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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

**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  
Commission File Number 001-36845 to

**Bellerophon Therapeutics, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**47-3116175**

(I.R.S. Employer  
Identification No.)

**20 Independence Boulevard, Suite 402  
Warren, New Jersey**

(Address of principal executive offices)

**07059**

(Zip Code)

**(908) 574-4770**

(Registrant's telephone number, including area code)

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

| Title of each class                             | Trading Symbol(s) | Name of each exchange on which registered |
|---|-------------------|---|
| <b>Common Stock, \$0.01 par value per share</b> | <b>BLPH</b>       | <b>The Nasdaq Capital Market</b>          |

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 type="checkbox"/>            |
| Non-accelerated filer   | <input checked="" 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

The number of shares outstanding of the registrant's common stock as of November 10, 2023: 12,232,648

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**TABLE OF CONTENTS**

|   | <u>Page No.</u> |
|---|-----------------|
| <b><u>PART I. FINANCIAL INFORMATION</u></b>   | 6               |
| <b><u>Item 1. Financial Statements</u></b>  | 6               |
| <u>Condensed Consolidated Balance Sheets as of September 30, 2023 (Unaudited) and December 31, 2022</u>   | 6               |
| <u>Condensed Consolidated Statements of Operations and Comprehensive Loss for the three and nine months ended September 30, 2023 and 2022 (Unaudited)</u> | 7               |
| <u>Condensed Consolidated Statement of Changes in Stockholders' Equity for the three and nine months ended September 30, 2023 and 2022 (Unaudited)</u>    | 8               |
| <u>Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2023 and 2022 (Unaudited)</u>                                  | 9               |
| <u>Notes to Condensed Consolidated Financial Statements (Unaudited)</u>   | 10              |
| <b><u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u></b>   | 21              |
| <b><u>Item 3. Quantitative and Qualitative Disclosures About Market Risk</u></b>  | 30              |
| <b><u>Item 4. Controls and Procedures</u></b>   | 30              |
| <b><u>PART II. OTHER INFORMATION</u></b>  | 31              |
| <b><u>Item 1. Legal Proceedings</u></b>   | 31              |
| <b><u>Item 1A. Risk Factors</u></b>   | 31              |
| <b><u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u></b>   | 33              |
| <b><u>Item 3. Defaults Upon Senior Securities</u></b>   | 33              |
| <b><u>Item 4. Mine Safety Disclosures</u></b>   | 33              |
| <b><u>Item 5. Other Information</u></b>   | 33              |
| <b><u>Item 6. Exhibits</u></b>  | 33              |
| <u>Signatures</u>   | 35              |

**REFERENCES TO BELLEROPHON**

In this Quarterly Report on Form 10-Q, unless otherwise stated or the context otherwise requires references to the “Company,” “Bellerophon,” “we,” “us” and “our” refer to Bellerophon Therapeutics, Inc. and its consolidated subsidiaries.

## CAUTIONARY STATEMENT

As previously announced, on October 12, 2023, following the conclusion of our review of strategic alternatives, our board of directors approved the dissolution and liquidation of Bellerophon Therapeutics, Inc., or the Dissolution, pursuant to a plan of complete liquidation and dissolution, or the Plan of Dissolution, which plan is subject to stockholder approval. We have called a special meeting of the stockholders to seek approval of the Plan of Dissolution and have filed a definitive proxy statement relating to the special meeting with the SEC.

**Bellerophon Therapeutics, Inc., or the Company, cautions that trading in the Company’s securities is highly speculative and poses substantial risks. Trading prices for the Company’s securities may bear little or no relationship to the actual value realized, if any, by holders of the Company’s securities. Accordingly, the Company urges extreme caution with respect to existing and future investments in its securities.**

## FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, contained in this Quarterly Report on Form 10-Q, including statements regarding our future results of operations and financial position, business strategy and plans and objectives of management for future operations, are forward-looking statements. The words “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “target,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words.

The forward-looking statements in this Quarterly Report on Form 10-Q include, among other things, statements about:

- our plans and expectations to our plan of liquidation and dissolution (the “Dissolution”);
- our anticipated uses of cash, cash runway and future cash position, including the availability, timing and amount of liquidating distributions, the amounts that will need to be set aside by us and the adequacy of such reserves to satisfy our obligations;
- our ability to fund our planned operations for the next twelve months and our ability to continue to operate as a going concern;
- the amount of proceeds that might be realized from the sale or other disposition of any of our remaining assets;
- the timing and stockholder approval of our planned Dissolution;
- the incurrence by the Company of expenses relating to the Dissolution;
- the limitations on trading of our common stock prior to the Dissolution;
- our ability to retain employees, consultants, advisors and other resources to carry out the Dissolution; and
- our estimates regarding our results of operations, financial condition, liquidity and capital requirements.

We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. We have included important factors in the cautionary statements included in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for the year ended December 31, 2022, particularly in the “Risk Factors” section, that could cause actual results or events to differ materially from the forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make.

You should read this Quarterly Report on Form 10-Q and the documents that we have filed as exhibits to this Quarterly Report on Form 10-Q completely and with the understanding that our actual future results may be materially different from what we expect. We do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

This Quarterly Report on Form 10-Q includes statistical and other industry and market data that we obtained from industry publications and research, surveys and studies conducted by third parties. Industry publications and third-party research, surveys and studies generally indicate that their information has been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information.

**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements.****BELLEROPHON THERAPEUTICS, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(in thousands except share and per share data)**

|  | As of<br>September 30, 2023<br>(Unaudited) | As of<br>December 31, 2022 |
|--|--|----------------------------|
| <b>Assets</b>  |  |                            |
| Current assets:  |  |                            |
| Cash and cash equivalents  | \$ 4,382                                   | \$ 6,924                   |
| Restricted cash  | 108  | 405                        |
| Prepaid expenses and other current assets  | 489  | 234                        |
| <b>Total current assets</b>  | <b>4,979</b>                               | <b>7,563</b>               |
| Right of use assets, net   | —  | 184                        |
| Property and equipment, net  | —  | 2                          |
| Other non-current assets   | —  | 186                        |
| <b>Total assets</b>  | <b>\$ 4,979</b>                            | <b>\$ 7,935</b>            |
| <b>Liabilities and Stockholders' Equity</b>  |  |                            |
| Current liabilities:   |  |                            |
| Accounts payable   | \$ 612                                     | \$ 1,230                   |
| Accrued research and development   | 336  | 2,655                      |
| Accrued expenses   | 308  | 1,313                      |
| Current portion of operating lease liabilities   | —  | 203                        |
| <b>Total current liabilities</b>   | <b>1,256</b>                               | <b>5,401</b>               |
| <b>Total liabilities</b>   | <b>1,256</b>                               | <b>5,401</b>               |
| Commitments and contingencies  |  |                            |
| Stockholders' equity:  |  |                            |
| Common stock, \$0.01 par value per share; 200,000,000 shares authorized and 12,232,648 and 9,645,711 shares issued and outstanding at September 30, 2023 and December 31, 2022, respectively | 122  | 96                         |
| Preferred stock, \$0.01 par value per share; 5,000,000 shares authorized, zero shares issued and outstanding at September 30, 2023 and December 31, 2022                                     | —  | —                          |
| Additional paid-in capital   | 259,916                                    | 254,516                    |
| Accumulated deficit  | (256,315)                                  | (252,078)                  |
| <b>Total stockholders' equity</b>  | <b>3,723</b>                               | <b>2,534</b>               |
| <b>Total liabilities and stockholders' equity</b>  | <b>\$ 4,979</b>                            | <b>\$ 7,935</b>            |

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

**BELLEROPHON THERAPEUTICS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**AND COMPREHENSIVE LOSS (UNAUDITED)**  
**(in thousands except share and per share data)**

|   | Three Months Ended<br>September 30, |                   | Nine Months Ended<br>September 30, |                    |
|---|-------------------------------------|-------------------|------------------------------------|--------------------|
|   | 2023                                | 2022              | 2023                               | 2022               |
| <b>Revenues:</b>                            |                                     |                   |                                    |                    |
| Licensing revenue                           | \$ —                                | \$ —              | \$ 5,640                           | \$ —               |
| <b>Operating expenses:</b>                  |                                     |                   |                                    |                    |
| Research and development                    | 544                                 | 3,750             | 5,992                              | 12,646             |
| General and administrative                  | 1,626                               | 1,366             | 5,599                              | 4,653              |
| Total operating expenses                    | 2,170                               | 5,116             | 11,591                             | 17,299             |
| Loss from operations                        | (2,170)                             | (5,116)           | (5,951)                            | (17,299)           |
| Gain on sale of equipment                   | 140                                 | —                 | 140                                | —                  |
| Interest and other income, net              | 109                                 | 47                | 297                                | 67                 |
| Pre-tax loss                                | (1,921)                             | (5,069)           | (5,514)                            | (17,232)           |
| Income tax benefit                          | —                                   | —                 | 1,277                              | 2,417              |
| Net loss and comprehensive loss             | <u>\$ (1,921)</u>                   | <u>\$ (5,069)</u> | <u>\$ (4,237)</u>                  | <u>\$ (14,815)</u> |
| <b>Weighted average shares outstanding:</b> |                                     |                   |                                    |                    |
| Basic                                       | 12,232,648                          | 9,545,451         | 11,614,650                         | 9,545,451          |
| Diluted                                     | 12,232,648                          | 9,545,451         | 11,614,650                         | 9,545,451          |
| <b>Net loss per share:</b>                  |                                     |                   |                                    |                    |
| Basic                                       | \$ (0.16)                           | \$ (0.53)         | \$ (0.36)                          | \$ (1.55)          |
| Diluted                                     | \$ (0.16)                           | \$ (0.53)         | \$ (0.36)                          | \$ (1.55)          |

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

**BELLEROPHON THERAPEUTICS, INC.**  
**CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY (UNAUDITED)**  
(in thousands except share data)

For the three and nine months ended September 30, 2023:

|   | Common Stock      |               | Additional Paid in<br>Capital | Accumulated<br>Deficit | Total<br>Stockholders'<br>Equity |
|---|-------------------|---------------|-------------------------------|------------------------|----------------------------------|
|   | Shares            | Amount        |                               |                        |                                  |
| Balance at June 30, 2023  | 12,232,648        | \$ 122        | \$ 259,895                    | \$ (254,394)           | \$ 5,623                         |
| Net loss  | —                 | —             | —                             | (1,921)                | (1,921)                          |
| Stock-based compensation  | —                 | —             | 21                            | —                      | 21                               |
| Balance at September 30, 2023   | <u>12,232,648</u> | <u>\$ 122</u> | <u>\$ 259,916</u>             | <u>\$ (256,315)</u>    | <u>\$ 3,723</u>                  |
| Balance at December 31, 2022  | 9,645,711         | \$ 96         | \$ 254,516                    | \$ (252,078)           | \$ 2,534                         |
| Net loss  | —                 | —             | —                             | (4,237)                | (4,237)                          |
| Direct offering of common stock   | 718,474           | 7             | 1,430                         | —                      | 1,437                            |
| Direct offering of pre-funded warrants  | —                 | —             | 3,545                         | —                      | 3,545                            |
| Stock-based compensation  | —                 | —             | 418                           | —                      | 418                              |
| Exercise of pre-funded warrants   | 1,781,526         | 18            | —                             | —                      | 18                               |
| Exercise of stock options   | 1,288             | —             | 10                            | —                      | 10                               |
| Issuance of common stock, restricted stock vesting                                | 86,500            | 1             | (1)                           | —                      | —                                |
| Surrender of shares to the Company for the payment of tax withholding obligations | (851)             | —             | (2)                           | —                      | (2)                              |
| Balance at September 30, 2023   | <u>12,232,648</u> | <u>\$ 122</u> | <u>\$ 259,916</u>             | <u>\$ (256,315)</u>    | <u>\$ 3,723</u>                  |

For the three and nine months ended September 30, 2022:

|                               | Common Stock     |              | Additional Paid in<br>Capital | Accumulated<br>Deficit | Total<br>Stockholders'<br>Equity |
|-------------------------------|------------------|--------------|-------------------------------|------------------------|----------------------------------|
|                               | Shares           | Amount       |                               |                        |                                  |
| Balance at June 30, 2022      | 9,545,451        | \$ 95        | \$ 254,178                    | \$ (241,993)           | \$ 12,280                        |
| Net loss                      | —                | —            | —                             | (5,069)                | (5,069)                          |
| Stock-based compensation      | —                | —            | 217                           | —                      | 217                              |
| Balance at September 30, 2022 | <u>9,545,451</u> | <u>\$ 95</u> | <u>\$ 254,395</u>             | <u>\$ (247,062)</u>    | <u>\$ 7,428</u>                  |
| Balance at December 31, 2021  | 9,545,451        | \$ 95        | \$ 253,771                    | \$ (232,247)           | \$ 21,619                        |
| Net loss                      | —                | —            | —                             | (14,815)               | (14,815)                         |
| Stock-based compensation      | —                | —            | 624                           | —                      | 624                              |
| Balance at September 30, 2022 | <u>9,545,451</u> | <u>\$ 95</u> | <u>\$ 254,395</u>             | <u>\$ (247,062)</u>    | <u>\$ 7,428</u>                  |

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

**BELLEROPHON THERAPEUTICS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)**  
**(in thousands)**

|  | <b>Nine Months Ended September 30,</b> |                  |
|--|--|------------------|
|  | <b>2023</b>                            | <b>2022</b>      |
| <b>Cash flows from operating activities:</b>   |  |                  |
| Net loss   | \$ (4,237)                             | \$ (14,815)      |
| Adjustments to reconcile net loss to net cash used in operating activities:                      |  |                  |
| Depreciation   | 2                                      | 61               |
| Stock-based compensation   | 418                                    | 624              |
| Gain on sale of equipment  | (140)                                  | —                |
| Changes in operating assets and liabilities:   |  |                  |
| Prepaid expenses and other current assets  | (255)                                  | 282              |
| Other non-current assets   | 186                                    | —                |
| Accounts payable, accrued research and development, lease liabilities and other accrued expenses | (3,961)                                | 430              |
| Net cash used in operating activities  | <u>(7,987)</u>                         | <u>(13,418)</u>  |
| <b>Cash flows from investing activities:</b>   |  |                  |
| Proceeds from sale of equipment  | 140                                    | —                |
| Net cash provided by investing activities  | <u>140</u>                             | <u>—</u>         |
| <b>Cash flows from financing activities:</b>   |  |                  |
| Proceeds from issuance of common stock in Direct Offering  | 1,437                                  | —                |
| Proceeds from exercise of pre-funded warrants in Direct Offering                                 | 3,545                                  | —                |
| Proceeds received from exercise of pre-funded warrants   | 18                                     | —                |
| Proceeds received from exercise of stock options   | 10                                     | —                |
| Tax withholding payments for stock compensation  | (2)                                    | —                |
| Net cash provided by financing activities  | <u>5,008</u>                           | <u>—</u>         |
| Net change in cash, cash equivalents and restricted cash   | (2,839)                                | (13,418)         |
| Cash, cash equivalents and restricted cash at beginning of period                                | 7,329                                  | 25,139           |
| Cash, cash equivalents and restricted cash at end of period                                      | <u>\$ 4,490</u>                        | <u>\$ 11,721</u> |

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

**BELLEROPHON THERAPEUTICS, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**

**(1) Organization and Nature of the Business**

Until recently, Bellerophon Therapeutics, Inc., or the Company, was a clinical-stage therapeutics company focused on developing innovative products that address significant unmet medical needs in the treatment of cardiopulmonary diseases. The focus of the Company's clinical program has historically been the development of its nitric oxide therapy for patients with pulmonary hypertension, or PH, using its proprietary delivery system, INOpulse®. The Company has three wholly-owned subsidiaries: Bellerophon BCM LLC, a Delaware limited liability company; Bellerophon Pulse Technologies LLC, a Delaware limited liability company; and Bellerophon Services, Inc., a Delaware corporation. On June 5, 2023, the Company announced top-line results from its Phase 3 REBUILD clinical trial evaluating the safety and efficacy of INOpulse® for the treatment of Interstitial Lung Disease. The trial did not meet its primary endpoint and the secondary endpoints demonstrated minimal difference between the two groups with none approaching statistical significance. Overall, INOpulse® was well-tolerated with no safety concerns, consistent with what had been observed in the prior Phase 2 studies. Based on these findings, the Company decided to terminate the REBUILD Phase 3 clinical study and withdraw patients from all of the Company's ongoing INOpulse® development programs. These conditions and events raise substantial doubt about the Company's ability to continue as a going concern.

In connection with the termination of the clinical study, the Company approved a reduction-in-force of substantially all of the Company's employees, including officers which was substantially completed by September 30, 2023. The Company's Chief Executive Officer has agreed to remain employed by the Company until November 15, 2023 or such later date if extended by the Company in its discretion. On October 12, 2023, after completing a review of the strategic options available to the Company, the Company's board of directors approved the plan of liquidation and dissolution of the Company (the "Plan of Dissolution"), subject to the approval of the Company's stockholders. The Company intends to hold a special meeting of stockholders (the "Special Meeting") on December 11, 2023 to seek stockholder approval of the Plan of Dissolution.

The Company recorded approximately \$1.3 million in separation costs during the nine months ended September 30, 2023 as a component of general and administrative expenses.

The Company's business is subject to significant risks and uncertainties, including but not limited to:

- On July 19, 2023, the Nasdaq Listing Qualifications staff ("Staff") notified the Company that, pursuant to Listing Rule 5101, it had determined to delist the Company's shares of common stock as the Staff believed that the Company was a "public shell," and that the continued listing of its securities was no longer warranted. Additionally, the Staff informed the Company that it no longer complied with the minimum bid price requirement under Listing Rule 5550(a)(2), which served as an additional and separate basis for delisting. On July 26, 2023, the Company requested a hearing before the Panel, which was held on September 21, 2023. On October 2, 2023, the Panel provided an extension for continued listing on the Nasdaq Capital Market subject to certain conditions. On October 12, 2023, the Company notified the Panel that it will not be able to meet the conditions of the Panel's decision. Accordingly, on October 12, 2023, the Staff notified the Company that it determined to delist the Company's shares of common stock from the Nasdaq Capital Market and that trading in the Company's shares was suspended at the open of trading on Monday October 16, 2023.
- The outcome of the Company's recent REBUILD Phase 3 clinical study and resulting impact on the Company's access to capital indicate substantial doubt exists related to its ability to continue as a going concern.
- On October 12, 2023, after completing a review of the strategic options available to the Company, the Company's board of directors approved the Plan of Dissolution, subject to the approval of the Company's stockholders. The Company intends to hold the Special Meeting on December 11, 2023 to seek stockholder approval of the Plan of Dissolution.

## **(2) Summary of Significant Accounting Policies**

### ***(a) Basis of Presentation***

The accompanying unaudited condensed consolidated financial statements were prepared following the requirements of the Securities and Exchange Commission, or the SEC, for interim reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by accounting principles generally accepted in the United States of America, or U.S. GAAP, can be condensed or omitted. The Company operates in one reportable segment and solely within the United States. Accordingly, no segment or geographic information has been presented.

The Company is responsible for the unaudited condensed consolidated financial statements. The condensed consolidated financial statements include all normal and recurring adjustments that are considered necessary for the fair presentation of the Company's financial position, results of operations and comprehensive loss and its cash flows for the periods presented. These condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements for the year ended December 31, 2022, included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022. The results of operations for the three and nine months ended September 30, 2023 for the Company are not necessarily indicative of the results expected for the full year.

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of costs and expenses during the reporting period, including accrued research and development expenses, stock-based compensation and income taxes. Actual results could differ from those estimates.

### ***(b) Cash and Cash Equivalents***

The Company considers all highly liquid investments with an original maturity date of three months or less to be cash equivalents. All investments with maturities of greater than three months from the date of purchase are classified as available-for-sale marketable securities.

### ***(c) Stock-Based Compensation***

The Company accounts for its stock-based compensation in accordance with applicable accounting guidance which establishes accounting for share-based awards, including stock options and restricted stock, exchanged for services and requires companies to expense the estimated fair value of these awards over the requisite service period. The Company recognizes stock-based compensation expense in operations based on the fair value of the award on the date of the grant. The resulting compensation expense is recognized on a straight-line basis over the requisite service period or sooner if the awards immediately vest. The Company determines the fair value of stock options issued using a Black-Scholes-Merton option pricing model. Certain assumptions used in the model include expected volatility, dividend yield, risk-free interest rate and expected term. For restricted stock, the fair value is the closing market price per share on the grant date. See Note 7 - *Stock-Based Compensation* for a description of these assumptions.

### ***(d) Common Stock Warrants***

The Company accounts for common stock warrants issued as freestanding instruments in accordance with applicable accounting guidance as either liabilities or as equity instruments depending on the specific terms of the warrant agreement. The Company historically classified warrant liabilities on the consolidated balance sheet based on the warrants' terms as long-term liabilities, which were revalued at each balance sheet date subsequent to the initial issuance. Changes in the fair value of the liability-classified warrants were historically reflected in the consolidated statement of operations as "Change in fair value of common stock warrant liability." The Company used the Black-Scholes-Merton pricing model to value the related warrant liability. There were no remaining liability-classified warrants as of September 30, 2023 and December 31, 2022.

**(e) Income Taxes**

The Company uses the asset and liability approach to account for income taxes as required by applicable accounting guidance, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Valuation allowances are provided when necessary to reduce deferred tax assets to the amount expected to be realized, on a more likely than not basis. The Company recognizes the benefit of an uncertain tax position that it has taken or expects to take on income tax returns it files if such tax position is more likely than not to be sustained on examination by the taxing authorities, based on the technical merits of the position. These tax benefits are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution.

**(f) Research and Development Expense**

Research and development costs are expensed as incurred. These expenses include the costs of the Company's proprietary research and development efforts, as well as costs incurred in connection with certain licensing arrangements. Upfront and milestone payments made to third parties in connection with research and development collaborations are expensed as incurred up to the point of regulatory approval. Payments made to third parties upon or subsequent to regulatory approval are capitalized and amortized over the remaining useful life of the related product. The Company also expenses the cost of purchased technology and equipment in the period of purchase if it believes that the technology or equipment has not demonstrated technological feasibility and it does not have an alternative future use. Nonrefundable advance payments for goods or services that will be used or rendered for future research and development activities are deferred and are recognized as research and development expense as the related goods are delivered or the related services are performed.

**(g) Leases**

A lease is a contract, or part of a contract, that conveys the right to control the use of explicitly or implicitly identified property, plant or equipment in exchange for consideration. Control of an asset is conveyed to the Company if the Company obtains the right to obtain substantially all of the economic benefits of the asset or the right to direct the use of the asset. The Company recognizes right of use ("ROU") assets and lease liabilities at the lease commencement date based on the present value of future, fixed lease payments over the term of the arrangement. Lease expense is recognized on a straight-line basis over the term of the lease. Lease liabilities are reduced at the time when the lease payment is payable to the vendor. Variable lease payments are recognized at the time when the event giving rise to the payment occurs and are recognized in the statement of operations in the same line item as expenses arising from fixed lease payments.

Leases are measured at present value using the rate implicit in the lease or, if the implicit rate is not determinable, the lessee's implicit borrowing rate. As the implicit rate is not typically available, the Company uses its implicit borrowing rate based on the information available at the lease commencement date to determine the present value of future lease payments. The implicit borrowing rate approximates the rate the Company would pay to borrow on a collateralized basis over a similar term an amount equal to the lease payments.

The Company does not recognize ROU assets or related lease liabilities for leases with a lease term of twelve months or less on its consolidated balance sheet. Short-term lease costs are recorded in the Company's consolidated statements of operations in the period in which the obligation for those payments was incurred. Short-term lease costs for the three and nine months ended September 30, 2023 and 2022 were de minimis.

**(h) Revenue from Contracts with Customers**

To date the Company's only revenue has consisted of license revenue. The Company has not generated any revenue from product sales and does not expect to generate any revenue from product sales for the foreseeable future.

The Company recognizes revenue in accordance with ASC 606, *Revenue from Contracts with Customers* ("ASC 606"). ASC 606 applies to all contracts with customers, except for contracts that are within the scope of other standards, such as leases, insurance, collaboration arrangements and financial instruments. Under ASC 606, the Company recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration the Company expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that are within the scope of ASC 606, the Company performs the following five steps:

- (i) identify the contract(s) with a customer;
- (ii) identify the performance obligations in the contract;
- (iii) determine the transaction price;
- (iv) allocate the transaction price to the performance obligations in the contract; and
- (v) recognize revenue when (or as) the Company satisfies a performance obligation.

If a contract is determined to be within the scope of ASC 606 at inception, the Company assesses the goods or services promised within such contract, determines which of those goods and services are performance obligations, and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied.

Specifically, license revenue relates to license fees from the Company's license agreement granting a customer with the right to use the Company's intellectual property for development and commercialization activities within an authorized territory. The Company must first assess whether the license is distinct, which depends upon whether the customer can benefit from the license and whether the license is separate from other performance obligations in the agreement. If the license is distinct, the Company must further assess whether the customer has a right to access or a right to use the license depending on whether the functionality of the license is expected to substantively change over time. If the license is not expected to substantively change, the revenue is recognized at a point in time when the license is provided. If the license is expected to substantively change, the revenue is recognized over the license period. The Company's license agreement entered into during the nine months ended September 30, 2023 was determined to be a right to use license and accordingly, the revenue was recognized at a point in time.

**(3) Liquidity**

In the course of its development activities, the Company has sustained operating losses and expects such losses to continue for the foreseeable future. The Company's primary uses of capital have been compensation and related expenses, third-party clinical research and development services, contract manufacturing services, laboratory and related supplies, clinical costs, legal and other regulatory expenses and general overhead costs.

The Company had unrestricted cash and cash equivalents of \$4.4 million as of September 30, 2023. The Company's existing cash and cash equivalents as of September 30, 2023 will be used primarily to fund the termination of the Phase 3 trial of INOpulse for fILD and execute the Plan of Dissolution, as approved by the Company's board of directors on October 12, 2023 and subject to the approval of the Company's stockholders. The Company intends to hold the Special Meeting on December 11, 2023 to seek stockholder approval of the Plan of Dissolution.

The Company evaluated whether there are any conditions and events, considered in the aggregate, that raise substantial doubt about the Company’s ability to continue as a going concern within one year beyond the filing of this Quarterly Report on Form 10-Q. Based on such evaluation and the Company’s current Plan of Dissolution substantial doubt about the Company’s ability to continue as a going concern exists.

**(4) Right of Use Assets and Leases**

The Company historically maintained two operating leases in Warren, NJ, one for the use of an office and research facility and a second for the use of a laboratory. The office and research facility lease was for a term of four years with an expiration date of March 31, 2023, with the Company’s right to extend the original term for one period of five years. During the nine months ended September 30, 2023, the Company decided not to renew the lease associated with its corporate headquarters and decided to vacate the premises upon the expiration of the existing lease.

The laboratory lease was for a term of three years and nine months with an expiration date of April 30, 2023. During the nine months ended September 30, 2023, the Company agreed to a short-term lease extension of the existing laboratory space through October 2023. Upon expiration of the lease, the Company vacated the premises and decided to operate remotely or in temporary flexible office workspace locations on demand as necessary. The remote and temporary flexible office workspace locations are deemed adequate to meet the Company’s needs. Operating lease expense is recognized on a straight-line basis over the respective lease term.

The Company does not recognize right of use assets or related lease liabilities for leases with a term of twelve months or less on its consolidated balance sheet. Short-term lease costs are recorded in our consolidated statements of operations in the period in which the obligation for those payments was incurred. Short-term lease costs for the three and nine months ended September 30, 2023 and 2022 were de minimis.

Information related to the Company’s right-of-use assets and related lease liabilities were as follows (\$ amounts in thousands):

|   | Three Months Ended<br>September 30, |        | Nine Months Ended<br>September 30, |           |
|---|-------------------------------------|--------|------------------------------------|-----------|
|   | 2023                                | 2022   | 2023                               | 2022      |
| Cash paid for operating lease liability | \$ —                                | \$ 197 | \$ 205                             | \$ 586    |
| Operating lease expenses                | \$ —                                | \$ 177 | \$ 185                             | \$ 532    |
| Weighted average remaining lease term   |                                     |        | — years                            | 0.5 years |
| Weighted average discount rate          |                                     |        | — %                                | 4.92 %    |

There are no right-of-use assets or lease liabilities recognized as of September 30, 2023.

**(5) Common Stock Warrants and Warrant Liability**

On November 29, 2016, the Company issued 1,142,838 warrants to purchase shares of common stock to investors that were immediately exercisable with an original expiration date five years from issuance at an exercise price of \$12.00 per share (the “2016 Warrants”). Of the 2016 Warrants issued, 557,699 warrants were either previously exercised or expired unexercised, leaving 585,139 warrants outstanding as of September 30, 2023, all of which are equity classified. None of the 2016 Warrants were exercised during the nine months ended September 30, 2023 or 2022.

On May 15, 2017, the Company issued, to an investor, warrants to purchase 66,666 shares of common stock that became exercisable commencing six months from their issuance with an expiration date five years from the initial exercise date at an exercise price of \$22.50 per share. In addition, the Company issued, to the placement agent, warrants to purchase 4,000 shares of common stock that were immediately exercisable with an expiration date five years from issuance at an exercise price of \$28.125 per share. As the warrants, under certain situations, could require cash settlement, the warrants were classified as liabilities and recorded at estimated fair value using a Black-Scholes-Merton pricing model. As of September 30, 2023, all of the warrants have expired, unexercised.

On September 29, 2017, the Company issued warrants to purchase 1,296,650 shares of common stock that became exercisable commencing six months from their issuance with an expiration date five years from the initial exercise date at an exercise price of \$18.63 per share. As the warrants could not require cash settlement, the warrants were classified as equity. As of September 30, 2023, all of these warrants have expired, unexercised.

On March 3, 2023, the Company entered into a subscription agreement with an institutional investor, pursuant to which the Company agreed to issue and sell in a registered direct offering (i) an aggregate of 718,474 shares of common stock, \$0.01 par value per share and (ii) 1,781,526 pre-funded warrants (the “Pre-Funded Warrants”) to purchase shares of common stock. The Pre-Funded Warrants were sold at an offering price of \$1.99 per Pre-Funded Warrant, which represents the per share offering price for the common stock less a \$0.01 per share exercise price for each such Pre-Funded Warrant. The Pre-Funded Warrants are exercisable at any time after the date of issuance. A holder of Pre-Funded Warrants may not exercise the warrant if the holder, together with its affiliates, would beneficially own more than 9.99% of the number of shares of common stock outstanding immediately after giving effect to such exercise. A holder of Pre-Funded Warrants may increase or decrease this percentage, but not in excess of 19.99%, by providing at least 61 days prior notice to the Company. The Pre-Funded Warrants cannot not require cash settlement, are freestanding financial instruments that are legally detachable and separately exercisable from the shares of common stock with which they were issued, are immediately exercisable, and do not embody an obligation for the Company to repurchase its shares and permit the holders to receive a fixed number of shares of common stock upon exercise. Additionally, the Pre-Funded Warrants do not provide any guarantee of value or return. Accordingly, the Pre-Funded Warrants were classified as a component of permanent equity. During the nine months ended September 30, 2023, all of the Pre-Funded Warrants were exercised.

The following table summarizes warrant activity for the nine months ended September 30, 2023 (fair value amount in thousands):

|   | <u>Equity Classified</u> | <u>Liability Classified</u> |                             |
|---|--------------------------|-----------------------------|-----------------------------|
|   | <u>Warrants</u>          | <u>Warrants</u>             | <u>Estimated Fair Value</u> |
| Warrants outstanding as of December 31, 2022  | 1,881,789                | —                           | \$ —                        |
| Expired                                       | (1,296,650)              | —                           | —                           |
| Issued  | 1,781,526                | —                           | —                           |
| Exercised                                     | (1,781,526)              | —                           | —                           |
| Warrants outstanding as of September 30, 2023 | <u>585,139</u>           | <u>—</u>                    | <u>\$ —</u>                 |

The following table summarizes warrant activity for the nine months ended September 30, 2022 (fair value amount in thousands):

|   | <u>Equity Classified</u> | <u>Liability Classified</u> |                             |
|---|--------------------------|-----------------------------|-----------------------------|
|   | <u>Warrants</u>          | <u>Warrants</u>             | <u>Estimated Fair Value</u> |
| Warrants outstanding as of December 31, 2021  | 1,881,789                | 70,666                      | \$ 1                        |
| Expired                                       | —                        | (4,000)                     | —                           |
| Warrants outstanding as of September 30, 2022 | <u>1,881,789</u>         | <u>66,666</u>               | <u>\$ 1</u>                 |

## (6) Fair Value Measurements

Assets and liabilities recorded at fair value on the balance sheets are categorized based upon the level of judgment associated with the inputs used to measure the fair value. Level inputs are as follows:

- Level 1 — Values are based on unadjusted quoted prices for identical assets or liabilities in an active market which the Company has the ability to access at the measurement date.
- Level 2 — Values are based on quoted market prices in markets where trading occurs infrequently or whose values are based on quoted prices of instruments with similar attributes in active markets.

- Level 3 — Values are based on prices or valuation techniques that require inputs that are both unobservable and significant to the overall fair value measurement. These inputs reflect management’s own assumptions about the assumptions a market participant would use in pricing the asset.

There were no liabilities measured at fair value as of September 30, 2023 or December 31, 2022.

There were no outstanding liability classified warrants as of September 30, 2023 and December 31, 2022.

## **(7) Stock-Based Compensation**

### ***Bellerophon 2015 and 2014 Equity Incentive Plans***

During 2014, the Company adopted the 2014 Equity Incentive Plan, or the 2014 Plan, which provided for the grant of options. Following the effectiveness of the Company’s registration statement filed in connection with its IPO, no options may be granted under the 2014 Plan. The awards granted under the 2014 Plan generally have a vesting period of between one to four years.

During 2015, the Company adopted the 2015 Equity Incentive Plan, or the 2015 Plan, which provides for the grant of options, restricted stock and other forms of equity compensation. On June 7, 2023, the Company’s stockholders approved an amendment to the 2015 Plan to increase the number of shares authorized for the issuance of awards from 833,333 to 1,443,318 shares. As of September 30, 2023, the Company had 739,451 shares available for grant with an aggregate of 2,089,637 shares of common stock authorized under the 2015 Plan.

As of September 30, 2023, there was approximately \$0.5 million of total unrecognized compensation expense related to unvested stock awards. This expense is expected to be recognized over a weighted-average period of 2.7 years.

No tax benefit was recognized during the three and nine months ended September 30, 2023 and 2022 related to stock-based compensation expense since the Company incurred operating losses and has established a full valuation allowance to offset all of the potential tax benefits associated with its deferred tax assets.

### *Options*

The weighted average grant-date fair value of options issued during the nine months ended September 30, 2023 was \$1.22. There were no options issued during the nine months ended September 30, 2022. The following are the weighted average assumptions used in estimating the fair values of the options issued during the nine months ended September 30, 2023:

|                        | <b>Nine Months Ended<br/>September 30, 2023</b> |
|------------------------|---|
| Valuation assumptions: |   |
| Risk-free rate         | 3.86 %  |
| Expected volatility    | 147.39 %  |
| Expected term (years)  | 6.0   |
| Dividend yield         | —   |

A summary of option activity under the 2015 and 2014 Plans for the nine months ended September 30, 2023 is presented below:

| <b>Bellerophon 2015 and 2014 Equity Incentive Plans</b> |                |                                |                               |   |
|---|----------------|--------------------------------|-------------------------------|---|
|   | <b>Options</b> | <b>Range of Exercise Price</b> | <b>Weighted Average Price</b> | <b>Weighted Average Remaining Contractual Life (in years)</b> |
| Options outstanding as of December 31, 2022             | 322,038        | \$ 3.10 - 199.20               | \$ 12.58                      | 6.7   |
| Granted   | 904,428        | 0.83 - 1.52                    | 1.22                          |   |
| Exercised   | (1,288)        | 7.35 - 7.50                    | 7.47                          |   |
| Forfeited   | (416,815)      | 0.83 - 10.12                   | 1.67                          | —   |
| Options outstanding as of September 30, 2023            | 808,363        | \$ 0.83 - 199.20               | \$ 5.51                       | 8.1   |
| Options vested and exercisable as of September 30, 2023 | 310,042        | \$ 0.83 - 199.20               | \$ 12.37                      | 6.0   |

The intrinsic value of options outstanding, vested and exercisable as of September 30, 2023 was zero.

*Restricted Stock*

Compensation expense is measured based on the fair value of the restricted stock on the grant date and is recognized on a straight-line basis over the requisite service period. Restricted stock are forfeited if the employee ceases to be employed by the Company prior to vesting.

A summary of restricted stock activity under the 2015 Plan for the nine months ended September 30, 2023 is presented below:

| <b>Bellerophon 2015 Equity Incentive Plan</b>         |               |                                    |  |   |
|---|---------------|------------------------------------|--|---|
|   | <b>Shares</b> | <b>Weighted Average Fair Value</b> | <b>Aggregate Grant Date Fair Value (in millions)</b> | <b>Weighted Average Remaining Contractual Life (in years)</b> |
| Restricted stock outstanding as of December 31, 2022  | 165,500       | \$ 2.23                            | \$ 0.4   | 0.9   |
| Granted   | 131,578       | 1.27                               | 0.2  |   |
| Vested  | (86,500)      | 1.53                               | (0.1)  |   |
| Forfeited   | (103,000)     | 2.16                               | (0.2)  |   |
| Restricted stock outstanding as of September 30, 2023 | 107,578       | \$ 1.68                            | \$ 0.2   | 0.2   |

*Ikaria Equity Incentive Plans prior to February 12, 2014*

*Options*

A summary of option activity under Ikaria equity incentive plans assumed in 2014 for the nine months ended September 30, 2023, is presented below:

| <b>Ikaria Equity Incentive Plans</b>                    |                |                                |                               |   |
|---|----------------|--------------------------------|-------------------------------|---|
|   | <b>Options</b> | <b>Range of Exercise Price</b> | <b>Weighted Average Price</b> | <b>Weighted Average Remaining Contractual Life (in years)</b> |
| Options outstanding as of December 31, 2022             | 864            | \$ 124.05 - 131.55             | \$ 124.50                     | 0.2   |
| Expired   | (864)          | 124.05 - 131.55                | 124.50                        | —   |
| Options outstanding as of September 30, 2023            | —              | \$ -                           | \$ —                          | —   |
| Options vested and exercisable as of September 30, 2023 | —              | \$ -                           | \$ —                          | —   |

**Stock-Based Compensation Expense, Net of Estimated Forfeitures**

The following table summarizes the stock-based compensation expense by the unaudited condensed consolidated statement of operations line items for the three and nine months ended September 30, 2023 and 2022 (in thousands):

|                            | <u>Three Months Ended September 30,</u> |               | <u>Nine Months Ended September 30,</u> |               |
|----------------------------|---|---------------|--|---------------|
|                            | <u>2023</u>                             | <u>2022</u>   | <u>2023</u>                            | <u>2022</u>   |
| Research and development   | \$ (26)                                 | \$ 134        | \$ 167                                 | \$ 380        |
| General and administrative | 47                                      | 83            | 251                                    | 244           |
| Total expense              | <u>\$ 21</u>                            | <u>\$ 217</u> | <u>\$ 418</u>                          | <u>\$ 624</u> |

**(8) Revenue***Licensing Revenue*

The Company's sources of revenue are detailed in Note 2, *Summary of Significant Accounting Policies*.

*Performance Obligations*

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account in ASC 606. A contract's transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied.

At contract inception, the Company assesses the goods or services promised in its contracts with customers and identifies a performance obligation for each promise to transfer to the customer a good or service that is distinct. When identifying individual performance obligations, the Company considers all goods or services promised in the contract regardless of whether explicitly stated in the customer contract or implied by customary business practices. The Company's license agreement with Baylor BioSciences, Inc. ("Baylor"), requires the Company to grant the right of use of its intellectual property to Baylor within China, Hong Kong, Macau and Taiwan (collectively, the "Territory"), which represents a single performance obligation. The Company's performance obligation with respect to the license agreement with Baylor is satisfied at a point in time, when Baylor was first able to use the license provided, which occurred during the nine months ended September 30, 2023. Net cash receipts of \$5.0 million, consisting of gross license fees of \$6.0 million less VAT and withholding taxes of \$1.0 million, were received in full as of September 30, 2023. The VAT expenses are accounted for as a pass-through expense similar to that of sales tax and the withholding taxes are accounted for as income tax expenses incurred by the Company during the nine months ended September 30, 2023. The contract also contains a provision for future royalties based on Baylor's future net sales and any related revenues earned by the Company are recognized at the time of Baylor's sale.

**(9) Income Taxes**

Excluding the impact of the sale of state net operating losses ("NOL") and research and development tax credits, the effective tax rate for the nine months ended September 30, 2023 and 2022 was (10.9%) and zero, respectively. The effective tax rate for the nine months ended September 30, 2023 was lower than the federal statutory rate due to the impact of the \$0.6 million paid to the Chinese tax authorities for required withholding taxes applicable under Chinese tax regulations. The \$0.6 million payment of withholdings taxes are eligible for a credit under the U.S. income tax regulations and as such are recorded as an income tax expense for the period. The effective tax rate for the nine months ended September 30, 2022 was lower than the federal statutory rate primarily due to the losses incurred and the full valuation allowance on deferred tax assets.

The Company’s estimated tax rate for 2023 excluding any benefits from any sales of net operating losses or research and development, or R&D, tax credits is expected to be less than zero because of the impact of the withholding taxes paid to the Chinese tax authorities described above, however, the Company expects to generate additional losses and currently has maintained a full valuation allowance. The valuation allowance is required until the Company has sufficient positive evidence of taxable income necessary to support realization of its deferred tax assets. In addition, the Company may be subject to certain limitations in its annual utilization of NOL carry forwards to offset future taxable income (and of tax credit carry forwards to offset future tax expense) pursuant to Section 382 of the Internal Revenue Code, which could result in tax attributes expiring unused.

During January 2023, the Company completed the sale of \$19.7 million of state NOLs and \$0.1 million of R&D credits under the State of New Jersey’s Technology Business Tax Certificate Transfer Program for net proceeds of \$1.7 million. During April 2022, the Company completed the sale of \$25.1 million of state NOLs and \$0.2 million of R&D credits under the State of New Jersey’s Technology Business Tax Certificate Transfer Program for net proceeds of \$2.2 million.

As of September 30, 2023, there were no material uncertain tax positions. There are no tax positions for which a material change in any unrecognized tax benefit liability is reasonably possible in the next 12 months.

#### (10) Net Loss Per Share

Basic net loss per share is calculated by dividing net loss by the weighted average number of shares outstanding during the period, as applicable. Included in the calculation of the weighted average number of shares outstanding for the basic net loss per share calculation for the three and nine months ended September 30, 2023 are the 1,781,526 pre-funded warrants, as described in Note 5 – *Common Stock Warrants and Warrant Liability*, as they were issuable in exchange for a nominal cash consideration and are therefore treated as issued as of March 7, 2023, the grant date, through June 8, 2023, the exercise date, for basic net loss per share purposes. Diluted net loss per share is calculated by dividing net loss by the weighted average number of shares outstanding, adjusted to reflect potentially dilutive securities using the treasury stock method, except when the effect would be anti-dilutive.

The Company reported a net loss for the three and nine months ended September 30, 2023 and 2022, therefore diluted net loss per share is the same as the basic net loss per share.

The following table sets forth the computation of basic and diluted net loss per common share for the three and nine months ended September 30, 2023 (in thousands, except share and per share amounts):

|                                | Three Months Ended<br>September 30, |                  | Nine Months Ended<br>September 30, |                  |
|--------------------------------|-------------------------------------|------------------|------------------------------------|------------------|
|                                | 2023                                | 2022             | 2023                               | 2022             |
| Net loss                       | \$ (1,921)                          | \$ (5,069)       | \$ (4,237)                         | \$ (14,815)      |
| Weighted-average shares:       |                                     |                  |                                    |                  |
| Basic                          | 12,232,648                          | 9,545,451        | 11,614,650                         | 9,545,451        |
| Effect of dilutive securities: |                                     |                  |                                    |                  |
| Options                        | —                                   | —                | —                                  | —                |
| Restricted Stock               | —                                   | —                | —                                  | —                |
| Diluted                        | <u>12,232,648</u>                   | <u>9,545,451</u> | <u>11,614,650</u>                  | <u>9,545,451</u> |
| Net loss per share:            |                                     |                  |                                    |                  |
| Basic                          | \$ (0.16)                           | \$ (0.53)        | \$ (0.36)                          | \$ (1.55)        |
| Diluted                        | \$ (0.16)                           | \$ (0.53)        | \$ (0.36)                          | \$ (1.55)        |

As of September 30, 2023, the Company had 808,363 options to purchase shares, 585,139 warrants to purchase shares, and 107,578 restricted stock units outstanding that have been excluded from the computation of diluted weighted average shares outstanding, because such securities had an anti-dilutive impact due to the loss reported.

As of September 30, 2022, the Company had 324,590 options to purchase shares, 1,948,455 warrants to purchase shares, and 347,000 restricted stock units outstanding that have been excluded from the computation of diluted weighted average shares outstanding, because such securities had an anti-dilutive impact due to the loss reported.

**(11) Commitments and Contingencies**

*Legal Proceedings*

The Company periodically becomes subject to legal proceedings and claims arising in connection with its business. The ultimate legal and financial liability of the Company in respect to all proceedings, claims and lawsuits, pending or threatened, cannot be estimated with any certainty.

As of the date of this report, the Company is not aware of any proceeding, claim or litigation, pending or threatened, that could, individually or in the aggregate, have a material adverse effect on the Company's business, operating results, financial condition and/or liquidity.

## **Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.**

*You should read the following discussion and analysis of our financial condition and results of operations together with our condensed consolidated financial statements and the related notes appearing elsewhere in this Quarterly Report on Form 10-Q. Some of the information contained in this discussion and analysis or set forth elsewhere in this Quarterly Report on Form 10-Q, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties. You should read the “Risk Factors” section in Part II—Item 1A. of this Quarterly Report on Form 10-Q and in Part I—Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022 for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.*

### **Overview**

The purpose of the following discussion and analysis is to provide material information relevant to an assessment of our financial condition and results of operations from management’s perspective, including to describe and explain key trends, events and other factors that impacted our reported results and that are reasonably likely to impact our future performance.

As previously announced, on October 12, 2023, following the conclusion of our review of strategic alternatives, our board of directors approved the dissolution and liquidation of Bellerophon, or the Dissolution, pursuant to a plan of complete liquidation and dissolution, or the Plan of Dissolution, which plan is subject to stockholder approval. As such, the following discussion and analysis of our business, financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and should also take into account our recent announcement regarding our planned Dissolution. Some of the information contained in this discussion and analysis or set forth elsewhere in this Quarterly Report includes forward-looking statements that involve risks and uncertainties, including risks associated with our planned Dissolution. As a result of many factors, including those factors set forth in the “Risk Factors” section of this Quarterly Report, our actual results could differ materially from the results described in, or implied by, the forward-looking statements contained in the following discussion and analysis.

### **Business**

Until recently, we were a clinical-stage therapeutics company focused on developing innovative products that address significant unmet medical needs in the treatment of cardiopulmonary diseases. Our focus had primarily been the development of our nitric oxide therapy for patients with or at risk of pulmonary hypertension, or PH, using our proprietary pulsatile nitric oxide delivery platform, INOpulse.

On June 5, 2023, we announced top-line results from our Phase 3 REBUILD clinical trial evaluating the safety and efficacy of INOpulse® for the treatment of Interstitial Lung Disease. The trial did not meet its primary endpoint and the secondary endpoints demonstrated minimal difference between the two groups with none approaching statistical significance. Overall, INOpulse® was well-tolerated with no safety concerns, consistent with what had been observed in the prior Phase 2 studies. Based on these findings, we decided to terminate the REBUILD Phase 3 clinical study and withdraw patients from all of our ongoing INOpulse® development programs. These conditions and events raise substantial doubt about our ability to continue as a going concern.

In connection with the termination of the clinical study, we approved a reduction-in-force of substantially all of our employees, including officers which was substantially completed by September 30, 2023. Affected employees were offered separation benefits, including severance payments along with temporary healthcare coverage assistance. Severance and termination-related costs of approximately \$0.8 million were recorded in the second quarter of 2023, as a component of general and administrative expenses. Additional severance and termination-related costs of approximately \$0.5 million were recorded in the three months ended September 30, 2023. Our Chief Executive Officer has agreed to remain employed by us until November 15, 2023 or such later date if extended by us in our discretion.

On July 19, 2023, the Nasdaq Listing Qualifications staff (“Staff”) notified us that, pursuant to Listing Rule 5101, it had determined to delist our shares of common stock as the Staff believed that we were a “public shell,” and that the continued listing of our securities was no longer warranted. Additionally, the Staff informed us that we no longer complied with the minimum bid price requirement under Listing Rule 5550(a)(2), which served as an additional and separate basis for delisting. On July 26, 2023, we requested a hearing before the Panel, which was held on September 21, 2023. On October 2, 2023, the Panel provided an extension for continued listing on the Nasdaq Capital Market subject to certain conditions. On October 12, 2023, we notified the Panel that we would not be able to meet the conditions of the Panel’s decision. Accordingly, on October 12, 2023, the Staff notified us that it determined to delist our shares of common stock from the Nasdaq Capital Market and that trading in our shares was suspended at the open of trading on Monday October 16, 2023.

On October 12, 2023, after completing a review of the strategic options available to us, our board of directors approved the plan of liquidation and dissolution of our company (the “Plan of Dissolution”), subject to the approval of our stockholders. We have filed definitive proxy materials with the Securities and Exchange Commission and mailed such materials to our stockholders as of the October 30, 2023 record date to hold a special meeting of stockholders (the “Special Meeting”) on December 11, 2023 to seek approval of the Plan of Dissolution.

The Plan of Dissolution contemplates an orderly wind down of our business and operations in accordance with the provisions of Delaware law. If our stockholders approve the Plan of Dissolution, we intend to file a Certificate of Dissolution with the Delaware Secretary of State dissolving the Company, satisfy or resolve our remaining liabilities and obligations, including but not limited to contingent liabilities and claims and costs associated with the dissolution and liquidation, make reasonable provisions for unknown claims and liabilities and attempt to convert all of our remaining assets into cash or cash equivalents, and make distributions to our stockholders of cash available for distribution based upon their proportionate ownership at the time of the dissolution, subject to applicable legal requirements. The proxy materials that we filed with the SEC and mailed to our stockholders contain more important information regarding the proposed Plan of Dissolution.

Pursuant to Delaware law, the Company will continue to exist for three years after the Certificate of Dissolution is filed or for such longer period as the Delaware Court of Chancery shall direct. If our stockholders approve the Dissolution, we will be authorized to cease operations, sell or otherwise dispose of its non-cash assets and dissolve the Company and its subsidiaries without further approval of the stockholders, unless required to obtain such approval under Delaware law.

If our stockholders do not approve the Dissolution, our board of directors and management will continue to explore other strategic alternatives. Because our board of directors and management believe that they have exhausted all reasonable and viable strategic alternatives, it is possible that we would seek voluntary dissolution at a later time and potentially with diminished assets. In addition, we could cease operations, make an assignment for the benefit of creditors, turn the Company over to a third-party management company or liquidator or file for bankruptcy protection.

### **Financial Operations Overview**

Prior to February 2014, we were a wholly-owned subsidiary of Ikaria, Inc. (a subsidiary of Mallinckrodt plc), or Ikaria. As part of an internal reorganization of Ikaria in October 2013, Ikaria transferred to us exclusive worldwide rights, with no royalty obligations, to develop and commercialize pulsed nitric oxide in PAH, PH-COPD and PH-IPF. Following the internal reorganization, in February 2014, Ikaria distributed all of our then outstanding units to its stockholders through the payment of a special dividend on a pro rata basis based on each stockholder’s ownership of Ikaria capital stock, which we refer to as the Spin-Out, and as a result we became a stand-alone company. In November 2015, we entered into an amendment to our exclusive cross-license, technology transfer and regulatory matters agreement with Ikaria that included a royalty equal to 3% of net sales of any commercial products for PAH. In April 2018, we expanded the scope of our license from PH-IPF to PH in patients with Pulmonary Fibrosis (PH-PF), which includes idiopathic interstitial pneumonias, chronic hypersensitivity pneumonitis, occupational and environmental lung disease, with a royalty equal to 1% of net sales of any commercial products for PH-PF.

### ***License Agreement with Baylor BioSciences, Inc.***

In January 2023, we entered into a License Agreement with Baylor BioSciences, Inc. (“Baylor”), pursuant to which Baylor received exclusive rights to develop and commercialize INOpulse within Greater China for diseases associated with pulmonary hypertension, including the lead indication of fibrotic interstitial lung disease (“fILD”), as well as PAH, PH-Sarcodosis, and PH-COPD, CTEPH and PH associated with pulmonary edema from high altitude sickness. Under the terms of the License Agreement, we received a license payment of \$5 million, which was net of VAT and withholding taxes of approximately \$1.0 million, from Baylor. Additionally, we are entitled to royalties of 5% on net sales by Baylor resulting from all of the licensed INOpulse indications within Greater China. Upon approval of the Plan of Dissolution and subsequent execution by the Company’s board of directors, the Company’s right to any such royalties under this agreement will terminate.

### ***Registered Direct Offering***

On March 3, 2023, we entered into a subscription agreement with an institutional investor, pursuant to which we agreed to issue and sell in a registered direct offering (the “Offering”) (i) an aggregate of 718,474 shares (the “Shares”) of our common stock and (ii) pre-funded warrants (the “Pre-Funded Warrants”) to purchase up to 1,781,526 shares of common stock. We closed the Offering on March 7, 2023 with the Shares sold to the purchaser at a price per share of \$2.00 per share. The Pre-Funded Warrants were sold at an offering price of \$1.99 per Pre-Funded Warrant, which represents the per share offering price for the common stock less a \$0.01 per share exercise price for each such Pre-Funded Warrant. No underwriter or placement agent participated in the Offering and the proceeds from the Offering were approximately \$5 million.

The Pre-Funded Warrants are exercisable at any time after the date of issuance. A holder of Pre-Funded Warrants may not exercise the warrant if the holder, together with its affiliates, would beneficially own more than 9.99% of the number of shares of common stock outstanding immediately after giving effect to such exercise. A holder of Pre-Funded Warrants may increase or decrease this percentage, but not in excess of 19.99%, by providing at least 61 days prior notice to us. During the nine months ended September 30, 2023, all of the Pre-Funded Warrants were exercised.

The Offering was made pursuant to the Company’s shelf registration statement previously filed with the Securities and Exchange Commission (the “SEC”), originally filed on June 26, 2020 (File No. 333-239473), which the SEC declared effective on July 2, 2020, and a related prospectus supplement.

### ***Completion of Sale under the State of New Jersey’s Technology Business Tax Certificate Transfer Program***

During January 2023, we completed a sale of our NOLs and R&D credits under the State of New Jersey’s Technology Business Tax Certificate Transfer Program. We sold \$19.7 million of state NOLs and \$0.1 million of R&D credits for net proceeds of approximately \$1.7 million.

### ***Revenue***

To date, we have not generated any revenue from product sales and do not expect to generate any revenue from product sales.

We recognize revenue in accordance with ASC 606, *Revenue from Contracts with Customers* (“ASC 606”). ASC 606 applies to all contracts with customers, except for contracts that are within the scope of other standards, such as leases, insurance, collaboration arrangements and financial instruments. Under ASC 606, we recognize revenue when our customer obtains control of promised goods or services, in an amount that reflects the consideration we expect to receive in exchange for those goods or services. To determine revenue recognition for arrangements that are within the scope of ASC 606, we perform the following five steps:

- (i) identify the contract(s) with a customer;
- (ii) identify the performance obligations in the contract;
- (iii) determine the transaction price;
- (iv) allocate the transaction price to the performance obligations in the contract; and
- (v) recognize revenue when (or as) we satisfy a performance obligation.

If a contract is determined to be within the scope of ASC 606 at inception, we assess the goods or services promised within such contract, determines which of those goods and services are performance obligations, and assesses whether each promised good or service is distinct. We then recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied.

Specifically, license revenue relates to license fees from our license agreement granting a customer with the right to use our intellectual property for development and commercialization activities within an authorized territory. We must first assess whether the license is distinct, which depends upon whether the customer can benefit from the license and whether the license is separate from other performance obligations in the agreement. If the license is distinct, we must further assess whether the customer has a right to access or a right to use the license depending on whether the functionality of the license is expected to substantively change over time. If the license is not expected to substantively change, the revenue is recognized at a point in time when the license is provided. If the license is expected to substantively change, the revenue is recognized over the license period. Our license agreement with Baylor entered into during the nine months ended September 30, 2023 was determined to be a right to use license and accordingly, the revenue was recognized at a point in time.

#### ***Research and Development Expenses***

Research and development expenses consist of costs incurred in connection with the development of our product candidates, including upfront and development milestone payments, related to in-licensed product candidates and technologies.

Research and development expenses primarily consist of:

- employee-related expenses, including salary, benefits and stock-based compensation expense;
- expenses incurred under agreements with contract research organizations, investigative sites that conduct our clinical trials and consultants that conduct a portion of our pre-clinical studies;
- expenses relating to vendors in connection with research and development activities;
- the cost of acquiring and manufacturing clinical trial materials;
- facilities, depreciation and allocated expenses;
- lab supplies, reagents, active pharmaceutical ingredients and other direct and indirect costs in support of our pre-clinical and clinical activities;
- device development and drug manufacturing engineering;
- license fees related to in-licensed products and technology; and
- costs associated with non-clinical activities and regulatory approvals.

We expense research and development costs as incurred.

Conducting a significant amount of research and development has been central to our business model. Product candidates in late stages of clinical development generally have higher development costs than those in earlier stages of clinical development primarily due to the increased size and duration of late-stage clinical trials.

We have tracked external research and development expenses and personnel expenses on a program-by-program basis. We used our employee and infrastructure resources, including regulatory, quality, clinical development and clinical operations, across our clinical development programs and have included these expenses in research and development infrastructure. Research and development laboratory expenses have also not been allocated to a specific program and are included in research and development infrastructure. Engineering activities related to INOpulse and the manufacture of cylinders related to INOpulse are included in INOpulse engineering.

#### *Drug and Delivery System Costs*

Drug and delivery system costs include cartridge procurement, cartridge filling, delivery system manufacturing and delivery system servicing. These costs relate to all indications that utilize the INOpulse delivery system.

#### *Research and Development Infrastructure*

We invested in regulatory, quality, clinical development and clinical operations activities, which have been expensed as incurred. These activities have primarily supported our clinical development programs.

#### *INOpulse Engineering*

We have invested a significant amount of funds in INOpulse, which is configured to be highly portable and compatible with available modes of long-term oxygen therapy via nasal cannula delivery. Our Phase 2 clinical trials of INOpulse for PAH and INOpulse for PH-COPD utilized the first generation INOpulse DS/DS-C device. We believe that our second generation INOpulse device, as well as a custom triple-lumen cannula, have significantly improved several characteristics of our INOpulse delivery system. We have also invested in design and engineering technology, through Ikaria, for the manufacture of our drug cartridges. We have manufactured and serviced the INOpulse devices that we have used in our clinical trials of INOpulse for fILD and PH-Sarc by third party turnkey manufacturers.

#### *General and Administrative Expenses*

General and administrative expenses include salaries, severances and costs related to executive, finance, and administrative support functions, patent filing, patent prosecution, professional fees for legal, insurance, consulting, investor relations, human resources, information technology and auditing and tax services not otherwise included in research and development expenses.

## Results of Operations

### Comparison of Three Months Ended September 30, 2023 and 2022

The following table summarizes our results of operations for the three months ended September 30, 2023 and 2022.

| (Dollar amounts in thousands)             | Three Months Ended<br>September 30, |            | \$ Change | % Change |
|---|-------------------------------------|------------|-----------|----------|
|   | 2023                                | 2022       |           |          |
| <b>Revenues:</b>                          |                                     |            |           |          |
| Licensing revenue                         | \$ —                                | \$ —       | \$ —      | — %      |
| <b>Research and development expenses:</b> |                                     |            |           |          |
| fILD, PH-Sarc and PH-COPD                 | 48                                  | 1,310      | (1,262)   | (96)%    |
| Drug and delivery system costs            | 159                                 | 475        | (316)     | (67)%    |
| Clinical programs                         | 207                                 | 1,785      | (1,578)   | (88)%    |
| Research and development infrastructure   | 335                                 | 1,560      | (1,225)   | (79)%    |
| INOpulse engineering                      | 2                                   | 405        | (403)     | (100)%   |
| Total research and development expenses   | 544                                 | 3,750      | (3,206)   | (85)%    |
| General and administrative expenses       | 1,626                               | 1,366      | 260       | 19 %     |
| Total operating expenses                  | 2,170                               | 5,116      | (2,946)   | (58)%    |
| Loss from operations                      | (2,170)                             | (5,116)    | 2,946     | (58)%    |
| Gain on sale of equipment                 | 140                                 | —          | 140       | >100 %   |
| Interest income                           | 109                                 | 47         | 62        | 132 %    |
| Pre-tax loss                              | (1,921)                             | (5,069)    | 3,148     | (62)%    |
| Income tax benefit                        | —                                   | —          | —         | — %      |
| Net loss                                  | \$ (1,921)                          | \$ (5,069) | \$ 3,148  | (62)%    |

**Total Operating Expenses.** Total operating expenses for the three months ended September 30, 2023 were \$2.2 million compared to \$5.1 million for the three months ended September 30, 2022, a decrease of \$2.9 million, or 58%. This decrease was due to the decrease in research and development expenses partially offset by an increase in general and administrative expenses.

**Research and Development Expenses.** Total research and development expenses for the three months ended September 30, 2023 were \$0.5 million compared to \$3.8 million for the three months ended September 30, 2022, a decrease of \$3.2 million, or 85%. Total research and development expenses consisted of the following:

- fILD, PH-Sarc and PH-COPD expenses for the three months ended September 30, 2023 were near zero compared to \$1.3 million for the three months ended September 30, 2022, a decrease of \$1.3 million, or 96%. The decrease is primarily due to the completion of the trial in June 2023 and subsequent close-out activities during the three months ended September 30, 2023 compared to ongoing trial activities during the three months ended September 30, 2022.
- Drug and delivery system costs for the three months ended September 30, 2023 were \$0.2 million, compared to \$0.5 million for the three months ended September 30, 2022, a decrease of \$0.3 million, or 67%. Drug and delivery system costs are recorded at the time of procurement from our suppliers. The decrease is primarily attributable to the termination of the Phase 3 clinical trial for fILD and subsequent close-out expenses incurred during the three months ended September 30, 2023.
- Research and development infrastructure costs for the three months ended September 30, 2023 were \$0.3 million compared to \$1.5 million for the three months ended September 30, 2022, a decrease of \$1.2 million, or 79%. The decrease was primarily due to a decrease in contractor costs associated with the termination of the Phase 3 clinical trial for fILD and subsequent close-out activities during the three months ended September 30, 2023.

- INOpulse engineering expenses for the three months ended September 30, 2023 were near zero compared to \$0.4 million for the three months ended September 30, 2022, a decrease of \$0.4 million, or 100%. The decrease was primarily due to the termination of the Phase 3 clinical trial for fILD and the related reduction in force.

**General and Administrative Expenses.** General and administrative expenses for the three months ended September 30, 2023 were \$1.6 million compared to \$1.4 million for the three months ended September 30, 2022, an increase of \$0.2 million, or 15%. The increase is due to the one-time separation benefits costs associated with the reduction-in-force partially offset by the reduction in rent expenses related to the vacated office space combined with additional reductions in legal and consulting costs in connection with the termination of the Phase 3 clinical trial for fILD during the three months ended September 30, 2023.

**Comparison of Nine Months Ended September 30, 2023 and 2022**

The following table summarizes our results of operations for the nine months ended September 30, 2023 and 2022.

| (Dollar amounts in thousands)             | Nine Months Ended<br>September 30, |             | \$ Change | % Change |
|---|------------------------------------|-------------|-----------|----------|
|   | 2023                               | 2022        |           |          |
| <b>Revenues:</b>                          |                                    |             |           |          |
| Licensing revenue                         | \$ 5,640                           | \$ —        | \$ 5,640  | >100 %   |
| <b>Research and development expenses:</b> |                                    |             |           |          |
| fILD, PH-Sarc and PH-COPD                 | 2,189                              | 3,822       | (1,633)   | (43)%    |
| Other clinical trials                     | —                                  | 1           | (1)       | (100)%   |
| Drug and delivery system costs            | 350                                | 2,313       | (1,963)   | (85)%    |
| Clinical programs                         | 2,539                              | 6,136       | (3,597)   | (59)%    |
| Research and development infrastructure   | 2,759                              | 5,215       | (2,456)   | (47)%    |
| INOpulse engineering                      | 694                                | 1,295       | (601)     | (46)%    |
| Total research and development expenses   | 5,992                              | 12,646      | (6,654)   | (53)%    |
| General and administrative expenses       | 5,599                              | 4,653       | 946       | 20 %     |
| Total operating expenses                  | 11,591                             | 17,299      | (5,708)   | (33)%    |
| Loss from operations                      | (5,951)                            | (17,299)    | 11,348    | (66)%    |
| Gain on sale of equipment                 | 140                                | —           | 140       | >100 %   |
| Interest income                           | 297                                | 67          | 230       | 343 %    |
| Pre-tax loss                              | (5,514)                            | (17,232)    | 11,718    | (68)%    |
| Income tax benefit                        | 1,277                              | 2,417       | (1,140)   | (47)%    |
| Net loss                                  | \$ (4,237)                         | \$ (14,815) | \$ 10,578 | (71)%    |

**Licensing Revenue.** Total licensing revenue for the nine months ended September 30, 2023 was \$5.6 million which directly relates to the upfront payment received in relation to the licensing agreement with Baylor BioSciences, Inc. We did not earn any revenue during the nine months ended September 30, 2022.

**Total Operating Expenses.** Total operating expenses for the nine months ended September 30, 2023 were \$11.6 million compared to \$17.3 million for the nine months ended September 30, 2022, a decrease of \$5.7 million, or 33%. This decrease was primarily due to a decrease in research and development expenses partially offset by an increase in general and administrative expenses.

**Research and Development Expenses.** Total research and development expenses for the nine months ended September 30, 2023 were \$6.0 million compared to \$12.6 million for the nine months ended September 30, 2022, a decrease of \$6.7 million, or 53%. Total research and development expenses consisted of the following:

- fILD, PH-Sarc and PH-COPD expenses for the nine months ended September 30, 2023 were \$2.2 million, compared to \$3.8 million for the nine months ended September 30, 2022, a decrease of \$1.6 million, or 43%. The decrease is primarily due to the completion of the trial in June 2023 and subsequent close-out activities during the nine months ended September 30, 2023 compared to ongoing trial activities during the nine months ended September 30, 2022.
- Drug and delivery system costs for the nine months ended September 30, 2023 were \$0.4 million, compared to \$2.3 million for the nine months ended September 30, 2022, a decrease of \$2.0 million, or 85%. Drug and delivery system costs are recorded at the time of procurement from our suppliers. The decrease is primarily attributable to the termination of the Phase 3 clinical trial for fILD and subsequent close-out expenses incurred during the nine months ended September 30, 2023.
- Research and development infrastructure costs for the nine months ended September 30, 2023 were \$2.8 million compared to \$5.2 million for the nine months ended September 30, 2022, a decrease of \$2.4 million, or 47%. The decrease was primarily due to a decrease in contractor costs associated with the termination of the Phase 3 clinical trial for fILD and subsequent close-out activities during the nine months ended September 30, 2023.
- INOpulse engineering expenses for the nine months ended September 30, 2023 were \$0.7 million compared to \$1.3 million for the nine months ended September 30, 2022, a decrease of \$0.6 million, or 46%. The decrease was primarily due to the termination of the Phase 3 clinical trial for fILD and the related reduction in force.

**General and Administrative Expenses.** General and administrative expenses for the nine months ended September 30, 2023 were \$5.6 million compared to \$4.7 million for the nine months ended September 30, 2022, an increase of \$0.9 million, or 20%. The increase is due to the one-time separation benefits costs associated with the reduction-in-force combined with increases in legal and consulting costs associated with various SEC filings and costs associated with the termination of the Phase 3 clinical trial. These increases were partially offset by a reduction in rent expenses related to the vacated office space during the nine months ended September 30, 2023.

**Income Tax Benefit.** Income tax benefit for the nine months ended September 30, 2023 was \$1.3 million compared to \$2.4 million during the nine months ended September 30, 2022, a decrease of \$1.1 million, or 47%. The decrease was primarily related to fewer eligible net operating losses sold under the State of New Jersey's Technology Business Tax Certificate Transfer Program during the nine months ended September 30, 2023 combined with the one-time foreign taxes incurred related to the license transaction with Baylor BioSciences, Inc.

### **Liquidity and Capital Resources**

In the course of our development activities, we have sustained operating losses and expect such losses to continue for the foreseeable future based on our current operations.

On June 5, 2023, we announced top-line results from our Phase 3 REBUILD clinical trial evaluating the safety and efficacy of INOpulse® for the treatment of Interstitial Lung Disease. The trial did not meet its primary endpoint and the secondary endpoints demonstrated minimal difference between the two groups with none approaching statistical significance. Based on these findings, we decided to terminate the REBUILD Phase 3 clinical study and withdraw patients from all of our ongoing INOpulse development programs. In connection with the termination of the clinical study, we approved a reduction-in-force of substantially all of our employees, including officers which was substantially completed by September 30, 2023. Affected employees were offered separation benefits, including severance payments along with temporary healthcare coverage assistance. Severance and termination-related costs of approximately \$0.8 million were recorded in the second quarter of 2023, as a component of general and administrative expenses. Additional severance and termination-related costs of approximately \$0.5 million were recorded in the three months ended September 30, 2023. Our Chief Executive Officer has agreed to remain employed by us until November 15, 2023 or such later date if extended by us in our discretion.

We had unrestricted cash and cash equivalents of \$4.4 million as of September 30, 2023. Our existing cash and cash equivalents as of September 30, 2023 will be used primarily to fund the termination of the Phase 3 trial of INOpulse for fILD and execute the Plan of Dissolution, as approved by our board of directors on October 12, 2023 and subject to the approval of our stockholders. We intend to hold a special meeting of stockholders (the “Special Meeting”) on December 11, 2023 to seek stockholder approval of the Plan of Dissolution.

We evaluated whether there are any remaining conditions and events, considered in the aggregate, that raise substantial doubt about our ability to continue as a going concern within one year beyond the filing of this Quarterly Report on Form 10-Q. Based on such evaluation and our current plans, we believe that our existing cash and cash equivalents as of September 30, 2023 will not be sufficient to satisfy our operating cash needs for at least one year after the filing of this Quarterly Report on Form 10-Q. Accordingly, substantial doubt about our ability to continue as a going concern exists.

### **Cash Flows**

The following table summarizes our cash flows for the nine months ended September 30, 2023 and 2022:

| <b>(Dollar amounts in thousands)</b>                     | <b>Nine Months Ended<br/>September 30,</b> |                    |
|--|--|--------------------|
|  | <b>2023</b>                                | <b>2022</b>        |
| Operating activities                                     | \$ (7,987)                                 | \$ (13,418)        |
| Investing activities                                     | 140  | —                  |
| Financing activities                                     | 5,008                                      | —                  |
| Net change in cash, cash equivalents and restricted cash | <u>\$ (2,839)</u>                          | <u>\$ (13,418)</u> |

#### *Net Cash Used in Operating Activities*

Cash used in operating activities for the nine months ended September 30, 2023 was \$8.0 million, as compared to \$13.4 million for the nine months ended September 30, 2022. The change in cash used in operating activities was primarily due to a decrease in our operating expenses combined with the license revenue and changes in our operating assets and liabilities.

#### *Net Cash Provided by Investing Activities*

Cash provided by investing activities for the nine months ended September 30, 2023 was \$0.1 million which was directly attributable to the proceeds received from the sale of miscellaneous office and lab equipment sold to third parties.

#### *Net Cash Provided by Financing Activities*

Cash provided by financing activities for the nine months ended September 30, 2023 was \$5.0 million which was directly attributable to cash raised under the direct offering of common stock and pre-funded warrants in March 2023. There were no financing activities conducted during the nine months ended September 30, 2022.

### **Contractual Obligations and Commitments**

There were no material changes in our outstanding contractual obligations from those disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022.

In the course of our normal business operations, we have entered into agreements with contract service providers and others to assist in the performance of our research and development and manufacturing activities. Such contracts and purchase orders do not contain minimum purchase obligations.

### **Off-Balance Sheet Arrangements**

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined under applicable SEC rules.

### **Critical Accounting Policies and Significant Judgments and Estimates**

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses and the disclosure of contingent assets and liabilities in our financial statements. On an ongoing basis, we evaluate our estimates and judgments, including those related to research and development expense and stock-based compensation. We base our estimates on historical experience, known trends and events and various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

During the nine months ended September 30, 2023, there were no material changes to our critical accounting policies. Our critical accounting policies are described under Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

We are exposed to market risk related to changes in interest rates. As of September 30, 2023, we had unrestricted cash and cash equivalents of \$4.4 million, consisting primarily of demand deposits with U.S. banking institutions. Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of U.S. interest rates, particularly because our investments are in cash and cash equivalents. Due to the nature of our deposits and the low risk profile of our investments, an immediate 10% change in interest rates would not have a material effect on the fair market value of our deposits.

### **Item 4. Controls and Procedures.**

#### **Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2023. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of September 30, 2023, our principal executive officer and principal financial officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

#### **Changes in Internal Control Over Financial Reporting**

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the three and nine months ended September 30, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings.

We are currently not a party to any material legal proceedings.

### Item 1A. Risk Factors.

Except as set forth below, there have been no material changes to our risk factors contained in our Annual Report on Form 10-K for the year ended December 31, 2022 and in our Quarterly Report on Form 10-Q for the quarter ended June 30, 2023. For a further discussion of our Risk Factors, refer to the “Risk Factors” discussion contained in our Annual Report on Form 10-K for the year ended December 31, 2022.

#### ***We cannot predict the timing of the distributions to stockholders.***

Our current intention is that, if approved by our stockholders, a Certificate of Dissolution would be filed promptly after obtaining such approval; however, the decision of whether or not to proceed with the execution of the Dissolution, post-obtaining stockholders’ approval, will be made by our board of directors, or the Board, in its sole discretion. No further stockholder approval would be required to effect the Dissolution. However, if the Board determines that the Dissolution is not in our best interest or the best interest of our stockholders, the Board may, in its sole discretion, abandon the Dissolution or may amend or modify the Plan of Dissolution to the extent permitted by Delaware law without the necessity of further stockholder approval. After the Certificate of Dissolution has been filed, revocation of the Dissolution would require stockholder approval under Delaware law.

Under Delaware law, before a dissolved corporation may make any distribution to its stockholders, it must pay or make reasonable provision to pay all of its claims and obligations, including all contingent, conditional or unmatured contractual claims known to the corporation. Furthermore, we may be subject to potential liabilities relating to indemnification obligations, if any, to third parties or to our current and former officers and directors. It might take significant time to resolve these matters, and as a result we are unable to predict the timing of distributions, if any are made, to our stockholders.

#### ***We cannot assure you as to the amount of distributions, if any, to be made to our stockholders.***

We cannot predict with certainty the amount of distributions, if any, to our stockholders. However, based on the information currently available to us and if our stockholders approve the Dissolution, we estimate that the aggregate amount of cash that will be available for distribution to our stockholders in the Dissolution will be in the range between approximately \$400,000 and \$900,000 and the total amount distributed to stockholders will be in the range between approximately \$0.03 and \$0.07 per share of common stock. These estimates do not include cash that may be available for distribution from the proceeds from any sales or our remaining assets, including our intellectual property. Any such amounts may be paid in one or more distributions. Such distributions will not occur until after the Certificate of Dissolution is filed, and we cannot predict the timing or amount of any such distributions, as uncertainties as to the ultimate amount of our liabilities, the operating costs and amounts to be set aside for claims, obligations and provisions during the liquidation and winding-up process, and the related timing to complete such transactions make it impossible to predict with certainty the actual net cash amount that will ultimately be available for distribution to stockholders or the timing of any such distributions. Examples of uncertainties that could reduce the value of distributions to our stockholders include: unanticipated costs relating to the defense, satisfaction or settlement of lawsuits or other claims threatened against us or our directors or officers; amounts necessary to resolve claims of any creditors or other third parties; and delays in the liquidation and dissolution or other winding up process.

In addition, as we wind down, we will continue to incur expenses from operations, including directors' and officers' insurance; payments to service providers and any continuing employees or consultants; taxes; legal, accounting and consulting fees and expenses related to our filing obligations with the SEC, which will reduce any amounts available for distribution to our stockholders. As a result, we cannot assure you as to any amounts to be distributed to our stockholders if the Board proceeds with the Dissolution. If our stockholders do not approve the Dissolution, we will not be able to proceed with the Dissolution and no liquidating distributions will be made in connection therewith.

It is the current intent of the Board, assuming approval of the Dissolution, that any cash will first be used to pay our outstanding current liabilities and then will be retained to pay ongoing corporate and administrative costs and expenses associated with winding down the Company, liabilities and potential liabilities relating to or arising out of any litigation matters and potential liabilities relating to our indemnification obligations, if any, to our service providers, or to our current and former officers and directors.

The Board will determine, in its sole discretion, the timing of the distribution of the remaining amounts, if any, to our stockholders in the Dissolution. We can provide no assurance as to if or when any such distribution will be made, and we cannot provide any assurance as to the amount to be paid to stockholders in any such distribution, if one is made. Stockholders may receive substantially less than the amount that we currently estimate that they may receive, or they may receive no distribution at all. To the extent funds are available for distribution to stockholders, the Board intends to seek to distribute such funds to our stockholders as quickly as possible, as permitted by the Delaware General Corporation Law (the "DGCL"), and intends to take all reasonable actions to optimize the distributable value to our stockholders.

***If our stockholders do not approve the Dissolution proposal, we would not be able to continue our business operations which may lead us to ultimately seek bankruptcy protection.***

On June 5, 2023, we issued a press release announcing top-line results from our pivotal Phase 3 REBUILD clinical trial evaluating the safety and efficacy of INOpulse® for the treatment of fILD. The trial did not meet its primary endpoint and the secondary endpoints demonstrated minimal difference between the two groups with none approaching statistical significance. Based on these findings, we decided to terminate the REBUILD Phase 3 clinical study and withdraw patients from all of our ongoing INOpulse development programs and disclosed our intention to explore a range of strategic alternatives to maximize stockholder value, including, but not limited to, a merger, a business combination, a sale of assets or other transaction or a liquidation and dissolution, which we disclosed in a Form 8-K filed on June 29, 2023. In connection with our plan to explore strategic alternatives, we also announced a reduction in force. After an extensive review of strategic alternatives, we have been unable to identify and enter into a viable transaction with a merger partner or purchaser of our company or our assets. If our stockholders do not approve the Dissolution proposal, the Board will continue to explore what, if any, alternatives are available for the future of the Company in light of its discontinued business activities; however, those alternatives are likely limited to seeking voluntary dissolution at a later time with potentially diminished assets or seeking bankruptcy protection (should our net assets decline to levels that would require such action). It is unlikely that these alternatives would result in greater stockholder value than the proposed Plan of Dissolution and the Dissolution.

***The Board may determine not to proceed with the Dissolution.***

Even if the Dissolution proposal is approved by our stockholders, the Board may determine in its sole discretion not to proceed with the Dissolution. If our Board elects to pursue any alternative to the Plan of Dissolution, our stockholders may not receive any of the funds that might otherwise be available for distribution to our stockholders. After the Certificate of Dissolution has been filed, revocation of the Dissolution would require stockholder approval under Delaware law.

***Our stockholders may be liable to third parties for part or all of the amount received from us in our liquidating distributions if reserves are inadequate.***

If the Dissolution becomes effective, we may establish a contingency reserve designed to satisfy any additional claims and obligations that may arise. Any contingency reserve may not be adequate to cover all of our claims and obligations. Under the DGCL, if we fail to create an adequate contingency reserve for payment of our expenses, claims and obligations, each stockholder could be held liable for payment to our creditors for claims brought prior to or after the expiration of the Survival Period (as defined below) after we file the Certificate of Dissolution with the Secretary of State (or, if we choose the Safe Harbor Procedures, for claims brought prior to the expiration of the Survival Period), up to the lesser of (i) such stockholder's pro rata share of amounts owed to creditors in excess of the contingency reserve and (ii) the amounts previously received by such stockholder in Dissolution from us and from any liquidating trust or trusts. Accordingly, in such event, a stockholder could be required to return part or all of the distributions previously made to such stockholder, and a stockholder could receive nothing from us under the Plan of Dissolution. Moreover, if a stockholder has paid taxes on amounts previously received, a repayment of all or a portion of such amount could result in a situation in which a stockholder may incur a net tax cost if the repayment of the amount previously distributed does not cause a commensurate reduction in taxes payable in an amount equal to the amount of the taxes paid on amounts previously distributed.

***We plan to initiate steps to exit from certain reporting requirements under the Exchange Act, which may substantially reduce publicly available information about us. If the exit process is protracted, we will continue to bear the expense of being a public reporting company despite having no source of revenue or other meaningful sources of capital inflows.***

Our common stock is currently registered under the Exchange Act, which requires that we, and our officers and directors with respect to Section 16 of the Exchange Act, comply with certain public reporting and proxy statement requirements thereunder. Compliance with these requirements is costly and time-consuming. We plan to initiate steps to exit from such reporting requirements in order to curtail expenses; however, such process may be protracted and we may be required to continue to file Current Reports on Form 8-K or other reports to disclose material events, including those related to the Dissolution. Accordingly, we will continue to incur expenses that will reduce the amount available for distribution, including expenses of complying with public company reporting requirements and paying its service providers, among others. If our reporting obligations cease, publicly available information about us will be substantially reduced.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

None.

**Item 3. Defaults Upon Senior Securities.**

None.

**Item 4. Mine Safety Disclosures.**

Not applicable.

**Item 5. Other Information.**

None.

**Item 6. Exhibits.**

The exhibits listed in the Exhibit Index to this Quarterly Report on Form 10-Q are incorporated herein by reference.

## Exhibit Index

| Exhibit Number         | Description  |
|------------------------|--|
| <a href="#">2.1</a>    | <a href="#">Plan of Liquidation and Dissolution of Bellerophon Therapeutics, Inc. (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K (File No. 001-36845) filed with the SEC on October 13, 2023).</a> |
| <a href="#">10.1*+</a> | <a href="#">Separation Agreement, dated as of July 13, 2023, by and between Bellerophon Therapeutics, Inc. and Martin Dekker.</a>  |
| <a href="#">10.2*+</a> | <a href="#">Separation Agreement, dated as of August 3, 2023, by and between Bellerophon Therapeutics, Inc. and Peter Fernandes.</a>   |
| <a href="#">10.3*+</a> | <a href="#">Separation Agreement, dated as of August 3, 2023, by and between Bellerophon Therapeutics, Inc. and Parag Shah.</a>  |
| <a href="#">31.1</a>   | <a href="#">Certification of Principal Executive Officer and Principal Financial Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended</a>   |
| <a href="#">32</a>     | <a href="#">Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>   |
| 101.INS                | Inline XBRL Instance 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 Presentation Linkbase Document  |
| 104                    | Cover Page Interactive Data File (Formatted as Inline XBRL and contained in Exhibit 101)   |

\* Filed herewith.

+ Management contract or compensatory plan or arrangement.

**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.

BELLEROPHON THERAPEUTICS, INC.

Date: November 14, 2023

By: /s/ Peter Fernandes

Peter Fernandes

Chief Executive Officer

(Principal Executive Officer and

Principal Financial and Accounting Officer)

July 13, 2023

Martin P. Dekker

**Re: Separation Agreement**

Dear Martin:

The purpose of this letter agreement (this "Agreement") is to set forth the terms of your transition and separation from Bellerophon Therapeutics, Inc. (the "Company").

You may take up to **forty-five (45) calendar days** from the date you receive this Agreement to review it and decide whether to sign it. If you sign this Agreement and do not rescind your acceptance (as described in Section 9 below), the eighth (8th) day after you sign this Agreement shall be the Effective Date of this Agreement. As described more fully below, the payment of the Separation Benefits described in this Agreement is contingent on (i) your compliance with the terms of this Agreement; (ii) your completion of the "Transition Period" described in Section 1; (iii) your execution of this Agreement without rescission (as described in Section 9 below); and (iv) your execution without rescission of the Supplemental Release included as Exhibit A no earlier than the Separation Date and no later than forty-five (45) days after the Separation Date.

1. **Separation of Employment.** Your employment with the Company will end on July 15, 2023 (the "Separation Date"). The period from the date you receive this Agreement (the "Notification Date") through the Separation Date is referred to as the "Transition Period", during which you will continue to be employed by the Company "at-will." During the Transition Period, you will perform such transition duties as may be reasonably requested by the Company. You will also continue to receive your base salary presently in effect in accordance with the Company's regular payroll practices, less all relevant taxes and other withholdings, continue to vest in any options to purchase shares of the Company's Common Stock under the Company's 2015 Equity Incentive Plan (the "Plan"), and continue to participate in all employee benefit plans of the Company in which you are currently participating (subject to the terms and conditions of such plans, which may be modified, amended or terminated in the Company's sole discretion). You acknowledge and agree that (i) should you provide a notice of resignation or otherwise resign your employment before the Separation Date; or (ii) should the Company terminate your employment for "Cause" (as defined below) before the Separation Date, then the Company may accelerate the Separation Date to the date of either your notice of resignation or the date of the Cause event, and you will not be entitled to, and the Company shall have no obligation to provide, any further pay and benefits during the Transition Period described herein or the Separation Benefits provided for in Section 2 below. "Cause" as used in this Agreement means your breach or other failure to comply with any Company policy, rule, or directive. From and after the Separation Date, you shall not represent yourself as an employee or agent of the Company. You shall receive your final wages for the period ending on your Separation Date, including any unused, accrued paid time off, less all applicable withholdings and deductions.
2. **Separation Benefits.** In exchange for the promises and release of claims contained herein, and provided that: (i) you have not resigned or been terminated for Cause as described in Section 1 above before the scheduled Separation Date; (ii) you execute and do not rescind your assent to this Agreement (as described in Section 9 below); and (iii) no sooner than the Separation Date but not later than forty-five (45) days after the Separation Date, you execute, and do not rescind, the Supplemental Release of Claims set forth as Exhibit A (the "Supplemental Release"), the Company shall provide you with the following (the "Separation Benefits"):
  - (a) **Separation Pay.** A lump-sum payment in the amount of \$281,200.00, which represents fifty-two (52) weeks of your current base salary, less all applicable federal, state, local and other legally required or authorized deductions. The Company shall pay the Separation Pay on the first regularly scheduled payroll date following the Supplemental Release Effective Date (as defined in the Supplemental Release).
  - (b) **Health Care Benefit Premium.** In the event that you receive Health Care Benefits from the Company, your Health Care Benefits will cease on the last day of the month of the Separation Date. However, to assist you in maintaining healthcare coverage after such date, and provided you continue your healthcare coverage pursuant to the Consolidate Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Company will continue to contribute on a pre-tax basis to the premium cost of your COBRA premiums for a period of six (6) months or, if earlier, until you become eligible to receive health care benefits from another employer.

You agree that the Separation Benefits are something of value and that you are not already entitled to payment of this additional compensation. You acknowledge that except for the Separation Benefit, payment for accrued paid time off (PTO) and your final wages (which shall be paid to you on the first regularly scheduled payroll date following the Separation Date), you are not now and shall not in the future be entitled to any other compensation from the Company including, without limitation, other wages, commissions, bonuses, vacation pay, holiday pay, paid time off or any other form of compensation or benefit.

3. **Equity.** To the extent applicable, the terms and conditions of the Company's 2015 Equity Incentive Plan (the "Plan") and any award agreements executed by you pursuant thereto (collectively the "Award Agreements") are expressly incorporated by reference herein and shall survive the signing of this Agreement. Any unvested or outstanding stock options or other equity incentives under the Plan or Award Agreements shall immediately lapse and be forfeited without consideration as of the Separation Date, provided that, subject to the terms of the Plan, you may exercise your vested options as of the Separation Date, if any, within three (3) months following the Separation Date. Following the Separation Date, you shall not have any right to acquire or vest in any form of equity under the Plan or Award Agreements, and there shall be no acceleration of vesting of any unvested stock options, unvested shares of restricted stock or other equity incentives under the Plan or Award Agreements.
4. **COBRA Benefits.** Regardless of whether you sign the Agreement, you shall have the right to elect to continue your medical and dental benefits pursuant to the terms and conditions of COBRA. Your eligibility for benefits under COBRA, the amount of such benefits, and the terms and conditions of such benefits, shall be determined by COBRA statutory and regulatory guidelines.
5. **Unemployment Benefits.** By virtue of your separation of employment, you shall be entitled to apply for unemployment benefits. The determination of your eligibility for such benefits (and the amount of benefits to which you may be entitled) shall be made by the appropriate state agency pursuant to applicable state law. The Company will not contest any claim for unemployment benefits by you.
6. **Return of Property, Confidentiality, Non-Disparagement, and Related Matters.** Subject to your preserved rights in Section 6(g) and Section 7(b), which shall apply at all times, you acknowledge and agree to the following:
  - (a) As of the Separation Date, you will have returned to the Company all Company documents (and any copies, duplicates, or replicas thereof), and property, including, without limitation, the laptop computer that was provided to you by the Company during your employment, and you shall abide by any and all common law and statutory obligations relating to protection and non-disclosure of the Company's trade secrets and confidential and proprietary documents and information.
  - (b) In the event that you receive an order, subpoena, request, or demand for disclosure of the Company's trade secrets and/or confidential and proprietary documents and information from any court or governmental agency, or from a party to any litigation or administrative proceeding, you shall as soon as reasonably possible and prior to disclosure notify the Company of same, in order to provide the Company with the opportunity to assert its respective interests in addressing or opposing such order, subpoena, request, or demand.
  - (c) All information relating to this Agreement, including the terms and amount of financial consideration provided for in this Agreement, shall be held confidential by you and shall not be publicized or disclosed to any third party, provided that (i) disclosure may be made to an immediate family member, legal counsel or financial advisor who agrees to be bound by these confidentiality obligations, and (ii) disclosure may be made to any government agency as mandated or permitted by state or federal law.
  - (d) To the extent you executed an Employee Confidentiality, Non-Solicitation, Non-Competition, and Work Product Assignment Agreement with the Company (the "Confidentiality Agreement") and signed the Company Employee Handbook, you shall honor and abide by the terms and provisions of the Confidentiality Agreement and Employee Handbook, the terms of which shall survive the termination of your employment with the Company.
  - (e) You represent and agree that you have not made, and will not make, any statements that are disparaging about, or adverse to, the interests or business of the Company (including its officers, directors, employees, and direct or indirect shareholders), including, without limitation, any statements that disparage any person, product, service, finances, financial condition, capability or any other aspect of the business of the Company (including its officers, directors, employees, and direct or indirect shareholders).
  - (f) Your breach of any of the foregoing covenants by you shall constitute a material breach of this Agreement and shall relieve the Company of any further obligations hereunder and, in addition to any other legal or equitable remedy available to the Company, shall entitle the Company to recover any Separation Benefit already paid to you pursuant to this Agreement.

- (g) Notwithstanding the foregoing, nothing in this Section 6 prohibits or otherwise restricts you from the following: (i) initiating, testifying, assisting, complying with a subpoena from, or participating in any manner with an investigation conducted by a Governmental Agency, including without limitation, with respect to any unfair labor practice charge; (ii) making any disclosures mandated by state or federal law, or participating in an investigation with a Governmental Agency, or providing documents or information to a Governmental Agency, if requested by the agency to do so (iii) filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which you may be entitled; (iv) discussing or disclosing information about unlawful acts in or related to the workplace, including, but not limited to discrimination, harassment, sexual assault, and retaliation, wage and hour violations, conduct that is against a clear mandate of public policy, or any other conduct you have reason to believe is unlawful; (v) engaging in protected activities under Section 7 of the National Labor Relations Act (“NLRA”), including filing unfair labor practice charges, assisting Company employees in filing unfair labor practice charges, discussing the improvement of terms and conditions of employment (including regarding the terms of this Agreement) with former and current Company employees or union representatives or other third parties for the purpose of engaging in concerted activity under Section 7 of the NLRA; or (vi) making any necessary disclosures as otherwise required by law.

## 7. Your Release of Claims.

- (a) You agree and acknowledge that by signing this Agreement and accepting the Separation Benefits, and for other good and valuable consideration provided for in this Agreement, you are waiving and releasing your right to assert any form of legal claim against the Company<sup>1/</sup> whatsoever for any alleged action, inaction or circumstance existing or arising from the beginning of time through the date you sign this Agreement (the “Execution Date”). Your waiver and release is intended to bar any form of legal claim, charge, complaint or any other action (jointly referred to as “Claims”) against the Company seeking any form of relief including, without limitation, equitable relief, the recovery of any damages, or any other form of monetary recovery (including, without limitation, back pay, front pay, compensatory damages, emotional distress damages, punitive damages, attorneys’ fees and any other costs), for any alleged action, inaction or circumstance existing or arising through the Execution Date. Without limiting the generality of the foregoing, you waive and release the Company from any waivable Claim arising from or related to your employment relationship with the Company through the Execution Date including, without limitation:
- (i) Claims under any New Jersey or any other state or federal employment related statute, regulation or executive order (as amended through the Execution Date) relating to any terms and conditions of employment, fair employment practices, discrimination, wages or hours, or any other employment related statute, regulation or executive order (as amended through the Execution Date), including but not limited to the Age Discrimination in Employment Act and Older Workers Benefit Protection Act, the Civil Rights Acts of 1866 and 1871 and Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991, the Equal Pay Act, the Genetic Information Non-Discrimination Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Equal Pay Act, the Lily Ledbetter Fair Pay Act, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the National Labor Relations Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, COBRA, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the New Jersey Law Against Discrimination, the New Jersey Family Leave Act, the New Jersey Wage Payment Law, the New Jersey Wage and Hour Law, the New Jersey Equal Pay Act, the New Jersey Security and Financial Empowerment Act, the New Jersey Opportunity to Compete Act, the New Jersey Family Leave Insurance provisions of the New Jersey Temporary Disability Benefits Law, the New Jersey Earned Sick Leave Law, the New Jersey WARN Act, retaliation claims under the New Jersey Workers’ Compensation Law, and any similar New Jersey or other state or federal statute. ***Please note that this Section 7 specifically includes a waiver and release of Claims that you have or may have regarding payments or amounts covered by these statutes, regulations or orders (including, for instance, hourly wages, salary, overtime, minimum wages, commissions, vacation pay, holiday pay, sick leave pay, dismissal pay, bonus pay or severance pay), as well as Claims for retaliation under these statutes, regulations or orders.***
- (ii) Claims under any New Jersey or any other state or federal common law theory, including, without limitation, wrongful discharge, breach of express or implied contract, promissory estoppel, unjust enrichment, breach of a covenant of good faith and fair dealing, termination in violation of public policy, defamation, interference with contractual relations, intentional or negligent infliction of emotional distress, promissory estoppel, fraudulent inducement, invasion of privacy, misrepresentation, deceit, fraud or negligence or any claim to attorneys’ fees under any applicable statute or common law theory of recovery.

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<sup>1/</sup>For purposes of this Section 7, the “Company” means Bellerophon Therapeutics and its current and former divisions, affiliates, parents, subsidiaries and related entities, and its and their respective current and former insurers, owners, shareholders, partners, directors, officers, employees, trustees, agents, successors and assigns.

(iii) Claims under any Company employment, compensation, bonus, benefit, stock option, incentive compensation, restricted stock, and/or equity plan, program, policy, practice or agreement, including, without limitation, the Option Agreement and the Plan.

(iv) Any other Claim arising under other local, state or federal law.

(b) Notwithstanding the foregoing, this Section 7 does not: (i) release the Company from any obligation expressly set forth in this Agreement; (ii) waive or release any legal claims which you may not waive or release by law, including obligations under workers' compensation laws; or (iii) prohibit you from (i) filing a charge with, or participating in or assisting with an investigation or proceeding conducted by, any governmental, regulatory and/or administrative entity or agency (including the Securities Exchange Commission, the Equal Employment Opportunity Commission, and/or OSHA); (ii) filing and, including as provided for under Section 21F of the Securities Exchange Act of 1934 (and Regulation 21F thereunder), maintaining the confidentiality of, a claim with a governmental, regulatory and/or administrative entity or agency that is responsible for enforcing a law; or (iii) providing truthful information to a governmental, regulatory and/or administrative entity or agency, or court, in response to compulsory legal process or as otherwise required by law or legal process or as permitted by Section 21F of the Securities Exchange Act of 1934 (or Regulation 21F thereunder); provided, however, you waive the right to recover any personal damages or other personal relief based on any claim, cause of action, demand, lawsuit or similar that is waived pursuant to this Agreement and brought by you or on your behalf by any third party, including as a member of any class or collective action, except that you do not waive any right to receive and fully retain any monetary award from a government-administered whistleblower award program for providing information to a government agency, including but not limited to damages or relief that may be available to Employee pursuant to such a program under the Securities Exchange Act of 1934.

(c) You acknowledge and agree that any obligation of the Company to provide you with the Separation Benefits is expressly conditioned on your execution of this Agreement without rescission and your execution of the Supplemental Release without rescission (as described in Exhibit A), both of which include a general release of claims.

8. **Reference Requests.** To the extent the Company receives any reference request for you from a prospective employer, the Company shall only provide dates of employment and last position held, and shall not otherwise characterize or discuss the nature of or circumstances surrounding your separation from employment from the Company.

9. **ADEA/OWBPA Review and Rescission Period.** You acknowledge and agree that:

- You are over the age of 40 and have specific rights under the Age Discrimination in Employment Act (“ADEA”) and the Older Workers Benefit Protection Act (the “OWBPA”), which prohibit discrimination on the basis of age.
- You have been encouraged and given the opportunity to consult with legal counsel before signing this Agreement, and have had the opportunity to review this Agreement with counsel of your choice.
- You have been provided with **forty-five (45) calendar days** (which includes the period between the Notification Date and your Separation Date, if applicable), in which to consider and accept the terms of this Agreement by signing below and returning it to Peter Fernandes. You have been afforded sufficient time to understand the terms of this Agreement, and you understand that the Agreement is valid, binding, and enforceable.
- Your agreements herein are made voluntarily, knowingly and without duress, and the Company has not made any representations inconsistent with this Agreement.
- You agree that any modifications, material or otherwise, made to this Agreement do not and shall not restart or affect in any manner whatsoever, the original 45-day review period.
- You may rescind your assent to this Agreement if, within seven (7) calendar days after you sign this Agreement, you deliver by hand or send by mail (certified, return receipt and postmarked within such 7 calendar day period), a notice of rescission to Peter Fernandes at 20 Independence Boulevard, Suite 402, Warren, NJ 07059. The eighth (8th) day following your execution of this Agreement without rescission is the “Effective Date.”
- Because you are being terminated with a group of other employees, and consistent with the relevant provisions of the OWBPA and ADEA, you are being provided with certain additional information, including job titles and ages of other employees in your decisional unit who were, or were not, separated from employment and offered a separation agreement, and such list is annexed to this Agreement as Exhibit B.

**10. General.** No modifications hereof shall be deemed valid unless reduced to writing and signed by the parties hereto. The failure of the Company to seek enforcement of any provision of this Agreement in any instance or for any period of time shall not be construed as a waiver of such provision or of the Company's right to seek enforcement of such provision in the future. The provisions of this Agreement are severable, and if for any reason any part hereof shall be found to be unenforceable, the remaining provisions shall be enforced in full. This Agreement shall be deemed to have been made in New Jersey and shall be governed by and construed in accordance with the laws of New Jersey, without giving effect to conflict of law principles. You and the Company agree that any action, demand or claim relating to the terms of this Agreement, or to its breach, shall be commenced in New Jersey in a court of competent jurisdiction, and that venue for such actions shall lie exclusively in New Jersey. You acknowledge and agree that, other than the Confidentiality Agreement, which is expressly incorporated herein by reference and stated as surviving the signing of this Agreement, this Agreement supersedes any and all prior or contemporaneous oral and written agreements between you and the Company, and sets forth the entire agreement between you and the Company.

This Agreement may be signed in one or more copies, each of which when signed shall be deemed to be an original, and all of which together shall constitute one and the same Agreement. If the foregoing correctly sets forth our understanding, please sign, date and return the enclosed copy of this Agreement to Peter Fernandes, within **forty-five (45) calendar days**. Additionally, and as noted above (and described in Exhibit A), the Company is under no obligation to provide you with the Separation Benefits set forth in this Agreement unless and until you execute, without rescission, the Supplemental Release, which you may execute no earlier than the Separation Date but no later than forty-five (45) days following the Separation Date.

Sincerely,  
BELLEROPHON THERAPEUTICS

By:                     /s/ Peter Fernandes                      
Date:                     06/29/2023                    

Agreed and Acknowledged:  
Martin P. Dekker

By:                     /s/ Martin Dekker                      
Date:                     07/13/2023

SUPPLEMENTAL RELEASEINSTRUCTIONS: DO NOT EXECUTE ANY EARLIER THAN THE SEPARATION DATE

In consideration of the benefits and covenants set forth in the Separation Agreement (the "Agreement") you entered into with Bellerophon Therapeutics (the "Company"), and more particularly the Separation Benefits set forth in Section 2 of the Agreement, and for other good and valuable consideration, you, Martin Dekker, on behalf of yourself and your heirs, executors, administrators, successors and assigns, hereby agree and acknowledge as follows:

- (a) You agree and acknowledge that by signing this Supplemental Release and accepting the Separation Benefit, and for other good and valuable consideration provided for in the Agreement, you are waiving and releasing your right to assert any form of legal claim against the Company<sup>2</sup> whatsoever for any alleged action, inaction or circumstance existing or arising from the beginning of time through the date you sign this Supplemental Release (the "Supplemental Release Execution Date"). Your waiver and release is intended to bar any form of legal claim, charge, complaint or any other action (jointly referred to as "Claims") against the Company seeking any form of relief including, without limitation, equitable relief, the recovery of any damages, or any other form of monetary recovery (including, without limitation, back pay, front pay, compensatory damages, emotional distress damages, punitive damages, attorneys' fees and any other costs), for any alleged action, inaction or circumstance existing or arising through the Execution Date. Without limiting the generality of the foregoing, you waive and release the Company from any waivable Claim arising from or related to your employment relationship with the Company through the Execution Date including, without limitation:
- (i) Claims under any New Jersey or any other state or federal employment related statute, regulation or executive order (as amended through the Execution Date) relating to any terms and conditions of employment, fair employment practices, discrimination, wages or hours, or any other employment related statute, regulation or executive order (as amended through the Execution Date), including but not limited to the Age Discrimination in Employment Act and Older Workers Benefit Protection Act, the Civil Rights Acts of 1866 and 1871 and Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991, the Equal Pay Act, the Genetic Information Non-Discrimination Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Equal Pay Act, the Lily Ledbetter Fair Pay Act, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the National Labor Relations Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, COBRA, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the New Jersey Law Against Discrimination, the New Jersey Family Leave Act, the New Jersey Wage Payment Law, the New Jersey Wage and Hour Law, the New Jersey Equal Pay Act, the New Jersey Security and Financial Empowerment Act, the New Jersey Opportunity to Compete Act, the New Jersey Family Leave Insurance provisions of the New Jersey Temporary Disability Benefits Law, the New Jersey Earned Sick Leave Law, the New Jersey WARN Act, retaliation claims under the New Jersey Workers' Compensation Law, and any similar New Jersey or other state or federal statute. ***Please note that this Section 7 specifically includes a waiver and release of Claims that you have or may have regarding payments or amounts covered by these statutes, regulations or orders (including, for instance, hourly wages, salary, overtime, minimum wages, commissions, vacation pay, holiday pay, sick leave pay, dismissal pay, bonus pay or severance pay), as well as Claims for retaliation under these statutes, regulations or orders.***
  - (ii) Claims under any New Jersey or any other state or federal common law theory, including, without limitation, wrongful discharge, breach of express or implied contract, promissory estoppel, unjust enrichment, breach of a covenant of good faith and fair dealing, termination in violation of public policy, defamation, interference with contractual relations, intentional or negligent infliction of emotional distress, promissory estoppel, fraudulent inducement, invasion of privacy, misrepresentation, deceit, fraud or negligence or any claim to attorneys' fees under any applicable statute or common law theory of recovery.
  - (iii) Claims under any Company employment, compensation, bonus, benefit, stock option, incentive compensation, restricted stock, and/or equity plan, program, policy, practice or agreement, including, without limitation, the Option Agreement and the Plan.
  - (iv) Any other Claim arising under other local, state or federal law.
- (b) Notwithstanding the foregoing, this Supplemental Release does not: (i) release the Company from any obligation expressly set forth in the Agreement; (ii) waive or release any legal claims which you may not waive or release by law, including obligations under workers' compensation laws; or (iii) prohibit you from (i) filing a charge with, or participating in or assisting with an investigation

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<sup>2</sup>For purposes of this Section 7, the "Company" means Bellerophon Therapeutics and its current and former divisions, affiliates, parents, subsidiaries and related entities, and its and their respective current and former insurers, owners, shareholders, partners, directors, officers, employees, trustees, agents, successors and assigns.



August 3, 2023

Peter P. Fernandes

**Re: Separation Agreement**

Dear Peter:

The purpose of this letter agreement (this "Agreement") is to set forth the terms of your transition and separation from Bellerophon Therapeutics, Inc. (the "Company").

You may take up to **forty-five (45) calendar days** from the date you receive this Agreement to review it and decide whether to sign it. If you sign this Agreement and do not rescind your acceptance (as described in Section 9 below), the eighth (8th) day after you sign this Agreement shall be the Effective Date of this Agreement. As described more fully below, the payment of the Separation Benefits described in this Agreement is contingent on (i) your compliance with the terms of this Agreement; (ii) your completion of the "Transition Period" described in Section 1; (iii) your execution of this Agreement without rescission (as described in Section 9 below); and (iv) your execution without rescission of the Supplemental Release included as Exhibit A no earlier than the Applicable Separation Date (as defined below) and no later than forty-five (45) days after the Applicable Separation Date.

1. **Separation of Employment.** Your employment with the Company will end on November 15, 2023 (the "Separation Date") unless, in the Company's discretion, your final date of employment is extended beyond November 15, 2023 (the "Alternative Separation Date") (each as applicable, the "Applicable Separation Date"). In no event shall the Alternative Separation Date be later than December 31, 2023 and, in the event the Company does extend your final day of employment beyond November 15, 2023, the Alternative Separation Date will operate as your Applicable Separation Date for the purposes of this Agreement. The period from the date you receive this Agreement (the "Notification Date") through the Applicable Separation Date is referred to as the "Transition Period", during which you will continue to be employed by the Company "at-will." During the Transition Period, you will perform such transition duties as may be reasonably requested by the Company including, but not limited to: (i) coordinating the resolution and shutting down of clinical studies, including accounting for a final disposition of accruals; (ii) providing management support and oversight of ongoing intellectual property activities; (iii) coordinating and supporting licensing and sublicensing arrangements with Baylor BioSciences, Inc.; (iv) assisting with the facilitation, management, and exploration of any reverse merger opportunities identified by the Company; and (v) handling matters in connection with financial reporting and signing and filing SEC reports, as well as assisting with Nasdaq and FINRA regulatory matters. You will also continue to receive your base salary presently in effect in accordance with the Company's regular payroll practices, less all relevant taxes and other withholdings, continue to vest in any options to purchase shares of the Company's Common Stock under the Company's 2015 Equity Incentive Plan (the "Plan"), and continue to participate in all employee benefit plans of the Company in which you are currently participating (subject to the terms and conditions of such plans, which may be modified, amended or terminated in the Company's sole discretion). You acknowledge and agree that (i) should you provide a notice of resignation or otherwise resign your employment before the Applicable Separation Date; or (ii) should the Company terminate your employment for "Cause" (as defined below) before the Applicable Separation Date, then the Company may accelerate your final day of employment at the Company to the date of either your notice of resignation or the date of the Cause event, and you will not be entitled to, and the Company shall have no obligation to provide, any further pay and benefits during the Transition Period described herein or the Separation Benefits provided for in Section 2 below. "Cause" as used in this Agreement means your breach or other failure to comply with any Company policy, rule, or directive. From and after the Applicable Separation Date, you shall not represent yourself as an employee or agent of the Company. You shall receive your final wages for the period ending on the Applicable Separation Date, including any unused, accrued paid time off, less all applicable withholdings and deductions.
2. **Separation Benefits.** In exchange for the promises and release of claims contained herein, and provided that: (i) you have not resigned or been terminated for Cause as described in Section 1 above before the Applicable Separation Date; (ii) you execute and do not rescind your assent to this Agreement (as described in Section 9 below); and (iii) no sooner than the Applicable Separation Date but not later than forty-five (45) days after the Applicable Separation Date, you execute, and do not rescind, the Supplemental Release of Claims set forth as Exhibit A (the "Supplemental Release"), the Company shall provide you with the following (the "Separation Benefits"):
  - (a) *Separation Pay.* A lump-sum payment in the amount of \$411,900.00, which represents fifty-two (52) weeks of your current base salary, less all applicable federal, state, local and other legally required or authorized deductions. The Company shall pay the Separation Pay as follows: (i) \$205,950 payable in a single lump sum on the Effective Date; (ii) \$102,975 payable in a

single lump sum on August 31, 2023; and (iii) (A) in the event that your final day of work is on the Separation Date, \$102,975 payable in a single lump sum on the first regularly scheduled payroll date following the Supplemental Release Effective Date (as defined in the Supplemental Release); or (B) in the event that your final day of work is the Alternative Separation Date, \$102,975 payable in a single lump sum on the first regularly scheduled payroll date following the Supplemental Release Effective Date (as defined in the Supplemental Release).

- (b) **Health Care Benefit Premium.** In the event that you receive Health Care Benefits from the Company, your Health Care Benefits will cease on the last day of the month of your final day of employment with the Company. However, to assist you in maintaining healthcare coverage after such date, and provided you continue your healthcare coverage pursuant to the Consolidate Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”), the Company will continue to contribute on a pre-tax basis to the premium cost of your COBRA premiums for a period of six (6) months following the Applicable Separation Date or, if earlier, until you become eligible to receive health care benefits from another employer.

You agree that the Separation Benefits are something of value and that you are not already entitled to payment of this additional compensation. You acknowledge that except for the Separation Benefit, payment for accrued paid time off (PTO) and your final wages (which shall be paid to you on the first regularly scheduled payroll date following your final day of employment with the Company), you are not now and shall not in the future be entitled to any other compensation from the Company including, without limitation, other wages, commissions, bonuses, vacation pay, holiday pay, paid time off or any other form of compensation or benefit.

3. **Equity.** To the extent applicable, the terms and conditions of the Company’s 2015 Equity Incentive Plan (the “Plan”) and any award agreements executed by you pursuant thereto (collectively the “Award Agreements”) are expressly incorporated by reference herein and shall survive the signing of this Agreement. Any unvested or outstanding stock options or other equity incentives under the Plan or Award Agreements shall immediately lapse and be forfeited without consideration as of the Applicable Separation Date, provided that, subject to the terms of the Plan, you may exercise your vested options as of the Applicable Separation Date, if any, within three (3) months following the Applicable Separation Date. Following the Applicable Separation Date, you shall not have any right to acquire or vest in any form of equity under the Plan or Award Agreements, and there shall be no acceleration of vesting of any unvested stock options, unvested shares of restricted stock or other equity incentives under the Plan or Award Agreements.
4. **COBRA Benefits.** Regardless of whether you sign the Agreement, you shall have the right to elect to continue your medical and dental benefits pursuant to the terms and conditions of COBRA. Your eligibility for benefits under COBRA, the amount of such benefits, and the terms and conditions of such benefits, shall be determined by COBRA statutory and regulatory guidelines.
5. **Unemployment Benefits.** By virtue of your separation of employment, you shall be entitled to apply for unemployment benefits. The determination of your eligibility for such benefits (and the amount of benefits to which you may be entitled) shall be made by the appropriate state agency pursuant to applicable state law. The Company will not contest any claim for unemployment benefits by you.
6. **Return of Property, Confidentiality, Non-Disparagement, and Related Matters.** Subject to your preserved rights in Section 6(g) and Section 7(b), which shall apply at all times, you acknowledge and agree to the following:
- (a) As of the Applicable Separation Date, you will have returned to the Company all Company documents (and any copies, duplicates, or replicas thereof), and property, including, without limitation, the laptop computer that was provided to you by the Company during your employment, and you shall abide by any and all common law and statutory obligations relating to protection and non-disclosure of the Company’s trade secrets and confidential and proprietary documents and information.
- (b) In the event that you receive an order, subpoena, request, or demand for disclosure of the Company’s trade secrets and/or confidential and proprietary documents and information from any court or governmental agency, or from a party to any litigation or administrative proceeding, you shall as soon as reasonably possible and prior to disclosure notify the Company of same, in order to provide the Company with the opportunity to assert its respective interests in addressing or opposing such order, subpoena, request, or demand.
- (c) All information relating to this Agreement, including the terms and amount of financial consideration provided for in this Agreement, shall be held confidential by you and shall not be publicized or disclosed to any third party, provided that (i) disclosure may be made to an immediate family member, legal counsel or financial advisor who agrees to be bound by these confidentiality obligations, and (ii) disclosure may be made to any government agency as mandated or permitted by state or federal law.

- (d) To the extent you executed an Employee Confidentiality, Non-Solicitation, Non-Competition, and Work Product Assignment Agreement with the Company (the “Confidentiality Agreement”) and signed the Company Employee Handbook, you shall honor and abide by the terms and provisions of the Confidentiality Agreement and Employee Handbook, the terms of which shall survive the termination of your employment with the Company.
- (e) You represent and agree that you have not made, and will not make, any statements that are disparaging about, or adverse to, the interests or business of the Company (including its officers, directors, employees, and direct or indirect shareholders), including, without limitation, any statements that disparage any person, product, service, finances, financial condition, capability or any other aspect of the business of the Company (including its officers, directors, employees, and direct or indirect shareholders).
- (f) Your breach of any of the foregoing covenants by you shall constitute a material breach of this Agreement and shall relieve the Company of any further obligations hereunder and, in addition to any other legal or equitable remedy available to the Company, shall entitle the Company to recover any Separation Benefit already paid to you pursuant to this Agreement.
- (g) This Agreement is intended to be exempt from or satisfy, the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), including current and future guidance and regulations interpreting such provisions, and it should be interpreted accordingly. Notwithstanding the foregoing, the Company does not guarantee that any payment hereunder complies with or is exempt from Section 409A of the Code and neither the Company, nor its executives, directors, officers, employees or affiliates shall have any liability with respect to any failure of this Agreement to comply with or be exempt from Section 409A of the Code. Each payment made under this Agreement will be treated as a separate payment for purposes of Section 409A of the Code and the right to a series of installment payments under this Agreement is to be treated as a right to a series of separate payments.
- (h) Notwithstanding the foregoing, nothing in this Section 6 prohibits or otherwise restricts you from the following: (i) initiating, testifying, assisting, complying with a subpoena from, or participating in any manner with an investigation conducted by a Governmental Agency, including without limitation, with respect to any unfair labor practice charge; (ii) making any disclosures mandated by state or federal law, or participating in an investigation with a Governmental Agency, or providing documents or information to a Governmental Agency, if requested by the agency to do so (iii) filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which you may be entitled; (iv) discussing or disclosing information about unlawful acts in or related to the workplace, including, but not limited to discrimination, harassment, sexual assault, and retaliation, wage and hour violations, conduct that is against a clear mandate of public policy, or any other conduct you have reason to believe is unlawful; (v) engaging in protected activities under Section 7 of the National Labor Relations Act (“NLRA”), including filing unfair labor practice charges, assisting Company employees in filing unfair labor practice charges, discussing the improvement of terms and conditions of employment (including regarding the terms of this Agreement) with former and current Company employees or union representatives or other third parties for the purpose of engaging in concerted activity under Section 7 of the NLRA; or (vi) making any necessary disclosures as otherwise required by law.

## 7. Your Release of Claims.

- (a) You agree and acknowledge that by signing this Agreement and accepting the Separation Benefits, and for other good and valuable consideration provided for in this Agreement, you are waiving and releasing your right to assert any form of legal claim against the Company<sup>1/</sup> whatsoever for any alleged action, inaction or circumstance existing or arising from the beginning of time through the date you sign this Agreement (the “Execution Date”). Your waiver and release is intended to bar any form of legal claim, charge, complaint or any other action (jointly referred to as “Claims”) against the Company seeking any form of relief including, without limitation, equitable relief, the recovery of any damages, or any other form of monetary recovery (including, without limitation, back pay, front pay, compensatory damages, emotional distress damages, punitive damages, attorneys’ fees and any other costs), for any alleged action, inaction or circumstance existing or arising through the Execution Date. Without limiting the generality of the foregoing, you waive and release the Company from any waivable Claim arising from or related to your employment relationship with the Company through the Execution Date including, without limitation:
  - (i) Claims under any New Jersey or any other state or federal employment related statute, regulation or executive order (as amended through the Execution Date) relating to any terms and conditions of employment, fair employment practices, discrimination, wages or hours, or any other employment related statute, regulation or executive order (as amended

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<sup>1/</sup>For purposes of this Section 7, the “Company” means Bellerophon Therapeutics and its current and former divisions, affiliates, parents, subsidiaries and related entities, and its and their respective current and former insurers, owners, shareholders, partners, directors, officers, employees, trustees, agents, successors and assigns.

through the Execution Date), including but not limited to the Age Discrimination in Employment Act and Older Workers Benefit Protection Act, the Civil Rights Acts of 1866 and 1871 and Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991, the Equal Pay Act, the Genetic Information Non-Discrimination Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Equal Pay Act, the Lily Ledbetter Fair Pay Act, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the National Labor Relations Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, COBRA, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the New Jersey Law Against Discrimination, the New Jersey Family Leave Act, the New Jersey Wage Payment Law, the New Jersey Wage and Hour Law, the New Jersey Equal Pay Act, the New Jersey Security and Financial Empowerment Act, the New Jersey Opportunity to Compete Act, the New Jersey Family Leave Insurance provisions of the New Jersey Temporary Disability Benefits Law, the New Jersey Earned Sick Leave Law, the New Jersey WARN Act, retaliation claims under the New Jersey Workers' Compensation Law, and any similar New Jersey or other state or federal statute. **Please note that this Section 7 specifically includes a waiver and release of Claims that you have or may have regarding payments or amounts covered by these statutes, regulations or orders (including, for instance, hourly wages, salary, overtime, minimum wages, commissions, vacation pay, holiday pay, sick leave pay, dismissal pay, bonus pay or severance pay), as well as Claims for retaliation under these statutes, regulations or orders.**

(ii) Claims under any New Jersey or any other state or federal common law theory, including, without limitation, wrongful discharge, breach of express or implied contract, promissory estoppel, unjust enrichment, breach of a covenant of good faith and fair dealing, termination in violation of public policy, defamation, interference with contractual relations, intentional or negligent infliction of emotional distress, promissory estoppel, fraudulent inducement, invasion of privacy, misrepresentation, deceit, fraud or negligence or any claim to attorneys' fees under any applicable statute or common law theory of recovery.

(iii) Claims under any Company employment, compensation, bonus, benefit, stock option, incentive compensation, restricted stock, and/or equity plan, program, policy, practice or agreement, including, without limitation, the Option Agreement and the Plan.

(iv) Any other Claim arising under other local, state or federal law.

(b) Notwithstanding the foregoing, this Section 7 does not: (i) release the Company from any obligation expressly set forth in this Agreement; (ii) waive or release any legal claims which you may not waive or release by law, including obligations under workers' compensation laws; or (iii) prohibit you from (i) filing a charge with, or participating in or assisting with an investigation or proceeding conducted by, any governmental, regulatory and/or administrative entity or agency (including the Securities Exchange Commission, the Equal Employment Opportunity Commission, and/or OSHA); (ii) filing and, including as provided for under Section 21F of the Securities Exchange Act of 1934 (and Regulation 21F thereunder), maintaining the confidentiality of, a claim with a governmental, regulatory and/or administrative entity or agency that is responsible for enforcing a law; or (iii) providing truthful information to a governmental, regulatory and/or administrative entity or agency, or court, in response to compulsory legal process or as otherwise required by law or legal process or as permitted by Section 21F of the Securities Exchange Act of 1934 (or Regulation 21F thereunder); provided, however, you waive the right to recover any personal damages or other personal relief based on any claim, cause of action, demand, lawsuit or similar that is waived pursuant to this Agreement and brought by you or on your behalf by any third party, including as a member of any class or collective action, except that you do not waive any right to receive and fully retain any monetary award from a government-administered whistleblower award program for providing information to a government agency, including but not limited to damages or relief that may be available to Employee pursuant to such a program under the Securities Exchange Act of 1934.

(c) You acknowledge and agree that any obligation of the Company to provide you with the Separation Benefits is expressly conditioned on your execution of this Agreement without rescission and your execution of the Supplemental Release without rescission (as described in Exhibit A), both of which include a general release of claims.

8. **Reference Requests.** To the extent the Company receives any reference request for you from a prospective employer, the Company shall only provide dates of employment and last position held, and shall not otherwise characterize or discuss the nature of or circumstances surrounding your separation from employment from the Company.

9. **ADEA/OWBPA Review and Rescission Period.** You acknowledge and agree that:

- You are over the age of 40 and have specific rights under the Age Discrimination in Employment Act (“**ADEA**”) and the Older Workers Benefit Protection Act (the “**OWBPA**”), which prohibit discrimination on the basis of age.
- You have been encouraged and given the opportunity to consult with legal counsel before signing this Agreement, and have had the opportunity to review this Agreement with counsel of your choice.
- You have been provided with **forty-five (45) calendar days** (which includes the period between the Notification Date and your Applicable Separation Date), in which to consider and accept the terms of this Agreement by signing below and returning it to Naseem Amin. You have been afforded sufficient time to understand the terms of this Agreement, and you understand that the Agreement is valid, binding, and enforceable.
- Your agreements herein are made voluntarily, knowingly and without duress, and the Company has not made any representations inconsistent with this Agreement.
- You agree that any modifications, material or otherwise, made to this Agreement do not and shall not restart or affect in any manner whatsoever, the original 45-day review period.
- You may rescind your assent to this Agreement if, within seven (7) calendar days after you sign this Agreement, you deliver by hand or send by mail (certified, return receipt and postmarked within such 7 calendar day period), a notice of rescission to Naseem Amin, 20 Blenheim Road, London, UNITED KINGDOM NWS OLX. The eighth (8th) day following your execution of this Agreement without rescission is the “**Effective Date.**”
- Because you are being terminated with a group of other employees, and consistent with the relevant provisions of the OWBPA and ADEA, you are being provided with certain additional information, including job titles and ages of other employees in your decisional unit who were, or were not, separated from employment and offered a separation agreement, and such list is annexed to this Agreement as **Exhibit B.**

10. **General.** No modifications hereof shall be deemed valid unless reduced to writing and signed by the parties hereto. The failure of the Company to seek enforcement of any provision of this Agreement in any instance or for any period of time shall not be construed as a waiver of such provision or of the Company’s right to seek enforcement of such provision in the future. The provisions of this Agreement are severable, and if for any reason any part hereof shall be found to be unenforceable, the remaining provisions shall be enforced in full. This Agreement shall be deemed to have been made in New Jersey and shall be governed by and construed in accordance with the laws of New Jersey, without giving effect to conflict of law principles. You and the Company agree that any action, demand or claim relating to the terms of this Agreement, or to its breach, shall be commenced in New Jersey in a court of competent jurisdiction, and that venue for such actions shall lie exclusively in New Jersey. You acknowledge and agree that, other than the Confidentiality Agreement, which is expressly incorporated herein by reference and stated as surviving the signing of this Agreement, this Agreement supersedes any and all prior or contemporaneous oral and written agreements between you and the Company, and sets forth the entire agreement between you and the Company.

This Agreement may be signed in one or more copies, each of which when signed shall be deemed to be an original, and all of which together shall constitute one and the same Agreement. If the foregoing correctly sets forth our understanding, please sign, date and return the enclosed copy of this Agreement to Peter Fernandes, within **forty-five (45) calendar days**. Additionally, and as noted above (and described in **Exhibit A**), the Company is under no obligation to provide you with the Separation Benefits set forth in this Agreement unless and until you execute, without rescission, the Supplemental Release, which you may execute no earlier than the Applicable Separation Date but no later than forty-five (45) days following the Applicable Separation Date.

Sincerely,  
BELLEROPHON THERAPEUTICS

By: \_\_\_\_\_ /s/ Naseem Amin  
Date: \_\_\_\_\_ 08/03/2023

Agreed and Acknowledged:  
Peter P. Fernandes

By: \_\_\_\_\_ /s/ Peter P. Fernandes  
Date: \_\_\_\_\_ 08/03/2023

EXHIBIT A

SUPPLEMENTAL RELEASE

INSTRUCTIONS: DO NOT EXECUTE ANY EARLIER THAN THE SEPARATION DATE

In consideration of the benefits and covenants set forth in the Separation Agreement (the “Agreement”) you entered into with Bellerophon Therapeutics (the “Company”), and more particularly the Separation Benefits set forth in Section 2 of the Agreement, and for other good and valuable consideration, you, Peter P. Fernandes, on behalf of yourself and your heirs, executors, administrators, successors and assigns, hereby agree and acknowledge as follows:

- (a) You agree and acknowledge that by signing this Supplemental Release and accepting the Separation Benefit, and for other good and valuable consideration provided for in the Agreement, you are waiving and releasing your right to assert any form of legal claim against the Company<sup>2/</sup> whatsoever for any alleged action, inaction or circumstance existing or arising from the beginning of time through the date you sign this Supplemental Release (the “Supplemental Release Execution Date”). Your waiver and release is intended to bar any form of legal claim, charge, complaint or any other action (jointly referred to as “Claims”) against the Company seeking any form of relief including, without limitation, equitable relief, the recovery of any damages, or any other form of monetary recovery (including, without limitation, back pay, front pay, compensatory damages, emotional distress damages, punitive damages, attorneys’ fees and any other costs), for any alleged action, inaction or circumstance existing or arising through the Execution Date. Without limiting the generality of the foregoing, you waive and release the Company from any waivable Claim arising from or related to your employment relationship with the Company through the Execution Date including, without limitation:
- (i) Claims under any New Jersey or any other state or federal employment related statute, regulation or executive order (as amended through the Execution Date) relating to any terms and conditions of employment, fair employment practices, discrimination, wages or hours, or any other employment related statute, regulation or executive order (as amended through the Execution Date), including but not limited to the Age Discrimination in Employment Act and Older Workers Benefit Protection Act, the Civil Rights Acts of 1866 and 1871 and Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991, the Equal Pay Act, the Genetic Information Non-Discrimination Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Equal Pay Act, the Lily Ledbetter Fair Pay Act, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the National Labor Relations Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, COBRA, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the New Jersey Law Against Discrimination, the New Jersey Family Leave Act, the New Jersey Wage Payment Law, the New Jersey Wage and Hour Law, the New Jersey Equal Pay Act, the New Jersey Security and Financial Empowerment Act, the New Jersey Opportunity to Compete Act, the New Jersey Family Leave Insurance provisions of the New Jersey Temporary Disability Benefits Law, the New Jersey Earned Sick Leave Law, the New Jersey WARN Act, retaliation claims under the New Jersey Workers’ Compensation Law, and any similar New Jersey or other state or federal statute. ***Please note that this Section 7 specifically includes a waiver and release of Claims that you have or may have regarding payments or amounts covered by these statutes, regulations or orders (including, for instance, hourly wages, salary, overtime, minimum wages, commissions, vacation pay, holiday pay, sick leave pay, dismissal pay, bonus pay or severance pay), as well as Claims for retaliation under these statutes, regulations or orders.***
  - (ii) Claims under any New Jersey or any other state or federal common law theory, including, without limitation, wrongful discharge, breach of express or implied contract, promissory estoppel, unjust enrichment, breach of a covenant of good faith and fair dealing, termination in violation of public policy, defamation, interference with contractual relations, intentional or negligent infliction of emotional distress, promissory estoppel, fraudulent inducement, invasion of privacy, misrepresentation, deceit, fraud or negligence or any claim to attorneys’ fees under any applicable statute or common law theory of recovery.
  - (iii) Claims under any Company employment, compensation, bonus, benefit, stock option, incentive compensation, restricted stock, and/or equity plan, program, policy, practice or agreement, including, without limitation, the Option Agreement and the Plan.
  - (iv) Any other Claim arising under other local, state or federal law.
- (b) Notwithstanding the foregoing, this Supplemental Release does not: (i) release the Company from any obligation expressly set forth in the Agreement; (ii) waive or release any legal claims which you may not waive or release by law, including obligations under

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<sup>2/</sup>For purposes of this Section 7, the “Company” means Bellerophon Therapeutics and its current and former divisions, affiliates, parents, subsidiaries and related entities, and its and their respective current and former insurers, owners, shareholders, partners, directors, officers, employees, trustees, agents, successors and assigns.

workers' compensation laws; or (iii) prohibit you from (i) filing a charge with, or participating in or assisting with an investigation or proceeding conducted by, any governmental, regulatory and/or administrative entity or agency (including the Securities Exchange Commission, the Equal Employment Opportunity Commission, and/or OSHA); (ii) filing and, including as provided for under Section 21F of the Securities Exchange Act of 1934 (and Regulation 21F thereunder), maintaining the confidentiality of, a claim with a governmental, regulatory and/or administrative entity or agency that is responsible for enforcing a law; or (iii) providing truthful information to a governmental, regulatory and/or administrative entity or agency, or court, in response to compulsory legal process or as otherwise required by law or legal process or as permitted by Section 21F of the Securities Exchange Act of 1934 (or Regulation 21F thereunder); provided, however, you waive the right to recover any personal damages or other personal relief based on any claim, cause of action, demand, lawsuit or similar that is waived pursuant to this Agreement and brought by you or on your behalf by any third party, including as a member of any class or collective action, except that you do not waive any right to receive and fully retain any monetary award from a government-administered whistleblower award program for providing information to a government agency, including but not limited to damages or relief that may be available to Employee pursuant to such a program under the Securities Exchange Act of 1934.

- (c) You acknowledge and agree that any obligation of the Company to provide you with the Separation Benefits in the Agreement is expressly conditioned on your execution of this Supplemental Release without rescission, which includes the general release of claims above.
- (d) By signing of this Supplemental Release, the provisions of Section 7 of the Agreement shall be deemed to cover any Claims which you have, may have had, or thereafter may have existing or occurring at any time on or before the date on which you sign this Supplemental Release.
- (e) If this Supplemental Release is not signed within forty-five (45) calendar days following your Separation Date, then the Company shall have no obligation to pay the Separation Benefits, but your prior release of claims under Section 7 of the Agreement shall remain in full force and effect through the date of your signing of the Agreement.
- (f) **By signing this Supplemental Release, you acknowledge and agree that:**
  - **You are over the age of 40 and have specific rights under the Age Discrimination in Employment Act (“ADEA”) and the Older Workers Benefit Protection Act (the “OWBPA”), which prohibit discrimination on the basis of age.**
  - **You have been encouraged and given the opportunity to consult with legal counsel before signing this Supplemental Release, and have had the opportunity to review this Supplemental Release with counsel of your choice.**
  - **You have been provided with forty-five (45) calendar days following your Separation Date in which to consider and accept the terms of this Supplemental Release by signing below and returning it to Naseem Amin at the address listed herein. You have been afforded sufficient time to understand the terms of this Supplemental Release, and you understand that the Supplemental Release is valid, binding, and enforceable.**
  - **Your agreements herein are made voluntarily, knowingly and without duress, and the Company has not made any representations inconsistent with this Supplemental Release.**
  - **You agree that any modifications, material or otherwise, made to this Supplemental Release do not and shall not restart or affect in any manner whatsoever, the original 45-day review period.**
  - **You may rescind your assent to this Supplemental Release if, within seven (7) calendar days after you sign this Supplemental Release, you deliver by hand or send by mail (certified, return receipt and postmarked within such 7 calendar day period), a notice of rescission to Naseem Amin. The eighth (8th) day following your execution of this Supplemental Release without rescission is the “Supplemental Release Effective Date.”**

Agreed and Acknowledged:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

August 3, 2023

Parag S. Shah

**Re: Separation Agreement**

Dear Parag:

The purpose of this letter agreement (this "Agreement") is to set forth the terms of your transition and separation from Bellerophon Therapeutics, Inc. (the "Company").

You may take up to **forty-five (45) calendar days** from the date you receive this Agreement to review it and decide whether to sign it. If you sign this Agreement and do not rescind your acceptance (as described in Section 9 below), the eighth (8th) day after you sign this Agreement shall be the Effective Date of this Agreement. As described more fully below, the payment of the Separation Benefits described in this Agreement is contingent on (i) your compliance with the terms of this Agreement; (ii) your completion of the "Transition Period" described in Section 1; (iii) your execution of this Agreement without rescission (as described in Section 9 below); and (iv) your execution without rescission of the Supplemental Release included as Exhibit A no earlier than the Applicable Separation Date (defined below) and no later than forty-five (45) days after the Applicable Separation Date.

- 1. Separation of Employment.** Your employment with the Company will end on August 31, 2023 (the "Separation Date") unless, in the Company's discretion, your final day of employment is extended beyond August 31, 2023 (the "Alternative Separation Date") (each as applicable, the "Applicable Separation Date"). In the event the Company extends your final day of employment beyond August 31, 2023, the Alternative Separation Date will operate as your Applicable Separation Date for the purposes of this Agreement. The period from the date you receive this Agreement (the "Notification Date") through the Applicable Separation Date is referred to as the "Transition Period", during which you will continue to be employed by the Company "at-will." During the Transition Period, you will perform such transition duties as may be reasonably requested by the Company including, but not limited to: (i) coordinating the resolution and shutting down of clinical studies, including accounting for a final disposition of accruals; (ii) providing management support and oversight of ongoing intellectual property activities; (iii) coordinating and supporting licensing and sublicensing arrangements with Baylor BioSciences, Inc.; and (iv) assisting with the facilitation, management, and exploration of any reverse merger opportunities identified by the Company. You will also continue to receive your base salary presently in effect in accordance with the Company's regular payroll practices, less all relevant taxes and other withholdings, continue to vest in any options to purchase shares of the Company's Common Stock under the Company's 2015 Equity Incentive Plan (the "Plan"), and continue to participate in all employee benefit plans of the Company in which you are currently participating (subject to the terms and conditions of such plans, which may be modified, amended or terminated in the Company's sole discretion). You acknowledge and agree that (i) should you provide a notice of resignation or otherwise resign your employment before the Applicable Separation Date; or (ii) should the Company terminate your employment for "Cause" (as defined below) before the Applicable Separation Date, then the Company may accelerate your final day of employment at the Company to the date of either your notice of resignation or the date of the Cause event, and you will not be entitled to, and the Company shall have no obligation to provide, any further pay and benefits during the Transition Period described herein or the Separation Benefits provided for in Section 2 below. "Cause" as used in this Agreement means your breach or other failure to comply with any Company policy, rule, or directive. From and after the Applicable Separation Date, you shall not represent yourself as an employee or agent of the Company. You shall receive your final wages for the period ending on the Applicable Separation Date, including any unused, accrued paid time off, less all applicable withholdings and deductions.
- 2. Separation Benefits.** In exchange for the promises and release of claims contained herein, and provided that: (i) you have not resigned or been terminated for Cause as described in Section 1 above before the Applicable Separation Date; (ii) you execute and do not rescind your assent to this Agreement (as described in Section 9 below); and (iii) no sooner than the Applicable Separation Date but not later than forty-five (45) days after the Applicable Separation Date, you execute, and do not rescind, the Supplemental Release of Claims set forth as Exhibit A (the "Supplemental Release"), the Company shall provide you with the following (the "Separation Benefits"):

  - (a) Separation Pay.** A lump-sum payment in the amount of \$281,200.00, which represents fifty-two (52) weeks of your current base salary, less all applicable federal, state, local and other legally required or authorized deductions. The Company shall pay the Separation Pay as follows: (i) \$140,600 payable in a single lump sum on the Effective Date; and (ii) (A) in the event that your final day of work is on the Separation Date, \$140,600 payable in a single lump sum on the first regularly scheduled payroll date following the Supplemental Release Effective Date (as defined in the Supplemental Release); or (B) in the event that your

final day of work is on the Alternative Separation Date (1) \$70,300 payable in a single lump sum on the first regularly scheduled payroll date following August 31, 2023, and (2) \$70,300 payable in a single lump sum on the first regularly scheduled payroll date following the Supplemental Release Effective Date (as defined in the Supplemental Release).

- (b) **Health Care Benefit Premium.** In the event that you receive Health Care Benefits from the Company, your Health Care Benefits will cease on the last day of the month of your final day of employment with the Company. However, to assist you in maintaining healthcare coverage after such date, and provided you continue your healthcare coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), the Company will continue to contribute on a pre-tax basis to the premium cost of your COBRA premiums for a period of six (6) months following the Applicable Separation Date or, if earlier, until you become eligible to receive health care benefits from another employer.

You agree that the Separation Benefits are something of value and that you are not already entitled to payment of this additional compensation. You acknowledge that except for the Separation Benefit, payment for accrued paid time off (PTO) and your final wages (which shall be paid to you on the first regularly scheduled payroll date following your final day of employment with the Company), you are not now and shall not in the future be entitled to any other compensation from the Company including, without limitation, other wages, commissions, bonuses, vacation pay, holiday pay, paid time off or any other form of compensation or benefit.

3. **Equity.** To the extent applicable, the terms and conditions of the Company’s 2015 Equity Incentive Plan (the “Plan”) and any award agreements executed by you pursuant thereto (collectively the “Award Agreements”) are expressly incorporated by reference herein and shall survive the signing of this Agreement. Any unvested or outstanding stock options or other equity incentives under the Plan or Award Agreements shall immediately lapse and be forfeited without consideration as of the Applicable Separation Date, provided that, subject to the terms of the Plan, you may exercise your vested options as of the Applicable Separation Date, if any, within three (3) months following the Applicable Separation Date. Following the Applicable Separation Date, you shall not have any right to acquire or vest in any form of equity under the Plan or Award Agreements, and there shall be no acceleration of vesting of any unvested stock options, unvested shares of restricted stock or other equity incentives under the Plan or Award Agreements.
4. **COBRA Benefits.** Regardless of whether you sign the Agreement, you shall have the right to elect to continue your medical and dental benefits pursuant to the terms and conditions of COBRA. Your eligibility for benefits under COBRA, the amount of such benefits, and the terms and conditions of such benefits, shall be determined by COBRA statutory and regulatory guidelines.
5. **Unemployment Benefits.** By virtue of your separation of employment, you shall be entitled to apply for unemployment benefits. The determination of your eligibility for such benefits (and the amount of benefits to which you may be entitled) shall be made by the appropriate state agency pursuant to applicable state law. The Company will not contest any claim for unemployment benefits by you.
6. **Return of Property, Confidentiality, Non-Disparagement, and Related Matters.** Subject to your preserved rights in Section 6(g) and Section 7(b), which shall apply at all times, you acknowledge and agree to the following:
- (a) As of the Applicable Separation Date, you will have returned to the Company all Company documents (and any copies, duplicates, or replicas thereof), and property, including, without limitation, the laptop computer that was provided to you by the Company during your employment, and you shall abide by any and all common law and statutory obligations relating to protection and non-disclosure of the Company’s trade secrets and confidential and proprietary documents and information.
- (b) In the event that you receive an order, subpoena, request, or demand for disclosure of the Company’s trade secrets and/or confidential and proprietary documents and information from any court or governmental agency, or from a party to any litigation or administrative proceeding, you shall as soon as reasonably possible and prior to disclosure notify the Company of same, in order to provide the Company with the opportunity to assert its respective interests in addressing or opposing such order, subpoena, request, or demand.
- (c) All information relating to this Agreement, including the terms and amount of financial consideration provided for in this Agreement, shall be held confidential by you and shall not be publicized or disclosed to any third party, provided that (i) disclosure may be made to an immediate family member, legal counsel or financial advisor who agrees to be bound by these confidentiality obligations, and (ii) disclosure may be made to any government agency as mandated or permitted by state or federal law.
- (d) To the extent you executed an Employee Confidentiality, Non-Solicitation, Non-Competition, and Work Product Assignment Agreement with the Company (the “Confidentiality Agreement”) and signed the Company Employee Handbook, you shall

honor and abide by the terms and provisions of the Confidentiality Agreement and Employee Handbook, the terms of which shall survive the termination of your employment with the Company.

- (e) You represent and agree that you have not made, and will not make, any statements that are disparaging about, or adverse to, the interests or business of the Company (including its officers, directors, employees, and direct or indirect shareholders), including, without limitation, any statements that disparage any person, product, service, finances, financial condition, capability or any other aspect of the business of the Company (including its officers, directors, employees, and direct or indirect shareholders).
- (f) Your breach of any of the foregoing covenants by you shall constitute a material breach of this Agreement and shall relieve the Company of any further obligations hereunder and, in addition to any other legal or equitable remedy available to the Company, shall entitle the Company to recover any Separation Benefit already paid to you pursuant to this Agreement.
- (g) This Agreement is intended to be exempt from or satisfy, the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), including current and future guidance and regulations interpreting such provisions, and it should be interpreted accordingly. Notwithstanding the foregoing, the Company does not guarantee that any payment hereunder complies with or is exempt from Section 409A of the Code and neither the Company, nor its executives, directors, officers, employees or affiliates shall have any liability with respect to any failure of this Agreement to comply with or be exempt from Section 409A of the Code. Each payment made under this Agreement will be treated as a separate payment for purposes of Section 409A of the Code and the right to a series of installment payments under this Agreement is to be treated as a right to a series of separate payments.
- (h) Notwithstanding the foregoing, nothing in this Section 6 prohibits or otherwise restricts you from the following: (i) initiating, testifying, assisting, complying with a subpoena from, or participating in any manner with an investigation conducted by a Governmental Agency, including without limitation, with respect to any unfair labor practice charge; (ii) making any disclosures mandated by state or federal law, or participating in an investigation with a Governmental Agency, or providing documents or information to a Governmental Agency, if requested by the agency to do so (iii) filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which you may be entitled; (iv) discussing or disclosing information about unlawful acts in or related to the workplace, including, but not limited to discrimination, harassment, sexual assault, and retaliation, wage and hour violations, conduct that is against a clear mandate of public policy, or any other conduct you have reason to believe is unlawful; (v) engaging in protected activities under Section 7 of the National Labor Relations Act (“NLRA”), including filing unfair labor practice charges, assisting Company employees in filing unfair labor practice charges, discussing the improvement of terms and conditions of employment (including regarding the terms of this Agreement) with former and current Company employees or union representatives or other third parties for the purpose of engaging in concerted activity under Section 7 of the NLRA; or (vi) making any necessary disclosures as otherwise required by law.

## 7. Your Release of Claims.

- (a) You agree and acknowledge that by signing this Agreement and accepting the Separation Benefits, and for other good and valuable consideration provided for in this Agreement, you are waiving and releasing your right to assert any form of legal claim against the Company<sup>1/</sup> whatsoever for any alleged action, inaction or circumstance existing or arising from the beginning of time through the date you sign this Agreement (the “Execution Date”). Your waiver and release is intended to bar any form of legal claim, charge, complaint or any other action (jointly referred to as “Claims”) against the Company seeking any form of relief including, without limitation, equitable relief, the recovery of any damages, or any other form of monetary recovery (including, without limitation, back pay, front pay, compensatory damages, emotional distress damages, punitive damages, attorneys’ fees and any other costs), for any alleged action, inaction or circumstance existing or arising through the Execution Date. Without limiting the generality of the foregoing, you waive and release the Company from any waivable Claim arising from or related to your employment relationship with the Company through the Execution Date including, without limitation:
  - (i) Claims under any New Jersey or any other state or federal employment related statute, regulation or executive order (as amended through the Execution Date) relating to any terms and conditions of employment, fair employment practices, discrimination, wages or hours, or any other employment related statute, regulation or executive order (as amended through the Execution Date), including but not limited to the Age Discrimination in Employment Act and Older Workers Benefit Protection Act, the Civil Rights Acts of 1866 and 1871 and Title VII of the Civil Rights Act of 1964 and the Civil

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<sup>1/</sup>For purposes of this Section 7, the “Company” means Bellerophon Therapeutics and its current and former divisions, affiliates, parents, subsidiaries and related entities, and its and their respective current and former insurers, owners, shareholders, partners, directors, officers, employees, trustees, agents, successors and assigns.

Rights Act of 1991, the Equal Pay Act, the Genetic Information Non-Discrimination Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Equal Pay Act, the Lily Ledbetter Fair Pay Act, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the National Labor Relations Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, COBRA, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the New Jersey Law Against Discrimination, the New Jersey Family Leave Act, the New Jersey Wage Payment Law, the New Jersey Wage and Hour Law, the New Jersey Equal Pay Act, the New Jersey Security and Financial Empowerment Act, the New Jersey Opportunity to Compete Act, the New Jersey Family Leave Insurance provisions of the New Jersey Temporary Disability Benefits Law, the New Jersey Earned Sick Leave Law, the New Jersey WARN Act, retaliation claims under the New Jersey Workers' Compensation Law, and any similar New Jersey or other state or federal statute. **Please note that this Section 7 specifically includes a waiver and release of Claims that you have or may have regarding payments or amounts covered by these statutes, regulations or orders (including, for instance, hourly wages, salary, overtime, minimum wages, commissions, vacation pay, holiday pay, sick leave pay, dismissal pay, bonus pay or severance pay), as well as Claims for retaliation under these statutes, regulations or orders.**

(ii) Claims under any New Jersey or any other state or federal common law theory, including, without limitation, wrongful discharge, breach of express or implied contract, promissory estoppel, unjust enrichment, breach of a covenant of good faith and fair dealing, termination in violation of public policy, defamation, interference with contractual relations, intentional or negligent infliction of emotional distress, promissory estoppel, fraudulent inducement, invasion of privacy, misrepresentation, deceit, fraud or negligence or any claim to attorneys' fees under any applicable statute or common law theory of recovery.

(iii) Claims under any Company employment, compensation, bonus, benefit, stock option, incentive compensation, restricted stock, and/or equity plan, program, policy, practice or agreement, including, without limitation, the Option Agreement and the Plan.

(iv) Any other Claim arising under other local, state or federal law.

(b) Notwithstanding the foregoing, this Section 7 does not: (i) release the Company from any obligation expressly set forth in this Agreement; (ii) waive or release any legal claims which you may not waive or release by law, including obligations under workers' compensation laws; or (iii) prohibit you from (i) filing a charge with, or participating in or assisting with an investigation or proceeding conducted by, any governmental, regulatory and/or administrative entity or agency (including the Securities Exchange Commission, the Equal Employment Opportunity Commission, and/or OSHA); (ii) filing and, including as provided for under Section 21F of the Securities Exchange Act of 1934 (and Regulation 21F thereunder), maintaining the confidentiality of, a claim with a governmental, regulatory and/or administrative entity or agency that is responsible for enforcing a law; or (iii) providing truthful information to a governmental, regulatory and/or administrative entity or agency, or court, in response to compulsory legal process or as otherwise required by law or legal process or as permitted by Section 21F of the Securities Exchange Act of 1934 (or Regulation 21F thereunder); provided, however, you waive the right to recover any personal damages or other personal relief based on any claim, cause of action, demand, lawsuit or similar that is waived pursuant to this Agreement and brought by you or on your behalf by any third party, including as a member of any class or collective action, except that you do not waive any right to receive and fully retain any monetary award from a government-administered whistleblower award program for providing information to a government agency, including but not limited to damages or relief that may be available to Employee pursuant to such a program under the Securities Exchange Act of 1934.

(c) You acknowledge and agree that any obligation of the Company to provide you with the Separation Benefits is expressly conditioned on your execution of this Agreement without rescission and your execution of the Supplemental Release without rescission (as described in Exhibit A), both of which include a general release of claims.

8. **Reference Requests.** To the extent the Company receives any reference request for you from a prospective employer, the Company shall only provide dates of employment and last position held, and shall not otherwise characterize or discuss the nature of or circumstances surrounding your separation from employment from the Company.

9. **ADEA/OWBPA Review and Rescission Period.** You acknowledge and agree that:

- You are over the age of 40 and have specific rights under the Age Discrimination in Employment Act (“**ADEA**”) and the Older Workers Benefit Protection Act (the “**OWBPA**”), which prohibit discrimination on the basis of age.
- You have been encouraged and given the opportunity to consult with legal counsel before signing this Agreement, and have had the opportunity to review this Agreement with counsel of your choice.
- You have been provided with **forty-five (45) calendar days** (which includes the period between the Notification Date and your Applicable Separation Date), in which to consider and accept the terms of this Agreement by signing below and returning it to Peter Fernandes. You have been afforded sufficient time to understand the terms of this Agreement, and you understand that the Agreement is valid, binding, and enforceable.
- Your agreements herein are made voluntarily, knowingly and without duress, and the Company has not made any representations inconsistent with this Agreement.
- You agree that any modifications, material or otherwise, made to this Agreement do not and shall not restart or affect in any manner whatsoever, the original 45-day review period.
- You may rescind your assent to this Agreement if, within seven (7) calendar days after you sign this Agreement, you deliver by hand or send by mail (certified, return receipt and postmarked within such 7 calendar day period), a notice of rescission to Naseem Amin. The eighth (8th) day following your execution of this Agreement without rescission is the “**Effective Date.**”
- Because you are being terminated with a group of other employees, and consistent with the relevant provisions of the OWBPA and ADEA, you are being provided with certain additional information, including job titles and ages of other employees in your decisional unit who were, or were not, separated from employment and offered a separation agreement, and such list is annexed to this Agreement as **Exhibit B.**

10. **General.** No modifications hereof shall be deemed valid unless reduced to writing and signed by the parties hereto. The failure of the Company to seek enforcement of any provision of this Agreement in any instance or for any period of time shall not be construed as a waiver of such provision or of the Company’s right to seek enforcement of such provision in the future. The provisions of this Agreement are severable, and if for any reason any part hereof shall be found to be unenforceable, the remaining provisions shall be enforced in full. This Agreement shall be deemed to have been made in New Jersey and shall be governed by and construed in accordance with the laws of New Jersey, without giving effect to conflict of law principles. You and the Company agree that any action, demand or claim relating to the terms of this Agreement, or to its breach, shall be commenced in New Jersey in a court of competent jurisdiction, and that venue for such actions shall lie exclusively in New Jersey. You acknowledge and agree that, other than the Confidentiality Agreement, which is expressly incorporated herein by reference and stated as surviving the signing of this Agreement, this Agreement supersedes any and all prior or contemporaneous oral and written agreements between you and the Company, and sets forth the entire agreement between you and the Company.

This Agreement may be signed in one or more copies, each of which when signed shall be deemed to be an original, and all of which together shall constitute one and the same Agreement. If the foregoing correctly sets forth our understanding, please sign, date and return the enclosed copy of this Agreement to Peter Fernandes, within **forty-five (45) calendar days**. Additionally, and as noted above (and described in **Exhibit A**), the Company is under no obligation to provide you with the Separation Benefits set forth in this Agreement unless and until you execute, without rescission, the Supplemental Release, which you may execute no earlier than the Applicable Separation Date but no later than forty-five (45) days following the Applicable Separation Date.

Sincerely,  
BELLEROPHON THERAPEUTICS

By: \_\_\_\_\_ /s/ Naseem Amin  
Date: \_\_\_\_\_ 08/03/2023

Agreed and Acknowledged:  
Parag S. Shah

By: \_\_\_\_\_ /s/ Parag S. Shah  
Date: \_\_\_\_\_ 08/03/2023

EXHIBIT A

SUPPLEMENTAL RELEASE

INSTRUCTIONS: DO NOT EXECUTE ANY EARLIER THAN THE SEPARATION DATE

In consideration of the benefits and covenants set forth in the Separation Agreement (the "Agreement") you entered into with Bellerophon Therapeutics (the "Company"), and more particularly the Separation Benefits set forth in Section 2 of the Agreement, and for other good and valuable consideration, you, Parag S. Shah, on behalf of yourself and your heirs, executors, administrators, successors and assigns, hereby agree and acknowledge as follows:

- (a) You agree and acknowledge that by signing this Supplemental Release and accepting the Separation Benefit, and for other good and valuable consideration provided for in the Agreement, you are waiving and releasing your right to assert any form of legal claim against the Company<sup>2/</sup> whatsoever for any alleged action, inaction or circumstance existing or arising from the beginning of time through the date you sign this Supplemental Release (the "Supplemental Release Execution Date"). Your waiver and release is intended to bar any form of legal claim, charge, complaint or any other action (jointly referred to as "Claims") against the Company seeking any form of relief including, without limitation, equitable relief, the recovery of any damages, or any other form of monetary recovery (including, without limitation, back pay, front pay, compensatory damages, emotional distress damages, punitive damages, attorneys' fees and any other costs), for any alleged action, inaction or circumstance existing or arising through the Execution Date. Without limiting the generality of the foregoing, you waive and release the Company from any waivable Claim arising from or related to your employment relationship with the Company through the Execution Date including, without limitation:
- (i) Claims under any New Jersey or any other state or federal employment related statute, regulation or executive order (as amended through the Execution Date) relating to any terms and conditions of employment, fair employment practices, discrimination, wages or hours, or any other employment related statute, regulation or executive order (as amended through the Execution Date), including but not limited to the Age Discrimination in Employment Act and Older Workers Benefit Protection Act, the Civil Rights Acts of 1866 and 1871 and Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991, the Equal Pay Act, the Genetic Information Non-Discrimination Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Equal Pay Act, the Lily Ledbetter Fair Pay Act, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the National Labor Relations Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, COBRA, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the New Jersey Law Against Discrimination, the New Jersey Family Leave Act, the New Jersey Wage Payment Law, the New Jersey Wage and Hour Law, the New Jersey Equal Pay Act, the New Jersey Security and Financial Empowerment Act, the New Jersey Opportunity to Compete Act, the New Jersey Family Leave Insurance provisions of the New Jersey Temporary Disability Benefits Law, the New Jersey Earned Sick Leave Law, the New Jersey WARN Act, retaliation claims under the New Jersey Workers' Compensation Law, and any similar New Jersey or other state or federal statute. ***Please note that this Section 7 specifically includes a waiver and release of Claims that you have or may have regarding payments or amounts covered by these statutes, regulations or orders (including, for instance, hourly wages, salary, overtime, minimum wages, commissions, vacation pay, holiday pay, sick leave pay, dismissal pay, bonus pay or severance pay), as well as Claims for retaliation under these statutes, regulations or orders.***
  - (ii) Claims under any New Jersey or any other state or federal common law theory, including, without limitation, wrongful discharge, breach of express or implied contract, promissory estoppel, unjust enrichment, breach of a covenant of good faith and fair dealing, termination in violation of public policy, defamation, interference with contractual relations, intentional or negligent infliction of emotional distress, promissory estoppel, fraudulent inducement, invasion of privacy, misrepresentation, deceit, fraud or negligence or any claim to attorneys' fees under any applicable statute or common law theory of recovery.
  - (iii) Claims under any Company employment, compensation, bonus, benefit, stock option, incentive compensation, restricted stock, and/or equity plan, program, policy, practice or agreement, including, without limitation, the Option Agreement and the Plan.
  - (iv) Any other Claim arising under other local, state or federal law.
- (b) Notwithstanding the foregoing, this Supplemental Release does not: (i) release the Company from any obligation expressly set forth in the Agreement; (ii) waive or release any legal claims which you may not waive or release by law, including obligations under

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<sup>2/</sup>For purposes of this Section 7, the "Company" means Bellerophon Therapeutics and its current and former divisions, affiliates, parents, subsidiaries and related entities, and its and their respective current and former insurers, owners, shareholders, partners, directors, officers, employees, trustees, agents, successors and assigns.

workers' compensation laws; or (iii) prohibit you from (i) filing a charge with, or participating in or assisting with an investigation or proceeding conducted by, any governmental, regulatory and/or administrative entity or agency (including the Securities Exchange Commission, the Equal Employment Opportunity Commission, and/or OSHA); (ii) filing and, including as provided for under Section 21F of the Securities Exchange Act of 1934 (and Regulation 21F thereunder), maintaining the confidentiality of, a claim with a governmental, regulatory and/or administrative entity or agency that is responsible for enforcing a law; or (iii) providing truthful information to a governmental, regulatory and/or administrative entity or agency, or court, in response to compulsory legal process or as otherwise required by law or legal process or as permitted by Section 21F of the Securities Exchange Act of 1934 (or Regulation 21F thereunder); provided, however, you waive the right to recover any personal damages or other personal relief based on any claim, cause of action, demand, lawsuit or similar that is waived pursuant to this Agreement and brought by you or on your behalf by any third party, including as a member of any class or collective action, except that you do not waive any right to receive and fully retain any monetary award from a government-administered whistleblower award program for providing information to a government agency, including but not limited to damages or relief that may be available to Employee pursuant to such a program under the Securities Exchange Act of 1934.

- (c) You acknowledge and agree that any obligation of the Company to provide you with the Separation Benefits in the Agreement is expressly conditioned on your execution of this Supplemental Release without rescission, which includes the general release of claims above.
- (d) By signing of this Supplemental Release, the provisions of Section 7 of the Agreement shall be deemed to cover any Claims which you have, may have had, or thereafter may have existing or occurring at any time on or before the date on which you sign this Supplemental Release.
- (e) If this Supplemental Release is not signed within forty-five (45) calendar days following your Applicable Separation Date, then the Company shall have no obligation to pay the Separation Benefits, but your prior release of claims under Section 7 of the Agreement shall remain in full force and effect through the date of your signing of the Agreement.
- (f) **By signing this Supplemental Release, you acknowledge and agree that:**
  - **You are over the age of 40 and have specific rights under the Age Discrimination in Employment Act (“ADEA”) and the Older Workers Benefit Protection Act (the “OWBPA”), which prohibit discrimination on the basis of age.**
  - **You have been encouraged and given the opportunity to consult with legal counsel before signing this Supplemental Release, and have had the opportunity to review this Supplemental Release with counsel of your choice.**
  - **You have been provided with forty-five (45) calendar days following your Applicable Separation Date in which to consider and accept the terms of this Supplemental Release by signing below and returning it to Naseem Amin at the address listed herein. You have been afforded sufficient time to understand the terms of this Supplemental Release, and you understand that the Supplemental Release is valid, binding, and enforceable.**
  - **Your agreements herein are made voluntarily, knowingly and without duress, and the Company has not made any representations inconsistent with this Supplemental Release.**
  - **You agree that any modifications, material or otherwise, made to this Supplemental Release do not and shall not restart or affect in any manner whatsoever, the original 45-day review period.**
  - **You may rescind your assent to this Supplemental Release if, within seven (7) calendar days after you sign this Supplemental Release, you deliver by hand or send by mail (certified, return receipt and postmarked within such 7 calendar day period), a notice of rescission to Naseem Amin. The eighth (8th) day following your execution of this Supplemental Release without rescission is the “Supplemental Release Effective Date.”**

Agreed and Acknowledged:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

## CERTIFICATION

I, Peter Fernandes, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Bellerophon Therapeutics, Inc.;
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 14, 2023

By: /s/ Peter Fernandes  
Peter Fernandes  
*Chief Executive Officer*  
*(Principal Executive Officer and*  
*Principal Financial and Accounting Officer)*

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

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), each of the undersigned officers of Bellerophon Therapeutics, Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

(1) the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 14, 2023

By: /s/ Peter Fernandes

Peter Fernandes

*Chief Executive Officer*

*(Principal Executive Officer and*

*Principal Financial and Accounting Officer)*

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