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

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): January 25, 2024

**Bellerophon Therapeutics, Inc.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or Other Jurisdiction of Incorporation)

**001-36845**  
(Commission  
File Number)

**47-3116175**  
(IRS Employer  
Identification No.)

**c/o Verdolino & Lowey, P.C.**  
**124 Washington Street, Suite 101**  
**Foxborough, MA**  
(Address of Principal Executive Offices)

**02035**  
(Zip Code)

Registrant's telephone number, including area code: **(908) 574-4770**

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)  
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)  
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))  
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
<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 is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

- Emerging growth company
- If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.
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**Item 1.01. Entry Into a Material Definitive Agreement**

On January 25, 2024, Bellerophon Therapeutics, Inc. (the “Company”) entered into a Subscription and Investment Representation Agreement (the “Subscription Agreement”) with a single accredited investor (the “Subscriber”), pursuant to which the Company agreed to issue and sell one share of the Company’s Series A Preferred Stock, par value \$0.01 per share (the “Series A Preferred Stock”), to the Subscriber for \$1.00 in cash. The sale was completed and settled on January 25, 2024. The Subscription Agreement contains customary representations and warranties and certain indemnification rights and obligations of the parties.

Additional information regarding the rights, preferences, privileges and restrictions applicable to the Series A Preferred Stock is set forth under Item 5.03 of this Current Report on Form 8-K and is incorporated herein by reference.

The foregoing summary of the Subscription Agreement does not purport to be complete and is subject to, and qualified in its entirety by, such document, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities**

The disclosure required by this Item is included in Item 1.01 of this Current Report on Form 8-K and is incorporated herein by reference. Based in part upon the representations of the Subscriber in the Subscription Agreement, the offering and sale of the Series A Preferred Stock was exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended.

**Item 3.03 Material Modifications to Rights of Security Holders**

The disclosure required by this Item is included in Item 5.03 of this Current Report on Form 8-K and is incorporated herein by reference.

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

On January 25, 2024, the Company filed a certificate of designation (the “Certificate of Designation”) with the Secretary of State of the State of Delaware designating, effective as of the time of filing, the rights, preferences, privileges and restrictions of one share of Series A Preferred Stock. The Certificate of Designation provides that each share of Series A Preferred Stock will have a number of votes equal to the number of outstanding shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), on the record date for determining stockholders entitled to vote, and will vote together with the outstanding shares of Common Stock as a single class exclusively with respect to (i) any proposal to approve the liquidation and dissolution of the Company and any related plan of liquidation and dissolution (the “Dissolution Proposal”), (ii) any proposal to adjourn any meeting of stockholders called for the purpose of voting on the Dissolution Proposal, or (iii) any other matter the Board determines (in its sole discretion) is related to the Dissolution Proposal. The Series A Preferred Stock will be voted on any such proposals in a manner proportionate to that in which all shares of Common Stock present, in person or by proxy, at the meeting and entitled to vote on the proposals described above are voted with respect thereto, such that the votes reflect the voting results with respect to “shares voted for,” “shares voted against,” and “shares abstained” (if any) proportionate to such aggregate voting results on such voting proposals. The Series A Preferred Stock otherwise has no voting rights except as otherwise required by the General Corporation Law of the State of Delaware.

The Series A Preferred Stock is not convertible into shares of Common Stock or any other class or series of stock of the Company. In the event of any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, in priority to any distributions to the holders of Common Stock, out of the assets, whether capital or surplus, of the Company an amount equal to \$0.01 in the aggregate. The holder of the Series A Preferred Stock will not be entitled to receive dividends of any kind.

Unless prohibited by Delaware law by virtue of a lack of sufficient surplus, legally available funds or otherwise and subject to the fiduciary duties of the Board of Directors of the Company, the outstanding shares of Series A Preferred Stock may be redeemed at any time upon the order of the Board of Directors in its sole discretion. Upon such redemption, the holders of the Series A Preferred Stock will receive consideration of \$0.01 in cash.

The foregoing summary of the Certificate of Designation does not purport to be complete and is subject to, and qualified in its entirety by, such document, which is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

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## **Item 8.01. Other Events.**

### **Rescheduled Special Meeting to Approve Dissolution Proposal**

On January 22, 2022, the Company announced that it had rescheduled its special meeting to, among other things, consider and vote on the Dissolution Proposal.

The Company has rescheduled the special meeting to March 1, 2024 and declared a new record date of the close of business on February 5, 2024 for the special meeting. Only stockholders of record holding shares of Common Stock or Series A Preferred Stock as of the close of business on the new record date are entitled to notice of, and to vote at, the special meeting or any adjournments thereof. The Company will mail a notice of meeting, original proxy statement and proxy statement supplement to stockholders of record and stockholders who hold shares in street name through a bank, broker or other institution, in each case as of the new record date.

### **Additional Information and Where to Find It**

In connection with the special meeting described above, the Company filed a definitive proxy statement with the Securities and Exchange Commission on November 6, 2023 and in connection with the rescheduled meeting the Company will file with the Securities and Exchange Commission a supplement to the definitive proxy statement. This press release does not contain all the information that should be considered concerning the matters to be considered at the special meeting, including the proposed Dissolution Proposal, and is not intended to form the basis of any investment decision or any other decision in respect of such matters.

The Company's stockholders and other interested persons are advised to read the definitive proxy statement and, when available, the proxy supplement, and any amendments thereto, and any other documents filed in connection with the matters to be considered at the special meeting, including the proposed Dissolution Proposal, as these materials will contain important information about the Company and such matters. The Company's stockholders will also be able to obtain copies of these documents filed with the SEC, without charge, once available, at the SEC's website at [www.sec.gov](http://www.sec.gov), or by directing a request to the Company's corporate secretary at Verdolino & Lowey, P.C. at 124 Washington St., Suite 101, Foxborough, Massachusetts 02035, Attention: Bellerophon Therapeutics.

### **Participants in Solicitation**

The Company has engaged Georgeson LLC to assist us with the solicitation of proxies in connection with the special meeting.

The Company and its directors and executive officers may also be deemed participants in the solicitation of proxies from the Company's stockholders with respect to the special meeting. A list of the names of those directors and executive officers and a description of their interests in the Company is contained in the Company's Annual Report for the year ended December 31, 2022 on Form 10-K, as amended, which was filed with the SEC and is available free of charge at the SEC's web site at [www.sec.gov](http://www.sec.gov). To the extent such holdings of the Company's securities may have changed since that time, such changes have been or will be reflected on Statements of Change in Ownership on Form 4 filed with the SEC. Additional information regarding the interests of such participants will be contained in the definitive proxy statement, proxy supplement and any amendments thereto and any other documents filed in connection with the rescheduled special meeting when available.

### **Forward Looking Statements**

Certain information contained in this press release includes "forward-looking statements" within the meaning of The Private Securities Litigation Reform Act of 1995, including statements related to the rescheduled special meeting. We may, in some cases, use terms such as "predicts," "believes," "potential," "continue," "anticipates," "estimates," "expects," "plans," "intends," "may," "could," "might," "will," "should" or other words that convey uncertainty of the future events or outcomes to identify these forward-looking statements. Our forward-looking statements are based on current beliefs and expectations of our management team that involve risks, potential changes in circumstances, assumptions, and uncertainties. Any or all of the forward-looking statements may turn out to be wrong or be affected by inaccurate assumptions we might make or by known or unknown risks and uncertainties, including, among other, the failure to obtain stockholder approval of the proposed Plan of Dissolution, and various other factors. For a more detailed description of the risks and uncertainties that could cause actual results to differ from those expressed in these forward-looking statements, as well as risks relating to our business in general, please refer to our most recent Quarterly Reports on Form 10-Q and the definitive proxy statement filed on November 6, 2023. You are cautioned not to place undue reliance on these forward-looking statements, which are made only as of the date of this press release. We undertake no obligation to publicly update such forward-looking statements to reflect subsequent events or circumstances.

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

**(d) Exhibits.**

<b>Exhibit Number</b>	<b>Description</b>
<a href="#">3.1</a>	<a href="#">Certificate of Designation of Series A Preferred Stock dated January 25, 2024</a>
<a href="#">10.1</a>	<a href="#">Form of Subscription and Investment Representation Agreement dated January 25, 2024</a>
104	Cover Page Interactive Data File (Embedded within the Inline XBRL Document).

**SIGNATURES**

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

Date: January 30, 2024

**BELLEROPHON THERAPEUTICS, INC.**

By: /s/ Craig Jalbert  
Name: Craig Jalbert  
Title: President

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**CERTIFICATE OF DESIGNATION OF  
SERIES A PREFERRED STOCK OF  
BELLEROPHON THERAPEUTICS, INC.**

Bellerophon Therapeutics, Inc., a Delaware corporation ("Company"), does hereby certify that the Board of Directors of the Company ("Board") adopted the following resolution:

**RESOLVED**, pursuant to authority conferred by the Restated Certificate of Incorporation of the Company, the Board designates, creates and authorizes a series of preferred stock, par value \$0.01 per share, with the powers, preferences and relative, participating, optional and other special rights, and qualifications, limitations, and restrictions thereof, as follows.

1. Number and Designation. There is one authorized share of this series, designated "Series A Preferred Stock".

2. Voting. Except as provided in this Section 2 or required by law, the Series A Preferred Stock shall not entitle the holder thereof, as such, to vote on any matter. If the holder of the Series A Preferred Stock votes the Series A Preferred Stock, in person or by proxy, in accordance with the Voting Formula on any Voting Proposal, the Series A Preferred Stock shall entitle the holder thereof, as such, to (i) vote with the holders of common stock, par value \$0.01 per share ("Common Stock") as a single class and (ii) cast a number of votes, in person or by proxy, equal to the number of shares of Common Stock outstanding on the record date for determining stockholders entitled to vote on such Voting Proposal (such number of votes, "Votes"). For this purpose:

- "Voting Proposal" means a proposal to approve (i) the liquidation and dissolution of the Company and any related plan of liquidation and dissolution ("Dissolution Proposal"), (ii) an adjournment of any meeting at which a Dissolution Proposal is presented to stockholders, or (iii) any other matter the Board determines (in its sole discretion) is related to a Dissolution Proposal.
- "Voting Formula" means that the Votes are cast with respect to such Voting Proposal in a manner proportionate to that in which all shares of Common Stock present, in person or by proxy, at the meeting and entitled to vote on the Voting Proposal are voted with respect to such Voting Proposal, such that the Votes with respect to such Voting Proposal reflect the voting results with respect to "shares voted for," "shared voted against," and "shares abstained" (if any) proportionate to such aggregate voting results on such Voting Proposal.

3. Liquidation Preference. Upon the liquidation, dissolution or winding up of the Company, the holder of the Series A Preferred Stock shall be entitled to receive \$0.01, payable in cash out of funds legally available therefor, by reason of its ownership thereof, which shall be paid prior to the payment of any amounts to the holders of Common Stock in connection with such liquidation, dissolution or winding up, and no more. Any series of preferred stock authorized and issued by the Company following the effectiveness of this Certificate of Designation may rank senior or junior to, or on parity with, the Series A Preferred Stock, as determined by the terms of such series of preferred stock.

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4. Dividends. No dividends shall be paid on the Series A Preferred Stock.

5. Redemption. The Series A Preferred Stock may be redeemed at any time at the option of the Board of Directors (in its sole discretion) for \$0.01, payable in cash and only out of funds legally available therefor.

6. Merger or Consolidation. In the event of a merger or consolidation of the Company with or into another entity (whether or not the Company is the surviving entity), the holder of Series A Preferred Stock shall not be entitled to receive any consideration in respect thereof.

7. Transfer Restriction. The Series A Preferred Stock shall be uncertificated. The holder of the Series A Preferred Stock shall not, directly or indirectly, transfer such share to any other person or entity without the prior written consent of the Board (acting in its sole discretion); *provided* that this sentence shall not prohibit the provision of a proxy to any person designated by the Company in connection with any Voting Proposal. A purported transfer in violation of this Section 7 shall be null and void *ab initio*.

8. Amendments. In addition to any vote required by law, any amendment to the provisions of this Certificate of Designation shall require the approval of the holder of the Series A Preferred Stock, voting as a separate class.

\* \* \* \* \*

In witness whereof, the undersigned has caused this Certificate to be signed by a duly authorized officer on the date set forth below.

**BELLEROPHON THERAPEUTICS, INC.**

By: /s/ Craig Jalbert

Name: Craig Jalbert

Title: President

Dated: January 25, 2024

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**Bellerophon Therapeutics, Inc.**  
**Series A Non-Convertible Preferred Stock**

**SUBSCRIPTION AND INVESTMENT REPRESENTATION AGREEMENT**

THIS AGREEMENT, dated as of January 25, 2024, is by and between Bellerophon Therapeutics, Inc., a Delaware corporation (the “**Company**”), and the undersigned subscriber (the “**Subscriber**”). In consideration of the mutual promises contained herein, and other good, valuable and adequate consideration, the parties hereto agree as follows:

1. Agreement of Sale; Closing. The Company agrees to sell to Subscriber, and Subscriber agrees to purchase from the Company, one (1) share of the Company’s Series A Preferred Stock, par value \$0.01 per share (the “**Securities**”), which Securities shall have the rights, preferences, privileges and restrictions set forth in the Certificate of Designation attached hereto as Exhibit A (the “**Certificate of Designation**”). Subscriber hereby acknowledges and agrees to the entire terms of the Certificate of Designation, including, without limitation, the voting rights in Section 3, the restrictions on transfer of the Securities in Section 5 and the redemption of the Securities pursuant to Section 6 of the Certificate of Designation. The purchase price will be paid by the Subscriber to the Company in cash at the price of \$1.00 in the aggregate.

2. Representations and Warranties of Subscriber. In consideration of the Company’s offer to sell the Securities, and in addition to the purchase price to be paid, Subscriber hereby covenants, represents and warrants to the Company as follows:

a. Information About the Company.

i. Subscriber is aware that the Company has limited cash and cash equivalents and there is substantial doubt about its ability to continue as a going concern.

ii. Subscriber has had an opportunity to ask questions of, and receive answers from, the Company concerning the business, management, and financial and compliance affairs of the Company and the terms and conditions of the purchase of the Securities contemplated hereby. Subscriber has had an opportunity to obtain, and has received, any additional information deemed necessary by the Subscriber to verify such information in order to form a decision concerning an investment in the Company.

b. Information on Subscriber. Subscriber is not an employee, officer, director, contractor, agent, representative, beneficiary, and/or affiliate of the Company.

c. Restrictions on Transfer. Subscriber covenants, represents and warrants that the Securities are being purchased for Subscriber’s own personal account and for Subscriber’s individual investment and without the intention of reselling or redistributing the same, that Subscriber has made no agreement with others regarding any of such Securities, and that Subscriber’s financial condition is such that it is not likely that it will be necessary to dispose of any of the Securities in the foreseeable future. Moreover, Subscriber acknowledges that any of the aforementioned actions may require the prior written consent of the Company’s board of directors pursuant to the Certificate of Designation. Subscriber is aware that, in the view of the Securities and Exchange Commission, a purchase of the Securities with an intent to resell by reason of any foreseeable specific contingency or anticipated change in market values, or any change in the condition of the Company, or in connection with a contemplated liquidation or settlement of any loan obtained by Subscriber for the acquisition of the Securities and for which the Securities were pledged as security, would represent an intent inconsistent with the covenants, warranties and representations set forth above. Subscriber understands that the Securities have not been registered under the Securities Act of 1933, as amended (the “**Securities Act**”), or any state or foreign securities laws in reliance on exemptions from registration under these laws, and that, accordingly, the Securities may not be resold by the undersigned (i) unless they are registered under both the Securities Act and applicable state or foreign securities laws or are sold in transactions which are exempt from such registration, and (ii) except in compliance with Section 5 of the Certificate of Designation, which may require the prior written consent of the Company’s board of directors. Subscriber therefore agrees not to sell, assign, transfer or otherwise dispose of the Securities (i) unless a registration statement relating thereto has been duly filed and become effective under the Securities Act and applicable state or foreign securities laws, or unless in the opinion of counsel satisfactory to the Company no such registration is required under the circumstances, and (ii) except in compliance with Section 5 of the Certificate of Designation. There is not currently, and it is unlikely that in the future there will exist, a public market for the Securities; and accordingly, for the above and other reasons, Subscriber may not be able to liquidate an investment in the Securities for an indefinite period.

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d. High Degree of Economic Risk. Subscriber realizes that an investment in the Securities involves a high degree of economic risk to the Subscriber, including the risks of receiving no return on the investment and/or of losing Subscriber's entire investment in the Company. Subscriber is able to bear the economic risk of investment in the Securities, including the total loss of such investment. The Company can make no assurance regarding its future financial performance or as to the future profitability of the Company.

e. Suitability. Subscriber has such knowledge and experience in financial, legal and business matters that Subscriber is capable of evaluating the merits and risks of an investment in the Securities. Subscriber has obtained, to the extent deemed necessary, Subscriber's own personal professional advice with respect to the risks inherent in, and the suitability of, an investment in the Securities in light of Subscriber's financial condition and investment needs. Subscriber believes that the investment in the Securities is suitable for Subscriber based upon Subscriber's investment objectives and financial needs, and Subscriber has adequate means for providing for Subscriber's current financial needs and personal contingencies and has no need for liquidity of investment with respect to the Securities. Subscriber understands that no federal or state agency has made any finding or determination as to the fairness for investment, nor any recommendation or endorsement, of the Securities.

f. Tax Liability. Subscriber has reviewed with Subscriber's own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement, and has and will rely solely on such advisors and not on any statements or representations of the Company or any of its agents, representatives, employees or affiliates or subsidiaries. Subscriber understands that Subscriber (and not the Company) shall be responsible for Subscriber's own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement. Under penalties of perjury, Subscriber certifies that Subscriber is not subject to back-up withholding either because Subscriber has not been notified that Subscriber is subject to back-up withholding as a result of a failure to report all interest and dividends, or because the Internal Revenue Service has notified Subscriber that Subscriber is no longer subject to back-up withholding.

g. Limitation Regarding Representations. Except as set forth in this Agreement, no covenants, representations or warranties have been made to Subscriber by the Company or any agent, representative, employee, director or affiliate or subsidiary of the Company and in entering into this transaction, Subscriber is not relying on any information, other than that contained herein and the results of independent investigation by Subscriber without any influence by Company or those acting on Company's behalf. Subscriber agrees it is not relying on any oral or written information not expressly included in this Agreement, including but not limited to the information which has been provided by the Company, its directors, its officers or any affiliate or subsidiary of any of the foregoing.

h. Authority.

i. Entity. If the undersigned is not an individual but an entity, the individual signing on behalf of such entity and the entity jointly and severally agree and certify that (a) the undersigned was not organized for the specific purpose of acquiring the Securities and (b) this Agreement has been duly authorized by all necessary action(s) on the part of the undersigned, has been duly executed by an authorized officer, agent or representative of the undersigned, and is a legal, valid and binding obligation of the undersigned enforceable in accordance with its terms.

ii. Individual. If the undersigned is an individual, the undersigned is of legal age.

3. Legend. Subscriber consents to the notation of the Securities with the following legend reciting restrictions on the transferability of the Securities:

The Securities represented hereby have not been registered under the Securities Act of 1933, as amended (the "**Securities Act**"), and have not been registered under any state securities laws. These Securities may not be sold, offered for sale or transferred, without first obtaining (i) an opinion of counsel satisfactory to the Company that such sale or transfer lawfully is exempt from registration under the Securities Act and under the applicable state securities laws or (ii) such registration. Moreover, these Securities may be transferred only in accordance with the terms of the Company's Certificate of Designation of Series A Preferred Stock, a copy of which is on file with the Secretary of the Company.

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**PARAGRAPH 4 IS REQUIRED IN CONNECTION WITH THE EXEMPTIONS FROM THE SECURITIES ACT AND STATE LAWS BEING RELIED ON BY THE COMPANY WITH RESPECT TO THE OFFER AND SALE OF THE SECURITIES HEREUNDER. ALL OF SUCH INFORMATION WILL BE KEPT CONFIDENTIAL AND WILL BE REVIEWED ONLY BY THE COMPANY AND ITS COUNSEL. THE UNDERSIGNED AGREES TO FURNISH ANY ADDITIONAL INFORMATION THAT THE COMPANY AND ITS COUNSEL DEEM NECESSARY TO VERIFY THE RESPONSES SET FORTH BELOW.**

4. Accredited Status. Subscriber covenants, represents and warrants that it qualifies as an “accredited investor” as that term is defined in Regulation D under the Securities Act. The information provided under this section of the Agreement is required in connection with the exemptions from the Securities Act and state securities laws being relied on by the Company with respect to the offer and sale of the Securities. The undersigned agrees to furnish any additional information which the Company or its legal counsel deem necessary in order to verify the responses set forth above.
5. Holding Status. Subscriber desires that the Securities be held as set forth on the signature page hereto.
6. Confidentiality. Subscriber will make no written or other public disclosures regarding the Company and its business, the terms or existence of the proposed or actual sale of Securities or regarding the parties to the proposed or actual sale of Securities to any individual or organization without the prior written consent of the Company, except as may be required by law.
7. Notice. Correspondence regarding the Securities should be directed to Subscriber at the address provided by Subscriber to the Company in writing.
8. No Assignment or Revocation; Binding Effect. Neither this Agreement, nor any interest herein, shall be assignable or otherwise transferable, restricted or limited by Subscriber without prior written consent of the Company. Subscriber hereby acknowledges and agrees that Subscriber is not entitled to cancel, terminate, modify or revoke this Agreement in any way and that the Agreement shall survive the death, incapacity or bankruptcy of Subscriber. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.
9. Indemnification. The Company agrees to indemnify and hold harmless the Subscriber and each current and future officer, director, employee, agent, representative and shareholder, if any, of the Subscriber from and against any and all costs, expenses, loss, damage, judgments or liability associated with this Agreement and the issuance and voting of the Securities.
10. Modifications. This Agreement may not be changed, modified, released, discharged, abandoned or otherwise amended, in whole or in part, except by an instrument in writing, signed by the Subscriber and the Company. No delay or failure of the Company in exercising any right under this Agreement will be deemed to constitute a waiver of such right or of any other rights.
11. Entire Agreement. This Agreement and the exhibits hereto are the entire agreement between the parties with respect to the subject matter hereto and thereto. This Agreement, including the exhibits, supersede any previous oral or written communications, representations, understandings or agreements with the Company or with any officers, directors, agents or representatives of the Company.
12. Severability. In the event that any paragraph or provision of this Agreement shall be held to be illegal or unenforceable in any jurisdiction, such paragraph or provision shall, as to that jurisdiction, be adjusted and reformed, if possible, in order to achieve the intent of the parties hereunder, and if such paragraph or provision cannot be adjusted and reformed, such paragraph or provision shall, for the purposes of that jurisdiction, be voided and severed from this Agreement, and the entire Agreement shall not fail on account thereof but shall otherwise remain in full force and effect.
13. Governing Law. This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of Delaware without regard to conflict of law principles.
14. Survival of Covenants, Representations and Warranties. Subscriber understands the meaning and legal consequences of the agreements, covenants, representations and warranties contained herein, and agrees that such agreements, covenants, representations and warranties shall survive and remain in full force and effect after the execution hereof and payment by Subscriber for the Securities.

***[Remainder of page left blank intentionally - signature page follows]***

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For good, valuable and adequate consideration, the receipt and sufficiency of which is hereby acknowledged, Subscriber hereby agrees that ***by signing this Subscription and Investment Representation Agreement, and upon acceptance hereof by the Company***, that the terms, provisions, obligations and agreements of this Agreement shall be binding upon Subscriber, and such terms, provisions, obligations and agreements shall inure to the benefit of and be binding upon Subscriber and its successors and assigns.

**INDIVIDUAL(S):**

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

**ENTITY:**

Entity Name:

By:

Name:

Its:

**The Company hereby accepts the subscription evidenced by this Subscription and Investment Representation Agreement:**

**Bellerophon Therapeutics, Inc.**

By:

Craig Jalbert

*President*

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**Exhibit A**

**Certificate of Designation**

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