term of the lease was for seven years and commenced on December 10, 2011. As amended, the Company rents approximately 65,656 square feet. The term of the lease runs until March 2026 and rent amounts payable by the Company increase approximately 3% per year. Concurrent with the execution of the lease, the Company provided the landlord an automatically renewable stand-by letter of credit in the amount of \$1.5 million. The stand-by letter of credit is collateralized by a high-yield savings account, which is classified as restricted cash, long-term on the accompanying consolidated balance sheets.

In June 2012, the Company entered into a long-term lease agreement for office space in South San Francisco, California, which was subsequently amended in May 2014 and July 2015. As amended, the Company rents approximately 29,470 square feet. The term of this lease runs until March 2026, with the option to extend for an additional five-year term, and rents payable by the Company increase approximately 3% per year. The Company provided the landlord an automatically renewable stand-by letter of credit in the amount of \$1.1 million. The stand-by letter of credit is collateralized by a high-yield savings account, which is classified as restricted cash, long-term on the accompanying consolidated balance sheets.

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Total rent expense for the three and nine months ended September 30, 2023 was approximately \$1.2 million and \$3.7 million, respectively. Total rent expense for the three and nine months ended September 30, 2022 was approximately \$1.2 million and \$3.7 million, respectively. For purposes of determining straight-line rent expense, the lease term is calculated from the date the Company first takes possession of the facility, including any periods of free rent and any renewal option periods that the Company is reasonably certain of exercising. The Company's office leases generally have contractually specified minimum rent and annual rent increases that are included in the measurement of the ROU asset and related lease liability. Additionally, under these lease arrangements, the Company may be required to pay directly, or reimburse the lessors, for real estate taxes, insurance, utilities, maintenance and other operating costs. Such amounts are generally variable and therefore not included in the measurement of the ROU asset and related lease liability but are instead recognized as variable lease expense in selling, general and administrative costs in the condensed consolidated statements of operations when they are incurred.

Supplemental cash flow information related to leases for the nine months ended September 30, 2023:

Operating cash flows used for operating leases (in thousands)	\$	4,546
Right-of-use assets obtained in exchange for new operating lease liabilities		—
Weighted average remaining lease term (in years)		2.5
Weighted average discount rate		10.9%

Future minimum lease payments as of September 30, 2023 were as follows (in thousands):

	Amount
2023 (remaining)	\$ 1,419
2024	5,805
2025	5,983
2026	1,509
Total minimum lease payments	\$ 14,716
Less: imputed interest	(1,792)
Total lease liabilities	\$ 12,924

In February 2019, the Company entered into a long-term sublease agreement for 12,429 square feet of the office space in Los Angeles, California. The term of the lease runs until March 2026 and rent amounts payable to the Company increase approximately 3% per year. The Company recorded operating sublease income of \$0.1 million and \$0.3 million for the three and nine months ended September 30, 2023, respectively, in other income (expenses) in the condensed consolidated statements of operations.

In September 2023, the Company entered into a long-term sublease agreement for 13,916 square feet of the office space in Los Angeles, California, which commences in November 2023. The term of the lease runs until March 2026 and the rent amounts payable to the Company increase approximately 3% per year. The Company will begin to record sublease income in other income (expenses) in the condensed consolidated statements of operations beginning November 2023. As a result of the long-term sublease, the Company recorded an impairment expense on the right-of-use asset of approximately \$0.6 million.

The future minimum lease payments to be received as of September 30, 2023, were as follows (in thousands):

	Amount
2023 (remaining)	\$ 209
2024	1,013
2025	1,044
2026	266
Total	\$ 2,533

Note 6—Property and Equipment, Net:

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

	September 30, 2023	December 31, 2022
Leasehold improvements	\$ 3,779	\$ 3,779
Computer equipment	2,228	2,132
Telephone equipment	302	302
Furniture and fixtures	2,359	2,359
Total property and equipment	8,668	8,572
Less: accumulated depreciation	(7,761)	(7,426)
Property and equipment, net	\$ 907	\$ 1,146

For the three and nine months ended September 30, 2023, the Company incurred depreciation expense of \$0.1 million and \$0.3 million, respectively. For the three and nine months ended September 30, 2022, the Company incurred depreciation expense of \$0.2 million and \$0.5 million, respectively.

Note 7—Intangible Assets, Net:

Intangible assets, net consisted of the following (in thousands):

	<u>September 30, 2023</u>	<u>December 31, 2022</u>
Acquired and in-licensed rights	\$ 102,500	\$ 102,500
Less: accumulated amortization	(39,195)	(31,890)
Total intangible assets, net	<u>\$ 63,305</u>	<u>\$ 70,610</u>

For the three and nine months ended September 30, 2023, the Company incurred amortization expense of \$2.4 million and \$7.3 million, respectively. The estimated remaining useful life of the intangible assets as of September 30, 2023 is 6.5 years.

Note 8—Accrued Expenses:

Accrued expenses consisted of the following (in thousands):

	<u>September 30, 2023</u>	<u>December 31, 2022</u>
Current:		
Accrued legal verdict expense	\$ —	\$ 8,000
Accrued royalties	9,575	13,585
Accrued CRO services	893	1,796
Accrued variable consideration	9,034	12,304
Accrued bonus	5,161	7,667
Accrued compensation	4,227	4,301
Accrued other clinical development	1,247	1,233
Accrued professional fees	860	1,649
Accrued legal fees	1,848	1,731
Accrued manufacturing costs	664	553
Other	264	215
	<u>33,773</u>	<u>53,034</u>
Long-term:		
Accrued legal verdict expense	7,618	7,354
Accrued other	121	37
	<u>7,739</u>	<u>7,391</u>
Totals	<u>\$ 41,512</u>	<u>\$ 60,425</u>

Included in accrued long-term legal verdict expense is approximately \$7.6 million (\$8.0 million net of imputed interest) as of September 30, 2023 that is related to *Eshelman v. Puma Biotechnology, Inc., et al.* The Company announced on November 10, 2022, that the parties entered into a settlement agreement. Pursuant to the settlement agreement, Dr. Eshelman filed a Stipulation of Voluntary Dismissal with Prejudice on November 7, 2022, and the Company agreed to pay Dr. Eshelman \$16.0 million. The settlement amount will be paid in two separate payments, the first payment of \$8.0 million was paid in January 2023, and the final payment of \$8.0 million will be paid on or before November 1, 2024.

Accrued variable consideration represents estimates of adjustments to product revenue, net for which reserves are established. Accrued royalties represent royalties incurred in connection with the Company's license agreement with Pfizer. Accrued CRO services, accrued other clinical development expenses, and accrued legal fees represent the Company's estimates of such costs and are recognized as incurred. Accrued compensation includes commissions, vacation and restructuring costs.

Other current accrued expenses consist primarily of marketing expenses, business license fees, and recruiting placement fees.

Note 9—Debt:

Long term debt consisted of the following (in thousands):

	<u>September 30, 2023</u>	<u>Maturity Date</u>
Total debt, inclusive of \$2.0 million exit payment	\$ 102,000	July 23, 2026
Less: debt issuance costs and discounts	(2,702)	
Less: current portion	(22,664)	
Total long-term debt, net	<u>\$ 76,634</u>	

[Table of Contents](#)*Athyrium Note Purchase Agreement:*

The Company issued senior notes for an aggregate principal amount of \$100.0 million pursuant to a note purchase agreement dated July 23, 2021, by the Company, and its subsidiaries, and Athyrium Opportunities IV Co-Invest 1 LP (“Athyrium”), as Administrative Agent, and certain other investor parties (the “Note Purchase Agreement”), with an initial maturity date of July 23, 2026 (the “Athyrium Notes”). The Athyrium Notes were issued for face amount of \$100.0 million net of an original issue discount of \$1.5 million. The Athyrium Notes also require a 2.0% exit payment to be made on each payment of principal. The borrowings under the Athyrium Notes, together with cash on hand, were used to repay the Company’s outstanding indebtedness, including the applicable exit and prepayment fees owed to lenders under its Oxford Credit Facility. The Company can borrow up to an additional \$25.0 million under the Note Purchase Agreement for general corporate purposes and to further support commercial initiatives. The Athyrium Notes are secured by substantially all of the Company’s assets. The Company incurred \$1.9 million of deferred financing costs with the borrowing.

Prior to October 1, 2022, the Athyrium Notes bore interest at an annual rate equal to the sum of (i) 8.0% and (ii) three-month London Interbank Offering Rate (“LIBOR”) rate where the three-month LIBOR rate could not be less than 1.5% or greater than 3.5%. (or a comparable or successor rate that gives due consideration to the then prevailing rate used by commercial banks in the United States, which rate is reasonably determined by Athyrium). Interest was payable quarterly on the last business day of March, June, September and December each year. Beginning June 30, 2024, principal payments are required to be made quarterly at 11.11% of the original face amount with the remaining balance paid at maturity. Each principal payment also included a 2.0% exit payment.

On September 16, 2022, the Company entered into a third amendment to the Note Purchase Agreement in which the Secured Overnight Financing Rate (“SOFR”) is to be used in place of the LIBOR rate in calculating interest on the Athyrium Notes, beginning on October 1, 2022. The Athyrium Notes bear interest at an annual rate equal to the sum of (a) eight percent (8.00%) plus (b) adjusted three-month term SOFR for such interest period. The adjusted three-month term SOFR means, with respect to any interest period, the lesser of (a) the sum of (i) three-month term SOFR and (ii) 0.26161% (26.161 basis points) and (b) three and one-half of one percent (3.50%) per annum. The interest rate applicable to the Athyrium Notes during the period from September 16, 2022, until the expiration of the interest period ending on September 30, 2022, was equal to the sum of (a) eight percent (8.00%) plus (b) adjusted three-month LIBOR. The modification of the Note Purchase Agreement did not meet the requirements of a debt extinguishment under ASC 470-50 - *Debt Modifications and Exchanges* and no gain or loss was recognized. The Company performed a quantitative analysis and determined that the terms of the new debt and original debt instrument were not substantially different. Accordingly, the September 16, 2022 amendment was accounted for as a debt modification.

Following the effectiveness of the Third Amendment, the Athyrium Notes bear interest at an annual rate equal to the sum of (a) eight percent (8.00%) plus (b) the lesser of (i) the sum of (x) three-month term SOFR for an interest period of three months plus (y) 0.26161% (26.161 basis points) and (ii) three and one-half of one percent (3.50%) per annum. Interest is payable quarterly on the last business day of March, June, September and December each year. Beginning June 30, 2024, principal payments are required to be made quarterly at 11.11% of the original face amount with the remaining balance paid at maturity. Each principal payment will also include a 2.0% exit payment. As of September 30, 2023, the effective interest rate for the loan was 12.99%.

At the Company’s option, the Company may prepay the outstanding principal balance of the notes in whole or in part, subject to a prepayment fee of 2.0% of the amount prepaid if the prepayment occurs on or prior to the second anniversary of the issuance date of such notes, plus the present value of remaining interest that would have accrued through and including the second anniversary date, and 2.0% of the amount prepaid if the prepayment occurs after the second anniversary but on or prior to the third anniversary of the issuance date of such notes.

The Athyrium Notes include affirmative and negative covenants applicable to the Company. The affirmative covenants include, among others, covenants requiring the Company to maintain its legal existence and governmental approvals, deliver certain financial reports, maintain insurance coverage, and satisfy certain requirements regarding deposit accounts. The negative covenants include, among others, restrictions on the Company’s transferring collateral, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens, selling assets and suffering a change in control, in each case subject to certain exceptions. The Company is also required to maintain minimum cash balances and achieve certain minimum product revenue targets, measured as of the last day of each fiscal quarter on a trailing year-to-date basis.

As of September 30, 2023, the principal balance outstanding under the Athyrium Notes was \$100.0 million and exit fees of \$2.0 million represent the balance of the Company’s long-term debt.

The future minimum principal and exit payments under the Athyrium Notes as of September 30, 2023 are as follows (in thousands):

	Amount
2023 (remaining)	\$ —
2024	33,997
2025	45,329
2026	22,674
Total	\$ 102,000

Debt Issuance Costs and Discounts:

Debt issuance costs and discounts consist of the following (in thousands):

	September 30, 2023	December 31, 2022
Debt issuance costs and discounts (Athyrium Notes)	\$ 5,410	\$ 5,410
Less: accumulated amortization	(2,708)	(1,717)
Included in long-term debt	\$ 2,702	\$ 3,693

Debt issuance costs and discounts are financing costs related to the Company’s outstanding debt. Amortization of debt issuance costs is expensed using

the effective interest method and is included in interest expense in the condensed consolidated statement of operations. For both the three and nine months ended September 30, 2023 and 2022, the Company recorded approximately \$0.2 million and \$0.6 million of interest expense, respectively, related to the amortization of debt issuance costs in the condensed consolidated statements of operations.

Note 10—Stockholders' Equity:**Common Stock:**

The Company issued no shares of common stock upon exercise of stock options during the nine months ended September 30, 2023 and 2022, respectively. The Company issued 1,197,130 and 849,079 shares of common stock upon vesting of RSUs during the nine months ended September 30, 2023 and 2022, respectively.

On March 8, 2022, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement") with Alan H. Auerbach, our President, Chief Executive Officer and Chairman of the Board, and Athyrium Opportunities IV Co-Invest 2 LP, an affiliate of the administrative agent and a purchaser under the Company's existing note purchase agreement (together with Mr. Auerbach, the "Purchasers"). Pursuant to the Purchase Agreement, the Company agreed to sell an aggregate of 3,584,228 shares of our common stock, par value \$0.0001 per share, to the Purchasers for aggregate gross proceeds of approximately \$10.0 million before deducting any offering expenses (the "Private Placement"). The purchase price for each share was \$2.79, which was equal to the closing price of the Company's common stock on NASDAQ on the date of the Purchase Agreement. Each Purchaser agreed to purchase approximately \$5.0 million of the shares, which resulted in Mr. Auerbach purchasing 1,792,114 shares of common stock. The Private Placement closed on March 10, 2022. In addition, Mr. Auerbach purchased an additional 568,181 shares of the Company's common stock on December 9, 2022 at a purchase price of \$4.40 per share. The purchase price was equal to the closing price of the Company's common stock on NASDAQ on the date of each purchase.

Authorized Shares:

The Company has 100,000,000 shares of stock authorized for issuance, all of which are common stock, par value \$0.0001 per share.

Warrants:

In October 2011, the Company issued an anti-dilutive warrant to Alan H. Auerbach, the Company's founder and Chief Executive Officer. The warrant was issued to provide Mr. Auerbach with the right to maintain ownership of at least 20% of the Company's common stock in the event that the Company raised capital through the sale of its securities in the future.

In connection with the closing of a public offering in October 2012, the exercise price and number of shares underlying the warrant issued to Mr. Auerbach were established and, accordingly, the final value of the warrant became fixed. Pursuant to the terms of the warrant, as amended in June 2021, Mr. Auerbach may exercise the warrant to acquire 2,116,250 shares of the Company's common stock at \$16 per share until October 4, 2026.

Stock Options and Restricted Stock Units:

The Company's 2011 Plan, as amended, was adopted by the Company's Board of Directors on September 15, 2011. Pursuant to the 2011 Plan, the Company may grant incentive stock options and nonqualified stock options, as well as other forms of equity-based compensation. Incentive stock options may be granted only to employees, while consultants, employees, officers, and directors are eligible for the grant of nonqualified options under the 2011 Plan. The maximum term of stock options granted under the 2011 Plan is 10 years and the awards generally vest over a three-year period. The exercise price of incentive stock options granted under the 2011 Plan must be at least equal to the fair value of such shares on the date of grant. As of September 30, 2023 a total of 14,545,860 shares of the Company's common stock have been reserved for issuance under the 2011 Plan.

All of the options awarded by the Company have been "plain vanilla options" as determined by the SEC Staff Accounting Bulletin 107 - *Share Based Payment*. As of September 30, 2023, 5,587,936 shares of the Company's common stock are issuable upon the exercise of outstanding stock options and vesting of RSUs granted under the 2011 Plan and 1,787,903 shares of the Company's common stock are available for future issuance under the 2011 Plan. The fair value of options granted to employees and nonemployees was estimated using the Black-Scholes Option Pricing Method (see Note 2—Significant Accounting Policies) with the following weighted-average assumptions used during the nine months ended September 30:

	2023	2022
Dividend yield	0.0%	0.0%
Expected volatility	85.5%	86.3%
Risk-free interest rate	3.9%	1.9%
Expected life in years	5.63	5.60

The Company's 2017 Plan, as amended, was adopted by the Company's Board of Directors on April 27, 2017. Pursuant to the 2017 Plan, the Company may grant stock options and RSUs, as well as other forms of equity-based compensation, to employees as an inducement to join the Company. The maximum term of stock options granted under the 2017 Plan is 10 years and the awards generally vest over a three-year period. The exercise price of stock options granted under the 2017 Plan must be at least equal to the fair market value of such shares on the date of grant. On July 15, 2021, the Board of Directors adopted an amendment to the 2017 Plan to increase the number of shares of the Company's common stock reserved for issuance thereunder by 1,000,000 shares. As of September 30, 2023 a total of 3,000,000 shares of the Company's common stock have been reserved for issuance under the 2017 Plan. As of September 30, 2023, a total of 871,793 shares of the Company's common stock are issuable upon the exercise of outstanding stock options and vesting of RSUs granted under the 2017 Plan and 1,146,332 shares of the Company's common stock are available for future issuance under the 2017 Plan.

Stock-based compensation expense was as follows (in thousands):

	For the Three Months Ended		For the Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
Stock-based compensation:				
Options:				
Selling, general, and administrative	\$ 566	\$ 753	\$ 1,947	\$ 2,233
Research and development	153	139	457	414
Restricted stock units:				
Selling, general, and administrative	1,228	1,185	3,477	4,015
Research and development	598	753	1,934	2,536
Total stock-based compensation expense	<u>\$ 2,545</u>	<u>\$ 2,830</u>	<u>\$ 7,815</u>	<u>\$ 9,198</u>

Activity with respect to options granted under the 2011 Plan and 2017 Plan is summarized as follows:

Stock Option Roll Forward:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2022	4,212,481	\$ 59.59	5.1	\$ 1,046
Granted	581,614	\$ 4.39	9.4	
(Expired)	(100,353)	\$ 114.62		
Outstanding at September 30, 2023	4,693,742	\$ 51.57	5.1	\$ 145
Nonvested at September 30, 2023	731,874	\$ 4.90	8.9	\$ 36
Exercisable	<u>3,961,868</u>	\$ 60.19	4.4	\$ 109

At September 30, 2023 total estimated unrecognized employee compensation cost related to non-vested stock options granted prior to that date was approximately \$2.0 million, which is expected to be recognized over a weighted-average period of 1.0 years. At September 30, 2023 the total estimated unrecognized employee compensation cost related to non-vested RSUs was approximately \$5.8 million, which is expected to be recognized over a weighted-average period of 1.2 years. The weighted-average grant date fair value of options granted during the nine months ended September 30, 2023 and 2022 was \$3.17 and \$1.72 per share, respectively. The weighted average grant date fair value of RSUs awarded during the nine months ended September 30, 2023 and 2022 was \$3.98 and \$2.46 per share, respectively.

	Shares	Weighted Average Grant-Date Fair Value
Nonvested shares at December 31, 2022	799,376	\$ 4.25
Granted	581,614	3.17
(Vested)	(649,116)	4.12
Nonvested shares at September 30, 2023	<u>731,874</u>	<u>\$ 3.52</u>

Restricted Stock Unit Roll Forward:

	Shares	Weighted Average Grant-Date Fair Value
Nonvested shares at December 31, 2022	1,501,767	\$ 4.92
Granted	1,520,527	3.98
(Vested)	(1,197,130)	4.70
(Forfeited)	(59,177)	5.02
Nonvested shares at September 30, 2023	<u>1,765,987</u>	<u>\$ 4.25</u>

Note 11—401(k) Savings Plan:

During 2012, the Company adopted a 401(k) savings plan for the benefit of its employees. The Company is required to make matching contributions to the 401(k) plan equal to 100% of the first 3% of wages deferred by each participating employee and 50% on the next 2% of wages deferred by each participating employee. The Company incurred expenses for employer matching contributions of approximately \$1.4 million and \$1.2 million for the nine months ended September 30, 2023 and 2022, respectively.



Note 12—Commitments and Contingencies:

Contractual Obligations:

Contractual obligations represent future cash commitments and liabilities under agreements with third parties and exclude contingent liabilities for which the Company cannot reasonably predict future payment. The Company's contractual obligations result primarily from obligations for various contract manufacturing organizations and clinical research organizations, which include potential payments we may be required to make under our agreements. The contracts also contain variable costs and milestones that are hard to predict as they are based on such things as patients enrolled and clinical trial sites. The timing of payments and actual amounts paid under contract manufacturing organization ("CMO") and CRO agreements may be different depending on the timing of receipt of goods or services or changes to agreed-upon terms or amounts for some obligations. Also, those agreements are cancelable upon written notice by the Company and, therefore, not long-term liabilities.

License Agreements:

Pfizer License Agreement

In August 2011, the Company entered into an agreement pursuant to which Pfizer agreed to grant it a worldwide license for the development, manufacture and commercialization of PB272 (neratinib, oral), PB272 (neratinib, intravenous) and PB357, and certain related compounds. The license is exclusive with respect to certain patent rights owned by or licensed to Pfizer. Under the agreement, the Company is obligated to commence a new clinical trial for a product containing one of these compounds within a specified period of time and to use commercially reasonable efforts to complete clinical trials and to achieve certain milestones as provided in a development plan. From the closing date of the agreement through December 31, 2011, Pfizer continued to conduct the existing clinical trials on behalf of the Company at Pfizer's sole expense. At the Company's request, Pfizer agreed to continue to perform certain services in support of the existing clinical trials at the Company's expense. These services would continue through the completion of the transitioned clinical trials. The license agreement "capped" the out-of-pocket expense the Company would incur to complete the then existing clinical trials. All agreed upon costs incurred by the Company above the "cost cap" would be reimbursed by Pfizer. The Company exceeded the "cost cap" during the fourth quarter of 2012. In accordance with the license agreement, the Company billed Pfizer for agreed upon costs above the "cost cap" until December 31, 2013.

On July 18, 2014, the Company entered into an amendment to the license agreement with Pfizer. The amendment amends the agreement to (1) reduce the royalty rate payable by the Company to Pfizer on sales of licensed products; (2) release Pfizer from its obligation to pay for certain out-of-pocket costs incurred or accrued on or after January 1, 2014 to complete certain ongoing clinical studies; and (3) provide that Pfizer and the Company will continue to cooperate to effect the transfer to the Company of certain records, regulatory filings, materials and inventory controlled by Pfizer as promptly as reasonably practicable.

As consideration for the license, the Company is required to make substantial payments upon the achievement of certain milestones totaling approximately \$187.5 million if all such milestones are achieved. In connection with the FDA approval of NERLYNX in July of 2017, the Company triggered a one-time milestone payment pursuant to the agreement. In June 2020, the Company entered into a letter agreement (the "Letter Agreement") with Pfizer relating to the method of payment associated with a one-time milestone payment under the license agreement with Pfizer. The Letter Agreement permitted the Company to make the milestone payment in installments with the remaining amount payable to Pfizer (including interest). The milestone payment accrued interest at 6.25% per annum. The milestone payment including accrued interest of \$1.8 million was paid in full in September 2021. In addition, the Company reached a commercial milestone by achieving aggregate worldwide net sales of \$250.0 million in calendar year 2022, resulting in a payment to Pfizer of \$12.5 million during the three months ended March 31, 2023. The Company capitalized the milestones as intangible assets and is amortizing the assets to cost of sales on a straight-line basis over the estimated useful life of the licensed patent through 2030. Should the Company commercialize any more of the compounds licensed from Pfizer or any products containing any of these compounds, the Company will be obligated to pay to Pfizer annual royalties at a fixed rate in the low-to-mid teens of net sales of all such products, subject to certain reductions and offsets in some circumstances. The Company's royalty obligation continues, on a product-by-product and country-by-country basis, until the later of (1) the last to expire licensed patent covering the applicable licensed product in such country, or (2) the earlier of generic competition for such licensed product reaching a certain level in such country or expiration of a certain time period after first commercial sale of such licensed product in such country. In the event that the Company sub-licenses the rights granted to the Company under the license agreement with Pfizer to a third party, the same milestone and royalty payments are required. The Company can terminate the license agreement at will, or for safety concerns, in each case upon specified advance notice.

Takeda License Agreement

In September 2022, the Company entered an exclusive license agreement with Takeda to license the worldwide research and development and commercial rights to alisertib, a selective, small-molecule, orally administered inhibitor of aurora kinase A. Under the terms of the exclusive license agreement, the Company will assume sole responsibility for the global development and commercialization of alisertib. Takeda received an upfront license fee of \$7.0 million in October 2022 and is eligible to receive potential future milestone payments of up to \$287.3 million upon the Company's achievement of certain regulatory and commercial milestones over the course of the exclusive license agreement, as well as tiered royalty payments for any net sales of alisertib. The Company recorded in-process research and development expense of \$7.0 million during the three months ended September 30, 2022, in connection with the up-front payment related to the asset acquisition. As of September 30, 2023, no milestones had been accrued as the underlying contingencies were not probable or estimable.

Legal Proceedings:

The Company and certain of its executive officers were named as defendants in the lawsuits detailed below. The Company records a liability in the consolidated financial statements for loss contingencies when a loss is known or considered probable and the amount can be reasonably estimated. If the reasonable estimate of a known or probable loss is a range, and no amount within the range is a better estimate than any other, the minimum amount of the range is accrued. If a loss is reasonably possible but not known or probable, and can be reasonably estimated, the estimated loss or range of loss is disclosed.

When determining the estimated loss or range of loss, significant judgment is required to estimate the amount and timing of a loss to be recorded.

Legal Malpractice Suit

On September 17, 2020, the Company filed a lawsuit against Hedrick Gardner Kincheloe & Garofalo, L.L.P. and David L. Levy, the attorneys who previously represented the Company in *Eshelman v. Puma Biotechnology, Inc., et al.* in the Superior Court of Mecklenburg County, North Carolina. The Company is alleging legal malpractice based on the defendants' negligent handling of the defense of the Company in *Eshelman v. Puma Biotechnology, Inc., et al.* The Company is seeking recovery of the entire amount awarded in *Eshelman v. Puma Biotechnology, Inc., et al.* and all legal fees and expenses incurred in appealing from the judgment and retrying the damages phase of the trial. On November 23, 2020, the defendant filed an answer to the complaint denying the allegations of negligence. On August 19, 2022, the Company filed a voluntary dismissal of the legal malpractice action, without prejudice, to allow the *Eshelman v. Puma Biotechnology, Inc., et al.* to conclude before proceedings. On June 2, 2023 the Company re-filed the lawsuit against Hedrick Gardner Kincheloe & Garofalo, L.L.P. and David L. Levy, the attorneys who previously represented the Company in *Eshelman v. Puma Biotechnology, Inc., et al.* in the Superior Court of Mecklenburg County, North Carolina. On August 22, 2023, the defendants filed motions to dismiss the case. These motions have not been scheduled for hearing.

Mfolozi Dlamini, individually and on behalf of all others similarly situated v. Puma Biotechnology, Inc.

On May 26, 2023, Mfolozi Dlamini filed a Class Action Complaint against the Company in the United States District Court for the Central District of California, alleging injuries as a result of unauthorized disclosure of certain individuals' personally identifiable information in connection with a data security incident discovered by the Company in June 2022. On September 21, 2023, the plaintiff and the Company agreed to dismiss the action with prejudice.

Patent-Related Proceedings

AstraZeneca Litigation

On September 22, 2021, the Company filed suit against AstraZeneca Pharmaceuticals, LP, AstraZeneca AB, and AstraZeneca PLC for infringement of United States Patent Nos. 10,603,314 ("the '314 patent") and 10,596,162 ("the '162 patent") (*Puma Biotechnology, Inc. et al. v. AstraZeneca Pharmaceuticals LP et al.*, 1:21CV01338 (D. Del. Sep. 22, 2021)). The Company's complaint alleges that AstraZeneca's commercial manufacture, use, offer for sale, sale, distribution, and/or importation of Tagrisso® (osimertinib) products for the treatment of gefitinib and/or erlotinib-resistant non-small cell lung cancer infringes the '314 and '162 patents. The Company is an exclusive licensee of the '314 and '162 patents under the Pfizer Agreement. Wyeth is a co-plaintiff. Plaintiffs seek a judgment that AstraZeneca's product infringes the asserted patents and an award of monetary damages in an amount to be proven at trial. AstraZeneca AB and AstraZeneca Pharmaceuticals LP filed an answer and counterclaims on November 5, 2021, including claims challenging the asserted patents as not infringed and/or invalid, and accusing plaintiffs of unclean hands and patent misuse. The parties stipulated to dismiss AstraZeneca PLC as a defendant and Pfizer as a Counterclaim Defendant on December 10, 2021, which the Court so ordered on December 13, 2021. The Company filed its answer to AstraZeneca's counterclaims on December 17, 2021, denying those claims. The case was reassigned to visiting Judge Matthew Kennelly of the Northern District of Illinois. A Markman Hearing was conducted on March 17, 2023, and the Court issued its claim construction decision on March 29, 2023. Fact discovery closed on May 19, 2023. The parties have exchanged expert reports, and are now preparing to conduct expert depositions. Expert discovery will close on November 17, 2023. Any dispositive motions and/or *Daubert* motions challenging the admissibility of expert testimony are to be filed by December 8, 2023. A jury trial is scheduled to begin on May 13, 2024.

Sandoz Litigation

On November 10, 2021, the Company filed suit against Sandoz, Inc. ("Sandoz") for infringement of U.S. Patent No. 7,399,865 B2 ("the '865 patent") (*Puma Biotechnology, Inc. et al. v. Sandoz Inc.*, 1:21CV19918 (D.N.J. Nov. 10, 2021) in the U.S. District Court for the District of New Jersey. The Complaint was filed within 45 days of Sandoz providing notice of its abbreviated new drug application ("ANDA") seeking approval to market a generic version of the Company's NERLYNX® (neratinib) Tablets, 40 mg prior to the expiration of the '865 patent. The Company and Wyeth seek judgment that Sandoz's purported ANDA product would, if allowed on the market, infringe the '865 patent, and ask that the Court order that, pursuant to 35 U.S.C. 271(e)(4)(A), the FDA's approval of the Sandoz ANDA can be no earlier than the date the '865 patent expires. Sandoz has stated that, due to Paragraph III certifications filed for other patents listed in the Orange Book in conjunction with NERLYNX, Sandoz cannot launch its ANDA product until November 21, 2030, at the earliest. The Company's complaint alleges that Sandoz has infringed the '865 patent by seeking approval to commercially manufacture, use, offer for sale, sell, and/or import a generic version of NERLYNX in the United States prior to the expiration of the '865 patent. The Company is the exclusive licensee of the '865 patent under the Pfizer Agreement. Wyeth is a co-plaintiff. Sandoz submitted its answer to the complaint on January 14, 2022 and asserted counterclaims challenging the '865 patent as invalid. The Company and Wyeth filed an answer to those counterclaims on February 4, 2022. The filing of the Company's Complaint against Sandoz triggered a 30-month stay of marketing approval for Sandoz's ANDA.

Effective December 13, 2022, the Company and Wyeth entered into a settlement and license agreement (the "Settlement and License Agreement") with Sandoz to fully settle and release all claims and terminate without prejudice the patent infringement litigation. Pursuant to the Settlement and License Agreement, the Company granted Sandoz a non-exclusive, royalty-free sub-license to certain licensed patents, including U.S. Patent No. 7,399,865 B2, which would permit Sandoz to begin selling a generic version of neratinib on or around December 8, 2030, unless such date is otherwise adjusted in accordance with the Settlement and License Agreement. In addition, the Company and Wyeth granted Sandoz a waiver of any and all regulatory exclusivities.

The Company entered into the Settlement and License Agreement solely to eliminate the burden, expense, distraction and uncertainties of further litigation.

Acebright China Litigation

On January 18, 2022, Shanghai Acebright Pharmaceuticals Group Co., Ltd. (“Acebright”) filed an ANDA with the National Medical Products Administration in China (“NMPA”) seeking approval to market a generic version of the Company’s NERLYNX® (neratinib) tablet, 40mg in China. Acebright seeks approval prior to the expiration of three patents listed on the China Patent Information Registration Platform for Marketed Drugs (“Chinese Orange Book”), namely, Chinese Patent Nos. ZL201410082103.7, ZL201080060546.6, and ZL200880118789.3 (“NERLYNX® Patents”), alleging in a Type 4.2 patent declaration that its generic version of NERLYNX does not fall within the scope of the claims of NERLYNX® Patents listed in the Chinese Orange Book. The patent declaration of Acebright was published in the Chinese Orange Book on January 19, 2022. On March 2, 2022, the Company filed petitions with the China National Intellectual Property Administration (“CNIPA”) and requested administrative determination that Acebright’s generic neratinib tablet falls within the scope of the claims of NERLYNX® Patents listed in the Chinese Orange Book. The Company’s request for administrative determination was accepted by CNIPA on March 18, 2022. The Company has notified NMPA of the acceptance of the request for administrative determination for NMPA to institute a stay of Acebright’s ANDA for nine months. On July 11, 2022, CNIPA decided that claims 5 and 6 of Patent No. ZL200880118789.3 are not eligible for registration in the Chinese Orange Book on the ground that these two pharmaceutical method-of-use claims fall in the scope of “patents of crystalline forms,” which are not eligible for listing in the Chinese Orange Book. On September 9, 2022, CNIPA decided that the generic drug in Acebright’s ANDA does not fall within the protection scope of claims 1, 3, 5 and 6 of Patent No. ZL201410082103.7 and claims 1-4, 7 and 9-13 of Patent No. ZL201080060546.6. The three CNIPA administrative decisions on NERLYNX® Patents have lifted the stay of Acebright’s ANDA by NMPA. The Company has appealed each CNIPA administrative decision in January 2023 at the Beijing Intellectual Property Court (“BJIPC”). The three appeals were accepted by BJIPC on February 20, 2023. The Company also filed three civil complaints based on the three NERLYNX® Patents against Acebright with the BJIPC in July 2022 and requested court determination that Acebright’s generic neratinib tablet falls within the scope of the claims of NERLYNX® Patents. On May 6, 2023, the Company withdrew two civil lawsuits and two appeals in relation to Chinese Patent Nos. ZL201410082103.7 and ZL201080060546.6 at the BJIPC. On May 24, 2023, the BJIPC accepted the Company’s withdrawal request. On July 24, 2023, the Company withdrew the remaining one civil lawsuit and one appeal in relation to Chinese Patent No. ZL200880118789.3 at the BJIPC. On August 15, 2023, the BJIPC accepted the Company’s withdrawal request. On September 12, 2023, the NMPA approved Acebright’s ANDA to market a generic version of the Company’s NERLYNX® in China with the approval number of GuoYaoZhunZi H20234141. The Company has the right to enforce NERLYNX® Patents in civil litigation under Article 11 of the Chinese Patent Law before the Chinese court.

Aosaikang China Litigation

On November 17, 2022, Jiangsu Aosaikang Pharmaceutical Co. Ltd. (“Aosaikang”) filed an ANDA with NMPA in China seeking approval to market a generic version of the Company’s NERLYNX®. The ANDA application No. is CYHS2202006. Aosaikang made Type 4.2 declarations against the four Orange Book Patents ZL201410082103.7, ZL201080060546.6, ZL200880118789.3 and ZL201710057547.9, alleging that its generic version of NERLYNX does not fall within the scope of the claims of the Orange Book patents. Aosaikang also alleged that Patents ZL200880118789.3 and ZL201710057547.9 are not eligible for Chinese Orange Book listing.

On December 28, 2022, the Company submitted four Article 76 petitions against the Aosaikang ANDA with the CNIPA and requested administrative determination that Aosaikang’s generic neratinib tablet falls within the scope of the claims of the four Orange Book patents. On January 6, 2023, the CNIPA accepted the Company’s request for administrative determination in relation to Patent Nos. ZL201410082103.7 and ZL201080060546.6. Also on January 6, 2023, the CNIPA declined to accept the Company’s request for administrative determination in relation to Patent Nos. ZL200880118789.3 and ZL201710057547.9, alleging that the listed claims are not eligible for registration in the Chinese Orange Book on the ground that these pharmaceutical method-of-use claims fall in the scope of “patents of crystalline forms,” which are not eligible for listing in the Chinese Orange Book. On January 28, 2023, the Company requested the NMPA to institute a nine-month stay against Aosaikang ANDA starting from the CNIPA’s acceptance of the Company’s request for administrative determination. On June 2, 2023, CNIPA decided that the generic drug in Aosaikang’s ANDA does not fall within the protection scope of claims 1, 3, 5 and 6 of Patent No. ZL201410082103.7 and claims 1-4, 7 and 9-13 of Patent No. ZL201080060546.6. The two CNIPA administrative decisions on NERLYNX® Patents have lifted the stay of Aosaikang’s ANDA by NMPA. The Company has the right to appeal each CNIPA administrative decision within six months of receiving the decision. The Company also has the right to enforce the four Orange Book patents in civil litigation before the Chinese court.

Convalife China Litigation

Convalife Pharmaceuticals (Shanghai) Co., Ltd (“Convalife”) filed an ANDA with NMPA in China seeking approval to market a generic version of the Company’s NERLYNX®. The ANDA application No. is CYHS2202095. On December 23, 2022, Convalife made Type 4.2 declarations against the four Orange Book Patents ZL201410082103.7, ZL201080060546.6, ZL200880118789.3 and ZL201710057547.9, alleging that its generic version of NERLYNX does not fall within the scope of the claims of the Orange Book patents. Convalife also alleged that Patents ZL200880118789.3 and ZL201710057547.9 are not eligible for Chinese Orange Book listing.

On February 1, 2023, the Company submitted four Article 76 petitions against the Convalife ANDA with the CNIPA and requested administrative determination that Convalife’s generic neratinib tablet falls within the scope of the claims of the four Orange Book patents. On February 3, 2023, the CNIPA accepted the Company’s request for administrative determination in relation to Patent Nos. ZL201410082103.7 and ZL201080060546.6. Also on February 3, 2023, the CNIPA declined to accept the Company’s request for administrative determination in relation to Patent Nos. ZL200880118789.3 and ZL201710057547.9, alleging that the listed claims are not eligible for registration in the Chinese Orange Book on the ground that these pharmaceutical method-of-use claims fall in the scope of “patents of crystalline forms,” which are not eligible for listing in the Chinese Orange Book. On February 24, 2023, the Company requested the NMPA to institute a nine-month stay against Convalife ANDA starting from the CNIPA’s acceptance of the Company’s request for administrative determination. On June 2, 2023, CNIPA decided that the generic drug in Convalife’s ANDA does not fall within the protection scope of claims 1, 3, 5 and 6 of Patent No. ZL201410082103.7 and claims 1-4, 7 and 9-13 of Patent No. ZL201080060546.6. The two CNIPA administrative decisions on NERLYNX® Patents have lifted the stay of Convalife’s ANDA by NMPA. The Company has the right to appeal each CNIPA administrative decision within six months of receiving the decision. The Company also has the right to enforce the four Orange Book patents in civil litigation before the Chinese court.

Kelun China Litigation

Hunan Kelun Pharmaceutical Co., Ltd. (“Kelun”) filed an ANDA with NMPA in China seeking approval to market a generic version of the Company’s NERLYNX®. The ANDA application No. is CYHS2300221. On January 28, 2023, Kelun made Type 4.2 declarations against the four Orange Book Patents ZL201410082103.7, ZL201080060546.6, ZL200880118789.3 and ZL201710057547.9, alleging that its generic version of NERLYNX does not fall within the scope of the claims of the Orange Book patents. Kelun also alleged that Patents ZL200880118789.3 and ZL201710057547.9 are not eligible for Chinese Orange Book listing.

On March 13, 2023, the Company submitted four Article 76 petitions against the Kelun ANDA with the CNIPA and requested administrative determination that Kelun’s generic neratinib tablet falls within the scope of the claims of the four Orange Book patents. On March 21, 2023, the CNIPA declined to accept the Company’s request for administrative determination in relation to Patent Nos. ZL200880118789.3 and ZL201710057547.9, alleging that the listed claims are not eligible for registration in the Chinese Orange Book on the ground that these pharmaceutical method-of-use claims fall in the scope of “patents of crystalline forms,” which are not eligible for listing in the Chinese Orange Book. On March 24, 2023, the CNIPA accepted the Company’s request for administrative determination in relation to Patent Nos. ZL201410082103.7 and ZL201080060546.6. On April 17, 2023, the Company requested the NMPA to institute a nine-month stay against Kelun’s ANDA starting from the CNIPA’s acceptance of the Company’s request for administrative determination. On September 14, 2023, the Company withdrew the two requests for administrative determination in relation to Chinese Patent Nos. ZL201410082103.7 and ZL201080060546.6 at the CNIPA. On September 25, 2023, the CNIPA accepted the Company’s withdrawal request.

Note 13—Subsequent Events

On October 26, 2023, the Company implemented a reduction in our workforce of approximately 5% across the Company. The Company anticipates that it will incur approximately \$0.4 million in related costs, which include severance payments and insurance premiums. These costs will be recorded in the fourth quarter of 2023. The Company believes that all payments related to this plan will be made by March 31, 2024.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed consolidated financial statements and the notes thereto included in Item 1 in this Quarterly Report on Form 10-Q, (this "Quarterly Report"). The following discussion should also be read in conjunction with our audited consolidated financial statements and the notes thereto and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our Annual Report on Form 10-K for the year ended December 31, 2022.

Unless otherwise provided in this Quarterly Report, references to the "Company," "we," "us," and "our" refer to Puma Biotechnology, Inc., a Delaware corporation, together with its wholly owned subsidiary.

Overview

We are a biopharmaceutical company that develops and commercializes innovative products to enhance cancer care and improve treatment outcomes for patients. We are currently commercializing NERLYNX, an oral version of neratinib, for the treatment of certain HER2-positive breast cancers. Additionally, we recently in-licensed and are responsible for global development and commercialization of alisertib. Alisertib is a selective, small-molecule inhibitor of aurora kinase A that is designed to disrupt mitosis leading to apoptosis of rapidly proliferating tumor cells that are dependent on aurora kinase A. Prior to our licensing alisertib from Takeda, alisertib was tested in over 1,300 patients who were treated across 22 company-sponsored trials resulting in a large, well-characterized clinical safety database. Based on information in this database, we believe alisertib has potential application in the treatment of a range of different cancer types, including hormone receptor-positive breast cancer, triple-negative breast cancer and small cell lung cancer. We intend to pursue development of alisertib initially in small cell lung cancer and hormone receptor-positive breast cancer.

NERLYNX is currently approved in the United States for two indications: the extended adjuvant treatment of adult patients with early stage HER2-overexpressed/amplified breast cancer following adjuvant trastuzumab-based therapy and for use in combination with capecitabine for the treatment of adult patients with advanced or metastatic HER2-positive breast cancer who have received two or more prior anti-HER2-based regimens in the metastatic setting.

We currently market NERLYNX in the United States using our direct specialty sales force consisting of approximately 40 sales specialists. Our sales specialists are supported by an experienced sales leadership team consisting of regional managers and directors, as well as a commercial team of experienced professionals in marketing, access and reimbursement, managed markets, marketing research, commercial operations and sales force planning and management. Outside the United States, we seek to enter into exclusive sub-license agreements with third parties to pursue regulatory approval, if necessary, and commercialize NERLYNX, if approved. We are currently party to several sub-licenses in various regions outside the United States, including Europe (excluding Russia and Ukraine), Australia, Canada, China, Southeast Asia, Israel, South Korea, and various countries and territories in Central America, South America and Africa. As of September 30, 2023, NERLYNX has received approval for the treatment of certain patients with extended adjuvant or metastatic HER2-positive breast cancer in over 50 countries outside the United States.

In September 2022, we entered into an exclusive license agreement with Takeda Pharmaceutical Company Limited ("Takeda") to license the worldwide research and development and commercial rights to alisertib. Alisertib is an investigational, reversible, ATP-competitive inhibitor that is designed to be highly selective for aurora kinase A. Inhibition of aurora kinase A can lead to disruption of mitotic spindle apparatus assembly, disruption of chromosome segregation, and inhibition of cell proliferation. In clinical trials to date, alisertib had shown single agent activity and activity in combination with other cancer drugs in the treatment of many different types of cancers, including hormone receptor-positive breast cancer, triple-negative breast cancer, small cell lung cancer and head and neck cancer.

Under the terms of the exclusive license agreement, we assumed sole responsibility for the global development and commercialization of alisertib. We paid Takeda an upfront license fee of \$7.0 million in October 2022, and it is eligible to receive potential future milestone payments of up to \$287.3 million upon our achievement of certain regulatory and commercial milestones over the course of the exclusive license agreement, as well as tiered royalty payments for any net sales of alisertib. We recorded in-process research and development expense of \$7.0 million during the year ended December 31, 2022, in connection with the up-front payment related to the asset acquisition. As of September 30, 2023, no milestones had been accrued as the underlying contingencies were not probable or estimable.

Our expenses to date have been related to hiring staff, commencing company-sponsored clinical trials and the build out of our corporate infrastructure and, since 2017, the commercial launch of NERLYNX. Accordingly, our success depends not only on the safety and efficacy of our product candidates, but also on our ability to finance product development. To date, our major sources of working capital have been proceeds from product and license revenue, public offerings of our common stock, proceeds from our credit facility and sales of our common stock in private placements. We intend to satisfy our near-term liquidity requirements through a combination of our existing cash and cash equivalents and marketable securities as of September 30, 2023, and proceeds that will become available to us through product sales, royalties and sub-license milestone payments. However, this intention is based on assumptions that may prove to be wrong. Changes may occur that would consume our available capital faster than anticipated, including changes in and progress of our development activities, the impact of commercialization efforts, acquisitions of additional drug candidates and changes in regulation. Some of these developments have had and may continue to have an adverse effect on our revenue and thus could have an adverse effect on our ability to satisfy the minimum revenue and cash balance covenants contained in the Athyrium Notes.

Critical Accounting Policies

As of the date of the filing of this Quarterly Report, we believe there have been no material changes to our critical accounting policies and estimates during the nine months ended September 30, 2023 from our accounting policies at December 31, 2022, as reported in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

Reclassification:

Certain prior year amounts have been reclassified for consistency with the current year presentation. These reclassifications had no effect on the reported results of operations. An adjustment to the presentation of operating lease assets and liabilities, net has been made to the Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2022.

Summary of Income and Expenses

Product revenue, net:

Product revenue, net consists of revenue from sales of NERLYNX. We sell NERLYNX to a limited number of specialty pharmacies and specialty distributors in the United States. We record revenue at the net sales price, which includes an estimate for variable consideration for which reserves are established. Variable consideration consists of trade discounts and allowances, product returns, provider chargebacks and discounts, government rebates and other incentives.

Product revenue also consists of product sales under sub-license agreements to our sub-licensees, who then sell into their respective international territories.

License revenue:

License revenue consists of consideration earned for performance obligations satisfied pursuant to our sub-license agreements.

Royalty revenue:

Royalty revenue consists of consideration earned related to product sales made by our sub-licensees in their respective territories pursuant to our sub-license agreements.

Cost of sales:

Cost of sales consists of third-party manufacturing costs, freight, and indirect overhead costs associated with sales of NERLYNX. Cost of product sales also includes period costs related to royalty charges payable to Pfizer, the amortization of milestone payments made under our license agreement with Pfizer, certain inventory manufacturing services, inventory adjustment charges, unabsorbed manufacturing and overhead costs, and manufacturing variances. Cost of sales includes applicable license termination fees.

Selling, general and administrative expenses:

Selling, general and administrative expenses (“SG&A expenses”) consist primarily of salaries and payroll-related costs, stock-based compensation expense, professional fees, business insurance, rent, general legal activities, credit loss expense and other corporate expenses. We expense SG&A expenses as they are incurred.

Research and development expenses:

Research and development expenses (“R&D expenses”) include costs associated with services provided by consultants who conduct and perform clinical services on our behalf and contract organizations for the manufacturing of clinical materials. During the three and nine months ended September 30, 2023 and 2022, our R&D expenses consisted primarily of clinical research organization (“CRO fees”), fees paid to consultants; salaries and related personnel costs; and stock-based compensation. We expense our R&D expenses as they are incurred. Internal R&D expenses primarily consist of payroll-related costs and also include equipment costs, travel expenses and supplies.

Acquired In-Process Research and Development Expense:

Acquired in-process research and development expense includes the rights to develop new product candidates. Payments to acquire a new product candidate are immediately expensed as acquired in-process research and development provided that the product candidate has not achieved regulatory approval for marketing and, absent obtaining such approval, has no alternative future use.

Results of Operations

Three Months Ended September 30, 2023 Compared to Three Months Ended September 30, 2022

Total revenue:

Total revenue for the three months ended September 30, 2023 was approximately \$56.1 million, compared to \$57.1 million for the three months ended September 30, 2022. This decrease in total revenue was primarily due to a decrease in product revenue, net of approximately \$2.7 million, partially offset by an increase in royalty revenue of \$1.7 million.

Product revenue, net:

Product revenue, net was approximately \$51.6 million for the three months ended September 30, 2023, compared to \$54.3 million for the three months ended September 30, 2022. This decrease in product revenue, net was primarily attributable a decrease of approximately 10% in bottles of NERLYNX sold compared to the three months ended September 30, 2022, partially offset by an increase in net selling price compared to the three months ended September 30, 2022. The related deductions to gross revenue for variable consideration for the three months ended September 30, 2023 were slightly lower compared to the three months ended September 30, 2022.

Royalty revenue:

Royalty revenue was approximately \$4.5 million for the three months ended September 30, 2023, compared to approximately \$2.8 million for the three months ended September 30, 2022. The increase was due primarily to the timing of sales made in China by Puma's sub-licensee.

Cost of sales:

Cost of sales was approximately \$13.3 million for the three months ended September 30, 2023, compared to approximately \$12.5 million for the three months ended September 30, 2022. The increase was primarily due to higher unit volume sales to our sub-licensees and the related higher royalty expense and by increased intangible amortization related to the \$12.5 million paid to Pfizer for meeting a commercial sales milestone as of December 31, 2022.

Selling, general and administrative expenses:

SG&A expenses were approximately \$22.8 million for the three months ended September 30, 2023, compared to approximately \$24.0 million for the three months ended September 30, 2022. SG&A expenses for the three months ended September 30, 2023 and 2022 were as follows:

Selling, general, and administrative expenses (in thousands)	For the Three Months Ended		Change	
	September 30,		\$	%
	2023	2022	2023/2022	2023/2022
Payroll and related costs	\$ 7,973	\$ 7,780	\$ 193	2.5%
Professional fees and expenses	9,152	10,794	(1,642)	-15.2%
Travel and meetings	1,099	1,130	(31)	-2.7%
Facilities and equipment costs	1,283	1,331	(48)	-3.6%
Stock-based compensation	1,795	1,938	(143)	-7.4%
Loss on impairment of asset	625	—	625	100.0%
Other	874	988	(114)	-11.5%
	<u>\$ 22,801</u>	<u>\$ 23,961</u>	<u>\$ (1,160)</u>	<u>-4.8%</u>

SG&A expenses decreased by approximately \$1.2 million for the three months ended September 30, 2023, compared to the same period in 2022, primarily attributable to the following:

- a decrease in professional fees and expenses of approximately \$1.6 million, primarily related to a \$0.6 million decrease in legal fees, a \$0.6 million decrease in consultants and contractors, and a \$0.3 million decrease in insurance costs;
- a decrease in stock-based compensation expense of approximately \$0.1 million, primarily due to lower fair value on equity grants as a result of a lower market price for our common stock;
- a decrease in other expenses of \$0.1 million, primarily due to lower training related expenses; partially offset by
- an increase in payroll and related costs of approximately \$0.2 million, primarily related to salary increases that began in the first quarter of 2023; and
- an increase in loss on impairment of asset expense of \$0.6 million in connection with our decision to sublease a portion of our leased office space,

which was recorded as an operating asset in accordance with ASC 842.

Research and development expenses:

R&D expenses were approximately \$11.4 million for the three months ended September 30, 2023, compared to approximately \$11.3 million for the three months ended September 30, 2022. R&D expenses for the three months ended September 30, 2023 and 2022, were as follows:

Research and development expenses (in thousands)	For the Three Months Ended		Change	
	September 30,		\$	%
	2023	2022	2023/2022	2023/2022
Clinical trial expense	\$ 2,791	\$ 2,737	\$ 54	2.0%
Internal R&D	7,307	6,844	463	6.8%
Consultant and contractors	597	780	(183)	-23.5%
Stock-based compensation	751	892	(141)	-15.8%
	<u>\$ 11,446</u>	<u>\$ 11,253</u>	<u>\$ 193</u>	<u>1.7%</u>

R&D expenses increased by approximately \$0.2 million for the three months ended September 30, 2023, compared to the same period in 2022, primarily attributable to the following:

- an increase in internal R&D of approximately \$0.5 million, primarily related to salary increases in the first quarter of 2023; partially offset by
- a decrease in consultant and contractors expense of approximately \$0.2 million, primarily due to the reduction and closure of clinical trial sites with respect to NERLYNX; and
- a decrease in stock-based compensation expense of approximately \$0.1 million, primarily due to lower fair value on equity grants as a result of a lower market price for our common stock.

Other income (expenses):

Other income (expenses) (in thousands)	For the Three Months Ended		Change	
	September 30,		\$	%
	2023	2022	2023/2022	2023/2022
Interest income	\$ 689	\$ 216	\$ 473	219.0%
Interest expense	(3,339)	(2,947)	(392)	13.3%
Legal verdict expense	—	(19)	19	-100.0%
Other income	74	64	10	15.6%
	<u>\$ (2,576)</u>	<u>\$ (2,686)</u>	<u>\$ 110</u>	<u>-4.1%</u>

Interest income:

For the three months ended September 30, 2023, we recognized approximately \$0.7 million in interest income, compared to approximately \$0.2 million of interest income for the three months ended September 30, 2022. The increase in interest income was primarily the result of higher interest rates and an increase in return on investment securities compared to the same period in 2022.

Interest expense:

For the three months ended September 30, 2023, we recognized approximately \$3.3 million in interest expense, compared to approximately \$2.9 million of interest expense for the three months ended September 30, 2022. The increase in interest expense was primarily related to higher interest rates on our Athyrium Notes, which is partially determined by the three-month SOFR rate, for the three months ended September 30, 2023 (see Part I, Item 3 of this Form 10-Q), as well as imputed interest on \$8.0 million related to the final installment payment on the Eshelman litigation settlement due on or before November 1, 2024.

Nine Months Ended September 30, 2023 Compared to Nine Months Ended September 30, 2022

Total revenue:

Total revenue for the nine months ended September 30, 2023 was approximately \$163.5 million, compared to \$162.4 million for the nine months ended September 30, 2022. This increase in total revenue was primarily due to an increase in product revenue, net of approximately \$3.6 million, partially offset by a decrease in royalty revenue of approximately \$2.5 million in the nine months ended September 30, 2023.

Product revenue, net:

Product revenue, net was approximately \$149.9 million for the nine months ended September 30, 2023, compared to \$146.3 million for the nine months ended September 30, 2022. This increase in product revenue, net was primarily attributable to an increase in net selling price compared to the nine months ended September 30, 2022, partially offset by a decrease of approximately 3.7% in bottles of NERLYNX sold compared to the nine months ended September 30, 2022. The related deductions to gross revenue for variable consideration for the nine months ended September 30, 2023 were consistent with the nine months ended September 30, 2022.

Royalty revenue:

Royalty revenue was approximately \$13.5 million for the nine months ended September 30, 2023, compared to approximately \$16.0 million for the nine months ended September 30, 2022. The decrease of approximately \$2.5 million was due to the timing of sales made in China by Puma's sub-licensee.

Cost of sales:

Cost of sales was approximately \$38.4 million for the nine months ended September 30, 2023, compared to approximately \$38.3 million for the nine months ended September 30, 2022. The increase was due to lower royalty expense related primarily to the timing of sales made in China by Puma's sub-licensee, partially offset by increased intangible amortization related to the \$12.5 million paid to Pfizer for meeting a commercial sales milestone as of December 31, 2022.

Selling, general and administrative expenses:

SG&A expenses were approximately \$69.7 million for the nine months ended September 30, 2023, compared to approximately \$64.9 million for the nine months ended September 30, 2022. SG&A expenses for the nine months ended September 30, 2023 and 2022 were as follows:

Selling, general, and administrative expenses (in thousands)	For the Nine Months Ended		Change	
	September 30,		\$	%
	2023	2022	2023/2022	2023/2022
Payroll and related costs	\$ 26,066	\$ 21,172	\$ 4,894	23.1%
Provision for credit loss	514	—	514	100.0%
Professional fees and expenses	26,377	27,192	(815)	-3.0%
Travel and meetings	4,268	3,636	632	17.4%
Facilities and equipment costs	3,873	4,042	(169)	-4.2%
Stock-based compensation	5,424	6,248	(824)	-13.2%
Loss on impairment of asset	625	—	625	100.0%
Other	2,602	2,649	(47)	-1.8%
	<u>\$ 69,749</u>	<u>\$ 64,939</u>	<u>\$ 4,810</u>	<u>7.4%</u>

SG&A expenses increased by approximately \$4.8 million for the nine months ended September 30, 2023, compared to the same period in 2022, primarily attributable to the following:

- an increase in payroll and related costs of approximately \$4.9 million, primarily related to a \$2.0 million tax credit under the CARES Act recorded during the nine months ended September 30, 2022, without a comparable tax credit in 2023, salary increases that began in the first quarter of 2023, as well as lower turnover during the nine months ended September 30, 2023;
- an increase in provision for credit loss of approximately \$0.5 million, primarily due to a royalty receivable due from a sub-license partner, compared to no provision for credit loss expense for the nine months ended September 30, 2022;
- an increase in travel and meetings expenses of approximately \$0.6 million, primarily due to the overall easing of COVID-19 travel restrictions;
- an increase in loss on impairment of asset expense of approximately \$0.6 million in connection with our decision to sublease the right to use a portion of our leased office space recorded as an operating asset in accordance with ASC 842; partially offset by
- a decrease in professional fees and expenses of approximately \$0.8 million, consisting of a decrease of approximately \$1.3 million in consultant and contractor fees and a decrease of \$1.1 million in insurance and other costs, offset by an increase of approximately \$1.6 million in legal fees (see Part II, Item 1. of this Form 10-Q);
- a decrease in facilities and equipment costs of approximately \$0.2 million, primarily due to lower depreciation expense for fully depreciated assets; and

- a decrease in stock-based compensation expense of approximately \$0.8 million, primarily due to lower fair value on equity grants as a result of a lower market price for our common stock.

Research and development expenses:

R&D expenses were approximately \$37.5 million for the nine months ended September 30, 2023, compared to approximately \$38.5 million for the nine months ended September 30, 2022. R&D expenses for the nine months ended September 30, 2023 and 2022, were as follows:

Research and development expenses (in thousands)	For the Nine Months Ended		Change	
	September 30,		\$	%
	2023	2022	2023/2022	2023/2022
Clinical trial expense	\$ 9,583	\$ 13,048	\$ (3,465)	-26.6%
Internal R&D	23,364	19,964	3,400	17.0%
Consultant and contractors	2,170	2,494	(324)	-13.0%
Stock-based compensation	2,392	2,950	(558)	-18.9%
	<u>\$ 37,509</u>	<u>\$ 38,456</u>	<u>\$ (947)</u>	<u>-2.5%</u>

R&D expenses decreased by approximately \$0.9 million for the nine months ended September 30, 2023, compared to the same period in 2022, primarily attributable to the following:

- a decrease in clinical trial expense of approximately \$3.5 million, primarily due to the reduction and closure of clinical trial sites with respect to NERLYNX;
- a decrease in consultant and contractors of approximately \$0.3 million, primarily due to the reduction and closure of clinical trial sites with respect to NERLYNX;
- a decrease in stock-based compensation of approximately \$0.6 million, primarily due to lower fair value on equity grants as a result of a lower market price for our common stock; partially offset by
- an increase in internal R&D of approximately \$3.4 million, primarily due to a \$1.8 million tax credit recorded during the nine months ended September 30, 2022 under the CARES Act without a comparable tax credit in 2023, as well as salary increases that began in the first quarter of 2023.

Other income (expenses):

Other income (expenses) (in thousands)	For the Nine Months Ended		Change	
	September 30,		\$	%
	2023	2022	2023/2022	2023/2022
Interest income	\$ 1,886	\$ 294	\$ 1,592	541.5%
Interest expense	(9,976)	(8,313)	(1,663)	20.0%
Legal verdict expense	—	(92)	92	-100.0%
Other income	118	176	(58)	-33.0%
	<u>\$ (7,972)</u>	<u>\$ (7,935)</u>	<u>\$ (37)</u>	<u>0.5%</u>

Interest income:

For the nine months ended September 30, 2023, we recognized approximately \$1.9 million in interest income, compared to approximately \$0.3 million of interest income for the nine months ended September 30, 2022. The increase in interest income was primarily the result of higher interest rates and an increase in return on investment securities compared to the same period in 2022.

Interest expense:

For the nine months ended September 30, 2023, we recognized approximately \$10.0 million in interest expense, compared to approximately \$8.3 million of interest expense for the nine months ended September 30, 2022. The increase in interest expense was primarily related to higher interest rates on our Athyrium loan, which is partially determined by the three-month SOFR rate, for the nine months ended September 30, 2023 (see Item 3 of this Form 10-Q) as well as imputed interest on \$8.0 million related to the final installment payment on the Eshelman litigation settlement due on or before November 1, 2024.

Liquidity and Capital Resources

The following table, which summarizes our liquidity and capital resources as of September 30, 2023 and December 31, 2022 and for the nine months ended September 30, 2023 and 2022, is intended to supplement the more detailed discussion that follows:

<u>Liquidity and capital resources (in thousands)</u>	As of	
	September 30, 2023	December 31, 2022
Cash and cash equivalents	\$ 81,800	\$ 76,201
Marketable securities	\$ 3,229	\$ 4,873
Working capital	\$ 57,992	\$ 56,797
Long-term debt	\$ 76,634	\$ 98,307
Stockholders' equity	\$ 38,742	\$ 21,608
	Nine Months Ended	
	September 30, 2023	September 30, 2022
Cash provided by (used in):		
Operating activities	\$ 16,554	\$ (23,510)
Investing activities	(10,955)	18,977
Financing activities	—	9,792
Net increase in cash, cash equivalents and restricted cash	\$ 5,599	\$ 5,259

On October 26, 2023, we implemented a reduction in our workforce of approximately 5% across the Company. We anticipate that we will incur approximately \$0.4 million in related costs, which include severance payments and insurance premiums. These costs will be recorded in the fourth quarter of 2023. We believe that all payments related to this plan will be made by March 31, 2024.

Operating Activities:

Cash provided by operating activities for the nine months ended September 30, 2023 was \$16.6 million and consisted of net income of approximately \$9.3 million, offset by a decrease of approximately \$17.6 million of non-cash items. These non-cash items included stock-based compensation, depreciation and amortization, provision for credit loss and loss on impairment of asset. In addition, there were decreases in cash flows from operations due to a decrease in accrued expenses and other of approximately \$18.9 million, which included an \$8.0 million payment related to the Eshelman litigation settlement, net, a decrease of \$3.3 million in variable considerations, and \$2.5 million in the employee bonus accrual, and a net decrease of \$4.0 million in our Pfizer royalty accrual. Additional decreases in cash flows were due to a decrease in our post-marketing commitment liability of approximately \$0.7 million, a decrease of \$1.4 million in accounts payable and an increase of \$1.2 million in inventory. These decreases in cash flows were partially offset increases in cash flows due to a decrease of \$10.9 million in accounts receivable from collections and a decrease of \$1.4 million in prepaid expenses and other. The decrease of \$0.4 million in other current assets was due to receipt of CARES Act funds, partially offset by an increase of a \$1.7 million receivable from a vendor related to damaged inventory.

Cash used in operating activities for the nine months ended September 30, 2022 was \$23.5 million and consisted of net income of approximately \$5.6 million, offset by a decrease of approximately \$15.9 million of non-cash items, including stock-based compensation, and depreciation and amortization. Further changes in cash flows from operations included a decrease in accrued expenses and other of approximately \$53.8 million related primarily to the \$54.3 million in payments related to our class action lawsuit settlement, an increase in other assets of approximately \$3.7 million due to a tax credit receivable related to the CARES Act, an increase of approximately \$3.8 million in accounts payable, a decrease in our post-marketing commitment liability of approximately \$0.7 million, offset by a decrease of approximately \$4.5 million in accounts receivable, a decrease of \$3.2 million in prepaid expense, and a decrease in inventory of approximately \$1.7 million.

Investing Activities:

Cash used in investing activities for the nine months ended September 30, 2023 was approximately \$11.0 million, compared to net cash provided by investing activities of approximately \$19.0 million for the same period in 2022. Cash used in investing activities was primarily due to the purchase of the intangible asset of \$12.5 million, and the purchase of available-for-sale securities of approximately \$12.5 million, offset by the maturity of available-for-sale securities of approximately \$14.2 million for the nine months ended September 30, 2023.

Cash provided by investing activities for the nine months ended September 30, 2022 was approximately \$19.0 million, primarily due to maturity of available-for-sale securities.

Financing Activities:

There was no cash provided by or used in financing activities for the nine months ended September 30, 2023.

Cash provided by financing activities for the nine months ended September 30, 2022 was approximately \$9.8 million, representing the cash raised from the Purchase Agreement entered into on March 8, 2022 from Mr. Auerbach and Athyrium Opportunities IV Co-Invest 2 LP.

Athyrium Note Purchase Agreement:

We issued senior notes for an aggregate principal amount of \$100.0 million pursuant to the note purchase agreement dated July 23, 2021, by us, and our

subsidiaries, and Athyrium, as Administrative Agent, and certain other investor parties (the “Note Purchase Agreement”), with an initial maturity date of July 23, 2026 (the “Athyrium Notes”). The Athyrium Notes were issued for face amount of \$100.0 million net of an original issue discount of \$1.5 million. The Athyrium Notes also require a 2.0% exit payment to be made on each payment of principal. The borrowings under the Athyrium Notes, together with cash on hand, were used to repay our outstanding indebtedness, including the applicable exit and prepayment fees owed to lenders under our Oxford Credit Facility. We can borrow up to an additional \$25.0 million under the Note Purchase Agreement for general corporate purposes and to further support commercial initiatives. The Athyrium Notes are secured by substantially all of our assets. We incurred \$1.9 million of deferred financing costs with the borrowing.

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Prior to October 1, 2022, the Athyrium Notes bore interest at an annual rate equal to the sum of (i) 8.0% and (ii) three-month London Interbank Offering Rate (“LIBOR”) rate where the three-month LIBOR rate could not be less than 1.5% or greater than 3.5%. (or a comparable or successor rate that gives due consideration to the then prevailing rate used by commercial banks in the United States, which rate is reasonably determined by Athyrium). Interest was payable quarterly on the last business day of March, June, September and December each year. Beginning June 30, 2024, principal payments are required to be made quarterly at 11.11% of the original face amount with the remaining balance paid at maturity. Each principal payment also included a 2.0% exit payment.

On September 16, 2022, we entered into a third amendment to the Note Purchase Agreement in which the Secured Overnight Financing Rate (“SOFR”) is to be used in place of the LIBOR rate in calculating interest on the Athyrium Notes, beginning on October 1, 2022. The Athyrium Notes bear interest at an annual rate equal to the sum of (a) eight percent (8.00%) plus (b) adjusted three-month term SOFR for such interest period. The adjusted three-month term SOFR means, with respect to any interest period, the lesser of (a) the sum of (i) three-month term SOFR and (ii) 0.26161% (26.161 basis points) and (b) three and one-half of one percent (3.50%) per annum. The interest rate applicable to the Athyrium Notes during the period from September 16, 2022, until the expiration of the interest period ending on September 30, 2022, was equal to the sum of (a) eight percent (8.00%) plus (b) adjusted three-month LIBOR. The modification of the Note Purchase Agreement did not meet the requirements of a debt extinguishment under ASC 470-50 - *Debt Modifications and Exchanges* and no gain or loss was recognized. The Company performed a quantitative analysis and determined that the terms of the new debt and original debt instrument were not substantially different. Accordingly, the September 16, 2022 amendment was accounted for as a debt modification.

Following the effectiveness of the Third Amendment, the Athyrium Notes bear interest at an annual rate equal to the sum of (a) eight percent (8.00%) plus (b) the lesser of (i) the sum of (x) three-month term SOFR for an interest period of three months plus (y) 0.26161% (26.161 basis points) and (ii) three and one-half of one percent (3.50%) per annum. Interest is payable quarterly on the last business day of March, June, September and December each year. Beginning June 30, 2024, principal payments are required to be made quarterly at 11.11% of the original face amount with the remaining balance paid at maturity. Each principal payment will also include a 2.0% exit payment. As of September 30, 2023, the effective interest rate for the loan was 12.99%.

At our option, we may prepay the outstanding principal balance of the notes in whole or in part, subject to a prepayment fee of 2.0% of the amount prepaid if the prepayment occurs on or prior to the second anniversary of the issuance date of such notes, plus the present value of remaining interest that would have accrued through and including the second anniversary date, and 2.0% of the amount prepaid if the prepayment occurs after the second anniversary but on or prior to the third anniversary of the issuance date of such notes.

The Athyrium Notes include affirmative and negative covenants applicable to us. The affirmative covenants include, among others, covenants requiring us to maintain our legal existence and governmental approvals, deliver certain financial reports, maintain insurance coverage, and satisfy certain requirements regarding deposit accounts. The negative covenants include, among others, restrictions on our transferring collateral, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens, selling assets and suffering a change in control, in each case subject to certain exceptions. We are also required to maintain minimum cash balances and achieve certain minimum product revenue targets, measured as of the last day of each fiscal quarter on a trailing year-to-date basis.

As of September 30, 2023, there were \$102.0 million in term loans outstanding under the Athyrium Notes, representing all of our long-term debt outstanding as of that date, and we were in compliance with all applicable covenants.

Current and Future Financing Needs:

We have spent, and expect to continue to spend, substantial amounts in connection with implementing our business strategy, including our planned product development efforts, our clinical trials, our research and development efforts and our commercialization efforts.

We may choose to begin new research and development efforts, or we may choose to launch additional marketing efforts. For example, we recently licensed alisertib from Takeda and assumed sole responsibility for its global development and commercialization. These efforts may require funding in addition to our cash and cash equivalents totaling approximately \$81.8 million at September 30, 2023. While our consolidated financial statements have been prepared on a going concern basis, we expect to continue incurring significant losses for the foreseeable future and will need to generate significant revenue to sustain operations, successfully commercialize neratinib and develop alisertib. While we have been successful in raising financing in the past, there can be no assurance that we will be able to do so in the future. Our ability to obtain funding may be adversely impacted by uncertain market conditions, including our success in commercializing NERLYNX, unfavorable decisions of regulatory authorities or adverse clinical trial results. The outcome of these matters cannot be predicted at this time.

In addition, we have based our estimate of capital needs on assumptions that may prove to be wrong. Changes may occur that would consume our available capital faster than anticipated, including changes in and progress of our development activities, the impact of commercialization efforts, acquisitions of additional drug candidates and changes in regulation. Potential sources of financing include strategic relationships, public or private sales of equity or debt, third-party debt financing and other sources of funds. We may seek to access the public or private equity markets when conditions are favorable due to our long-term capital requirements. If we raise funds by selling additional shares of common stock or other securities convertible into common stock, the ownership interests of our existing stockholders will be diluted. If we are not able to obtain financing when needed, we may be unable to carry out our business plan. As a result, we may have to significantly limit our operations, and our business, financial condition and results of operations would be materially harmed. In such an event, we will be required to undertake a thorough review of our programs, and the opportunities presented by such programs, and allocate our resources in the manner most prudent.

Non-GAAP Financial Measures

In addition to our operating results, as calculated in accordance with Generally Accepted Accounting Principles (“GAAP”) we use certain non-GAAP financial measures when planning, monitoring, and evaluating our operational performance. The following table presents our net income and net income per share, as calculated in accordance with GAAP, as adjusted to remove the impact of stock-based compensation. For the three and nine months ended September 30, 2023, stock-based compensation represented approximately 7.4% and 7.3% of our operating expenses, respectively, compared to 8.0% and 8.9% for the

same respective periods in 2022, in each case excluding cost of sales and acquired in-process research and development. Our management believes that these non-GAAP financial measures are useful to enhance understanding of our financial performance, are more indicative of our operational performance and facilitate a better comparison among fiscal periods. These non-GAAP financial measures are not, and should not be viewed as, substitutes for GAAP reporting measures.

**Reconciliation of GAAP Net Income (Loss) to Non-GAAP Adjusted Net Income and
GAAP Net Income (Loss) Per Share to Non-GAAP Adjusted Net Income Per Share
(in thousands except share and per share data)**

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2023	2022	2023	2022
GAAP net income (loss)	\$ 5,796	\$ (360)	\$ 9,323	\$ 5,608
Adjustments:				
Stock-based compensation -				
Selling, general and administrative (1)	1,794	1,938	5,424	6,248
Research and development (2)	751	892	2,391	2,950
Non-GAAP adjusted net income	<u>\$ 8,341</u>	<u>\$ 2,470</u>	<u>\$ 17,138</u>	<u>\$ 14,806</u>
GAAP net income (loss) per share—basic	\$ 0.12	\$ (0.01)	\$ 0.20	\$ 0.13
Adjustment to net income (loss) (as detailed above)	0.06	0.06	0.16	0.20
Non-GAAP adjusted basic net income per share	<u>\$ 0.18 (3)</u>	<u>\$ 0.05 (4)</u>	<u>\$ 0.36 (3)</u>	<u>\$ 0.33 (4)</u>
GAAP net income (loss) per share—diluted	\$ 0.12	\$ (0.01)	\$ 0.20	\$ 0.13
Adjustment to net income (loss) (as detailed above)	0.05	0.06	0.16	0.20
Non-GAAP adjusted diluted net income per share	<u>\$ 0.17 (5)</u>	<u>\$ 0.05 (6)</u>	<u>\$ 0.36 (5)</u>	<u>\$ 0.33 (6)</u>

- (1) To reflect a non-cash charge to operating expense for selling, general, and administrative stock-based compensation.
- (2) To reflect a non-cash charge to operating expense for research and development stock-based compensation.
- (3) Non-GAAP adjusted basic net income per share was calculated based on 47,520,338 and 46,977,127 weighted-average shares of common stock outstanding for the three and nine months ended September 30, 2023, respectively.
- (4) Non-GAAP adjusted basic net income per share was calculated based on 45,567,739 and 44,290,432 weighted-average shares of common stock outstanding for the three and nine months ended September 30, 2022, respectively.
- (5) Non-GAAP adjusted diluted net income per share was calculated based on 47,819,234 and 47,397,209 weighted-average shares of common stock outstanding for the three and nine months ended September 30, 2023, respectively.
- (6) Non-GAAP adjusted diluted net income per share was calculated based on 45,797,841 and 44,464,682 weighted-average shares of common stock outstanding for the three and nine months ended September 30, 2022, respectively.

Off-Balance Sheet Arrangements

We do not have any “off-balance sheet arrangements,” as defined by SEC regulations.

Contractual Obligations

There have been no material changes outside the ordinary course of business to our contractual obligations and commitments as described in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the year ended December 31, 2022.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Some of the securities that we invest in have market risk in that a change in prevailing interest rates may cause the principal amount of the cash equivalents to fluctuate. Financial instruments that potentially subject us to significant concentrations of credit risk consist primarily of cash and cash equivalents. We invested our excess cash primarily in cash equivalents such as money market investments as of September 30, 2023. The primary objectives of our investment activities are to ensure liquidity and to preserve principal while at the same time maximizing the income we receive from our cash and cash equivalents without significantly increasing risk. Additionally, we established guidelines regarding approved investments and maturities of investments, which are designed to maintain safety and liquidity.

Because of the short-term maturities of our cash equivalents, we do not believe that a 10% increase in interest rates would have a material effect on the realized value of our cash equivalents.

We also have interest rate exposure as a result of borrowings outstanding under the Athyrium Notes. As of September 30, 2023 the aggregate outstanding principal amounts of the Athyrium Notes was \$100.0 million. The Athyrium Notes bear interest at a rate per annum equal to the sum of 8.00% plus the adjusted three-month term SOFR and the lesser of (a) the sum of (i) three-month term SOFR and (ii) 0.26161% (26.161 basis points) and (b) three and one-half of one percent (3.50%) per annum. If overall interest rates had increased by one hundred basis points during the quarter ended September 30, 2023, our interest expense would have increased by \$1.0 million.

Item 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Exchange Act, is recorded, processed, summarized and reported within the timelines specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives and in reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of our disclosure controls and procedures (as defined under Exchange Act Rule 13a-15(e)), as of September 30, 2023. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that these disclosure controls and procedures were effective as of September 30, 2023.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the three months ended September 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

Legal Malpractice Suit

On September 17, 2020, the Company filed a lawsuit against Hedrick Gardner Kincheloe & Garofalo, L.L.P. and David L. Levy, the attorneys who previously represented the Company in *Eshelman v. Puma Biotechnology, Inc., et al.* in the Superior Court of Mecklenburg County, North Carolina. The Company is alleging legal malpractice based on the defendants' negligent handling of the defense of the Company in *Eshelman v. Puma Biotechnology, Inc., et al.* The Company is seeking recovery of the entire amount awarded in *Eshelman v. Puma Biotechnology, Inc., et al.* and all legal fees and expenses incurred in appealing from the judgment and retrying the damages phase of the trial. On November 23, 2020, the defendant filed an answer to the complaint denying the allegations of negligence. On August 19, 2022, the Company filed a voluntary dismissal of the legal malpractice action, without prejudice, to allow the *Eshelman v. Puma Biotechnology, Inc., et al.* to conclude before proceedings. On June 2, 2023 the Company re-filed the lawsuit against Hedrick Gardner Kincheloe & Garofalo, L.L.P. and David L. Levy, the attorneys who previously represented the Company in *Eshelman v. Puma Biotechnology, Inc., et al.* in the Superior Court of Mecklenburg County, North Carolina. On August 22, 2023, the defendants filed motions to dismiss the case. These motions have not been scheduled for hearing.

Mfolozi Dlamini, individually and on behalf of all others similarly situated v. Puma Biotechnology, Inc.

On May 26, 2023, Mfolozi Dlamini filed a Class Action Complaint against the Company in the United States District Court for the Central District of California, alleging injuries as a result of unauthorized disclosure of certain individuals' personally identifiable information in connection with a data security incident discovered by the Company in June 2022. On September 21, 2023, the plaintiff and the Company agreed to dismiss the action with prejudice.

Patent-Related Proceedings

AstraZeneca Litigation

On September 22, 2021, the Company filed suit against AstraZeneca Pharmaceuticals, LP, AstraZeneca AB, and AstraZeneca PLC for infringement of United States Patent Nos. 10,603,314 (“the ‘314 patent”) and 10,596,162 (“the ‘162 patent”) (*Puma Biotechnology, Inc. et al. v. AstraZeneca Pharmaceuticals LP et al.*, 1:21CV01338 (D. Del. Sep. 22, 2021)). The Company’s complaint alleges that AstraZeneca’s commercial manufacture, use, offer for sale, sale, distribution, and/or importation of Tagrisso® (osimertinib) products for the treatment of gefitinib and/or erlotinib-resistant non-small cell lung cancer infringes the ‘314 and ‘162 patents. The Company is an exclusive licensee of the ‘314 and ‘162 patents under the Pfizer Agreement. Wyeth is a co-plaintiff. Plaintiffs seek a judgment that AstraZeneca’s product infringes the asserted patents and an award of monetary damages in an amount to be proven at trial. AstraZeneca AB and AstraZeneca Pharmaceuticals LP filed an answer and counterclaims on November 5, 2021, including claims challenging the asserted patents as not infringed and/or invalid, and accusing plaintiffs of unclean hands and patent misuse. The parties stipulated to dismiss AstraZeneca PLC as a defendant and Pfizer as a Counterclaim Defendant on December 10, 2021, which the Court so ordered on December 13, 2021. The Company filed its answer to AstraZeneca’s counterclaims on December 17, 2021, denying those claims. The case was reassigned to visiting Judge Matthew Kennelly of the Northern District of Illinois. A Markman Hearing was conducted on March 17, 2023, and the Court issued its claim construction decision on March 29, 2023. Fact discovery closed on May 19, 2023. The parties have exchanged expert reports, and are now preparing to conduct expert depositions. Expert discovery will close on November 17, 2023. Any dispositive motions and/or *Daubert* motions challenging the admissibility of expert testimony are to be filed by December 8, 2023. A jury trial is scheduled to begin on May 13, 2024.

Sandoz Litigation

On November 10, 2021, the Company filed suit against Sandoz, Inc. (“Sandoz”) for infringement of U.S. Patent No. 7,399,865 B2 (“the ‘865 patent”) (*Puma Biotechnology, Inc. et al. v. Sandoz Inc.*, 1:21CV19918 (D.N.J. Nov. 10, 2021) in the U.S. District Court for the District of New Jersey. The Complaint was filed within 45 days of Sandoz providing notice of its abbreviated new drug application (“ANDA”) seeking approval to market a generic version of the Company’s NERLYNX® (neratinib) Tablets, 40 mg prior to the expiration of the ‘865 patent. The Company and Wyeth seek judgment that Sandoz’s purported ANDA product would, if allowed on the market, infringe the ‘865 patent, and ask that the Court order that, pursuant to 35 U.S.C. 271(e)(4)(A), the FDA’s approval of the Sandoz ANDA can be no earlier than the date the ‘865 patent expires. Sandoz has stated that, due to Paragraph III certifications filed for other patents listed in the Orange Book in conjunction with NERLYNX, Sandoz cannot launch its ANDA product until November 21, 2030, at the earliest. The Company’s complaint alleges that Sandoz has infringed the ‘865 patent by seeking approval to commercially manufacture, use, offer for sale, sell, and/or import a generic version of NERLYNX in the United States prior to the expiration of the ‘865 patent. The Company is the exclusive licensee of the ‘865 patent under the Pfizer Agreement. Wyeth is a co-plaintiff. Sandoz submitted its answer to the complaint on January 14, 2022 and asserted counterclaims challenging the ‘865 patent as invalid. The Company and Wyeth filed an answer to those counterclaims on February 4, 2022. The filing of the Company’s Complaint against Sandoz triggered a 30-month stay of marketing approval for Sandoz’s ANDA.

Effective December 13, 2022, the Company and Wyeth entered into a settlement and license agreement (the “Settlement and License Agreement”) with Sandoz to fully settle and release all claims and terminate without prejudice the patent infringement litigation. Pursuant to the Settlement and License Agreement, the Company granted Sandoz a non-exclusive, royalty-free sub-license to certain licensed patents, including U.S. Patent No. 7,399,865 B2, which would permit Sandoz to begin selling a generic version of neratinib on or around December 8, 2030, unless such date is otherwise adjusted in accordance with the Settlement and License Agreement. In addition, the Company and Wyeth granted Sandoz a waiver of any and all regulatory exclusivities.

The Company entered into the Settlement and License Agreement solely to eliminate the burden, expense, distraction and uncertainties of further litigation.

Acebright China Litigation

On January 18, 2022, Shanghai Acebright Pharmaceuticals Group Co., Ltd. (“Acebright”) filed an ANDA with the National Medical Products Administration in China (“NMPA”) seeking approval to market a generic version of the Company’s NERLYNX® (neratinib) tablet, 40mg in China. Acebright seeks approval prior to the expiration of three patents listed on the China Patent Information Registration Platform for Marketed Drugs (“Chinese Orange Book”), namely, Chinese Patent Nos. ZL201410082103.7, ZL201080060546.6, and ZL200880118789.3 (“NERLYNX® Patents”), alleging in a Type 4.2 patent declaration that its generic version of NERLYNX does not fall within the scope of the claims of NERLYNX® Patents listed in the Chinese Orange Book. The patent declaration of Acebright was published in the Chinese Orange Book on January 19, 2022. On March 2, 2022, the Company filed petitions with the China National Intellectual Property Administration (“CNIPA”) and requested administrative determination that Acebright’s generic neratinib tablet falls within the scope of the claims of NERLYNX® Patents listed in the Chinese Orange Book. The Company’s request for administrative determination was accepted by CNIPA on March 18, 2022. The Company has notified NMPA of the acceptance of the request for administrative determination for NMPA to institute a stay of Acebright’s ANDA for nine months. On July 11, 2022, CNIPA decided that claims 5 and 6 of Patent No. ZL200880118789.3 are not eligible for registration in the Chinese Orange Book on the ground that these two pharmaceutical method-of-use claims fall in the scope of “patents of crystalline forms,” which are not eligible for listing in the Chinese Orange Book. On September 9, 2022, CNIPA decided that the generic drug in Acebright’s ANDA does not fall within the protection scope of claims 1, 3, 5 and 6 of Patent No. ZL201410082103.7 and claims 1-4, 7 and 9-13 of Patent No. ZL201080060546.6. The three CNIPA administrative decisions on NERLYNX® Patents have lifted the stay of Acebright’s ANDA by NMPA. The Company has appealed each CNIPA administrative decision in January 2023 at the Beijing Intellectual Property Court (“BJIPC”). The three appeals were accepted by BJIPC on February 20, 2023. The Company also filed three civil complaints based on the three NERLYNX® Patents against Acebright with the BJIPC in July 2022 and requested court determination that Acebright’s generic neratinib tablet falls within the scope of the claims of NERLYNX® Patents. On May 6, 2023, the Company withdrew two civil lawsuits and two appeals in relation to Chinese Patent Nos. ZL201410082103.7 and ZL201080060546.6 at the BJIPC. On May 24, 2023, the BJIPC accepted the Company’s withdrawal request. On July 24, 2023, the Company withdrew the remaining one civil lawsuit and one appeal in relation to Chinese Patent No. ZL200880118789.3 at the BJIPC. On August 15, 2023, the BJIPC accepted the Company’s withdrawal request. On September 12, 2023, the NMPA approved Acebright’s ANDA to market a generic version of the Company’s NERLYNX® in China with the approval number of GuoYaoZhunZi H20234141. The Company has the right to enforce NERLYNX® Patents in civil litigation under Article 11 of the Chinese Patent Law before the Chinese court.

Aosaikang China Litigation

On November 17, 2022, Jiangsu Aosaikang Pharmaceutical Co. Ltd. (“Aosaikang”) filed an ANDA with NMPA in China seeking approval to market a generic version of the Company’s NERLYNX®. The ANDA application No. is CYHS2202006. Aosaikang made Type 4.2 declarations against the four Orange Book Patents ZL201410082103.7, ZL201080060546.6, ZL200880118789.3 and ZL201710057547.9, alleging that its generic version of NERLYNX does not fall within the scope of the claims of the Orange Book patents. Aosaikang also alleged that Patents ZL200880118789.3 and ZL201710057547.9 are not eligible for Chinese Orange Book listing.

On December 28, 2022, the Company submitted four Article 76 petitions against the Aosaikang ANDA with the CNIPA and requested administrative determination that Aosaikang’s generic neratinib tablet falls within the scope of the claims of the four Orange Book patents. On January 6, 2023, the CNIPA accepted the Company’s request for administrative determination in relation to Patent Nos. ZL201410082103.7 and ZL201080060546.6. Also on January 6, 2023, the CNIPA declined to accept the Company’s request for administrative determination in relation to Patent Nos. ZL200880118789.3 and ZL201710057547.9, alleging that the listed claims are not eligible for registration in the Chinese Orange Book on the ground that these pharmaceutical method-of-use claims fall in the scope of “patents of crystalline forms,” which are not eligible for listing in the Chinese Orange Book. On January 28, 2023, the Company requested the NMPA to institute a nine-month stay against Aosaikang ANDA starting from the CNIPA’s acceptance of the Company’s request for administrative determination. On June 2, 2023, CNIPA decided that the generic drug in Aosaikang’s ANDA does not fall within the protection scope of claims 1, 3, 5 and 6 of Patent No. ZL201410082103.7 and claims 1-4, 7 and 9-13 of Patent No. ZL201080060546.6. The two CNIPA administrative decisions on NERLYNX® Patents have lifted the stay of Aosaikang’s ANDA by NMPA. The Company has the right to appeal each CNIPA administrative decision within six months of receiving the decision. The Company also has the right to enforce the four Orange Book patents in civil litigation before the Chinese court.

Convalife China Litigation

Convalife Pharmaceuticals (Shanghai) Co., Ltd (“Convalife”) filed an ANDA with NMPA in China seeking approval to market a generic version of the Company’s NERLYNX®. The ANDA application No. is CYHS2202095. On December 23, 2022, Convalife made Type 4.2 declarations against the four Orange Book Patents ZL201410082103.7, ZL201080060546.6, ZL200880118789.3 and ZL201710057547.9, alleging that its generic version of NERLYNX does not fall within the scope of the claims of the Orange Book patents. Convalife also alleged that Patents ZL200880118789.3 and ZL201710057547.9 are not eligible for Chinese Orange Book listing.

On February 1, 2023, the Company submitted four Article 76 petitions against the Convalife ANDA with the CNIPA and requested administrative determination that Convalife’s generic neratinib tablet falls within the scope of the claims of the four Orange Book patents. On February 3, 2023, the CNIPA accepted the Company’s request for administrative determination in relation to Patent Nos. ZL201410082103.7 and ZL201080060546.6. Also on February 3, 2023, the CNIPA declined to accept the Company’s request for administrative determination in relation to Patent Nos. ZL200880118789.3 and ZL201710057547.9, alleging that the listed claims are not eligible for registration in the Chinese Orange Book on the ground that these pharmaceutical method-of-use claims fall in the scope of “patents of crystalline forms,” which are not eligible for listing in the Chinese Orange Book. On February 24, 2023, the Company requested the NMPA to institute a nine-month stay against Convalife ANDA starting from the CNIPA’s acceptance of the Company’s request for administrative determination. On June 2, 2023, CNIPA decided that the generic drug in Convalife’s ANDA does not fall within the protection scope of claims 1, 3, 5 and 6 of Patent No. ZL201410082103.7 and claims 1-4, 7 and 9-13 of Patent No. ZL201080060546.6. The two CNIPA administrative decisions on NERLYNX® Patents have lifted the stay of Convalife’s ANDA by NMPA. The Company has the right to appeal each CNIPA administrative decision within six months of receiving the decision. The Company also has the right to enforce the four Orange Book patents in civil litigation before the Chinese court.

Kelun China Litigation

Hunan Kelun Pharmaceutical Co., Ltd. (“Kelun”) filed an ANDA with NMPA in China seeking approval to market a generic version of the Company’s NERLYNX®. The ANDA application No. is CYHS2300221. On January 28, 2023, Kelun made Type 4.2 declarations against the four Orange Book Patents ZL201410082103.7, ZL201080060546.6, ZL200880118789.3 and ZL201710057547.9, alleging that its generic version of NERLYNX does not fall within the scope of the claims of the Orange Book patents. Kelun also alleged that Patents ZL200880118789.3 and ZL201710057547.9 are not eligible for Chinese Orange Book listing.

On March 13, 2023, the Company submitted four Article 76 petitions against the Kelun ANDA with the CNIPA and requested administrative determination that Kelun’s generic neratinib tablet falls within the scope of the claims of the four Orange Book patents. On March 21, 2023, the CNIPA declined to accept the Company’s request for administrative determination in relation to Patent Nos. ZL200880118789.3 and ZL201710057547.9, alleging that the listed claims are not eligible for registration in the Chinese Orange Book on the ground that these pharmaceutical method-of-use claims fall in the scope of “patents of crystalline forms,” which are not eligible for listing in the Chinese Orange Book. On March 24, 2023, the CNIPA accepted the Company’s request for administrative determination in relation to Patent Nos. ZL201410082103.7 and ZL201080060546.6. On April 17, 2023, the Company requested the NMPA to institute a nine-month stay against Kelun’s ANDA starting from the CNIPA’s acceptance of the Company’s request for administrative determination. On September 14, 2023, the Company withdrew the two requests for administrative determination in relation to Chinese Patent Nos. ZL201410082103.7 and ZL201080060546.6 at the CNIPA. On September 25, 2023, the CNIPA accepted the Company’s withdrawal request.

Item 1A. RISK FACTORS

Under Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022, we identified important factors that could affect our financial performance and could cause our actual results for future periods to differ materially from our anticipated results or other expectations, including those expressed in any forward-looking statements made in this Quarterly Report. Except as described below, there has been no material change in our risk factors subsequent to the filing of our prior reports referenced above. However, the risks described in our reports are not the only risks we face. Additional risks and uncertainties that we currently deem to be immaterial or not currently known to us, as well as other risks reported from time to time in our reports to the SEC, also could cause our actual results to differ materially from our anticipated results or other expectations.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Recent Sales of Unregistered Securities

None.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Item 3. DEFAULTS UPON SENIOR SECURITIES

None.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

Item 5. OTHER INFORMATION

During the three months ended September 30, 2023, no director or officer of the Company adopted or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) of Regulation S-K.

Item 6. EXHIBITS

(a) Exhibits required by Item 601 of Regulation S-K.

Exhibit Number	Description
3.1	Second Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on June 14, 2016 (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on June 15, 2016, and incorporated herein by reference)
3.2	Fourth Amended and Restated Bylaws of the Company (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on August 18, 2023, and incorporated herein by reference)
10.1	Limited Waiver and Fifth Amendment to Note Purchase Agreement, dated July 7, 2023, by and between the Company and Athyrium Opportunities IV CO-Invest 1 LP, as Administrative Agent (filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the SEC on August 3, 2023, and incorporated herein by reference)
10.2+	Sixth Amendment to Note Purchase Agreement, dated September 8, 2023, by and between the Company and Athyrium Opportunities IV CO-Invest 1 LP, as Administrative Agent
31.1+	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 with respect to the registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023
31.2+	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, with respect to the registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023
32.1++	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2++	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS+	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH+	Inline XBRL Taxonomy Extension Schema Document
101.CAL+	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF+	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB+	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE+	Inline XBRL Taxonomy Extension Linkbase Document
104+	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)
+	Filed herewith
++	Furnished herewith

SIGNATURES

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

PUMA BIOTECHNOLOGY, INC.

Date: November 2, 2023

By: /s/ Alan H. Auerbach

Alan H. Auerbach
President and Chief Executive Officer
(Principal Executive Officer)

Date: November 2, 2023

By: /s/ Maximo F. Nougues

Maximo Nougues
Chief Financial Officer
(Principal Financial and Accounting Officer)

SIXTH AMENDMENT TO NOTE PURCHASE AGREEMENT

This SIXTH AMENDMENT TO NOTE PURCHASE AGREEMENT (this “Agreement”), dated as of September 8, 2023, is entered into by and among PUMA BIOTECHNOLOGY, INC., a Delaware corporation (the “Issuer”), the Guarantors party hereto, the Purchasers party hereto and ATHYRIUM OPPORTUNITIES IV CO-INVEST 1 LP, as the Administrative Agent. All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Note Purchase Agreement (as defined below).

RECITALS

WHEREAS, the Issuer, the Guarantors, the Purchasers and the Administrative Agent entered into that certain Note Purchase Agreement dated as of July 23, 2021 (as amended or modified from time to time, the “Note Purchase Agreement”);

WHEREAS, the Credit Parties have requested that the Note Purchase Agreement be amended as set forth below, subject to the terms and conditions specified in this Agreement; and

WHEREAS, the parties hereto are willing to amend the Note Purchase Agreement, subject to the terms and conditions specified in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendments. The Note Purchase Agreement is hereby amended as follows:

(a) The following definitions are hereby added to Section 1.01 of the Note Purchase Agreement in appropriate alphabetical order to read as follows:

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

(b) The following definitions in Section 1.01 of the Note Purchase Agreement are hereby amended to read as follows:

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Defaulting Purchaser” means, subject to Section 2.12(b), any Purchaser, as determined by the Administrative Agent, that (a) has failed to perform any of its funding or purchasing obligations hereunder, including with respect to any Second Tranche Note Purchase Commitments, within three (3) Business Days of the date required to be funded or purchase, as the case may be, by it hereunder, (b) has notified the Issuer or the Administrative Agent that it does not intend to comply with its funding or purchasing obligations hereunder or (c) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment, or (iv) has become the subject of a Bail-In Action; provided that a Purchaser shall not be a Defaulting Purchaser solely by virtue of the ownership or acquisition of any Equity Interest in that Purchaser or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Purchaser with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Purchaser (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Purchaser.

“Sanction(s)” means any sanction administered or enforced by the United States government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

(c) Section 6.25 of the Note Purchase Agreement is hereby amended to read as follows:

6.25 Affected Financial Institution.

Neither any Credit Party nor any Subsidiary is an Affected Financial Institution.

(d) Clause (o) of Section 8.01 of the Note Purchase Agreement is hereby amended to read as follows:

(o) Liens in favor of Wells Fargo on cash, solely to the extent securing Indebtedness permitted under Section 8.03(h)(i);

(e) Clause (h) of Section 8.03 of the Note Purchase Agreement is hereby amended to read as follows:

(h) (i) obligations owing to Wells Fargo on account of corporate credit card services, including the Issuer’s credit card issued by Wells Fargo, in an aggregate amount not to exceed \$750,000 at any time and (ii) prior to December 1, 2023 (or such later date as may be reasonably agreed by the Administrative Agent), obligations owing to SVB on account of corporate credit card services, including the Issuer’s credit card issued by SVB, in an aggregate amount not to exceed \$265,000 at any time;

(f) Section 11.19 of the Note Purchase Agreement is hereby amended to read as follows:

11.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Note Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Purchaser that is an Affected Financial Institution arising under any Note Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Note Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

2. Condition Precedent. This Agreement shall be effective as of the date hereof upon satisfaction of each of the following conditions:

(a) the Administrative Agent shall have received counterparts of this Agreement duly executed by the Issuer, the Guarantors, the Purchasers and the Administrative Agent; and

(b) the Issuer shall have paid all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates prior to the date hereof (including the reasonable fees, charges and disbursements of outside counsel for the Administrative Agent), in each case, to the extent required under Section 11.04 of the Note Purchase Agreement and invoiced at least three Business Days prior to the date hereof.

3. **Reaffirmation of Representations and Warranties; No Default.** The Issuer and each other Credit Party represents and warrants to the Administrative Agent and each Purchaser that after giving effect to this Agreement (a) the representations and warranties of the Issuer and each other Credit Party contained in Article VI of the Note Purchase Agreement or any other Note Document, or which are contained in any document furnished at any time under or in connection therewith, are true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of such earlier date, and except that for purposes of this **Section 3**, the representations and warranties contained in clauses (a) and (b) of Section 6.05 of the Note Purchase Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) of Section 7.01 of the Note Purchase Agreement, respectively, and (b) no Default or Event of Default exists.

4. **Miscellaneous.**

(a) The Note Purchase Agreement and the obligations of the Credit Parties thereunder and under the other Note Documents, are hereby ratified and confirmed and shall remain in full force and effect according to their terms.

(b) Sections 11.14 and 11.15 of the Note Purchase Agreement are incorporated herein by reference and shall apply, *mutatis mutandis*, to this Agreement as if fully set forth herein.

(c) As a material part of the consideration for the Administrative Agent and the Purchasers entering into this Agreement, the Credit Parties agree that the Administrative Agent, the Purchasers, each of their respective Affiliates and each of the foregoing Persons' respective officers, managers, members, directors, advisors, sub-advisors, partners, agents and employees, and their respective successors and assigns (hereinafter all of the above collectively referred to as the "**Purchaser Group**"), are irrevocably and unconditionally released, discharged and acquitted from any and all actions, causes of action, claims, demands, damages and liabilities of whatever kind or nature, in law or in equity, now known or unknown, suspected or unsuspected to the extent that any of the foregoing arises from any action or failure to act under or otherwise arising in connection with the Note Documents, in each case arising on or prior to the date hereof, except to the extent such actions, causes of action, claims, demands, damages and liabilities result from the gross negligence or willful misconduct of any of the Purchaser Group as determined by a court of competent jurisdiction in a final and nonappealable judgment.

(d) This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

(e) **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

ISSUER:

PUMA BIOTECHNOLOGY, INC.,
a Delaware corporation

By: /s/ Alan Auerbach
Name: Alan Auerbach
Title: Chief Executive Officer

ADMINISTRATIVE AGENT:

ATHYRIUM OPPORTUNITIES
IV CO-INVEST 1 LP, a Delaware limited partnership

By: ATHYRIUM OPPORTUNITIES ASSOCIATES IV CO-INVEST LLC

By: /s/ Rashida Adams

Name: Rashida Adams

Title: Authorized Signatory

PURCHASERS:

ATHYRIUM OPPORTUNITIES
IV CO-INVEST 1 LP, a Delaware limited partnership

By: ATHYRIUM OPPORTUNITIES ASSOCIATES IV CO-INVEST LLC

By: /s/ Rashida Adams

Name: Rashida Adams

Title: Authorized Signatory

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Alan H. Auerbach, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2023

/s/ Alan H. Auerbach

Alan H. Auerbach
Principal Executive Officer

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Maximo F. Nougues, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2023

/s/ Maximo F. Nougues
Maximo F. Nougues
Chief Financial Officer

CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

The following certification is being furnished solely to accompany the Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2023, pursuant to 18 U.S.C. § 1350 and in accordance with SEC Release No. 33-8238. This certification shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall it be incorporated by reference in any filing of Puma Biotechnology, Inc. under the Securities Act of 1933, as amended, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Certification of Principal Executive Officer

I, Alan H. Auerbach, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2023, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Puma Biotechnology, Inc.

Date: November 2, 2023

/s/ Alan H. Auerbach

Alan H. Auerbach

Principal Executive Officer

A signed original of this written statement required by Section 906 has been provided to Puma Biotechnology, Inc. and will be retained by Puma Biotechnology, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

The following certification is being furnished solely to accompany the Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2023, pursuant to 18 U.S.C. § 1350 and in accordance with SEC Release No. 33-8238. This certification shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall it be incorporated by reference in any filing of Puma Biotechnology, Inc. under the Securities Act of 1933, as amended, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Certification of Principal Financial Officer

I, Maximo F. Nougues, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Puma Biotechnology, Inc. for the quarter ended September 30, 2023, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Puma Biotechnology, Inc.

November 2, 2023

/s/ Maximo F. Nougues

Maximo F. Nougues

Principal Financial and Accounting Officer

A signed original of this written statement required by Section 906 has been provided to Puma Biotechnology, Inc. and will be retained by Puma Biotechnology, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.