

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

FORM 10-Q

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the Quarterly Period Ended: March 31, 2023

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File Number: 001-39101

Baudax Bio, Inc.

(Exact name of registrant as specified in its charter)

Pennsylvania
(State or other jurisdiction of
incorporation or organization)

490 Lapp Road, Malvern, Pennsylvania

(Address of principal executive offices)

47-4639500
(I.R.S. Employer
Identification No.)

19355

(Zip Code)

(484) 395-2440

(Registrant's telephone number, including area code)

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

<u>Title of Each Class</u>	<u>Trading Symbol</u>	<u>Name of Exchange on Which Registered</u>
Common Stock, par value \$0.01	BXRX	Nasdaq Capital Market

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

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

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

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

As of May 9, 2023, there were 6,063,964 shares of common stock, par value \$0.01 per share, outstanding.

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Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q, or Quarterly Report, contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, included in this Quarterly Report regarding our strategy, future operations, future financial position, future revenues, projected costs, prospects, plans and objectives of management are forward-looking statements. The words “anticipate,” “believe,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “will,” “would,” “could,” “should,” “potential,” “seek,” “evaluate,” “pursue,” “continue,” “design,” “impact,” “affect,” “forecast,” “target,” “outlook,” “initiative,” “objective,” “designed,” “priorities,” “goal,” or the negative of such terms and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Such statements are based on assumptions and expectations that may not be realized and are inherently subject to risks, uncertainties and other factors, many of which cannot be predicted with accuracy and some of which might not even be anticipated.

These forward-looking statements in this Quarterly Report include, among other things, statements about:

- our estimates regarding expenses, revenue, capital requirements and timing and availability of and the need for additional financing;
- our ability to continue as a going concern for the next twelve months;
- our ability to operate under significant indebtedness;
- our ability to maintain the listing of our common stock on the Nasdaq Capital Market;
- our ability to obtain regulatory approval for any product candidates that we may develop, and any related restrictions, limitations, or warnings in the label of any approved product candidates;
- our ability to successfully market, commercialize and achieve broad market acceptance for any of our product candidates once approved;
- our ability and that of our third-party manufacturers to successfully scale-up our clinical and commercial manufacturing process for our product candidates;
- the results, timing and outcome of our clinical trials of our product candidates, and any future clinical trials and preclinical studies;
- our ability to source materials needed for our product candidates, optimize formulations for stability and other characteristics;
- our relationships with licensors, collaborators, other third parties and our employees;
- the effects of changes in our effective tax rate due to changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of deferred tax assets and liabilities, tax impacts and net operating loss utilization related to the separation from Societal CDMO’s acute care business and transfer of such assets to us, or the Separation, and changes in the tax laws;
- our ability to comply with the regulatory schemes applicable to our business and other regulatory developments in the United States and foreign countries;
- the performance of third-parties upon which we depend, including third-parties involved with clinical trial execution, and third-party suppliers, manufacturers, supply chain and logistics providers;
- our ability to obtain and maintain patent protection and defend our intellectual property rights against third-parties;
- our ability to develop relationships with potential development partners;
- our ability to defend any material litigation filed against us and avoid liabilities resulting from any material litigation;
- our ability to recruit or retain key scientific, technical, and management personnel or to retain our executive officers;
- our ability to raise future financing for continued development of our business and our product candidates and to meet any required debt payments, and any milestone payments we may owe;
- the volatility of capital markets and other macroeconomic factors, including inflationary pressures, banking instability issues, geopolitical tensions or the outbreak of hostilities or war;
- our ability to operate under leverage and comply with associated lending covenants; to pay existing required interest and principal amortization payments when due; and/or to obtain acceptable refinancing alternatives; and

•our expectations regarding continuing effects of the COVID-19 pandemic, including manufacturing and supply chain interruptions, adverse effects on healthcare systems and disruption of the global economy, and the overall impact of the COVID-19 pandemic on our business, financial condition and results of operations.

Any forward-looking statements that we make in this Quarterly Report speak only as of the date of such statement, and we undertake no obligation to update such statements to reflect events or circumstances after the date of this Quarterly Report or to reflect the occurrence of unanticipated events. Comparisons of results for current and any prior periods are not intended to express any future trends or indications of future performance, unless expressed as such, and should only be viewed as historical data.

You should also read carefully the factors described in the “Risk Factors” included in Part II, Item 1A of this Quarterly Report and Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 filed with the SEC on February 23, 2023, or the 2022 Annual Report, to better understand significant risks and uncertainties inherent in our business and underlying any forward-looking statements. As a result of these factors, actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements in this Quarterly Report and you should not place undue reliance on any forward-looking statements.

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

BAUDAX BIO, INC.
Consolidated Balance Sheets
(Unaudited)

(amounts in thousands, except share and per share data)

	March 31, 2023	December 31, 2022
Assets		
Current assets:		
Cash and cash equivalents	\$ 3,803	\$ 5,259
Prepaid expenses and other current assets	305	303
Current assets of discontinued operation	—	785
Total current assets	4,108	6,347
Property and equipment, net	1	9
Goodwill	2,127	2,127
Other long-term assets	829	854
Non-current assets of discontinued operation	—	695
Total assets	<u>\$ 7,065</u>	<u>\$ 10,032</u>
Liabilities and Shareholders' (Deficit) Equity		
Current liabilities:		
Accounts payable	\$ 3,837	\$ 3,198
Accrued expenses and other current liabilities	2,534	2,364
Current portion of long-term debt, net	6,000	5,600
Current liabilities of discontinued operation	—	10,298
Total current liabilities	12,371	21,460
Long-term debt, net	1,433	1,519
Other long-term liabilities	574	598
Non-current liabilities of discontinued operation	—	10,697
Total liabilities	14,378	34,274
Commitments and contingencies (Note 11)		
Shareholders' (deficit) equity:		
Preferred stock, \$0.01 par value. Authorized, 10,000,000 shares; issued and outstanding, 0 shares at March 31, 2023 and December 31, 2022	—	—
Common stock, \$0.01 par value. Authorized, 190,000,000 shares; issued and outstanding, 2,585,702 shares at March 31, 2023 and 1,623,913 shares at December 31, 2022	26	16
Additional paid-in capital	172,161	166,646
Accumulated deficit	(179,500)	(190,904)
Total shareholders' deficit	(7,313)	(24,242)
Total liabilities and shareholders' deficit	<u>\$ 7,065</u>	<u>\$ 10,032</u>

See accompanying notes to consolidated financial statements.

BAUDAX BIO, INC.
Consolidated Statements of Operations
(Unaudited)

(amounts in thousands, except share and per share data)	For the Three Months Ended March 31,	
	2023	2022
Operating expenses:		
Research and development	\$ 2,917	\$ 694
Selling, general and administrative	1,771	6,934
Change in warrant valuation	—	(5)
Total operating expenses	4,688	7,623
Operating loss from continuing operations	(4,688)	(7,623)
Other expense:		
Other expense, net	(2,698)	(571)
Net loss from continuing operations	\$ (7,386)	\$ (8,194)
Income (loss) on discontinued operation	18,790	(4,615)
Net income (loss)	<u>\$ 11,404</u>	<u>\$ (12,809)</u>
Per share information:		
Net loss per share from continuing operations, basic and diluted	\$ (3.19)	\$ (81.16)
Net income (loss) per share from discontinued operation, basic and diluted	\$ 8.10	\$ (45.71)
Net income (loss) per share, basic and diluted	\$ 4.91	\$ (126.87)
Weighted average common shares outstanding, basic and diluted	<u>2,318,539</u>	<u>100,961</u>

See accompanying notes to consolidated financial statements.

BAUDAX BIO, INC.
Consolidated Statements of Shareholders' (Deficit) Equity
(Unaudited)

For the Three Months Ended March 31, 2023

(amounts in thousands, except share data)	Preferred Stock		Common Stock		Additional paid-in capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount			
Balance, December 31, 2022	—	\$ —	1,623,913	\$ 16	\$ 166,646	\$ (190,904)	\$ (24,242)
Stock-based compensation expense	—	—	—	—	194	—	194
Issuance of common stock and warrants for public offering, net	—	—	—	—	(55)	—	(55)
Issuance of shares pursuant to vesting of restricted stock units, net of shares withheld for income taxes	—	—	2	—	—	—	—
Exercise of warrants	—	—	961,787	10	4,318	—	4,328
Issuance of warrants for MAM debt amendment	—	—	—	—	1,058	—	1,058
Net income	—	—	—	—	—	11,404	11,404
Balance, March 31, 2023	—	\$ —	<u>2,585,702</u>	\$ <u>26</u>	\$ <u>172,161</u>	\$ <u>(179,500)</u>	\$ <u>(7,313)</u>

See accompanying notes to consolidated financial statements.

BAUDAX BIO, INC.
Consolidated Statements of Shareholders' (Deficit) Equity
(Unaudited)

For the Three Months Ended March 31, 2022

(amounts in thousands, except share data)	Preferred Stock		Common Stock		Additional paid-in capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount			
Balance, December 31, 2021	8,289	\$ —	70,181	\$ 1	\$ 145,314	\$ (132,089)	\$ 13,226
Stock-based compensation expense	—	—	—	—	521	—	521
Issuance of common stock and warrants for registered direct offerings, net	—	—	—	—	(13)	—	(13)
Issuance of common stock and warrants for public offering, net	—	—	87,719	1	8,817	—	8,818
Issuance of shares pursuant to vesting of restricted stock units, net of shares withheld for income taxes	—	—	56	—	—	—	—
Conversion of preferred stock	(8,289)	—	2,368	—	—	—	—
Net loss	—	—	—	—	—	(12,809)	(12,809)
Balance, March 31, 2022	<u>—</u>	<u>\$ —</u>	<u>160,324</u>	<u>\$ 2</u>	<u>\$ 154,639</u>	<u>\$ (144,898)</u>	<u>\$ 9,743</u>

See accompanying notes to consolidated financial statements.

BAUDAX BIO, INC.
Consolidated Statements of Cash Flows
(Unaudited)

(amounts in thousands)	For the Three Months Ended March 31,	
	2023	2022
Cash flows from operating activities:		
Net income (loss)	\$ 11,404	\$ (12,809)
(Income) loss on discontinued operation	(18,790)	4,615
Adjustments to reconcile net income (loss) from continuing operations to net cash used in operating activities from continuing operations:		
Stock-based compensation	191	491
Non-cash interest expense	276	226
Depreciation expense	3	14
Non-cash loss on retirement of fixed assets	5	—
Loss on extinguishment of debt	2,196	—
Change in warrant valuation	—	(5)
Changes in operating assets and liabilities:		
Prepaid expenses and other assets	28	(325)
Accounts payable, accrued expenses and other liabilities	749	2,021
Net cash used in operating activities, continuing operations	(3,938)	(5,772)
Cash flows from financing activities:		
Payment of deferred financing costs	(5)	—
Proceeds from public offering, net of transaction costs	(15)	9,074
Proceeds from registered direct offerings, net of transaction costs	—	(13)
Payments on long-term debt	(1,100)	—
Proceeds from warrant exercises	4,328	—
Payments of withholdings on shares withheld for income taxes	—	(2)
Net cash provided by financing activities, continuing operations	3,208	9,059
Net (decrease) increase in cash and cash equivalents from continuing operations	(730)	3,287
Discontinued operation:		
Cash flows used in operating activities	(726)	(7,131)
Cash flows used in investing activities	—	(20)
Cash flows used in financing activities	—	(500)
Net decrease in cash and cash equivalents from discontinued operations	(726)	(7,651)
Cash and cash equivalents, beginning of period	5,259	15,891
Cash and cash equivalents, end of period	<u>\$ 3,803</u>	<u>\$ 11,527</u>
Supplemental disclosure of cash flow information:		
Offering costs included in accounts payable and accrued expenses	\$ 850	\$ 281

See accompanying notes to consolidated financial statements.

BAUDAX BIO, INC.
Notes to the Consolidated Financial Statements
(amounts in thousands, except share and per share data)
(Unaudited)

(1) Background

Business

Baudax Bio, Inc. (“Baudax Bio” or the “Company”) is a pharmaceutical company primarily focused on innovative products for acute care and related settings. Baudax Bio believes it can bring valuable therapeutic options to patients, prescribers and payers to acute care and related markets.

The Company holds exclusive global rights to two new molecular entities, which are centrally acting Neuromuscular Blocking Agents (NMBs), BX1000, an intermediate duration of action NMB that recently completed a Phase II clinical trial, and BX2000, an ultra-short acting NMB currently undergoing a Phase I clinical trial. A proprietary blockade reversal agent, BX3000, is currently being evaluated in preclinical studies intended to support an IND filing in 2023. BX3000 is an agent that is expected to rapidly reverse BX1000 and BX2000 blockade. All three agents are licensed from Cornell University. The Company believes these agents, when an NMB and BX3000 are administered in succession, allow for a rapid onset of centrally acting neuromuscular blockade, followed by a rapid reversal of the neuromuscular blockade with BX3000. These novel agents have the potential to meaningfully reduce time to onset and reversal of blockade and improve the reliability of onset and offset of neuromuscular blockade. This can potentially reduce time in operating rooms or post operative suites (PACU), resulting in potential clinical and cost advantages, as well as valuable cost savings for hospitals and ambulatory surgical centers and has the potential for an improved clinical profile in terms of safety.

In mid-2020, the Company launched its first commercial product, ANJESO, in the United States. ANJESO was the first and only 24-hour, intravenous, or IV, analgesia agent. ANJESO is a cyclooxygenase-2, or COX-2, preferential, non-steroidal anti-inflammatory, or NSAID, for the management of moderate to severe pain, which could be administered alone or in combination with other non-NSAID analgesics. The Company discontinued commercial sales of ANJESO in December of 2022 and further withdrew its New Drug Application (“NDA”) related to ANJESO in late March 2023. See Note 4 for discussion on the discontinued operation related to our ANJESO commercial business.

The Company has determined that it operates in a single segment involved in innovative products for hospital and related settings.

Reverse Stock Splits

On February 16, 2022, the Company effected a reverse split of shares of the Company’s common stock on a 1-for-35 basis (the “Reverse Stock Split”). On December 1, 2022, the Company effected a second reverse split of shares of the Company’s common stock on a 1-for-40 basis (the “December Reverse Stock Split”). All issued and outstanding shares of common stock, warrants, common stock options, and unvested restricted stock units and the related per share amounts contained in the financial statements have been retroactively adjusted to reflect these reverse stock splits for all periods presented. The par value and authorized shares of common stock were not adjusted as a result of the reverse stock splits. Additionally, the authorized, issued and outstanding shares of preferred stock and their related per share amount, other than the conversion price per share, was not adjusted as a result of the reverse stock splits.

(2) Development Activity Risks, Liquidity and Going Concern

The Company has incurred operating losses since inception and has negative cash flows, working capital and equity, including accumulated deficit of \$179,500, as of March 31, 2023.

The Company has raised funds from debt and equity transactions and will be required to raise additional funds to continue to operate as a standalone entity. In order to fund development activities, and clinical and pre-clinical testing, the Company will require significant additional funding. The Company could delay clinical trial activity or reduce funding of specific programs in order to reduce cash needs. Insufficient funds may cause the Company to delay, reduce the scope of or eliminate one or more of its development, future commercialization, or expansion activities. The Company may raise such funds, if available, through debt financings, bank or other loans, through strategic research and development, licensing (including out-licensing) and/or marketing arrangements or through public or private sales of equity or debt securities from time to time. Financing may not be available on acceptable terms, or at all, and failure to raise capital when needed could materially adversely impact the Company’s growth plans and its financial condition or results of operations and ability to continue as a going concern. Additional debt or equity financing, if available, may be dilutive to holders of the Company’s common stock and may involve significant cash payment obligations and covenants that restrict the Company’s ability to operate its business.

BAUDAX BIO, INC.

Notes to the Consolidated Financial Statements
(amounts in thousands, except share and per share data)
(Unaudited)

The Company follows the provisions of Financial Accounting Standards Board (“FASB”), Accounting Standards Codification (“ASC”), Topic 205-40, “*Presentation of Financial Statements — Going Concern*”, or ASC 205-40, which requires management to assess the Company’s ability to continue as a going concern for one year after the date the consolidated financial statements are issued. Based on the Company’s available cash and cash equivalents as of March 31, 2023, management has concluded that substantial doubt exists about the Company’s ability to continue as a going concern for one year from the date these financial statements are issued. The Company expects to seek additional funding to sustain its future operations and while the Company has successfully raised capital in the past, the ability to raise capital in future periods is not assured. The Company is not expected to be able to maintain its minimum liquidity covenant over the next twelve months without additional inflows of funds or capital financing. The consolidated financial statements have been prepared assuming that the Company will continue as a going concern, which contemplates continuity of operations, the realization of assets and the satisfaction of liabilities and commitments in the normal course of business. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

(3) Summary of Significant Accounting Principles

(a) Basis of Presentation

The accompanying unaudited consolidated financial statements of the Company and its subsidiaries have been prepared in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”), for interim financial information and with the instructions of Form 10-Q and Article 10 of Regulation S-X and, therefore, do not include all of the information and notes required by U.S. GAAP for complete annual financial statements. In the opinion of management, the accompanying consolidated financial statements include all normal and recurring adjustments (which consist primarily of accruals, estimates and assumptions that impact the financial statements) considered necessary to present fairly the Company’s results for the interim periods. Operating results for the three months ended March 31, 2023 are not necessarily indicative of the results that may be expected for the full year ending December 31, 2023.

The accompanying unaudited interim consolidated financial statements should be read in conjunction with the annual audited financial statements and related notes as of and for the year ended December 31, 2022 included in the Company’s Form 10-K.

(b) Use of Estimates

The preparation of financial statements and the notes to the financial statements in conformity with U.S. GAAP 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 revenues and expenses during the reporting period. Actual results could differ from such estimates.

(c) Cash and Cash Equivalents

Cash and cash equivalents represents cash in banks and highly liquid short-term investments that have maturities of three months or less when acquired to be cash equivalents. These highly liquid short-term investments are both readily convertible to known amounts of cash and so near to their maturity that they present insignificant risk of changes in value because of the changes in interest rates.

(d) Property and Equipment

Property and equipment are recorded at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, which are as follows: three to seven years for furniture and office equipment; six to ten years for manufacturing equipment; and the shorter of the remaining lease term or useful life for leasehold improvements. Repairs and maintenance costs are expensed as incurred.

BAUDAX BIO, INC.
Notes to the Consolidated Financial Statements
(amounts in thousands, except share and per share data)
(Unaudited)

(e) Goodwill

Goodwill represents the excess of purchase price over the fair value of net assets acquired by the Company. Goodwill is not amortized but assessed for impairment on an annual basis or more frequently if impairment indicators exist. The impairment model prescribes a one-step method for determining impairment.

The one-step quantitative test calculates the amount of goodwill impairment as the excess of a reporting unit's carrying amount over its fair value, not to exceed the total amount of goodwill allocated to the reporting unit. The Company has one reporting unit.

The Company performs its annual goodwill impairment test as of November 30th, or whenever an event or change in circumstances occurs that would require reassessment of the recoverability of goodwill. In performing the evaluation, the Company assesses qualitative factors such as overall financial performance of its reporting unit, anticipated changes in industry and market conditions, including recent tax reform, intellectual property protection, and competitive environments. The Company performed an impairment test as of March 31, 2023 after identifying indicators of impairment. There was no impairment to goodwill based on the analysis.

(f) Concentration of Credit Risk

Financial instruments that potentially subject the Company to significant concentration of credit risk consist primarily of cash and cash equivalents. The Company manages its cash and cash equivalents based on established guidelines relative to diversification and maturities to maintain safety and liquidity.

(g) Research and Development

Research and development costs for the Company's proprietary products/product candidates are charged to expense as incurred. Research and development expenses consist of internal costs and funds paid to third parties for the provision of services for pre-commercialization and manufacturing scale-up activities, drug development, pre-clinical activities, clinical trials, statistical analysis, report writing and regulatory filing fees and compliance costs. At the end of the reporting period, the Company compares payments made to third-party service providers to the estimated progress toward completion of the research or development project. Such estimates are subject to change as additional information becomes available. Depending on the timing of payments to the service providers and the progress that the Company estimates has been made as a result of the service provided, the Company may record net prepaid or accrued expenses relating to these costs.

Upfront and milestone payments made to third parties who perform research and development services on the Company's behalf are expensed as services are rendered. Costs incurred in obtaining product technology licenses are charged to research and development expense as acquired in-process research and development ("IPR&D") if the technology licensed has not reached technological feasibility and has no alternative future use.

(h) Stock-Based Awards

Share-based compensation included in the consolidated financial statements is based upon the Baudax Bio, Inc. 2019 Equity Incentive Plan (the "2019 Plan"). The plan includes grants of stock options, time-based vesting restricted stock units ("RSUs") and performance-based RSUs. The Company measures employee stock-based awards at grant-date fair value and recognizes employee compensation expense on a straight-line basis over the vesting period of the award. The Company accounts for forfeitures as they occur.

Determining the appropriate fair value of stock options requires the input of subjective assumptions, including the expected life of the option and expected stock price volatility. The Company uses the Black-Scholes option pricing model to value its stock option awards. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates and involve inherent uncertainties and the application of management's judgment. As a result, if factors change and/or management uses different assumptions, stock-based compensation expense could be materially different for future awards.

BAUDAX BIO, INC.
Notes to the Consolidated Financial Statements
(amounts in thousands, except share and per share data)
(Unaudited)

The expected life of stock options was estimated using the “simplified method,” as the Company has limited historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior for its stock options grants. The simplified method is based on the average of the vesting tranches and the contractual life of each grant. For stock price volatility, the Company uses an average of its peer group’s volatility in order to estimate future stock price trends. The risk-free interest rate is based on U.S. Treasury notes with a term approximating the expected life of the option. The Company has never declared or paid cash dividends and has no plans to do so in the foreseeable future, therefore the dividend yield is zero.

(i) Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis, operating losses and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date. A valuation allowance is recorded to the extent it is more likely than not that some portion or all of the deferred tax assets will not be realized. Because of the Company’s history of losses as a standalone entity, a full valuation allowance is recorded against deferred tax assets in all periods presented.

Unrecognized income tax benefits represent income tax positions taken on income tax returns that have not been recognized in the consolidated financial statements. The Company recognizes the benefit of an income tax position only if it is more likely than not (greater than 50%) that the tax position will be sustained upon tax examination, based solely on the technical merits of the tax position. Otherwise, no benefit is recognized. The tax benefits recognized are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Company does not anticipate significant changes in the amount of unrecognized income tax benefits over the next year.

(j) Net Income (Loss) Per Common Share

Net loss per common share is computed using the two-class method required due to the participating nature of the Series A Preferred Stock (as defined and discussed in Note 12(b)). Except with respect to voting and conversion, the rights of the holders of the Company’s common stock and the Company’s Series A Preferred Stock are identical. Each class of shares has the same rights to dividends. Although the Preferred Stock are participating securities, such securities do not participate in net losses and therefore do not impact the Company’s net loss per share calculation as of March 31, 2023.

Basic net loss per common share is determined by dividing net loss attributable to common shareholders by the weighted average common shares outstanding during the period. Diluted net loss per common share is determined using the weighted average common shares outstanding during the period plus the weighted average number of shares of common shares that would be issued assuming exercise or conversion of all potentially dilutive instruments. Outstanding warrants, common stock options and unvested restricted stock units are excluded from the calculation of diluted net loss per share when their effect would be anti-dilutive.

For purposes of calculating basic and diluted loss per common share, the denominator includes the weighted average common shares outstanding, the weighted average common stock equivalents for warrants priced at par value, or \$0.01, as the underlying common shares will be issued for little cash consideration and the conditions for the issuance of the underlying common shares are met when such warrants are issued, and, with regard to diluted loss per common share, the number of common stock equivalents if the inclusion of such common stock equivalents would be dilutive.

BAUDAX BIO, INC.
Notes to the Consolidated Financial Statements
(amounts in thousands, except share and per share data)
(Unaudited)

The following table sets forth the computation of basic and diluted income (loss) per share:

	Three Months Ended March 31,	
	2023	2022
Basic and Diluted Income (Loss) Per Share		
Net loss from continuing operations	\$ (7,386)	\$ (8,194)
Net income (loss) from discontinued operation	\$ 18,790	\$ (4,615)
Net income (loss)	\$ 11,404	\$ (12,809)
Net loss per share from continuing operations	\$ (3.19)	\$ (81.16)
Net income (loss) per share from discontinued operation	\$ 8.10	\$ (45.71)
Net income (loss) per share of common stock, basic and diluted	\$ 4.91	\$ (126.87)
Weighted average common shares outstanding, basic and diluted	2,318,539	100,961

The following potentially dilutive securities have been excluded from the computations of diluted weighted average shares outstanding as they would be anti-dilutive:

	Three Months Ended March 31,	
	2023	2022
Options and restricted stock units outstanding	11,807	2,665
Warrants	2,672,798	133,016

Amounts in the table above reflect the common stock equivalents of the noted instruments.

(k) Recent Accounting Pronouncements

Recently Adopted Accounting Pronouncements

In August 2020, the FASB issued ASU No. 2020-06, “*Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity’s Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity*,” or ASU 2020-06. ASU 2020-06 simplifies accounting for convertible instruments by reducing the number of accounting models available for convertible debt instruments. ASU 2020-06 also eliminates the treasury stock method to calculate diluted earnings per share for convertible instruments and requires the use of the if-converted method. ASU 2020-06 is effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years and early adoption is permitted in annual reporting periods ending after December 15, 2020. The Company adopted this guidance as of January 1, 2022, using the full retrospective method of adoption. The adoption eliminated the presentation of the beneficial conversion feature on the consolidated statement of operations and had no other material impact to the Company.

In May 2021, the FASB issued ASU No. 2021-04, “*Earnings Per Share (Topic 260), Debt – Modifications and Extinguishments (Subtopic 470-50), Compensation – Stock Compensation (Topic 718), and Derivatives and Hedging – Contracts in Entity’s Own Equity (Subtopic 815-40): Issuer’s Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options*,” or ASU 2021-04. ASU 2021-04 clarifies and reduces diversity in an issuer’s accounting for modifications or exchanges of freestanding equity-classified written call options, such as warrants, that remain equity classified after modification or exchange. ASU 2021-04 is effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years and early adoption is permitted. The Company adopted this guidance as of January 1, 2022, using the prospective method of adoption. This adoption did not have a material impact to the Company or its disclosures.

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In November 2021, the FASB issued ASU No. 2021-10, “*Government Assistance (Topic 832): Disclosures by Business Entities about Government Assistance*,” or ASU 2021-10. ASU 2021-10 requires entities to provide disclosures on government assistance transactions for annual reporting periods. The disclosures include information around the nature of the transaction, the related accounting policies used to account for the transaction, the effect of the transaction on the entity’s financial statements, and any significant terms and conditions of the agreements, including commitments and contingencies. ASU 2021-10 is effective for fiscal years beginning after December 15, 2021 and early adoption is permitted. The Company adopted this guidance as of January 1, 2022, using the prospective method of adoption. This adoption did not have a material impact to the Company or its disclosures.

In June 2016, the FASB issued ASU No. 2016-13, “*Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*,” or ASU 2016-13. ASU 2016-13 requires companies to measure credit losses utilizing a methodology that reflects expected credit losses and requires consideration of a range of reasonable information to estimate credit losses on certain types of financial instruments, including trade receivables and available-for-sale debt securities. ASU 2016-13 is effective for fiscal years beginning after December 15, 2022, including those interim periods within those fiscal years. The Company adopted this guidance as of January 1, 2023 and noted no impact to the Company or its disclosures.

4) Discontinued Operations

In March 2023, the Company entered into an Asset Transfer Agreement with Alkermes Pharma Ireland Limited (“Alkermes”) (the “Transfer Agreement”). Under the terms of the Transfer Agreement, the Company transferred the rights to certain patents, trademarks, equipment, data and other rights related to ANJESO (the “Assets”) to Alkermes. The Company also withdrew the New Drug Application (“NDA”) related to ANJESO and agreed, if elected by Alkermes at a later date, to transfer such withdrawn NDA to Alkermes at no additional cost.

Additionally, under the Transfer Agreement, the Company granted Alkermes a non-exclusive, perpetual and irrevocable, royalty-free and fully paid-up worldwide license, to the additional intellectual property owned by the Company necessary to or useful to exploit ANJESO. In consideration of the transfer of the Assets, the parties agreed to the termination of (i) the Purchase and Sale Agreement, dated March 7, 2015 by and among Alkermes, the Company and the other parties thereto (as amended, the “PSA”), (ii) the Asset Transfer and License Agreement, dated April 10, 2015 by and among Alkermes, the Company and the other parties thereto (as amended, the “ATLA”); and (iii) the Development, Manufacturing and Supply Agreement, dated as of July 10, 2015 by and between the Company and Alkermes (as amended, the “Manufacturing Agreement”) between the parties related to ANJESO (the PSA, ATLA and Manufacturing Agreement, collectively, the “ANJESO Agreements”). In connection with the termination of the ANJESO Agreements, no further payments of any kind pursuant to the ANJESO Agreements are payable by the Company to Alkermes.

The accounting requirements for reporting the abandonment of ANJESO as a discontinued operation were met when the agreements with Alkermes were executed. Accordingly, the accompanying consolidated financial statements for all periods presented reflect this business as a discontinued operation.

The historical consolidated balance sheet and statements of operations of the Company and the related notes to the consolidated financial statements have been presented as discontinued operations in the consolidated financial statements and prior periods have been recast. Discontinued operations include results of the Company’s commercial business except for certain corporate overhead costs, which are included in continuing operations.

The following table shows amounts included in assets and liabilities of discontinued operations, respectively, on the Company’s Consolidated Balance Sheets at December 31, 2022:

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December 31, 2022

Current assets of discontinued operation:		
Accounts receivable, net	\$	336
Prepaid expenses and other current assets		449
Total current assets of discontinued operation		785
Non-current assets of discontinued operation:		
Property and equipment, net		695
Total non-current assets of discontinued operation		695
Total assets of discontinued operation	\$	<u>1,480</u>
Current liabilities of discontinued operation:		
Accounts payable	\$	730
Accrued expenses and other current liabilities		365
Current portion of contingent consideration		9,203
Total current liabilities of discontinued operation		10,298
Non-current liabilities of discontinued operation:		
Long-term portion of contingent consideration		10,697
Total non-current liabilities of discontinued operation		10,697
Total liabilities of discontinued operation	\$	<u>20,995</u>

The results of operations from discontinued operations for the three months ended March 31, 2023 and 2022, have been reflected as discontinued operations in the consolidated statements of operations and consist of the following:

	For the Three Months Ended March 31,		
	2023	2022	
Revenue, net	\$	(14)	\$ 422
Operating expenses:			
Cost of sales		405	648
Research and development		—	599
Selling, general and administrative		—	7,256
Amortization of intangible assets		—	644
Change in contingent consideration valuation		(19,900)	(3,803)
Loss on impairment of property and equipment		485	—
Total operating expenses		(19,010)	5,344
Operating gain (loss) from discontinued operation		18,996	(4,922)
Other expense:			
Other expense, net		(206)	307
Net income (loss) from discontinued operation	\$	18,790	\$ (4,615)

The Company sold ANJESO in the U.S. through a single third-party logistics provider (“3PL”), which took title to and control of the goods, and was considered the customer. The Company recognized revenue from ANJESO product sales at the point the title to the product is transferred to the customer and the customer obtains control of the product. The transaction price that was recognized as revenue for products includes an estimate of variable consideration for reserves, which result from discounts, returns, chargebacks, rebates, and other allowances that were offered within contracts between the Company and end-user customers, wholesalers, group purchasing organizations and other indirect customers. The Company’s payment terms were generally between thirty to ninety days.

Historically, the Company’s intangible asset was classified as an asset resulting from R&D activities. The Company determined the useful life of its asset resulting from R&D activities to be approximately 10 years, which was based on the remaining patent life, and was amortized on a straight-line basis. The Company performed an impairment test as of December 31, 2022 after identifying indicators of impairment, such as a decline in share price, the termination of the dedicated commercial team, sustained impacts of COVID-19 on the market and the discontinuation of commercialization of ANJESO, and based on the quantitative

BAUDAX BIO, INC.

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analysis an impairment loss of \$19,681 was recorded during the year ended December 31, 2022, eliminating the remaining carrying value of the intangible asset.

Additionally, as part of the Transfer Agreement, the Company wrote off its inventory balance as of March 31, 2023, which was fully reserved for as of December 31, 2022, and the remaining property and equipment balance related to equipment at the Alkermes facility that was transferred as part of the Transfer Agreement of \$485. The Company was additionally relieved of its milestone payments previously owed to Alkermes in connection with the transaction and reversed its contingent consideration balance of \$19,900 as of March 31, 2023.

(5) Fair Value of Financial Instruments

The Company follows the provisions of FASB ASC Topic 820, “*Fair Value Measurements and Disclosures*,” for fair value measurement recognition and disclosure purposes for its financial assets and financial liabilities that are remeasured and reported at fair value each reporting period. The Company measures certain financial assets and liabilities at fair value on a recurring basis, including cash equivalents, warrants, and contingent consideration. The Company’s assessment of the significance of a particular input to the fair value measurement requires judgment and may affect the valuation of financial assets and financial liabilities and their placement within the fair value hierarchy. Categorization is based on a three-tier valuation hierarchy, which prioritizes the inputs used in measuring fair value, as follows:

- Level 1: Observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities;
- Level 2: Inputs that are other than quoted prices in active markets for identical assets and liabilities, inputs that are quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are either directly or indirectly observable; and
- Level 3: Unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

The Company has classified assets and liabilities measured at fair value on a recurring basis as follows:

	Fair value measurements at reporting date using		
	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
At March 31, 2023:			
Assets:			
Cash equivalents (See Note 6)			
Money market mutual funds	\$ 2,264	\$ —	\$ —
Total cash equivalents	\$ 2,264	\$ —	\$ —
At December 31, 2022:			
Assets:			
Cash equivalents (See Note 6)			
Money market mutual funds	\$ 2,241	\$ —	\$ —
Total cash equivalents	\$ 2,241	\$ —	\$ —

The Company follows the disclosure provisions of FASB ASC Topic 825, “*Financial Instruments*”, for disclosure purposes for financial assets and financial liabilities that are not measured at fair value. As of March 31, 2023, the financial assets and liabilities recorded on the Consolidated Balance Sheets that are not measured at fair value on a recurring basis include accounts payable and accrued expenses, which approximate fair value due to the short-term nature of these instruments. The fair value of debt, where a quoted market price is not available, is evaluated based on, among other factors, interest rates currently available to the Company for debt with similar terms, remaining payments and considerations of the Company’s creditworthiness. The Company determined that the recorded book value of debt approximated fair value at March 31, 2023 due to the fact that the debt arrangements reflect market terms from recent transactions.

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(6) Cash Equivalents

The following is a summary of cash equivalents:

Description	Amortized Cost	March 31, 2023 Gross Unrealized		Estimated Fair Value
		Gain	Loss	
Money market mutual funds	\$ 2,264	\$ —	\$ —	\$ 2,264
Total cash equivalents	<u>\$ 2,264</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 2,264</u>

Description	Amortized Cost	December 31, 2022 Gross Unrealized		Estimated Fair Value
		Gain	Loss	
Money market mutual funds	\$ 2,241	\$ —	\$ —	\$ 2,241
Total cash equivalents	<u>\$ 2,241</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 2,241</u>

As of March 31, 2023 and December 31, 2022, the Company's cash equivalents had maturities of one month.

(7) Property, Plant and Equipment

Property, plant and equipment consists of the following:

	March 31, 2023	December 31, 2022
Building and improvements	\$ 129	\$ 166
Furniture, office and computer equipment	259	306
	388	472
Less: accumulated depreciation	387	463
Property and equipment, net	<u>\$ 1</u>	<u>\$ 9</u>

Depreciation expense for the three months ended March 31, 2023 was \$3. Depreciation expense for the three months ended March 31, 2022 was \$14.

(8) Leases

The Company is a party to various operating leases in Malvern, Pennsylvania, and Dublin, Ireland for office space and office equipment. Right-of-use assets are recorded on the Consolidated Balance Sheet in other long-term assets. Operating lease liabilities are recorded on the Consolidated Balance Sheet in accrued expenses and other current liabilities and other long-term liabilities, based on the timing of expected cash payments.

The Company determines if an arrangement is a lease at inception. The arrangement is a lease if it conveys the right to the Company to control the use of identified property, plant, or equipment for a period of time in exchange for consideration. Lease terms vary based on the nature of operations. The current leased facility recorded on the Consolidated Balance Sheet is classified as an operating lease with a remaining lease term of 5 years. Most leases contain specific renewal options where notice to renew must be provided in advance of lease expiration or automatic renewals where no advance notice is required. Periods covered by an option to extend the lease were included in the non-cancellable lease term when exercise of the option was determined to be reasonably certain. Costs determined to be variable and not based on an index or rate were not included in the measurement of operating lease liabilities. As most leases do not provide an implicit rate, the Company's effective interest rate was used to discount its lease liabilities.

The Company's leases with an initial term of twelve months or less that do not have a purchase option or extension that is reasonably certain to be exercised are not included in the right of use asset or lease liability on the Consolidated Balance Sheets. Lease expense is recognized on a straight-line basis over the lease term.

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As of March 31, 2023, undiscounted future lease payments for non-cancellable operating leases are as follows:

	Lease payments	
Remainder of 2023	\$	263
2024		278
2025		278
2026		287
2027		294
Total lease payments		1,400
Less imputed interest		(604)
Total operating lease liability	\$	<u>796</u>

As of March 31, 2023, the weighted average remaining lease term was 5 years and the weighted average discount rate was 23%.

The components of the Company's lease cost were as follows:

	Three Months Ended March 31,	
	2023	2022
Operating lease cost	\$ 70	\$ 73
Short-term lease cost	35	37
Total lease cost	<u>\$ 105</u>	<u>\$ 110</u>

Cash paid for amounts included in the measurement of lease liabilities, which is included in operating cash flows, was \$96 and \$131 for the three months ended March 31, 2023 and 2022, respectively.

(9) Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consist of the following:

	March 31, 2023	December 31, 2022
Payroll and related costs	\$ 220	\$ 656
Professional and consulting fees	568	789
Other research and development costs	1,246	593
Interest payable	81	94
Other	419	232
	<u>\$ 2,534</u>	<u>\$ 2,364</u>

In March 2022, the Company implemented a reduction in force impacting approximately 66 employees and resulted in a charge of \$4,148, primarily related to severance, of which \$97 remains accrued and unpaid as of March 31, 2023.

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(10) Debt

The following table summarizes the components of the carrying value of debt:

	March 31, 2023	December 31, 2022
Credit Agreement	\$ 10,000	\$ 10,000
Payment of principal	(3,344)	(2,244)
Unamortized deferred issuance costs	—	(828)
Accrued amendment fee	568	—
Exit fee accretion	209	191
Total debt	<u>\$ 7,433</u>	<u>\$ 7,119</u>
Current portion	\$ 6,000	\$ 5,600
Long-term portion, net	1,433	1,519

Credit Agreement

On May 29, 2020 (the “Credit Agreement Closing Date”), the Company entered into a \$50,000 Credit Agreement (the “Credit Agreement”) by and among the Company, Wilmington Trust, National Association, in its capacity as the agent (“Agent”), and MAM Eagle Lender, LLC, as the lender (together with any other lenders under the Credit Agreement from time to time, collectively, the “Lenders”). The Credit Agreement provides for a term loan in the original principal amount of \$10,000 (the “Tranche One Loans”) funded on the Credit Agreement Closing Date. Pursuant to the terms of the Credit Agreement, there are four additional tranches of term loans, in an aggregate original principal amount of \$40,000 (the “Tranche Two Loans”, “Tranche Three Loans”, “Tranche Four Loans” and the “Tranche Five Loans”, and collectively with the Tranche One Loans, the “Term Loans” and each a “Term Loan”). As of March 31, 2023, no funds have been drawn from the additional tranches and are not expected to be drawn in the future.

The Term Loans will bear interest at a per annum rate equal to 13.5%, with monthly, interest-only payments until the date that is three years prior to the Maturity Date (as defined below) (the “Amortization Date”). The maturity date of the Credit Agreement is May 29, 2025, but may be extended to May 29, 2026 provided that the EBITDA (as defined in the Credit Agreement) for the consecutive twelve-month period ending on or immediately prior to May 29, 2022 is greater than \$10,000 (such date, “Maturity Date”), which the Company did not achieve. Beginning on the Amortization Date, the Company was obligated to pay amortization payments (in addition to the interest stated above) on such date and each month thereafter in equal month installments of principal based on an amortization schedule of thirty-six months. Any unpaid principal amount of the Term Loans is due and payable on the Maturity Date.

Subject to certain exceptions, the Company is required to make mandatory prepayments of the Term Loans, with the proceeds of asset sales, extraordinary receipts, debt issuances and specified other events. The Company may make voluntary prepayments in whole or in part, subject to a prepayment premium equal to (i) with respect to any prepayment paid on or prior to the third anniversary of the Tranche One Loan (or, in the case of each of the Tranche Two Loans, Tranche Three Loans, Tranche Four Loans or Tranche Five Loans, the third anniversary of the date each such loan is funded), the remaining scheduled payments of interest that would have accrued on the Term Loans being prepaid, repaid or accelerated, but that remained unpaid, in no event to be less than 5.0% of the principal amount of the Term Loan being prepaid, and (ii) with respect to any prepayment paid after the third but prior to the fourth anniversary of the Tranche One Loan (or, in the case of each of the Tranche Two Loans, Tranche Three Loans, Tranche Four Loans or Tranche Five Loans, the fourth anniversary of the date each such loan is funded), 3.0% of the principal amount of the Term Loan being prepaid. In addition, an exit fee will be due and payable upon prepayment or repayment of the Term Loans (including, without limitation, on the Maturity Date) equal to the lesser of 2.5% of the sum of the aggregate principal amount of the Term Loans advanced or approved to be advanced by the Lenders and \$700; provided that such exit fee will be equal to \$700 if fee is paid in conjunction with a change of control that occurs in connection with the payoff or within 6 months thereof. As of March 31, 2023, the Company will have to pay a 2.5% exit fee, which is \$250 at the current outstanding loan balance and is being accreted to the carrying amount of the debt using the effective interest method over the term of the loan.

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The Credit Agreement contains certain usual and customary affirmative and negative covenants, as well as financial covenants including a minimum liquidity requirement of \$5,000 at all times (the "Minimum Liquidity Covenant") and minimum EBITDA levels that the Company may need to satisfy on a quarterly basis beginning in September 2021, subject to borrowing levels. As of March 31, 2023, the Company was in compliance with the Minimum Liquidity Covenant as the minimum EBITDA criteria is not applicable until additional tranches are drawn. As of March 31, 2023, borrowings under the Credit Agreement are classified based on their schedule maturities.

In connection with the Credit Agreement, the Company issued a warrant to MAM Eagle Lender, LLC to purchase 376 shares of the Company's common stock, at an exercise price equal to \$6,426.00 per share. See Note 12(c) for additional information. The warrant is exercisable through May 29, 2027.

The Company recorded debt issuance costs for the Credit Agreement of \$1,496 plus the fair value of warrants of \$1,423, which were being amortized using the effective interest method over the term of Credit Agreement prior to Amendment No. 5 as noted below. Debt issuance cost amortization is included in interest expense within the Consolidated Statements of Operations. The Company recorded debt issuance cost amortization related to the Credit Agreement prior to Amendment No. 5 of \$263 and \$211 for the three months ended March 31, 2023 and 2022, respectively.

On August 1, 2022, the Company entered into Amendment No. 1 and Waiver to Credit Agreement, or the Amendment, with MAM Eagle Lender. Pursuant to the terms of the Amendment, the lenders waived any default under the credit agreement (including the imposition of a default interest rate with respect to the default) resulting from our failure to comply with the Minimum Liquidity Covenant. In addition, the Amendment, among other items, (i) provides that 30% of any cash proceeds received by the Company from certain potential strategic licensing transactions shall be used to prepay amounts outstanding under the credit agreement; and (ii) decreases the amount of cash the Company is required to maintain pursuant to the Minimum Liquidity Covenant to \$3,000 for a period beginning on August 1, 2022, and ending on August 31, 2022, at which point the amount required pursuant to the Minimum Liquidity Covenant shall increase to \$5,000.

On October 24, 2022, the Company entered into Amendment No. 2 and Waiver to Credit Agreement, or the Amendment, with MAM Eagle Lender. Pursuant to the terms of the Amendment, the Credit Agreement is amended such that the Company must repay the principal thereunder (i) on the first business day of each month until the Interest Payment Date on December 1, 2022, in equal monthly installments of principal based on an amortization schedule of 36 months, (ii) an additional payment of principal in the amount of \$300 prior to December 31, 2022 and (iii) commencing on the Interest Payment Date on January 2, 2023 and on each Interest Payment Date thereafter until the obligations have been repaid in full, the principal amount of \$500. In addition, the Amendment decreases the minimum cash covenant the Company is required to maintain under the Credit Agreement to (i) \$3,000 for the period beginning on October 1, 2022, and ending on November 30, 2022, (ii) \$4,500 for the period beginning on December 1, 2022, and ending on February 28, 2023, and (iii) \$4,000 from and after March 1, 2023. Further, the Company has agreed that prior to December 31, 2022, it shall not, without the prior written consent of the Lenders, make or permit any payment under its agreements with Alkermes. In consideration for the Amendment, the Company agreed to pay the Agent an amendment fee of \$5 and the Lender an amendment fee of \$200.

On December 1, 2022, the Company entered into Amendment No. 3 to Credit Agreement with MAM Eagle Lender. Pursuant to the terms of the amendment, the amendment decreases the minimum cash covenant the Company is required to maintain under the credit agreement to (a) from October 1, 2022 to December 6, 2022 to not be less than \$3,000 at any time, (b) from December 7, 2022 to February 28, 2023 to not be less than \$4,500, and (c) from and after March 1, 2023 to not be less than \$4,000.

In January 2023, the Company entered into Amendment No. 4 to Credit Agreement with MAM Eagle Lender. Pursuant to the terms of the amendment, the credit agreement was amended such that the Company must make (i) a payment of principal in the amount of \$500 on January 3, 2023, (ii) a payment of principal in the amount of \$300 on February 1, 2023 and March 1, 2023, and (iii) on the interest payment date on April 3, 2023 and on each interest payment date thereafter until the obligations are repaid in full, a payment in the principal amount of \$500. In addition, the amendment decreases the minimum cash covenant the Company is required to maintain under the credit agreement, or the Minimum Liquidity Covenant, to (i) \$3,000 for the period beginning on October 1, 2022, and ending on December 6, 2022, (ii) \$4,500 for the period beginning on December 7, 2022, and ending on January 10, 2023, (iii) \$2,225 for the period beginning on January 11, 2023, and ending on February 28, 2023, and (iv) \$3,000 from and after March 1, 2023. Further, the Company agreed that prior to April 30, 2023, it will not, without the prior written consent of MAM Eagle Lender, make or permit any payment under its agreements with Alkermes.

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On March 29, 2023, the Company entered into Amendment No. 5 and Consent to Credit Agreement whereby MAM Eagle Lender consented to the transactions contemplated by the Transfer Agreement (as defined above) and agreed to release and discharge any liens granted or held by the lenders in respect of the assets discussed in the Transfer Agreement. The parties also agreed to, among other things, amend the minimum liquidity covenants under the Credit Agreement to require that the Company maintains \$2,500 of liquidity at all times. In connection with Amendment No. 5, the Company issued warrants to MAM Eagle Lender to purchase an aggregate of 785,026 shares of the Company's common stock, par value \$0.01 per share at an exercise price equal to \$1.8951 per share.

As a result of Amendment No. 5, the Company performed a cash flow analysis to determine if the terms of the amended agreement were substantially different from those of the previous debt agreement. Due to the amendment fee and the fair value of the warrants issued, the Company concluded the terms are substantially changed in accordance with ASC 470-50, *Debt – Modifications and Extinguishments*. ASC 470-50 requires accounting for the amendment as a debt extinguishment and not a debt modification. The Company recorded a loss on debt extinguishment of \$2,196 as of March 31, 2023, which represents the difference between the net carrying value of the existing debt and the reacquisition cost of the amended terms of the agreement and is attributable to unamortized debt issuance costs, the fair value of the Amendment No. 5 warrants and the Amendment No.5 fee.

Based on the terms of the amended agreement, as of March 31, 2023, the effective interest rate was 14.51%, which takes into consideration the accretion of the exit fee.

As a result of the liquidity conditions discussed in Note 2, the Company is not expected to be able to comply with the Minimum Liquidity Covenant, as amended, over the next twelve months without additional capital financing. If the Company is unable to maintain its Minimum Liquidity Covenant, it is reasonably possible that the Lenders could demand repayment of the borrowings under the Credit Agreement during the next twelve months.

(11) Commitments and Contingencies

(a) Licenses and Supply Agreements

In June 2017, the Company acquired the exclusive global rights to two novel neuromuscular blocking agents (“NMBs”) and a proprietary reversal agent from Cornell University (“Cornell”). The NMBs and reversal agent are referred to herein as the NMB Related Compounds. The NMB Related Compounds include one novel intermediate-acting NMB that has initiated Phase I clinical trials and two other agents, a novel short-acting NMB, and a rapid-acting reversal agent specific to these NMBs. The Company is obligated to make: (i) an annual license maintenance fee payment to Cornell in the remaining range of \$70 to \$125 until the first commercial sale of the NMB Related Compounds; and (ii) milestone payments to Cornell upon the achievement of certain milestones, up to a maximum, for each NMB Related Compound, of \$5,000 for U.S. regulatory approval and commercialization milestones and \$3,000 for European regulatory approval and commercialization milestones. The Company is obligated to pay Cornell royalties on net sales of the NMB Related Compound at a rate ranging from low to mid-single digits, depending on the applicable NMB Related Compounds and whether there is a valid patent claim in the applicable country, subject to an annual minimum royalty amount. Further, the Company reimburses Cornell for its ongoing patent costs related to prosecution and maintenance of the patents related to the Cornell patents for the NMB Related Compounds. Through March 31, 2023, no such milestones have been achieved.

(b) Contingent Consideration for the Alkermes Transaction

On April 10, 2015, Societal CDMO, Inc. (“Societal CDMO”), formerly Recro Pharma, Inc., completed the acquisition of a manufacturing facility in Gainesville, Georgia and the licensing and commercialization rights to injectable meloxicam (the “Alkermes Transaction”). Pursuant to the purchase and sale agreement and subsequent amendment with Alkermes, as amended, governing the Alkermes Transaction, the Company agreed to pay to Alkermes up to an additional \$140,000 in milestone payments including \$60,000 upon regulatory approval payable over a seven-year period, as well as net sales milestones related to injectable meloxicam and royalties on future product sales of injectable meloxicam.

On March 29, 2023, the Company entered into the Transfer Agreement. Under the terms of the Transfer Agreement, the Company transferred the rights to certain patents, trademarks, equipment, data and other rights related to ANJESO (the “Assets”) to Alkermes. The Company also withdrew the New Drug Application (“NDA”) related to ANJESO and agreed, if elected by Alkermes at a later date, to transfer such withdrawn NDA to Alkermes at no additional cost.

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Additionally, under the Transfer Agreement, the Company granted Alkermes a non-exclusive, perpetual and irrevocable, royalty-free and fully paid-up worldwide license, to the additional intellectual property owned by the Company necessary to or useful to exploit ANJESO. In consideration of the transfer of the Assets, the parties agreed to the termination of (i) the Purchase and Sale Agreement, dated March 7, 2015, (ii) the Asset Transfer and License Agreement, dated April 10, 2015; and (iii) the Development, Manufacturing and Supply Agreement, dated as of July 10, 2015. In connection with the termination of the ANJESO Agreements, no further payments of any kind pursuant to the ANJESO Agreements will be payable by the Company to Alkermes and as a result, the Company removed the balance of its contingent consideration as of March 31, 2023.

Historically, the contingent consideration consisted of four separate components. The first component was (i) a \$5,000 payment made in the first quarter of 2019 and (ii) a \$5,000 payment made in the second quarter of 2019. The second components became payable upon regulatory approval in February 2020 and included (i) a \$5,000 payment, which was paid in three installments during 2020 and 2021, and (ii) \$45,000 payable in seven equal annual payments of approximately \$6,400 beginning on the first anniversary of such approval, of which the first payment was made in the first quarter of 2021. The Company paid \$1,200 of the second payment in 2022. The third component consisted of three potential payments, based on the achievement of specified annual revenue targets. The fourth component consists of a royalty payment between 10% and 12% (subject to a 30% reduction when no longer covered by patent) for a defined term on future injectable meloxicam net sales, which was paid quarterly.

(c) Purchase Commitments

As of March 31, 2023, the Company had outstanding non-cancelable and cancelable purchase commitments in the aggregate amount of \$64 primarily related to goods and services from development activities.

(d) Certain Compensation and Employment Agreements

The Company entered into an employment agreement with one of its named executive officers in February 2020. As of March 31, 2023, this employment agreement provided for, among other things, annual base salary in an aggregate amount of not less than \$927, from that date through September 2024.

(12) Capital Structure

(a) Common Stock

On November 21, 2019, the Company separated from Societal CDMO as a result of a special dividend distribution of all the outstanding shares of its common stock to Societal CDMO shareholders. On the distribution date, each Societal CDMO shareholder received one share of Baudax Bio's common stock for every two and one-half shares of Societal CDMO common stock held of record at the close of business on November 15, 2019. Upon the distribution, 6,712 shares of common stock were issued.

The Company is authorized to issue 190,000,000 shares of common stock, with a par value of \$0.01 per share.

On March 1, 2022, the Company closed an underwritten public offering of 45,791 shares of its common stock, pre-funded warrants to purchase 41,929 shares of common stock at an exercise price of \$0.40 per share and warrants to purchase 87,719 shares of common stock at an exercise price of \$130.00 per share, as well as up to 13,158 additional shares of common stock and/or additional warrants to purchase up to 13,158 shares of common stock, which may be purchased pursuant to a 30-day option to purchase additional securities granted to H.C. Wainwright & Co., LLC (the "Underwriter") by the Company. The public offering price for each share of common stock and accompanying warrant to purchase one share of common stock was \$114.00, and the public offering price for each pre-funded warrant and accompanying warrant was \$113.60. As compensation to the Underwriter, the Company agreed to pay to the Underwriter a cash fee of 7.0% of the gross proceeds, plus a cash management fee equal to 1.0% of the gross proceeds and reimbursement of certain expenses and legal fees. The Company also issued to designees of the Underwriter warrants to purchase 5,263 shares of common stock at an exercise price of \$142.50 per share. On February 28, 2022, the Underwriter partially exercised its option to purchase an additional 2,847 warrants. Net proceeds to the Company, after deducting underwriting discounts and commissions and offering expenses, was \$8,791.

On May 17, 2022, the Company entered into a securities purchase agreement with institutional investors named therein, pursuant to which the Company agreed to issue and sell, in a registered direct offering (the "May 2022 Offering"),

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41,152 shares of the Company's common stock, par value \$0.01 per share, and, in a concurrent private placement, warrants exercisable for up to an aggregate of 41,152 shares of Common Stock at a combined offering price of \$48.60 per share and associated warrant. The warrants have an exercise price of \$43.60 per share. Each warrant is exercisable for one share of common stock and was exercisable immediately upon issuance. The warrants will have a term of five years from the issuance date. As compensation to H.C. Wainwright & Co., LLC as placement agent in connection with the offering, the Company agreed to pay to the placement agent a cash fee of 7.0% of the aggregate gross proceeds raised in the offering, plus a management fee equal to 1.0% of the gross proceeds raised in the offering and certain expenses. The Company also issued to designees of the placement agent warrants to purchase up to 6.0% of the aggregate number of shares of common stock sold in the transactions, or warrants to purchase up to 2,469 shares of common stock. The placement agent warrants have substantially the same terms as the warrants, except that the placement agent warrants have an exercise price equal to 125% of the offering price per share (or \$60.75 per share). The placement agent warrants will expire on May 17, 2027. Net proceeds to the Company, after deducting underwriting discounts and commissions and offering expenses, was \$1,720.

On September 1, 2022, the Company closed a best efforts public offering of: (i) 188,872 shares of its common stock, par value \$0.01 per share and accompanying Series A-1 warrants ("Series A-1 warrants") to purchase 188,872 shares of Common stock and Series A-2 warrants ("Series A-2 warrants", and together with the Series A-1 warrants, "Series A warrants") to purchase 188,872 shares of Common Stock, at a combined public offering price of \$21.00 per share and Series A warrants and (ii) Series B pre-funded warrants ("Series B pre-funded warrants") to purchase 106,607 shares of Common Stock and accompanying Series A-1 warrants to purchase 106,607 shares of Common Stock and Series A-2 warrants to purchase 106,607 shares of Common stock at a combined public offering price of \$20.60 per Series B pre-funded warrant and Series A warrants, which is equal to the public offering price per share of Common Stock and accompanying Series A warrants less the \$0.01 per share exercise price of each such Series B pre-funded warrant. The Series A warrants have an exercise price of \$21.00 per share of Common Stock. The Series A-1 warrants are exercisable upon issuance and will expire five years from the date of issuance. The Series A-2 warrants are exercisable upon issuance and will expire thirteen months from the date of issuance. The exercise price of the Series A warrants is subject to adjustment for stock splits, reverse splits, and similar capital transactions as described in the Series A warrants. Subject to certain ownership limitations, the Series B pre-funded warrants are immediately exercisable and were exercised at a nominal consideration of \$0.40 per share of Common Stock upon the closing of the transaction. As compensation to H.C. Wainwright & Co., LLC, as the exclusive placement agent in connection with the Offering, the Company paid a cash fee of 7.0% of the aggregate gross proceeds raised in the offering, plus a management fee equal to 1.0% of the gross proceeds raised in the offering, and reimbursement of certain expenses and legal fees. The Company also issued to designees of the placement agent warrants to purchase up to 17,728 shares of common stock. The placement agent warrants have substantially the same terms as the Series A warrants, except that the placement agent warrants have an exercise price equal to \$26.25 per share and expire on August 29, 2027. Net proceeds to the Company, after deducting underwriting discounts and commissions and offering expenses, was \$5,044.

On December 6, 2022 the Company closed a best efforts public offering of: (i) 54,787 shares of its common stock, par value \$0.01 per share and accompanying Series A-3 warrants to purchase 54,787 shares of common stock and Series A-4 warrants to purchase 54,787 shares of common stock, at a combined public offering price of \$4.795 per share and accompanying series A warrants and (ii) series C pre-funded warrants to purchase 988,000 shares of common stock and accompanying series A-3 warrants to purchase 988,000 shares of common stock and series A-4 warrants to purchase 988,000 shares of common stock at a combined public offering price of \$4.785 per series C pre-funded warrant and accompanying series A warrants, which was equal to the public offering price per share of common stock and accompanying series A warrants less the \$0.01 per share exercise price of each such series C pre-funded warrant. The series A warrants have an exercise price of \$4.50 per share of common stock. The series A-3 warrants are exercisable upon issuance and will expire on December 6, 2027. The series A-4 warrants are exercisable upon issuance and will expire on January 8, 2024. The exercise price of the series A warrants is subject to adjustment for stock splits, reverse splits, and similar capital transactions as described in the Series A Warrants. The Series C prefunded warrants have been exercised in full as of December 31, 2022. As compensation to H.C. Wainwright & Co., LLC as the exclusive placement agent in connection with the offering, the Company paid the placement agent a cash fee of 7.0% of the aggregate gross proceeds raised in the offering, plus a management fee equal to 1.0% of the gross proceeds raised in the offering, and reimbursement of certain expenses and legal fees. The Company also issued to designees of the placement agent warrants to purchase up to 62,567 shares of common stock. The Placement Agent Warrants have substantially the same terms as the series A warrants, except that the placement agent warrants have an exercise price equal to \$5.99375 per share and expire on December 2, 2027. Net proceeds to the Company, after deducting underwriting discounts and commissions and offering expenses, was \$3,916.

On May 1, 2023 the Company closed a best efforts public offering of: (i) 1,326,175 shares of its common stock, par value \$0.01 per share and accompanying Series A-5 warrants to purchase 1,326,175 shares of Common stock and Series A-6

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warrants to purchase 1,326,175 shares of common stock, at a combined public offering price of \$1.15 per share and accompanying Series A warrants and (ii) Series D pre-funded warrants to purchase 2,152,087 shares of common stock and accompanying Series A-5 warrants to purchase 2,152,087 shares of common stock and Series A-6 warrants to purchase 2,152,087 shares of common stock at a combined public offering price of \$1.14 per Series D pre-funded warrant and accompanying Series A warrants, which is equal to the public offering price per share of Common Stock and accompanying Series A warrants less the \$0.01 per share exercise price of each such Series D pre-funded warrant. The Series A warrants have an exercise price of \$1.15 per share of common stock. The Series A-5 warrants are exercisable upon issuance and will expire on May 1, 2028. The Series A-6 warrants are exercisable upon issuance and will expire on November 1, 2024. Subject to certain ownership limitations described in the Series D pre-funded warrants, the Series D pre-funded warrants were immediately exercisable and were fully exercised at a nominal consideration of \$0.01 per share of common stock upon closing. As compensation to H.C. Wainwright & Co., LLC, as the exclusive placement agent in connection with the offering, the Company paid the placement agent a cash fee of 7.0% of the aggregate gross proceeds raised in the offering, plus a management fee equal to 1.0% of the gross proceeds raised in the offering, and reimbursement of certain expenses and legal fees. The Company also issued to designees of the placement agent warrants to purchase up to 208,696 shares of common stock. These warrants have substantially the same terms as the Series A warrants, except that the placement agent warrants have an exercise price equal to \$1.4375 per share and expire on April 26, 2028.

(b) Preferred Stock

The Company is authorized to issue 10,000,000 shares of preferred stock, with a par value of \$0.01 per share.

On September 19, 2022, the board of directors of the Company declared a dividend of one one-thousandth (1/1,000th) of a share of Series B Preferred Stock, par value \$0.01 per share (“Series B Preferred Stock”), for each outstanding share of the Company’s common stock, par value \$0.01 per share to shareholders of record on September 29, 2022 (the “Record Date”). The shares of Series B Preferred Stock were distributed to such recipients on October 3, 2022. Each share of Series B Preferred Stock entitles the holder thereof to 1,000,000 votes per share. The outstanding shares of Series B Preferred Stock vote together with the outstanding shares of Common Stock of the Company as a single class exclusively with respect to (1) any proposal to adopt an amendment to the Company’s Amended and Restated Articles of Incorporation, as amended, to reclassify the outstanding shares of common stock into a smaller number of shares of common stock at a ratio specified in or determined in accordance with the terms of such amendment (the “Reverse Stock Split”) and (2) any proposal to adjourn any meeting of shareholders called for the purpose of voting on the Reverse Stock Split. The Series B Preferred Stock will not be entitled to vote on any other matter, except to the extent required under the Pennsylvania Business Corporation Law.

In September 2022, 20,003.745 shares of Series B Preferred Stock were declared as a stock dividend and issued on October 3, 2022. On November 3, 2022, all of our outstanding shares of Series B Preferred Stock were redeemed for nominal consideration pursuant to the terms of the Series B Preferred Stock.

As of March 31, 2023, there were no shares of Preferred Stock issued and outstanding.

(c) Warrants

On May 29, 2020, in connection with the Credit Agreement, the Company issued a warrant to MAM Eagle Lender, LLC to purchase 376 shares of common stock, at an exercise price equal to \$6,426.00 per share (see Note 10).

On October 19, 2020, the Company entered into Warrant Exchange Agreements (each, an “Exchange Agreement”) with certain holders (each, a “Holder”) of the Company’s outstanding March Series A Warrants and March Series B Warrants. Pursuant to the Exchange Agreements, the Holders, at their election, agreed to a cashless exchange of either all of their March Series A Warrants or March Series B Warrants, in each case for 0.2 shares of the Company’s common stock per warrant (rounded up to the nearest whole share) (the “Exchange”). The Company issued 848 shares of its common stock to the participating Holders as a result of the Exchange.

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As a result of the Exchange, pursuant to certain price adjustment provisions in the warrants, the exercise price of each of the March Series A Warrants or March Series B Warrants (including warrants held by holders not participating in the Exchange) that were not exchanged were adjusted to \$1.8951, for each share of common stock underlying such warrant. Pursuant to the Exchange Agreements, any outstanding warrant held by a Holder participating in the Exchange (i) was amended to remove certain anti-dilution and variable pricing protections and (ii) in the case of March Series A Warrants not exchanged by a participating Holder, was amended to adjust the expiration date of such March Series A Warrants to April 26, 2021 (which is the expiration date of the March Series B Warrants). The March Series A and Series B warrants were liability classified prior to the Exchange because they contained anti-dilution provisions that did not meet the standard definition of anti-dilution provisions. The Company recorded a mark-to-market adjustment to record the March Series A and Series B warrant at their fair values immediately prior to the Exchange and then reclassified the remaining balance of \$21,858 to equity as a result of the issuance of shares and the removal of the anti-dilution and variable pricing protections in the Exchange.

On January 21, 2021, the Company entered into an agreement with an institutional investor, pursuant to which the Company agreed to issue and sell, in an offering (the "January Offering"), warrants exercisable for an aggregate of 7,358 shares of common stock of the Company (the "January Warrants") at an offering price of \$175.00 per warrant in exchange for the exercise of the institutional investor's existing December Series A warrants that were issued to them on December 21, 2020, at an exercise price of \$1,652.00 per warrant. The January Warrants have an exercise price of \$2,240.00 per share.

As compensation to the Placement Agent, in connection with the January Offering, the Company agreed to pay to the Placement Agent a cash fee of 6.0% of the aggregate gross proceeds raised in the January Offering (including the proceeds relating to the exercise of the December Series A Warrants), plus a management fee equal to 1.0% of the gross proceeds raised in the January Offering (including the proceeds relating to the exercise of the December Series A Warrants) and reimbursement of certain expenses and legal fees. The Company also issued to designees of the Placement Agent warrants to purchase 441 shares of common stock (the "January Placement Agent Warrants") at an exercise price of \$2,800.00 per share.

On August 24, 2022, the Company entered into warrant amendment agreements (the "Warrant Amendment Agreements") with certain holders of the Company's (i) Series A Warrants to purchase 7,234 shares of common stock with an exercise price of \$1,680.00 per share, (ii) Warrants to purchase 7,358 shares of common stock with an exercise price of \$2,240.00 per share, (iii) Warrants to purchase 10,021 shares of common stock with an exercise price of \$1,260.00 per share, (iv) Warrants to purchase 9,062 shares of common stock with an exercise price of \$448.00 per share, and (v) Warrants to purchase 88,615 shares of common stock with an exercise price of \$130.00 per share (the "Existing Warrants"). Under the Warrant Amendment Agreements, the Company agreed to amend the Existing Warrants by lowering the exercise price of the Existing Warrants to \$23.92 per share. The warrant modification resulted in an increase in the fair value of warrants of \$1,151. Subsequent to the warrant amendment, the Company issued 2,875 shares of common stock upon exercise of a portion of the amended warrants for net proceeds of \$69.

On December 2, 2022, the Company entered into a warrant amendment agreement (the "December Warrant Amendment Agreement") with a certain holder of the Company's (i) warrants to purchase 7,234 shares of common stock with an exercise price of \$23.92 per share, (ii) warrants to purchase 7,358 shares of common stock with an exercise price of \$23.92 per share, (iii) warrants to purchase 6,013 shares of common stock with an exercise price of \$23.92 per share, (iv) Warrants to purchase 5,143 shares of common stock with an exercise price of \$23.92 per share, (v) warrants to purchase 48,246 shares of common stock with an exercise price of \$23.92 per share, (vi) Series A-1 warrants to purchase 14,404 shares of common stock with an exercise price of \$43.60 per share, (vii) Series A-2 warrants to purchase 142,858 shares of common stock with an exercise price of \$21.00 per share and (viii) warrants to purchase 142,858 shares of common stock with an exercise price of \$21.00 per share (collectively, the "December Existing Warrants"). Under the December Warrant Amendment Agreement, the Company (i) agreed to amend the December Existing Warrants by lowering the exercise price of the December Existing Warrants to \$4.50 per share and (ii) amend the expiration date of the December Existing Warrants to December 6, 2027, in each case effective on December 6, 2022. The warrant modification resulted in an increase in the fair value of warrants of \$746.

In January 2023, the Company issued 961,787 shares of common stock upon the exercise of warrants for proceeds of \$4,328.

In March 2023, in connection with Amendment No. 5, the Company issued warrants to MAM Eagle Lender to purchase an aggregate of 785,026 shares of the Company's common stock, par value \$0.01 per share at an exercise price equal to \$1.8951 per share.

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As of March 31, 2023, the Company had the following warrants outstanding to purchase shares of the Company's common stock:

	Number of Shares		Exercise Price per Share	Expiration Date
March Series A Warrants (non-participating holders)	15	\$	1.8951	March 26, 2025
MAM Eagle Lender Warrant	376	\$	6,426.00	May 29, 2027
November Series A Warrants	7,234	\$	4.50	December 6, 2027
November Placement Warrants	433	\$	2,073.75	November 24, 2025
December Placement Warrants	441	\$	2,038.75	December 18, 2025
January Warrants	7,358	\$	4.50	December 6, 2027
January Placement Warrants	441	\$	2,800.00	January 21, 2026
February Placement Warrants	471	\$	2,800.00	February 8, 2026
May Warrants	4,008	\$	23.924	June 1, 2027
May Warrants, repriced	6,013	\$	4.50	December 6, 2027
May Placement Warrants	601	\$	1,487.50	May 31, 2026
December 2021 Warrants	3,918	\$	23.924	June 27, 2027
December 2021 Warrants, repriced	5,143	\$	4.50	December 6, 2027
December 2021 Placement Agent Warrants	724	\$	448.00	December 27, 2026
March 2022 Warrants	1,952	\$	130.00	March 1, 2027
March 2022 Warrants, repriced	37,492	\$	23.924	March 1, 2027
March 2022A Warrants, repriced	48,246	\$	4.50	December 6, 2027
March 2022 Underwriter Warrants	5,263	\$	142.50	February 24, 2027
May 2022 Warrants	26,748	\$	43.60	May 19, 2027
May 2022 Warrants, repriced	14,404	\$	4.50	December 6, 2027
May 2022 Placement Agent Warrants	2,469	\$	60.752	May 17, 2027
August 2022 Series A-1 Warrants	152,612	\$	21.00	September 1, 2027
August 2022 Series A-1 Warrants, repriced	142,858	\$	4.50	December 6, 2027
August 2022 Series A-2 Warrants	152,612	\$	21.00	October 2, 2023
August 2022 Series A-2 Warrants, repriced	142,858	\$	4.50	December 6, 2027
August 2022 Placement Agent Warrants	17,728	\$	26.25	August 29, 2027
December 2022 Series A-3 Warrants	1,042,787	\$	4.50	December 6, 2027
December 2022 Placement Agent Warrants	62,567	\$	5.99375	December 2, 2027
MAM Eagle Lender Amendment No. 5 Warrant	785,026	\$	1.89510	March 29, 2033

With the exception of the March Series A Warrants to purchase 15 shares of common stock related to the public offering and held by non-participating investors in the Exchange that are liability classified as they contain antidilution provisions that do not meet the standard definition of antidilution provisions, the remaining warrants outstanding are equity classified. As of March 31, 2023 the liability warrants had a nominal fair value.

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(13) Stock-Based Compensation

The Company has adopted the 2019 Plan that allows for the grant of stock options, stock appreciation rights and stock awards for an initial total of 2,142 shares of common stock. On December 1st of each year, pursuant to the “Evergreen” provision of the 2019 Plan, the number of shares available under the plan shall be increased by an amount equal to 5% of the outstanding common stock on December 1st of that year or such lower amount as determined by the Board of Directors. The total number of shares authorized for issuance under the 2019 Plan as of March 31, 2023 is 31,581 shares. As of March 31, 2023, 28,718 shares are available for future grants under the 2019 Plan.

Stock Options:

Stock options are exercisable generally for a period of 10 years from the date of grant and generally vest over four years. There were no options granted during the three months ended March 31, 2023 or 2022.

The following table summarizes Baudax Bio stock option activity during the three months ended March 31, 2023:

	Number of shares	Weighted average exercise price	Weighted average remaining contractual life
Balance, December 31, 2022	1,939	\$ 3,525.88	6.5 years
Expired/forfeited/cancelled	(351)	\$ 3,644.51	
Balance, March 31, 2023	<u>1,588</u>	\$ 3,499.66	7.7 years
Vested	1,193	\$ 3,568.46	7.8 years
Vested and expected to vest	1,588	\$ 3,499.66	7.7 years

Included in the table above are 28 stock options outstanding as of March 31, 2023 that were granted outside of the plan. The grants were made pursuant to the Nasdaq inducement grant exception in accordance with Nasdaq Listing Rule 5635(c)(4).

Restricted Stock Units (RSUs):

The following table summarizes Baudax Bio RSUs activity during the three months ended March 31, 2023:

	Number of shares	Weighted average grant date fair value
Balance, December 31, 2022	10,611	\$ 116.81
Granted	—	—
Vested and settled	(6)	2,391.91
Expired/forfeited/cancelled	(386)	1,318.71
Balance, March 31, 2023	<u>10,219</u>	<u>\$ 70.08</u>
Expected to vest	10,219	

In June 2022, the Company granted 12,519 time-based RSUs, which may be settled in cash, stock, or a combination of cash and stock, solely at the election of the Company. These awards are classified as Other long-term liabilities on the Consolidated Balance Sheet due to insufficient shares available for grant in the 2019 Plan.

Included in the table above are 3 time-based RSUs outstanding as of March 31, 2023 that were granted outside of the plan. The grants were made pursuant to the Nasdaq inducement grant exception in accordance with Nasdaq Listing Rule 5635(c)(4).

Stock-Based Compensation Expense:

Stock-based compensation expense from continuing operations for the three months ended March 31, 2023 and 2022 was \$191 and \$491, respectively, which also includes expense for the liability classified awards.

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As of March 31, 2023, there was \$705 of unrecognized compensation expense related to unvested options and time-based RSUs that are expected to vest and will be expensed over a weighted average period of 0.9 years.

The aggregate intrinsic value represents the total amount by which the fair value of the common stock subject to options exceeds the exercise price of the related options. As of March 31, 2023, there was no aggregate intrinsic value of the vested and unvested options.

(14) Retirement Plan

The Company has a voluntary 401(k) Savings Plan (the “401(k) Plan”) in which all employees are eligible to participate. The Company’s policy is to match 100% of the employee contributions up to a maximum of 5% of employee compensation. Total Company contributions to the 401(k) plan for the three months ended March 31, 2023 and 2022 were \$31 and \$117, respectively.

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

The following Management’s Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the interim unaudited financial statements contained in Part I, Item 1 of this Quarterly Report, and the audited financial statements and notes thereto for the year ended December 31, 2022 and the related Management’s Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on February 23, 2023. As used in this Quarterly Report, unless the context suggests otherwise, “we,” “us,” “our,” the “Company” or “Baudax Bio” refer to Baudax Bio, Inc. and its consolidated subsidiaries.

Overview

We are a pharmaceutical company primarily focused on innovative products for acute care and related settings. We believe that we can bring valuable therapeutic options for patients, prescribers and payers to the acute care and related markets.

We hold exclusive global rights to two new molecular entities, which are centrally acting Neuromuscular Blocking Agents, or NMBs, BX1000, an intermediate duration of action NMB that recently completed a Phase II clinical trial, and BX2000, an ultra-short acting NMB currently undergoing a Phase I clinical trial. A proprietary blockade reversal agent, BX3000, is currently being evaluated in preclinical studies intended to support an IND filing in 2023. BX3000 is an agent that is expected to rapidly reverse BX1000 and BX2000 blockade. All three agents are licensed from Cornell University. We believe these agents, when an NMB and BX3000 are administered in succession, allow for a rapid onset of centrally acting neuromuscular blockade, followed by a rapid reversal of the neuromuscular blockade with BX3000. These novel agents have the potential to meaningfully reduce time to onset and reversal of blockade and improve the reliability of onset and offset of neuromuscular blockade. The combination of the blocking agent, and the reversal agent can potentially reduce time in operating rooms resulting in potential clinical and cost advantages, as well as valuable cost savings for hospitals and ambulatory surgical centers and has the potential for an improved clinical profile in terms of safety compared to other NMBs and reversal agents.

The Top-line results for the Phase II clinical trial for BX1000 showed that BX1000 met the primary endpoint of readiness for intubation (evaluated as “Good” or “Excellent” - Viby-Mogensen 1996) at 60 seconds for all three dose levels of BX1000 compared to the active-control, rocuronium. Study treatments were generally well tolerated, with no occurrence of severe or serious adverse events. The frequency and severity of adverse events was similar across all four dose groups, and no notable events were aggregated in any one dose group.

In mid-2020, we launched our first commercial product, ANJESO, in the United States. ANJESO was the first and only 24-hour, intravenous, or IV, analgesia agent. ANJESO is a cyclooxygenase-2, or COX-2, preferential, non-steroidal anti-inflammatory, or NSAID, for the management of moderate to severe pain, which could be administered alone or in combination with other non-NSAID analgesics. We discontinued commercial sales of ANJESO in December 2022 and further withdrew the NDA in March 2023.

Our costs have consisted primarily of expenses incurred in conducting our manufacturing and commercialization of ANJESO, which was discontinued in December 2022, as well as public company and personnel costs, clinical trials and preclinical studies, regulatory activities, and manufacturing costs for our NMB blocking and reversal agents. We expect to incur operating losses for at least the next several years. We expect substantially all of our operating losses to result from costs incurred in connection with our development programs, including our clinical, nonclinical and formulation development, preclinical and manufacturing related activities. Our expenses over the next several years are expected to primarily relate to developing our product candidates. In addition, we may incur costs associated with the acquisition or in-license of products and successful commercialization of the acquired or in-licensed products.

Top-line Results of Phase II Clinical Trial for BX1000

Study Design

Phase II randomized, double blinded, active controlled study with four treatment groups (n=20/group):

- Single bolus dose of BX1000:
 - o0.15 mg/kg
 - o0.25 mg/kg
 - o0.35 mg/kg
- Single bolus dose of Rocuronium 0.6 mg/kg

The study was performed in patients undergoing hernia repair and other elective surgeries with efficacy evaluation at 60, 90 and 120 seconds.

FDA required Primary Efficacy Endpoint

Proportion of subjects with excellent or good intubating conditions at 60 seconds after NMB administration:

Criteria	Acceptable			Unacceptable Poor
	Excellent		Good	
Vocal cord position	Abducted		Intermediate	Closed/Adducted
Vocal cord movement	None		Moving	Closing
Ease of laryngoscopy*	Easy		Fair	Difficult
Airway reaction	None		Diaphragm	Sustained >10s
Limb movement	None		Slight	Vigorous
Viby-Mogensen 1996	*Ease of Laryngoscopy			
Scoring Intubation conditions	-Easy: Jaw relaxed, no resistance to blade in the course of laryngoscopy			
Excellent: All qualities are excellent	-Fair: Jaw not fully relaxed, slight resistance to blade			
Good: All qualities are either excellent or good	-Difficult: Poor jaw relaxation, active resistance of the patient to laryngoscopy			
Poor: The presence of a single quality listed under "poor"				

Study Demographics

	Rocuronium		BX1000		Total (N=80)
	0.6 mg/kg (N=20)	0.15 mg/kg (N=20)	0.25 mg/kg (N=20)	0.35 mg/kg (N=20)	
Subjects dosed n (%)	20 (100.0)	20 (100.0)	20 (100.0)	20 (100.0)	80 (100.0)
Subjects in Efficacy Evaluation n (%)	19 (95.0)*	20 (100.0)	20 (100.0)	20 (100.0)	79 (97.5)
Mean Age (yrs)	37	38.2	40.5	39.5	38.8
n (%) Female	18 (90.0)	13 (65.0)	13 (65.0)	15 (75.0)	59 (73.8)
Race, n (%)					
White	19 (95.0)	19 (95.0)	20 (100.0)	19 (95.0)	19 (95.0)
Black or African American	1 (5.0)	-	-	1 (5.0)	2 (2.5)
Multiple	-	1 (5.0)	-	-	1 (1.3)
Mean Baseline BMI (kg/m ²)	26.1	28.2	26.2	25.9	26.6

*1 Subject experienced a delay in intubating condition assessments due to issues with the endotracheal tube

Intubating Conditions at 60 Seconds

	n (%) of Subjects				Total (N=79)
	Rocuronium 0.6 mg/kg (N=19)	0.15 mg/kg (N=20)	BX1000 0.25 mg/kg (N=20)	0.35 mg/kg (N=20)	
Excellent or Good	19 (100.0)	20 (100.0)	20 (100.0)	20 (100.0)	79 (100.0)
Poor	--	--	--	--	--
Not Done	1*	--	--	--	--

*1 Subject experienced a delay in intubating condition assessments at 60, 90, and 120 seconds after NMB administration due to issues with the endotracheal tube, and therefore not included in the efficacy analyses

Adverse Events - ≥5% of Total Population

Preferred Term	n (%) of Subjects				Total (N=80)
	Rocuronium 0.6 mg/kg (N=20)	0.15 mg/kg (N=20)	BX1000 0.25 mg/kg (N=20)	0.35 mg/kg (N=20)	
Subjects with ≥1 TEAE	12 (60.0)	11 (55.0)	9 (45.0)	9 (45.0)	41 (51.3)
Nausea	5 (25.0)	5 (25.0)	2 (10.0)	2 (10.0)	14 (17.5)
Hypotension	2 (10.0)	2 (10.0)	2 (10.0)	3 (15.0)	9 (11.3)
Constipation	1 (5.0)	1 (5.0)	2 (10.0)	2 (10.0)	6 (7.5)
Hypoxia	1 (5.0)	1 (5.0)	2 (10.0)	1 (5.0)	5 (6.3)
Vomiting	1 (5.0)	2 (10.0)	1 (5.0)	--	4 (5.0)
Rash	3 (15.0)	--	1 (5.0)	--	4 (5.0)

No SAEs have been reported for any treatment group at this time.

COVID-19 Impact

While the COVID-19 pandemic has stabilized within many global regions, it may cyclically continue to adversely affect our business, financial condition and results of operations. Although the Department of Health and Human Services announced that the federal public health emergency for COVID-19 ended on May 11, 2023, we expect the trends that emerged as a result of the pandemic may continue to result in disruptions to the global economy, as well as businesses and capital markets around the world. While the COVID-19 vaccines have proven effective in reducing the severity and mortality of COVID-19 including the variants that have evolved to date, the emergence of new variants, which could prove resistant to existing vaccines, could again result in major disruptions to businesses and markets worldwide. The extent to which the outbreak may affect our preclinical studies, clinical trials, business, financial condition, and results of operations will depend on future developments, which are uncertain and cannot be predicted at this time.

ANJESO Transfer Agreement

In March 2023, we entered into an Asset Transfer Agreement with Alkermes Pharma Ireland Limited, or Alkermes, or the Transfer Agreement. Under the terms of the Transfer Agreement, we transferred the rights to certain patents, trademarks, equipment, data and other rights related to ANJESO, or the Assets to Alkermes. We also withdrew the New Drug Application, or NDA, related to ANJESO and agreed, if elected by Alkermes at a later date, to transfer such withdrawn NDA to Alkermes at no additional cost.

2022 Reduction in Force

Due to our cash position, in March 2022, we implemented a reduction in workforce by approximately 66 employees (representing approximately 80% of our total workforce), including 43 members of our sales force. The reorganization was substantially completed by the end of the second quarter and approximately \$4.1 million of charges were incurred for severance and other related costs. The reduction in force was designed to substantially reduce our operational expenses and conserve cash resources. Further, in September 2022, we terminated the remaining dedicated commercial team of 7 employees and incurred a third quarter charge of \$0.2 million for severance and other related costs.

Discontinued Operation

Upon executing the Transfer Agreement, we met the criteria for discontinued operations related to our commercial business. Accordingly, the accompanying consolidated financial statements for all periods presented reflect this business as a discontinued operation. Discontinued operations include results of our commercial business except for certain corporate overhead costs, which are included in continuing operations. See Note 4 to the Consolidated Financial Statements included in this Quarterly Report for additional information.

Financial Overview

Revenue

We sold ANJESO in the U.S. through a single third-party logistics provider, or 3PL, which takes title to and control of the goods and is considered our customer. We recognized revenue from ANJESO product sales at the point the title to the product is transferred to the customer and the customer obtained control of the product. The transaction price that was recognized as revenue for products included an estimate of variable consideration for reserves, which result from discounts, returns, chargebacks, rebates and other allowances that were offered within contracts between us and our end-user customers, wholesalers, group purchasing organizations and other indirect customers. In December 2022, we discontinued the commercialization of ANJESO and expect that the majority of expenses associated with the discontinuation were incurred by the end of the first quarter of 2023.

Cost of Sales

Historically, cost of sales included product costs, manufacturing costs, transportation and freight, royalty expense, qualification costs for a secondary manufacturing suite and indirect overhead costs associated with the manufacturing and distribution of ANJESO including supply chain and quality personnel costs. Cost of sales also included period costs related to certain manufacturing services and inventory adjustment charges. We discontinued commercialization of ANJESO in December 2022. We believe there is very modest inventory held at the wholesaler level and have notified wholesalers through our 3PL that we will accept product returns until June 30, 2023, which has been reserved for as of March 31, 2023.

Research and Development Expenses

Research and development expenses have consisted primarily of costs incurred in connection with the NMB portfolio and in previous years, the FDA required pediatric development of ANJESO activities. These expenses consist primarily of:

- expenses incurred under agreements with investigative sites, consultants and other service providers that conduct or support our clinical and pre-clinical trials;
- the cost of acquiring and manufacturing clinical trial drug supply and related manufacturing services;
- costs related to facilities, depreciation and other allocated expenses;
- costs associated with regulatory activities and responses to the FDA; and
- salaries and related costs for personnel in research and development and pre-commercial regulatory functions.

The majority of our external research and development costs have related to clinical trials, manufacturing of drug supply for pre-commercial products, analysis and testing of product candidates and patent costs. We expense costs related to clinical inventory and pre-commercial inventory until we receive approval from the FDA to market a product, at which time we commence capitalization of costs relating to that product to inventory. Costs related to facilities, depreciation and support are not charged to specific programs. Subsequent to regulatory approval of ANJESO and prior to the withdrawal of the NDA, we allocated or recategorized certain personnel and overhead expenses related to medical affairs, supply chain, quality and regulatory support functions that had previously been recorded within research and development, to cost of sales or selling, general and administrative expenses in support of the commercialization of ANJESO. Pre-commercial activities directly utilizing personnel and overhead expenses from the medical affairs, supply chain, quality and regulatory support function continue to be recorded within research and development.

The development of our other product candidates is highly uncertain and subject to a number of risks, including, but not limited to:

- the costs, timing and outcome of regulatory review of a product candidate;
- the duration of clinical trials, which varies substantially according to the type, complexity and novelty of the product candidate;
- substantial requirements on the introduction of pharmaceutical products imposed by the FDA and comparable agencies in foreign countries, which require lengthy and detailed laboratory and clinical testing procedures, sampling activities and other costly and time-consuming procedures;
- the possibility that data obtained from pre-clinical and clinical activities at any step in the testing process may be adverse and lead to discontinuation or redirection of development activity or may be susceptible to varying interpretations, which could delay, limit or prevent regulatory approval;
- risk involved with development of manufacturing processes, FDA pre-approval inspection practices and successful completion of manufacturing batches for clinical development and other regulatory purposes;
- the emergence of competing technologies and products, including obtaining and maintaining patent protections, and other adverse market developments, which could impede our commercial efforts; and
- the other risks disclosed in the sections titled “Risk Factors” of our 2022 Annual Report and this Quarterly Report.

Development timelines, probability of success and development costs vary widely. As a result of the uncertainties discussed above, we will assess our product candidate’s commercial potential and our available capital resources. As a result of these uncertainties surrounding the timing and outcome of any approval, we are currently unable to estimate precisely when, if ever, any of our product candidates will generate revenues and cash flows.

We expect our research and development costs to relate to the development and commercialization scale-up of our NMB product candidate portfolio. We may elect to seek collaborative relationships in order to provide us with a diversified revenue stream and to help facilitate the development and commercialization of our product candidate pipeline.

Selling, General and Administrative Expenses

Selling, general and administrative expenses have consisted of sales and marketing expenses related to ANJESO and general and administrative expenses.

Sales and marketing expenses primarily consisted of compensation and benefits for our sales force and personnel that supported our sales and marketing efforts as well as third party consulting costs for the promotion and sale of ANJESO. In addition, sales and marketing expenses included expenses related to communicating the clinical and economic benefits of ANJESO and educational programs for our indirect customers.

General and administrative expenses consist principally of salaries and related costs for personnel in executive, finance and information technology functions, and additionally in the prior year, the commercial portion of the medical affairs and regulatory functions. General and administrative expenses also include public company costs, directors and officer’s insurance, professional fees for legal, including patent-related expenses, consulting, auditing, and tax services.

Our selling, general and administrative expenses decreased in the quarter ended March 31, 2023 as a result of a reduction in personnel and public company costs, and we expect no future selling and commercial costs at this time. General and administrative expenses from continuing operations will remain relatively constant in the near term.

Change in Fair Value of Contingent Consideration

In connection with the Separation, we entered into an Assignment and a Partial Assignment, Assumption and Bifurcation Agreement, or the Alkermes Agreements, relating to the Purchase and Sale Agreement for the acquisition of certain assets, including the worldwide rights to injectable meloxicam and Societal CDMO’s development, formulation and manufacturing business from Alkermes, or the Alkermes Transaction, as amended in December 2018 and August 2020. Pursuant to the Alkermes Agreements, we were required to pay up to \$140.0 million in milestone payments, including \$10.0 million that was paid during 2019, \$3.6 million paid in 2020, another \$1.4 million paid in 2021, and \$45.0 million over seven years beginning one year after approval, of which the first payment was made in the first quarter of 2021 and a partial payment was made on the second payment of \$1.2 million, as well as net sales milestones and a royalty percentage of future product net sales related to injectable meloxicam between 10% and 12% (subject to a 30% reduction when no longer covered by patent), which was paid quarterly. The estimated fair value of the initial \$54.6 million payment obligation was recorded as part of the purchase price for the Alkermes Transaction. We reevaluated the fair value each subsequent period.

As noted above, in March 2023, we entered into the Transfer Agreement. Under the terms of the Transfer Agreement, we transferred the rights to certain patents, trademarks, equipment, data and other rights related to ANJESO, or the Assets, to Alkermes. We also

withdrew the NDA related to ANJESO and agreed, if elected by Alkermes at a later date, to transfer such withdrawn NDA to Alkermes at no additional cost.

Additionally, under the Transfer Agreement, we granted Alkermes a non-exclusive, perpetual and irrevocable, royalty-free and fully paid-up worldwide license, to the additional intellectual property owned by the Company necessary to or useful to exploit ANJESO. In consideration of the transfer of the Assets, the parties agreed to the termination of (i) the Purchase and Sale Agreement, dated March 7, 2015 by and among Alkermes, the Company and the other parties thereto, or as amended, the PSA, (ii) the Asset Transfer and License Agreement, dated April 10, 2015 by and among Alkermes, the Company and the other parties thereto, or as amended, the ATLA; and (iii) the Development, Manufacturing and Supply Agreement, dated as of July 10, 2015 by and between the Company and Alkermes, or as amended, the Manufacturing Agreement, between the parties related to ANJESO (the PSA, ATLA and Manufacturing Agreement are collectively referred to herein as the ANJESO Agreements). In connection with the termination of the ANJESO Agreements, no further payments of any kind pursuant to the ANJESO Agreements will be payable by us to Alkermes and a result, we reversed the balance of contingent consideration recorded on our balance sheet as of March 31, 2023 of \$19,900 within Income from discontinued operation on our Consolidated Statements of Operations.

Interest Expense

Interest expense for the periods presented primarily includes interest expense incurred on our Credit Agreement with MAM Eagle Lender, the amortization of related financing costs, and in the current year the resulting loss on extinguishment of debt from Amendment No. 5 of the MAM lender agreement.

Income Taxation

We maintained a valuation allowance against our deferred tax assets as of March 31, 2023 and December 31, 2022.

Results of Operations

Comparison of the Three Months Ended March 31, 2023 and 2022

	Three Months Ended March 31,	
	2023	2022
	(amounts in thousands)	
Operating expenses:		
Research and development	2,917	694
Selling, general and administrative	1,771	6,934
Change in warrant valuation	—	(5)
Total operating expenses	4,688	7,623
Operating loss from continuing operations	(4,688)	(7,623)
Other expense:		
Other expense, net	(2,698)	(571)
Net loss from continuing operations	(7,386)	(8,194)
Income (loss) on discontinued operation	18,790	(4,615)
Net income (loss)	<u>\$ 11,404</u>	<u>\$ (12,809)</u>

Research and Development. Our research and development expenses were \$2.9 million and \$0.7 million for the three months ended March 31, 2023 and 2022, respectively. The increase of \$2.2 million was primarily due to an increase in clinical and preclinical trials costs associated with our NMB program of \$1.7 million and an increase in general expenses, including consulting and other outside service expenses, of \$0.5 million.

Selling, General and Administrative. Our selling, general and administrative expenses were \$1.8 million and \$6.9 million for the three months ended March 31, 2023 and 2022, respectively. The decrease of \$5.1 million was primarily a result of a reduction in personnel costs of \$3.5 million, a decrease in public company costs of \$0.7 million, a decrease in consulting expenses of \$0.5 million, a decrease of \$0.2 million in patent legal expenses and a decrease of \$0.3 million in other costs.

Other Expense, net. Other expense was \$2.7 million and \$0.6 million for the three months ended March 31, 2023 and 2022, respectively. The increase in other expense of \$2.1 million was primarily due to the loss on extinguishment of debt as a result of the fifth amendment to the MAM credit agreement of \$2.1 million.

Liquidity and Capital Resources

As of March 31, 2023, we had \$3.8 million in cash and cash equivalents.

On May 1, 2023 we closed a best efforts public offering of: (i) 1,326,175 shares of our common stock, par value \$0.01 per share and accompanying Series A-5 warrants to purchase 1,326,175 shares of Common stock and Series A-6 warrants to purchase 1,326,175 shares of common stock, at a combined public offering price of \$1.15 per share and accompanying Series A warrants and (ii) Series D pre-funded warrants to purchase 2,152,087 shares of common stock and accompanying Series A-5 warrants to purchase 2,152,087 shares of common stock and Series A-6 warrants to purchase 2,152,087 shares of common stock at a combined public offering price of \$1.14 per Series D pre-funded warrant and accompanying Series A warrants, which is equal to the public offering price per share of Common Stock and accompanying Series A warrants less the \$0.01 per share exercise price of each such Series D pre-funded warrant. The Series A warrants have an exercise price of \$1.15 per share of common stock. The Series A-5 warrants are exercisable upon issuance and expire on May 1, 2028. The Series A-6 warrants are exercisable upon issuance and expire on November 1, 2024. Subject to certain ownership limitations described in the Series D pre-funded warrants, the Series D pre-funded warrants were immediately exercisable and were fully exercised at a nominal consideration of \$0.01 per share of common stock shortly after closing. As compensation to H.C. Wainwright & Co., LLC, as the exclusive placement agent in connection with the offering, we paid the placement agent a cash fee of 7.0% of the aggregate gross proceeds raised in the offering, plus a management fee equal to 1.0% of the gross proceeds raised in the offering, and reimbursement of certain expenses and legal fees. We also issued to designees of the placement agent warrants to purchase up to 208,696 shares of common stock. These warrants have substantially the same terms as the Series A warrants, except that the placement agent warrants have an exercise price equal to \$1.4375 per share and expire on April 26, 2028.

On December 6, 2022 we closed a best efforts public offering of: (i) 54,787 shares of our common stock, par value \$0.01 per share and accompanying Series A-3 warrants to purchase 54,787 shares of common stock and Series A-4 warrants to purchase 54,787 shares of common stock, at a combined public offering price of \$4.795 per share and accompanying series A warrants and (ii) series C pre-funded warrants to purchase 988,000 shares of common stock and accompanying series A-3 warrants to purchase 988,000 shares of common stock and series A-4 warrants to purchase 988,000 shares of common stock at a combined public offering price of \$4.785 per series C pre-funded warrant and accompanying series A warrants, which was equal to the public offering price per share of common stock and accompanying series A warrants less the \$0.01 per share exercise price of each such series C pre-funded warrant. The series A warrants have an exercise price of \$4.50 per share of common stock. The series A-3 warrants are exercisable upon issuance and expire on December 6, 2027. The series A-4 warrants are exercisable upon issuance and expire on January 8, 2024. The exercise price of the series A warrants is subject to adjustment for stock splits, reverse splits, and similar capital transactions as described in the Series A Warrants. The Series C prefunded warrants have been exercised in full as of December 31, 2022. As compensation to H.C. Wainwright & Co., LLC as the exclusive placement agent in connection with the offering, we paid the placement agent a cash fee of 7.0% of the aggregate gross proceeds raised in the offering, plus a management fee equal to 1.0% of the gross proceeds raised in the offering, and reimbursement of certain expenses and legal fees. We also issued to designees of the placement agent warrants to purchase up to 62,567 shares of common stock. The Placement Agent Warrants have substantially the same terms as the series A warrants, except that the placement agent warrants have an exercise price equal to \$5.99375 per share and expire on December 2, 2027. Net proceeds after deducting underwriting discounts and commissions and offering expenses, was \$4.0 million.

On September 1, 2022, we closed a best efforts public offering of: (i) 188,872 shares of its common stock, par value \$0.01 per share and accompanying Series A-1 warrants to purchase 188,872 shares of Common stock and Series A-2 warrants, and together with the Series A-1 warrants to purchase 188,872 shares of Common Stock, at a combined public offering price of \$21.00 per share and Series A warrants and (ii) Series B pre-funded warrants to purchase 106,607 shares of Common Stock and accompanying Series A-1 warrants to purchase 106,607 shares of Common Stock and Series A-2 warrants to purchase 106,607 shares of Common stock at a combined public offering price of \$20.60 per Series B pre-funded warrant and Series A warrants, which is equal to the public offering price per share of Common Stock and accompanying Series A warrants less the \$0.01 per share exercise price of each such Series B pre-funded warrant. The Series A warrants have an exercise price of \$21.00 per share of Common Stock. The Series A-1 warrants are exercisable upon issuance and will expire five years from the date of issuance. The Series A-2 warrants are exercisable upon issuance and will expire thirteen months from the date of issuance. The exercise price of the Series A warrants is subject to adjustment for stock splits, reverse splits, and similar capital transactions as described in the Series A warrants. Subject to certain ownership limitations, the Series B pre-funded warrants were immediately exercisable and were exercised at a nominal consideration of \$0.01 per share of Common Stock upon the closing of the transaction. As compensation to H.C. Wainwright & Co., LLC, as the exclusive placement agent in connection with the Offering, we paid a cash fee of 7.0% of the aggregate gross proceeds raised in the offering, plus a management fee equal to 1.0% of the gross proceeds raised in the offering, and reimbursement of certain expenses and legal fees. We also issued to designees of the placement agent warrants to purchase up to 17,728 shares of common stock. The placement agent warrants have substantially the same terms as the Series A warrants, except that the placement agent warrants have an exercise price equal to \$26.25 per share and expire on August 29, 2027. Net proceeds, after deducting underwriting discounts and commissions and offering expenses, was \$5.0 million.

On May 17, 2022, we closed a registered direct offering of 41,152 shares of our common stock, par value \$0.01 per share, and in a concurrent private placements, warrants exercisable for up to an aggregate of 41,152 shares of common stock at a combined offering price of \$48.60 per share and associated warrant. The warrants have an exercise price of \$43.60 per share. Each warrant is exercisable for one share of common stock and was exercisable immediately upon issuance. The warrants have a term of five years from the issuance date. As compensation to H.C. Wainwright & Co., LLC as placement agent in connection with the offering, we agreed to pay to the placement agent a cash fee of 7.0% of the aggregate gross proceeds raised in the offering, plus a management fee equal to 1.0% of the gross proceeds raised in the offering and certain expenses. We also issued to designees of the placement agent warrants to purchase up

to 6.0% of the aggregate number of shares of common stock sold in the transactions, or warrants to purchase up to 2,469 shares of common stock. The placement agent warrants have substantially the same terms as the warrants, except that the placement agent warrants have an exercise price equal to 125% of the offering price per share (or \$60.75 per share). The placement agent warrants will expire on May 17, 2027. Net proceeds, after deducting underwriting discounts and commissions and offering expenses, was \$1.7 million.

On March 1, 2022, we closed an underwritten public offering of 45,791 shares of common stock, pre-funded warrants to purchase 41,929 shares of common stock at an exercise price of \$0.01 per share and warrants to purchase 87,719 shares of common stock at an exercise price of \$130.00 per share, as well as up to 13,158 additional shares of common stock and/or additional warrants to purchase up to 13,158 shares of common stock which may be purchased pursuant to a 30-day option to purchase additional securities granted to H.C. Wainwright & Co., LLC (the "Underwriter") by us. The public offering price for each share of common stock and accompanying warrant to purchase one share of common stock was \$114.00, and the public offering price for each pre-funded warrant and accompanying warrant was \$113.60. As compensation to the Underwriter, we agreed to pay to the Underwriter a cash fee of 7.0% of the gross proceeds, plus a cash management fee equal to 1.0% of the gross proceeds and reimbursement of certain expenses and legal fees. We also issued to designees of the Underwriter warrants to purchase 5,263 shares of common stock at an exercise price of \$142.50 per share. On February 28, 2022, the Underwriter partially exercised its option to purchase an additional 2,847 warrants. Net proceeds, after deducting underwriting discounts and commissions and offering expenses, was \$8.8 million.

On May 29, 2020, we entered in a \$50.0 million Credit Agreement with MAM Eagle Lender, pursuant to which we have drawn \$10.0 million as of the date of this Quarterly Report and may draw upon four additional tranches of term loans. The Tranche Two Loans in an amount not to exceed \$5.0 million may be drawn upon on or before August 29, 2021 provided that we generate at least \$5.0 million in net revenue in the three consecutive calendar months immediately preceding the date such Tranche Two Loans are funded. The Tranche Two Loans may also be drawn on a subsequent date with the satisfaction of the conditions for the Tranche Three Loans, Tranche Four Loans, or Tranche Five Loans, as applicable, provided that the Tranche Two Loans may not be drawn more than once. The Tranche Three Loans in an amount not to exceed \$5.0 million may be drawn upon on or before November 29, 2021 provided that we generate at least \$10.0 million in net revenue in the three consecutive calendar months immediately preceding such date such Tranche Three Loans are funded. The Tranche Three Loans may also be drawn on a subsequent date with the satisfaction of the conditions for the Tranche Four Loans or Tranche Five Loans, as applicable, provided that the Tranche Three Loans may not be drawn more than once. The Tranche Four Loans in an amount not to exceed \$10.0 million may be drawn upon, subject to the consent of the Lenders, on or before August 29, 2022 provided that we generate at least \$20.0 million in net revenue in the three consecutive calendar months immediately preceding the date such Tranche Four Loans are funded. The Tranche Four Loans may also be drawn on a subsequent date with the satisfaction of the conditions for the Tranche Five Loans provided that the Tranche Four Loans may not be drawn more than once. The Tranche Five Loans in an amount not to exceed \$20.0 million may be drawn upon, subject to the consent of the Lenders, on or before March 1, 2023 provided that we generate at least \$100.0 million in net revenue in the twelve consecutive calendar months immediately preceding the date such Tranche Five Loans are funded.

On August 1, 2022, we entered into Amendment No. 1 and Waiver to Credit Agreement, or the Amendment, with MAM Eagle Lender. Pursuant to the terms of the Amendment, the lenders waived any default under the credit agreement (including the imposition of a default interest rate with respect to the default) resulting from our failure to comply with the minimum cash covenant, or the Minimum Liquidity Covenant, which requires us to maintain at least \$5.0 million in a liquidity account. In addition, the Amendment, among other items, (i) provides that 30% of any cash proceeds received by us from certain potential strategic licensing transactions shall be used to prepay amounts outstanding under the credit agreement; and (ii) decreases the amount of cash we are required to maintain pursuant to the Minimum Liquidity Covenant to \$3.0 million for a period beginning on August 1, 2022, and ending on August 31, 2022, at which point the amount required pursuant to the Minimum Liquidity Covenant shall increase to \$5.0 million.

On October 24, 2022, we entered into Amendment No. 2 and Waiver to Credit Agreement with MAM Eagle Lender. Pursuant to the terms of the amendment, the Credit Agreement is amended such that we must repay the principal thereunder (i) on the first business day of each month until the Interest Payment Date on December 1, 2022, in equal monthly installments of principal based on an amortization schedule of 36 months, (ii) an additional payment of principal in the amount of \$0.3 million prior to December 31, 2022 and (iii) commencing on the Interest Payment Date on January 2, 2023 and on each Interest Payment Date thereafter until the obligations have been repaid in full, the principal amount of \$0.5 million. In addition, the amendment decreases the minimum cash covenant we are required to maintain under the Credit Agreement to (i) \$3.0 million for the period beginning on October 1, 2022, and ending on November 30, 2022, (ii) \$4.5 million for the period beginning on December 1, 2022, and ending on February 28, 2023, and (iii) \$4.0 million from and after March 1, 2023. Further, we have agreed that prior to December 31, 2022, we shall not, without the prior written consent of the Lenders, make or permit any payment under its agreements with Alkermes. In consideration for the amendment, we paid the Agent an amendment fee of \$0.01 million and the Lender an amendment fee of \$0.2 million.

On December 1, 2022, we entered into Amendment No. 3 to Credit Agreement with MAM Eagle Lender. Pursuant to the terms of the amendment, the amendment decreases the minimum cash covenant we are required to maintain under the credit agreement to (a) from October 1, 2022 to December 6, 2022 to not be less than \$3.0 million at any time, (b) from December 7, 2022 to February 28, 2023 to not be less than \$4.5 million, and (c) from and after March 1, 2023 to not be less than \$4.0 million.

In January 2023, we entered into Amendment No. 4 to Credit Agreement with MAM Eagle Lender. Pursuant to the terms of the amendment, the credit agreement was amended such that we must make (i) a payment of principal in the amount of \$0.5 million on

January 3, 2023, (ii) a payment of principal in the amount of \$0.3 million on February 1, 2023 and March 1, 2023, and (iii) on the interest payment date on April 3, 2023 and on each interest payment date thereafter until the obligations are repaid in full, a payment in the principal amount of \$0.5 million. In addition, the amendment decreases the minimum cash covenant we are required to maintain under the credit agreement, or the Minimum Liquidity Covenant, to (i) \$3.0 million for the period beginning on October 1, 2022, and ending on December 6, 2022, (ii) \$4.5 million for the period beginning on December 7, 2022, and ending on January 10, 2023, (iii) \$2.225 million for the period beginning on January 11, 2023, and ending on February 28, 2023, and (iv) \$3.0 million from and after March 1, 2023. Further, we have agreed that prior to April 30, 2023, we will not, without the prior written consent of MAM Eagle Lender, make or permit any payment under our agreements with Alkermes.

On March 29, 2023, we entered into Amendment No. 5 and Consent to Credit Agreement whereby MAM Eagle Lender consented to the transactions contemplated by the Transfer Agreement (as defined above) and agreed to release and discharge any liens granted or held by the lenders in respect of the assets discussed in the Transfer Agreement. The parties also agreed to, among other things, amend the minimum liquidity covenants under the Credit Agreement to require that we maintain \$2.5 million of liquidity at all times.

We anticipate that our principal uses of cash in the future will be primarily to fund our operations, pipeline development activities, working capital needs, and other general corporate purposes.

We expect to seek additional funding to sustain our future operations and while we have successfully raised capital in the past, the ability to raise capital in future periods is not assured. Based on our available cash as of March 31, 2023, we will need to raise additional capital in the next twelve months to continue as a going concern.

Sources and Uses of Cash

Cash used in operations was \$3.9 million and \$5.8 million for the three months ended March 31, 2023 and 2022, respectively, which represents our operating income (losses) less our non-cash items including: stock-based compensation, non-cash interest expense, depreciation, loss on extinguishment of debt, and changes in warrant valuations, as well as changes in operating assets and liabilities.

There was \$3.2 million of net cash provided by financing activities in the three months ended March 31, 2023 consisting of proceeds of \$4.3 million from warrant exercises, partially offset by \$1.1 million in long-term debt principal payments. There was \$9.1 million of net cash provided by financing activities for the three months ended March 31, 2022 consisting primarily of net proceeds of \$9.1 million from public offerings of common stock and warrants.

Our future use of operating cash and capital requirements will depend on many forward-looking factors, including the following:

- our relationships with third parties, licensors, collaborators, and our employees;
- our ability to execute our strategic priorities;
- the scope, progress, results, and costs of development for our product candidates;
- the cost, timing and outcome of regulatory review of our product candidates;
- the cost of manufacturing scale-up, acquiring drug product and other capital equipment for our product candidates;
- the extent to which we in-license, acquire or invest in products, businesses and technologies;
- our ability to raise additional funds through equity or debt financings or the sale of certain assets;
- our ability to maintain listing on the Nasdaq Capital Market;
- our ability to comply with our debt covenants;
- our ability to achieve certain milestones to access and draw down additional tranches of debt under the Credit Agreement;
- the extent to which holders of our warrants exercise their warrants resulting in the payment of cash proceeds to us;
- the costs of preparing, submitting and prosecuting patent applications and maintaining, enforcing and defending intellectual property claims; and
- the effect of any changes in our effective tax rate due to changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of deferred tax assets and liabilities, tax impacts and net operating loss utilization related to the Separation and changes in tax laws.

We may use existing cash and cash equivalents on hand, debt, equity financing, sale of assets or out-licensing revenue or a combination thereof to fund our operations or product acquisitions. If we increase our debt levels, we might be restricted in our ability to raise additional capital and might be subject to financial and restrictive covenants. Our shareholders may experience dilution as a result of the issuance of additional equity or debt securities. This dilution may be significant depending upon the amount of equity or debt securities that we issue and the prices at which we issue any securities.

Contractual Commitments

The table below reflects our contractual commitments as of March 31, 2023:

Contractual Obligations	Payments Due by Period (in 000s)				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Debt Obligations (1):					
Debt	\$ 6,656	\$ 6,000	\$ 656	\$ —	\$ —
Interest on Debt	795	536	259	—	—
Purchase Obligations (2):	\$ 64	\$ 64	\$ —	\$ —	\$ —
Operating Leases (3)	1,400	332	558	510	—
Other Long-Term Liabilities:					
Other License Commitments and Milestone payments (4)	16,395	80	190	125	—
Employment Agreements (5)	927	618	309	—	—
Total Contractual Obligations	\$ 26,237	\$ 7,630	\$ 1,972	\$ 635	\$ —

(1)Debt obligations consist of principal, an exit fee of 2.5% of that principal and interest on the \$6.7 million outstanding term loan under our Credit Agreement. In accordance with U.S. GAAP, the future interest obligations are not recorded on our Consolidated Balance Sheet. See Note 10 to the Consolidated Financial Statements included in this Quarterly Report.

(2)These obligations consist of cancelable and non-cancelable purchase commitments related to development activities and other goods or services. In accordance with U.S. GAAP, these obligations are not recorded on our Consolidated Balance Sheets. See Note 11(c) to the Consolidated Financial Statements included in this Quarterly Report.

(3)We have become party to certain operating leases for the leased space in Malvern, Pennsylvania, and Dublin, Ireland, as well as for office equipment, for which the minimum lease payments are presented. See Note 8 to the Consolidated Financial Statements included in this Quarterly Report.

(4)We license the neuromuscular blocking agents, or NMBs, from Cornell University pursuant to a license agreement under which we are obligated to make annual license maintenance fee payments, milestone payments and patent cost payments and to pay royalties on net sales of the NMBs. The amount reflects only payment obligations that are fixed and determinable. We are unable to reliably estimate the timing of certain of these payments totaling a maximum of \$16,000 across three compounds because they are dependent on the type and complexity of regulatory filing approvals in the U.S. and Europe and the number of product candidates approved, which have not been established, and as such are only included in the total. In accordance with U.S. GAAP, certain of these obligations are not recorded on our Consolidated Balance Sheets. See 11(a) to the Consolidated Financial Statements included in this Quarterly Report.

(5)We have entered into an employment agreement with one of our named executive officers. As of March 31, 2023, this employment agreement provided for, among other things, annual base salaries in an aggregate amount of not less than this amount, from that date through September 2024. In accordance with U.S. GAAP, these obligations are not recorded on our Consolidated Balance Sheets. See Note 11(d) to the Consolidated Financial Statements included in this Quarterly Report.

Critical Accounting Policies and Estimates

Our critical accounting policies and estimates are disclosed in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of our 2022 Annual Report. In the three months ended March 31, 2023, there were no significant changes to the application of critical accounting policies previously disclosed in our 2022 Annual Report.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

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 such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act) as of March 31, 2023. We maintain disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow for timely decisions regarding required disclosure.

A control system, no matter how well conceived and operated, can provide only reasonable, and not absolute, assurance that the objectives of the control system will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected. However, our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives. Based on the evaluation of our disclosure controls and procedures as of March 31, 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

There has been no change in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during our most recent fiscal quarter 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.

From time to time, we may become involved in legal proceedings arising in the ordinary course of our business. Our management believes that there are currently no claims or actions pending against us, the ultimate disposition of which would have a material adverse effect on our results of operations, financial condition or cash flows.

Item 1A. Risk Factors.

Except as set forth below, there have been no material changes in the risk factors disclosed in our 2022 Annual Report.

Risks Related to Our Finances and Capital Requirements

If we are unable to regain compliance with the listing standards of Nasdaq, our common stock may become delisted, which could have a material adverse effect on the liquidity of our common stock and our ability to raise funding.

The listing standards of the Nasdaq Capital Market provide that a company, in order to qualify for continued listing, must maintain stockholders' equity of at least \$2,500,000, or the Stockholders' Equity Requirement pursuant to Nasdaq Listing Rule 5550(b)(1), or Rule 5550(b)(1). On November 15, 2022, we received notice from the Nasdaq Stock Market, LLC, or Nasdaq, or the Notice, advising us that we are not in compliance with the Stockholders' Equity Requirement. Pursuant to the Notice, Nasdaq gave us until December 30, 2022, to submit to Nasdaq a plan to regain compliance, or the Plan. On January 17, 2023, Nasdaq informed us that the Plan was accepted and we have until May 15, 2023 to comply with the Plan. It is likely we will not be able to comply with the Plan in a timely manner. If we do not regain compliance with the Nasdaq continued listing requirements, our common stock will be delisted from the Nasdaq Capital Market and it could be more difficult to buy or sell our securities and to obtain accurate quotations, and the price of our common stock could suffer a material decline. In addition, a delisting would impair our ability to raise capital through the public markets, could deter broker-dealers from making a market in or otherwise seeking or generating interest in our securities and might deter certain institutions and persons from investing in our securities at all.

Our losses, negative cash flows from operations and accumulated deficit raise substantial doubt about our ability to continue as a going concern absent obtaining adequate new debt or equity financings.

Management has concluded that substantial doubt exists about our ability to continue as a going concern for the next twelve months from the date hereof. As of March 31, 2023, we had an accumulated deficit of \$179.5 million, cash and cash equivalents of \$3.8 million and current liabilities of \$12.4 million. Based on available resources, we believe that our cash and cash equivalents on hand will be sufficient to fund our currently anticipated operating and capital requirements into the third quarter of 2023.

We expect to continue to incur losses for the foreseeable future as we continue our efforts to develop our current and future product candidates. We have also incurred significant indebtedness. As of March 31, 2023, we had an outstanding principal balance of \$6.7 million under our credit facility with MAM Eagle Lender. These factors, individually and collectively, raise substantial doubt about our ability to continue as a going concern, and therefore, could materially limit our ability to raise additional funds through an issuance of debt or equity securities or otherwise.

There can be no assurance that we will be able to raise sufficient additional capital on acceptable terms or at all. Additionally, if we are unable to regain compliance with the listing standards of Nasdaq, our common stock may become delisted, which could have a material adverse effect on the liquidity of our common stock and our ability to raise funding. If such additional financing is not available on satisfactory terms, or is not available in sufficient amounts, we may be required to delay, limit or eliminate the development of business opportunities and our ability to achieve our business objectives, our competitiveness, and our business, financial condition and results of operations will be materially adversely affected. In addition, the impact of the COVID-19 pandemic and other macroeconomic factors, including but not limited to, inflationary pressures, banking instability issues, and geopolitical tensions, on the global financial markets may reduce our ability to access capital, which could negatively affect our liquidity and ability to continue as a going concern. In addition, the perception that we may not be able to continue as a going concern may cause others to choose not to deal with us due to concerns about our ability to meet our contractual obligations.

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.***Second Amended and Restated Bylaws***

In connection with the effectiveness of new SEC rules regarding universal proxy cards and a periodic review of our Amended and Restated Bylaws, our Board approved and adopted the Second Amended and Restated Bylaws, or the Amended Bylaws, effective May 10, 2023. The amendments address matters relating to Rule 14a-19 under the Exchange Act, or the Universal Proxy Rules, providing, among other things, that:

- a stockholder delivering a notice of nomination must include a representation that it intends to solicit proxies from stockholders representing at least 67% of the voting power of shares entitled to vote on the election of directors;
- a stockholder delivering a notice of nomination must certify to the Company in writing that it has complied with the Universal Proxy Rules requirements;
- the Company may disqualify a stockholder's nomination if such stockholder fails to satisfy the Universal Proxy Rules requirements;
- a stockholder providing notice pursuant to the Company's advance notice bylaws must inform the Company if the stockholder no longer plans to solicit proxies in accordance with the Universal Proxy Rules; and
- the stockholder to use a proxy card color other than white, which is reserved for the exclusive use of the Board.

The above description of the Amended Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws, which is filed as Exhibit 3.1 hereto and incorporated herein by reference.

Jillian Dilmore Employment Agreement

On May 10, 2023, we entered into an employment agreement with Jillian Dilmore, pursuant to which she will continue to serve as the Company's Corporate Controller, or the Employment Agreement. Pursuant to the Employment Agreement, Ms. Dilmore is entitled to a base salary of \$280,000 per year, which is subject to periodic review and adjustment, and has the opportunity to earn an annual bonus with a target amount equal to 25% of her annual base salary, or the Target Bonus. Ms. Dilmore shall also be eligible to participate in all health insurance, savings and retirement, and other benefit plans, that are generally applicable to our other employees, subject to the terms and conditions of such plans.

The term of the Employment Agreement is one year and will automatically renew, subject to earlier termination, for successive one year periods, unless either we or Ms. Dilmore give notice of non-renewal at least thirty days prior to the expiration of the applicable one-year period. Under the Employment Agreement, Ms. Dilmore is bound by a non-solicitation of employees, license partners, suppliers and customers of the Company and a non-compete during her employment and the one-year period thereafter.

Pursuant to the Employment Agreement, if we terminate Ms. Dilmore's employment without cause (as defined in the Employment Agreement), or Ms. Dilmore resigns with good reason (as described in the Employment Agreement) within 12 months of a change of control (as defined below), Ms. Dilmore will be entitled to receive: (i) any accrued but unused vacation and paid time off and any earned but unpaid bonus in respect of the prior year, or the Accrued Benefits; (ii) a pro-rata annual bonus in respect of the fiscal year in which the effective date of termination occur (determined based on actual performance and the number of days Ms. Dilmore is employed by the Company in such fiscal year), with such annual bonus (if any) paid at the same time it would have otherwise been paid absent her termination of employment; (iii) continuation of base salary and health insurance benefits (including for eligible dependents), at active employee rates for a period of 6 months; and (iv) outplacement services for a period of 6 months following the date of termination, which shall not exceed \$25,000. If Ms. Dilmore's employment is terminated as a result of her death, her estate will be entitled to receive: (a) the Accrued Benefits; (ii) continuation of base salary and health insurance benefits (including for eligible dependents) at active employee rates for a period of 6 months following the date of termination; and (iii) a pro-rata target bonus in respect of the fiscal year in which the effective date of termination occurs, paid within 30 days of termination.

The severance benefits described above are subject to Ms. Dilmore's execution of a release of claims in favor of the Company and our affiliates. If the severance and other benefits provided in Ms. Dilmore's employment agreement or otherwise payable to her

would be subject to excise tax under Section 280(G) of the Internal Revenue Code of 1986, as amended, then her severance benefits will be either delivered in full or delivered as to such lesser extent that would result in no portion of the severance benefits being subject to such excise tax, whichever results in the receipt by Ms. Dilmore, on an after-tax basis, of the greatest portion of such total severance and other benefits.

The summary of the Employment Agreement is qualified in its entirety by the actual terms of the Employment Agreement, which is filed as Exhibit 10.4 to this Quarterly Report on Form 10-Q.

Item 6. Exhibits.

(a)The following exhibits are filed herewith or incorporated by reference herein:

EXHIBIT INDEX

Exhibit No.	Description	Method of Filing
3.1	Second Amended and Restated Bylaws of Baudax Bio, Inc.	Filed herewith.
4.1	Form of Series A-5 Warrant.	Incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1/A filed on April 26, 2023 (File No. 333-2771161).
4.2	Form of Series A-6 Warrant.	Incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1/A filed on April 26, 2023 (File No. 333-2771161).
4.3	Form of Series D Pre-Funded Warrant.	Incorporated herein by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-1/A filed on April 26, 2023 (File No. 333-2771161).
4.4	Form of Placement Agent Warrant.	Incorporated herein by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-1/A filed on April 26, 2023 (File No. 333-2771161).
10.1*	Amendment No. 5 and Waiver to Credit Agreement, dated March 29, 2023, by and Baudax Bio, Inc., Baudax Bio N.A. LLC, Baudax Bio Limited, Wilmington Trust, National Association, and the Lenders party thereto.	Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 31, 2023 (File No. 001-39101).
10.2	Registration Rights Agreement, dated March 29, 2023, by and between Baudax Bio, Inc. and MAM Eagle Lender, LLC.	Incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on March 31, 2023 (File No. 001-39101).
10.3	Form of Securities Purchase Agreement.	Incorporated herein by reference to Exhibit 10.35 to the Company's Registration Statement on Form S-1/A filed on April 26, 2023 (File No. 333-271161).
10.4●	Employment Agreement, by and between Baudax Bio, Inc. and Jillian Dilmore, dated May 10, 2023.	Filed herewith.
31.1	Rule 13a-14(a)/15d-14(a) certification of Principal Executive Officer.	Filed herewith.
31.2	Rule 13a-14(a)/15d-14(a) certification of Principal Financial and Accounting Officer.	Filed herewith.
32.1	Section 1350 certification, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	Filed herewith.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.	Filed herewith.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.	Filed herewith.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.	Filed herewith.

101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.	Filed herewith.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.	Filed herewith.
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).	Filed herewith.

* Certain identified information in the exhibit has been omitted because it is both (i) not material and (ii) would likely cause competitive harm to the Company if publicly disclosed.

- Indicates management contract or compensatory plan.

SIGNATURES

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

BAUDAX BIO, INC.

Date: May 11, 2023

By: /s/ Gerri A. Henwood
Gerri A. Henwood
President and Chief Executive Officer
(Principal Executive Officer)

Date: May 11, 2023

By: /s/ Jillian Dilmore
Jillian Dilmore
Corporate Controller
(Principal Financial and Accounting Officer)

SECOND AMENDED AND RESTATED BYLAWS

OF

BAUDAX BIO, INC.

ARTICLE I
OFFICES1.1 Registered Office.

The registered office of Baudax Bio, Inc. (the “**Corporation**”) shall be located within the Commonwealth of Pennsylvania at such place as the Board of Directors (the “**Board of Directors**” or the “**Board**”) shall determine from time to time.

1.2 Other Offices.

The Corporation may also have such other offices at such places, within or without the Commonwealth of Pennsylvania, as the Board of Directors may determine from time to time.

ARTICLE II
MEETING OF SHAREHOLDERS2.1 Place of Meetings of Shareholders.

Meetings of shareholders may be held at such geographic locations, within or without the Commonwealth of Pennsylvania, as may be fixed from time to time by the Board of Directors or, in the case of a special meeting, the Secretary of the Corporation (the “**Secretary**”). If no such geographic location is so fixed and the Board of Directors or the Secretary, as applicable, does not determine to hold a meeting by means of electronic technology as provided in the next sentence rather than at a geographic location, meetings of the shareholders shall be held at the executive office of the Corporation, wherever situated. If a meeting of the shareholders is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the shareholders have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the shareholders and pose questions to the Directors, the meeting need not be held at a particular geographic location.

2.2 Annual Meeting of Shareholders.

(a) Time. A meeting of the shareholders of the Corporation shall be held in each calendar year, commencing with the year 2020, at such time as the Board of Directors may determine.

(b) Election of Directors. At such annual meeting, there shall be held an election of Directors.

2.3 Special Meetings of Shareholders. Except as expressly required by law, special meetings of the shareholders may be called at any time only by (i) the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Directors then in office; (ii) the Chairman of the Board of Directors (the “**Chairman of the Board**” or the “**Chairman**”); or (iii) the chief executive officer (the “**CEO**”) or President of the Corporation, and special meetings of shareholders may not be called by any other person or persons.

2.4 Notices of Meetings of Shareholders. Notice complying with Article VI of these Amended and Restated Bylaws (these “**Bylaws**”) of every meeting of the shareholders shall be given to each shareholder of record entitled to vote at the meeting at least: (i) ten days prior to the day named for a meeting that will consider a transaction under Chapter 3 of Title 15 of the Pennsylvania Consolidated Statutes or Chapter 19 of the Pennsylvania Business Corporation Law of 1988, as amended (the “**Pennsylvania BCL**”), or (ii) five days prior to the day named for the meeting in any other case.

2.5 Conduct of Meetings of Shareholders.

(a) Presiding Officer. There shall be a presiding officer at every meeting of the shareholders. The presiding officer shall be appointed by, or in the manner authorized by, the Board of Directors; provided that if a presiding officer is not designated by, or in the manner authorized by, the Board of Directors, the Chairman of the Board, if any, or, in the absence of such officer, the President shall be the presiding officer.

(b) Authority of Presiding Officer. Except as prescribed by the Board of Directors, the presiding officer shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting of the shareholders.

(c) Procedural Standard. Any action by the presiding officer in adopting rules for, and in conducting, a meeting of the shareholders shall be fair to the shareholders.

(d) Closing the Polls. The presiding officer shall announce at the meeting of the shareholders when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes thereto, may be accepted.

2.6 Quorum of and Action by Shareholders.

(a) General Rule. Except as provided in Sections 2.6(c), 2.7(c) and 2.7(d) hereof, the presence, in person or by proxy, of shareholders entitled to cast at least a majority of the votes that all shareholders are entitled to cast on a particular matter to be acted upon at the meeting shall constitute a quorum for the purpose of consideration and action on the matter. To the extent that a quorum is present with respect to consideration of and action on a particular matter or matters but a quorum is not present as to another matter or matters, consideration of and action on the matter or matters for which a quorum is present may occur and, after such consideration and action, the meeting may be adjourned for purposes of the consideration of and action on the matter or matters for which a quorum is not present.

(b) Action by Shareholders. At all meetings of shareholders for the election of Directors, a plurality of the votes cast shall be sufficient to elect a Director. Except as otherwise specifically provided by law or the Amended and Restated Articles of Incorporation of the Corporation (as may be amended or restated from time to time, the “**Articles**”), all other corporate action to be taken by vote of the shareholders of the Corporation at a duly organized meeting of shareholders, shall be authorized upon receiving the affirmative vote of a majority of the votes cast at the meeting by holders of shares entitled to vote with respect to such matter. The shareholders of the Corporation may act only at a duly organized meeting.

(c) Continuing Quorum. The shareholders present at a duly organized meeting can continue to do business until adjournment on matters for which a quorum was present, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

2.7 Adjournments.

(a) General Rule. Adjournments of any regular or special meeting of shareholders, including one at which Directors are to be elected, may be taken for such periods as the shareholders present and entitled to vote shall direct.

(b) Notice of an Adjourned Meeting. When a meeting of shareholders is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which the adjournment is taken, unless the Board fixes a new record date for the adjourned meeting or the Pennsylvania BCL requires notice of the business to be transacted and such notice has not previously been given.

(c) Election of Directors at Adjourned Meetings. Those shareholders entitled to vote who attend a meeting of shareholders at which Directors are to be elected that has been previously adjourned for lack of a quorum, although less than a quorum as fixed in Section 2.6(a) hereof, shall nevertheless constitute a quorum for the purpose of electing Directors.

(d) Conduct of Other Business at Adjourned Meetings. Those shareholders entitled to vote who attend a meeting of shareholders that has been previously adjourned for one or more periods aggregating at least 15 days because of an absence of a quorum, although less than a quorum as fixed in Section 2.6(a) hereof, shall nevertheless constitute a quorum for the purpose of acting upon any matter set forth in the notice of meeting if the notice states that those

shareholders who attend the adjourned meeting shall nevertheless constitute a quorum for the purpose of acting upon the matter.

2.8 Business at Meetings of Shareholders. Except as otherwise provided by law (including but not limited to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended or any successor provision thereto (the “**Exchange Act**”)) or in these Bylaws, the business which shall be conducted at any meeting of the shareholders shall (a) have been specified in the written notice of the meeting (or any supplement thereto) given by the Corporation, or (b) be brought before the meeting at the direction of the Board of Directors, or (c) be brought before the meeting by the presiding officer of the meeting unless a majority of the Directors then in office object to such business being conducted at the meeting, or (d) in the case of any matters intended to be brought by a shareholder before an annual meeting of shareholders for specific action at such meeting, have been specified in a written notice given to the Secretary, by or on behalf of any shareholder who shall have been a shareholder of record on the record date for such meeting and who shall continue to be entitled to vote thereat (the “**Shareholder Notice**”), in accordance with all of the following requirements:

(a) Each Shareholder Notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation (A) in the case of an annual meeting that is called for a date that is within 30 days before or after the anniversary date of the immediately preceding annual meeting of shareholders, not less than 90 days nor more than 120 days prior to such anniversary date, and (B) in the case of an annual meeting that is called for a date that is not within 30 days before or after the anniversary date of the immediately preceding annual meeting, not later than the close of business on the tenth day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever occurs first; and

(b) Each such Shareholder Notice must set forth: (A) the name and address of the shareholder who intends to bring the business before the meeting; (B) the general nature of the business which such shareholder seeks to bring before the meeting and the text of the resolution or resolutions which the proposing shareholder proposes that the shareholders adopt; (C) a representation that the shareholder is a holder of record of the stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring the business specified in the notice before the meeting; and (D) a statement (i) whether or not the shareholder giving the notice and/or the other Proposing Person(s) (as defined below), if any (a) will deliver a proxy statement and form of proxy to holders of at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to approve the proposal or (b) otherwise solicit proxies or votes from shareholders in support of such proposal.

Notwithstanding the foregoing, if a Proposing Person no longer plans to solicit proxies in accordance with its representation pursuant to this Article II, Section 2.8(b), such Proposing Person shall inform the Corporation of this change by delivering a written notice to the Secretary at the principal executive offices of the Corporation no later than two (2) business days after making the determination not to proceed with a solicitation of proxies. The presiding officer of the meeting may, in his or her sole discretion, refuse to acknowledge any business proposed by a shareholder not made in compliance with the foregoing procedure.

(c) For purposes of this Section 2.8, the term “Proposing Person” shall mean (i) the shareholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, or (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such shareholder in such solicitation.

2.9 Voting List, Voting and Proxies.

(a) Voting List. The officer or agent having charge of the transfer books for shares of the Corporation shall make a complete list of the shareholders entitled to vote at any meeting of shareholders, arranged in alphabetical order, with the address of and the number of shares held by each. The list shall be produced and kept open at the date, time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof except that the Corporation shall not be required to produce the list at a meeting of shareholders for which a judge or Judges of Election are appointed but instead shall furnish the list to the judge or judges of election. Failure to comply with the requirements of this Section 2.9 shall not affect the validity of any action taken at a meeting prior to a demand at the meeting by any shareholder entitled to vote thereat to examine the list.

(b) Voting and Proxies. Unless otherwise provided in the Articles, every shareholder shall be entitled to one vote for every share standing in the name of the shareholder on the books of the Corporation. Shareholders entitled to vote

may attend and vote either in person or by proxy. Every proxy shall be executed or authenticated by the shareholder or by such shareholder's duly authorized attorney-in-fact and filed with or transmitted to the Secretary or its designated agent. A shareholder or such shareholder's duly authorized attorney-in-fact may execute or authenticate a writing or transmit an electronic message authorizing another person to act for such shareholder by proxy. A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the Secretary or its designated agent in writing or by electronic transmission. An unrevoked proxy shall not be valid after three years from the date of its execution unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the Secretary or its designated agent.

(c) Soliciting Proxies. Any shareholder directly or indirectly soliciting proxies from other shareholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board.

2.10 Judges of Election. In advance of any meeting of shareholders of the Corporation, the Board of Directors may appoint one or three Judges of Election, who need not be shareholders and who will have such duties as provided in Section 1765(a)(3) of the Pennsylvania BCL, to act at the meeting or any adjournment thereof. If one or three Judges of Election are not so appointed, the presiding officer of the meeting may, and on the request of any shareholder shall, appoint one or three Judges of Election at the meeting. In case any person appointed as a Judge of Election fails to appear or refuses to act, the vacancy may be filled by appointment made by the Board of Directors in advance of the convening of the meeting or at the meeting by the presiding officer. A person who is a candidate for office to be filled at the meeting shall not act as a Judge of Election.

2.11 No Action by Written Consent in Lieu of a Meeting. The shareholders shall not be permitted to act by written consent in lieu of a meeting.

2.12 Participation in Meetings by Electronic Means. The Board of Directors may permit, by resolution with respect to a particular meeting of the shareholders, or the presiding officer of such meeting may permit, one or more persons to participate in that meeting, count for the purposes of determining a quorum and exercise all rights and privileges to which such person might be entitled were such person personally in attendance, including the right to vote, by means of conference telephone or other electronic means, including, without limitation, the Internet. Unless the Board of Directors so permits by resolution, or the presiding officer of such meeting so permits, no person may participate in a meeting of the shareholders by means of conference telephone or other electronic means.

ARTICLE III BOARD OF DIRECTORS

3.1 Board of Directors.

(a) General Powers. Except as otherwise provided by the law and these Bylaws, all powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of the Board of Directors.

(b) Number of Directors; Term of Office. The number of Directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The Directors shall be classified, with respect to the term for which they severally hold office, into three classes. Such classes shall be as nearly equal in number of Directors as reasonably possible. The Board of Directors shall assign Directors into classes at the time the classification becomes effective. The initial Class I Directors shall serve for a term expiring at the first annual meeting of shareholders to be held after the filing of these Bylaws, the initial Class II Directors shall serve for a term expiring at the second annual meeting of shareholders to be held after the filing of these Bylaws, and the initial Class III Directors shall serve for a term expiring at the third annual meeting of shareholders to be held after the filing of these Bylaws. At each annual meeting of shareholders, Directors elected to succeed those Directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of shareholders after their election. Notwithstanding the foregoing, the Directors elected to each class shall hold office until their successors are duly elected and qualified or until their earlier resignation, death or removal.

(c) Vacancies. Any and all vacancies in the Board of Directors, however occurring, including, without limitation, by reason of an increase in the size of the Board of Directors, or the death, resignation, disqualification or removal of a

Director, shall be filled solely and exclusively by the affirmative vote of a majority of the remaining Directors then in office, even if less than a quorum of the Board of Directors, and not by the shareholders. Any Director appointed in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been duly elected and qualified or until his or her earlier resignation, death or removal. When the number of Directors is increased or decreased, the Board of Directors shall determine the class or classes to which the increased or decreased number of Directors shall be apportioned; provided, however, that no decrease in the number of Directors shall shorten the term of any incumbent Director. In the event of a vacancy in the Board of Directors, the remaining Directors, except as otherwise provided by law, shall exercise the powers of the full Board of Directors until the vacancy is filled.

(d) Removal. Subject to the rights of any class or series of stock having preference over the common stock as to dividends or upon liquidation to elect Directors under specified circumstances, any Director may be removed from office by the shareholders only with cause by the affirmative vote of the holders of seventy-five percent (75%) of the voting power of all shares of the Corporation entitled to vote generally in the election of Directors, voting together as a single class. In case a Director or class of Directors or the entire Board of Directors is so removed, new Directors may be elected at the same meeting or in the same consent.

(e) Qualification. A Director must be a natural person at least 18 years of age.

3.2 Place of Meetings. Meetings of the Board of Directors may be held at such place within or without the Commonwealth of Pennsylvania as a majority of Directors in office may designate from time to time or as may be designated in the notice of the meeting.

3.3 Regular Meetings. A regular meeting of the Board of Directors shall be held annually, immediately following the annual meeting of the shareholders, at the place where such meeting of the shareholders is held or at such other time and place as the Board of Directors in office after the annual meeting of shareholders may designate. At such meeting, the Board of Directors shall elect officers of the Corporation. In addition to such regular meeting, the Board of Directors shall have the power to fix by resolution the time and place of other regular meetings of the Board.

3.4 Special Meetings. Special meetings of the Board of Directors shall be held whenever ordered by the Chairman of the Board, if any, by the President, by a majority of the executive committee, if any, or by a majority of the Directors in office.

3.5 Participation in Meetings by Electronic Means. Any Director may participate in any meeting of the Board of Directors or of any committee (provided such Director is otherwise entitled to participate), be counted for the purpose of determining a quorum thereof and exercise all rights and privileges to which such Director might be entitled were such Director personally in attendance, including the right to vote, or any other rights attendant to presence in person at such meeting, by means of conference telephone or other electronic technology by means of which all persons participating in the meeting can hear each other.

3.6 Notices of Meetings of Board of Directors.

(a) Regular Meetings. No notice shall be required to be given of any regular meeting, unless the same is rescheduled to be held at other than the time and place for holding such meeting as fixed in accordance with Section 3.3 hereof in which event two days' notice complying with Article VI of these Bylaws shall be given of the time and place of such meeting.

(b) Special Meetings. Notice complying with Article VI of these Bylaws shall be sufficient if given at least one day in advance of the time fixed for any special meeting of the Board of Directors.

3.7 Quorum; Action by the Board of Directors. A majority of the Directors in office shall be necessary to constitute a quorum for the transaction of business and the acts of a majority of the Directors present and voting at a meeting at which a quorum is present shall be the acts of the Board of Directors. If there is no quorum present at a duly convened meeting of the Board of Directors, the majority of those present may adjourn the meeting from time to time and place to place.

3.8 Action by Unanimous Consent. Any action required or permitted to be taken at a meeting of the Directors, or of the members of any committee of the Board of Directors, may be taken without a meeting if, prior or subsequent to the action, a consent or consents thereto by all of the Directors in office (or members of the committee with respect

to committee action) is filed with the Secretary. For purposes of this Section 3.8, a consent may be given by means of a physical written copy or may be transmitted by facsimile transmission, e-mail or similar electronic communications technology; provided that the means of giving consent shall enable the Corporation to keep a record of the consents. In addition to other means of filing with the Secretary, insertion in the minute book of the Corporation shall be deemed filing with the Secretary regardless of whether the Secretary or some other authorized person has actual possession of the minute book. Consents by all of the Directors or committee members, as the case may be, given pursuant to this Section 3.8 may be signed in any number of counterparts and shall be deemed effective as of the date set forth therein or, if no date is set forth therein, as of the date consents of all the Directors are received by or on behalf of the Corporation.

3.9 Committees.

(a) Establishment and Powers. The Board of Directors of the Corporation may, by resolution adopted by a majority of the Directors in office, establish one or more committees to consist of one or more Directors of the Corporation. Any committee, to the extent provided in the applicable resolution of the Board of Directors or in these Bylaws, shall have and may exercise all of the powers and authority of the Board of Directors and may adopt such charter or governing provisions as are consistent with the resolution forming such committee, except as may be limited by the Pennsylvania BCL. If the Board of Directors has an executive committee, the executive committee may take action upon a subject matter committed by these Bylaws or resolution of the Board of Directors to another committee of the Board of Directors unless these Bylaws, the Articles, or a resolution adopted by the Board of Directors expressly provides that another committee shall have the exclusive authority among the committees of the Board of Directors with respect to such subject matter.

(b) Alternate Members. The Board of Directors may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee or for the purpose of any written action by the committee. In the absence or disqualification of a member and alternate member or members of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of the absent or disqualified member.

(c) Term. Each committee of the Board of Directors and the members thereof shall serve at the pleasure of the Board of Directors.

(d) Status of Committee Action. The term "Board of Director" or "Board", when used in any provision of these Bylaws relating to the organization or procedures of or the manner of taking action by the Board of Directors, shall be construed to include and refer to any executive or other committee of the Board of Directors. Any provision of these Bylaws relating or referring to action to be taken by the Board of Directors or the procedure required therefor shall be satisfied by the taking of corresponding action by a committee of the Board of Directors to the extent authority to take the action has been delegated to the committee pursuant to this Section 3.9.

3.10 Nominations.

(a) Nominations for the election of Directors may be made only (A) by the Board of Directors or (B) pursuant to this Section 3.10 by any shareholder of record entitled to vote in the election of Directors generally as of the record date of the meeting and also on the date of the meeting at which Directors are to be elected. However, any shareholder entitled to vote in the election of Directors generally may nominate one or more persons for election as Directors at a meeting pursuant to this Section 3.10 only if written notice of such shareholder's intention to make such nomination or nominations has been delivered personally to, or been mailed to and received by the Corporation at, the principal executive offices of the Corporation, addressed to the attention of the Secretary in accordance with the following requirements:

(i) with respect to an election to be held at an annual meeting that is called for a date that is within 30 days before or after the anniversary date of the immediately preceding annual meeting of shareholders, not less than 90 days nor more than 120 days prior to such anniversary date and with respect either to an election to be held at an annual meeting that is called for a date that is not within 30 days before or after the anniversary date of the immediately preceding annual meeting, or to a special meeting of shareholders called for the purpose of electing Directors, not later than the close of business on the tenth day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever occurs first.

(ii) Each such notice shall set forth: (i) the name and address of the shareholder intending to make the nomination and of the person or persons to be nominated; (ii) a representation that the shareholder is a holder of record of shares of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (iii) a reasonably detailed description of all agreements, arrangements and understandings between the shareholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder; (iv) a reasonably detailed description of all agreements, arrangements and understandings (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that have been entered into by or on behalf of such shareholder, and all other agreements, arrangements and understandings that have been made, the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such shareholder; (v) a reasonably detailed description of all agreements, arrangements and understandings with any person with respect to any direct or indirect compensation, reimbursement or indemnification of each nominee (A) in connection with being a nominee that has not been fully disclosed in writing to the Corporation prior to or concurrently with the submission of the notice or (B) in connection with service or action as a Director of the Corporation if so elected; (vi) such other information regarding each nominee proposed by such shareholder as would have been required to be included in a proxy statement filed pursuant to the proxy rules of the United States Securities and Exchange Commission (the “SEC”) had the nominee been nominated by the Board of Directors; (vii) the written consent of each nominee to serve as a Director of the Corporation if so elected; and (viii) a statement (a) whether or not the shareholder giving the notice and/or the other Nominating Person(s) (defined below), if any, (i) will deliver a proxy statement and form of proxy to holders of at least 67 percent of the voting power of all of the shares of capital stock of the Corporation entitled to vote on the election of directors or (ii) otherwise solicit proxies or votes from shareholders in support of such nomination and (b) providing a representation as to whether or not such Nominating Person intends to solicit proxies in support of director nominees other than the Corporation’s director nominees in accordance with Rules 14a-19 promulgated under the Exchange Act. Notwithstanding the foregoing, if a Nominating Person no longer plans to solicit proxies in accordance with its representation pursuant to this Article III, Section 3.10(b), such Nominating Person shall inform the Corporation of this change by delivering a written notice to the Secretary at the principal executive offices of the Corporation no later than two (2) business days after making the determination not to proceed with a solicitation of proxies.

(b) The presiding officer of the meeting may, in his or her sole discretion, declare invalid or refuse to acknowledge any nomination not made in compliance with the foregoing procedure.

(c) For purposes of this Section 3.10, the term “Nominating Person” shall mean (i) the shareholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any other participant in such solicitation.

(d) In addition to the requirements of this Section 3.10, with respect to any nomination proposed to be made at a meeting, each Nominating Person shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder, including, but not limited to, Rule 14a-19 of the Exchange Act, with respect to any such nominations. If a shareholder fails to comply with any applicable requirements of the Exchange Act, including, but not limited to, Rule 14a-19 promulgated thereunder, such shareholder’s proposed nomination shall be deemed to have not been made in compliance with this Bylaw and shall be disregarded.

(e) Notwithstanding the foregoing provisions of these Bylaws, unless otherwise required by law, (i) no Nominating Person shall solicit proxies in support of director nominees other than the Corporation’s nominees unless such Nominating Person has complied with Rule 14a-19 promulgated under the Exchange Act in connection with the solicitation of such proxies, including the provision to the Corporation of notices required thereunder with timely notice, and (ii) if any Nominating Person (A) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, (B) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) promulgated under the Exchange Act, including the provision to the Corporation of notices required thereunder with timely notice, and (C) no other Nominating Person has provided notice pursuant to, and in compliance with, Rule 14a-19 under the Exchange Act that it intends to solicit proxies in support of the election of such proposed nominee

in accordance with Rule 14a-19(b) under the Exchange Act, then such proposed nominee shall be disqualified from nomination, the Corporation shall disregard the nomination of such proposed nominee and no vote on the election of such proposed nominee shall occur. Upon request by the Corporation, if any Nominating Person provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such Nominating Person shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting date, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

ARTICLE IV OFFICERS

4.1 Election and Office. The Corporation shall have a President, a Secretary and a Treasurer who shall be elected by the Board of Directors. The Board of Directors may create the positions of, define the powers, rank and duties of and elect as additional officers or assistant officers. Any number of offices may be held by the same person. The Board of Directors may delegate to any officer the power to appoint subordinate officers and to retain or appoint employees or other agents, and to prescribe the rank, authority and duties of such subordinate officers, employees or other agents. Any number of offices may be held by the same person.

4.2 Term. The officers and assistant officers shall each serve at the pleasure of the Board of Directors until the first meeting of the Board of Directors subsequent to the next annual meeting of shareholders at which the Directors elect a slate of officers, or until such officer's earlier death, resignation or removal.

4.3 Powers and Duties of the President. Unless otherwise determined by the Board of Directors, the President shall have the usual duties of a CEO and president of a corporation, including the supervision, coordination and management of the Corporation's business, operations, activities, operating expenses and capital allocation, matters relating to officers (other than the Chairman) and employees, including, without limitation, hiring, terminating, changing positions and allocating responsibilities of such officers and employees.

4.4 Powers and Duties of the Secretary. Unless otherwise determined by the Board of Directors, the Secretary shall be responsible for the keeping of the minutes of all meetings of the Board of Directors and the shareholders, in books provided for that purpose, and for the giving and serving of all notices for the Corporation. The Secretary shall perform all other duties ordinarily incident to the office of Secretary and shall have such other powers and perform such other duties as may be assigned to the Secretary by the Board of Directors. The minute books of the Corporation may be held by a person other than the Secretary.

4.5 Powers and Duties of the Treasurer. Unless otherwise determined by the Board of Directors, the Treasurer shall provide for the custody of the funds or other property of the Corporation; shall collect and receive or provide for the collection and receipt of moneys earned by or in any manner received by the Corporation; shall deposit all funds in his or her custody as Treasurer in such banks or other places of deposit as the Board of Directors may from time to time designate; shall, whenever so required by the Board of Directors, render an account showing all transactions as Treasurer, and the financial condition of the Corporation; and, in general, shall discharge such other duties as may from time to time be assigned by the Board of Directors or the President.

4.6 Powers and Duties of the Chairman of the Board. Unless otherwise determined by the Board of Directors, the Chairman of the Board, if any, shall preside at all meetings of Directors. The Chairman of the Board shall have such other powers and perform such further duties as may be assigned to such officer by the Board of Directors, including, without limitation, acting as CEO of the Corporation. To be eligible to serve, the Chairman of the Board must be a Director of the Corporation.

4.7 Delegation of Office. The Board of Directors may delegate the powers or duties of any officer of the Corporation to any other person from time to time.

4.8 Removal; Vacancies. Any officer or agent of the Corporation, whether appointed by the Board of Directors or the President, may be removed by the Board of Directors with or without cause. The Board of Directors shall have the power to fill any vacancies in any office occurring for any reason.

ARTICLE V CAPITAL STOCK

5.1 Share Certificates. Except as otherwise provided in Section 5.5 hereof, the shares of the Corporation shall be represented by certificates. Unless otherwise provided by the Board of Directors, every share certificate shall be signed by two officers, but where such certificate is signed by a transfer agent or a registrar, the signature of any corporate officer upon such certificate may be a facsimile, engraved or printed. In case any officer who has signed, or whose facsimile signature has been placed upon, any share certificate shall have ceased to be such officer because of death, resignation or otherwise before the certificate is issued, it may be issued with the same effect as if the officer had not ceased to be such at the date of its issue.

5.2 Transfer of Shares. Transfer of shares shall be made on the books of the Corporation as required by law. A transfer of shares represented by a share certificate shall be made only upon surrender of the share certificate, duly endorsed or with duly executed stock powers attached and otherwise in proper form for transfer, which certificate shall be cancelled at the time of the transfer.

5.3 Determination of Shareholders of Record.

(a) Fixing Record Date. The Board of Directors of the Corporation may fix a time prior to the date of any meeting of shareholders as a record date for the determination of the shareholders entitled to notice of, or to vote at, the meeting, which time, except in the case of an adjourned meeting, shall be not more than 90 days prior to the date of the meeting of shareholders. Only shareholders of record on the date fixed shall be so entitled notwithstanding any transfer of shares on the books of the Corporation after any record date fixed as provided in this subsection. The Board of Directors may similarly fix a record date for the determination of shareholders of record for any other purpose. When a determination of shareholders of record has been made as provided in this Section 5.3 for purposes of a meeting, the determination shall apply to any adjournment thereof unless the Board of Directors fixes a new record date for the adjourned meeting.

(b) Determination when No Record Date Fixed. If a record date is not fixed:

(i) The record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held.

(ii) The record date for determining shareholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Certification by Nominee. The Board of Directors may adopt a procedure whereby a shareholder of the Corporation may certify in writing to the Corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of a specified person or persons. The resolution of the Board of Directors may set forth: (i) the classification of shareholder who may certify; (ii) the purpose or purposes for which the certification may be made; (iii) the form of certification and information to be contained therein; (iv) if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and (v) such other provisions with respect to the procedure as are deemed necessary or desirable. Upon receipt by the Corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification. The Corporation shall be entitled to treat the person in whose name any share or shares of the Corporation stand on the books of the Corporation as the absolute owner thereof, and shall not be bound to recognize any equitable or other claim to, or interest in, such share or shares on the part of any other person.

5.4 Lost, Stolen or Destroyed Share Certificates. Unless waived in whole or in part by the Board of Directors, any person requesting the issuance of a new certificate in lieu of an alleged lost, destroyed, mislaid or wrongfully taken certificate shall (a) give to the Corporation such person's bond of indemnity with an acceptable surety, and (b) satisfy such other requirements as may be imposed by the Board of Directors. A new share certificate shall be issued to the registered owner or such person's assigns in lieu of the alleged lost, destroyed, mislaid or wrongfully taken certificate, provided that the request therefor and issuance thereof have been made before the Corporation has notice that such shares have been acquired by a bona fide purchaser.

5.5 Uncertificated Shares. Notwithstanding anything herein to the contrary, any or all classes and series of shares, or any part thereof, may be represented by uncertificated shares to the extent determined by the Board of Directors. Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the

registered owner thereof, a written notice containing the information required to be set forth or stated on certificates. The rights and obligations of the holders of shares represented by certificates and the rights and obligations of the holders of uncertificated shares of the same class and series shall be identical.

ARTICLE VI NOTICES; COMPUTING TIME PERIODS

6.1 Contents of Notice. Whenever any notice of a meeting is required to be given pursuant to these Bylaws, the Articles or otherwise, the notice shall specify the time and geographic location, if any, of the meeting: in the case of a special meeting of shareholders or where otherwise required by law or these Bylaws (including Section 9.1 hereof), the general nature of the business to be transacted at such meeting, and any other information required by law.

6.2 Method of Notice. Any notice required to be given to any person under the provisions of the Articles or these Bylaws shall be given to the person either personally or by sending a copy thereof (a) by first class or express mail, postage prepaid, or courier service, charges prepaid, to such person's postal address appearing on the books of the Corporation or, in the case of a Director, supplied by such Director to the Corporation for the purpose of notice or (b) by facsimile transmission, email or other electronic communication to such person's facsimile number or address for email or other electronic communications supplied by such person to the Corporation for the purpose of notice. Notice pursuant to clause (a) in the preceding sentence shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a courier service for delivery to that person, and notice pursuant to clause (b) in the preceding sentence shall be deemed to have been given to the person entitled thereto when sent. Except as otherwise provided herein, or as otherwise directed by the Board of Directors, notices of meetings may be given by, or at the direction of, the Secretary.

6.3 Computing Time Periods.

(a) Days to Be Counted. In computing the number of days for purposes of these Bylaws, all days shall be counted, including Saturdays, Sundays and Holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or Holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or Holiday. In computing the number of days for the purpose of giving notice of any meeting, the date upon which the notice is given shall be counted but the day set for the meeting shall not be counted.

(b) One Day's Notice. In any case where only one day's notice is being given, notice must be given at least 24 hours in advance of the time specified for the meeting in question.

6.4 Waiver of Notice. Whenever any notice is required to be given by law or the Articles or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of the notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting. Attendance of a person at any meeting shall constitute a waiver of notice of the meeting except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

6.5 Modification of Proposal Contained in Notice. Whenever the language of a proposed resolution is included in a written notice of a meeting required to be given under the provisions of the Pennsylvania BCL or the Articles or these Bylaws, the meeting considering the resolution may without further notice adopt it with such clarifying or other amendments as do not enlarge its original purpose. Where no notice of the purpose of a meeting is required to be given under the provisions of the Pennsylvania BCL or the Articles or these Bylaws, a resolution that enlarges the original purpose of a previously transmitted draft is permissible and the foregoing provision of this Section 6.5 shall not be applicable.

6.6 Bulk Mail. Notice of any regular or special meeting of the shareholders, or any other notice required by the Pennsylvania BCL or by the Articles or these Bylaws to be given to all shareholders or to all holders of a class or a series of shares, may be given by any class of post-paid mail if the notice is deposited in the United States mail at least 20 days prior to the day named for the meeting or any corporate or shareholder action specified in the notice.

6.7 Shareholders without Forwarding Addresses. Notice or other communications need not be sent to any shareholder with whom the Corporation has been unable to communicate for more than 24 consecutive months because communications to the shareholder are returned unclaimed or the shareholder has otherwise failed to provide the Corporation with a current address. Whenever the shareholder provides the Corporation with a current address, the Corporation shall commence sending notices and other communications to the shareholder in the same manner as to other shareholders.

**ARTICLE VII
LIMITATION OF DIRECTORS' LIABILITY AND INDEMNIFICATION
OF DIRECTORS, OFFICERS AND OTHER PERSONS**

7.1 Limitation of Liability. No Director or officer of the Corporation shall be personally liable for monetary damages as such for any action taken or any failure to take any action unless: (a) the Director or officer has breached or failed to perform the duties of such Director's or officer's office under the Pennsylvania BCL, and (b) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness; provided, however, that the provisions of this Section 7.1 shall not apply to the responsibility or liability of a Director or officer pursuant to any criminal statute, or to the liability of a Director for the payment of taxes pursuant to local, Pennsylvania or federal law.

7.2 Indemnification and Insurance.

(a) Indemnification of Directors and Officers.

(i) Each Indemnitee (as defined below) shall be indemnified and held harmless by the Corporation for all actions taken by such Indemnitee and for all failures to take action (regardless of the date of any such action or failure to take action) to the fullest extent permitted by Pennsylvania law against all expense, liability and loss (including without limitation attorneys' fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Indemnitee in connection with any Proceeding (as defined below). No indemnification pursuant to this Section 7.2 shall be made, however, in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted self-dealing, willful misconduct or recklessness.

(ii) The right to indemnification provided in this Section 7.2 shall include the right to have the expenses reasonably incurred by the Indemnitee in defending any Proceeding paid by the Corporation in advance of the final disposition of the Proceeding to the fullest extent permitted by Pennsylvania law; provided that, if Pennsylvania law continues so to require, the payment of such expenses incurred by the Indemnitee in advance of the final disposition of a Proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced without interest if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified under this Section 7.2 or otherwise.

(iii) Indemnification pursuant to this Section 7.2 shall continue as to an Indemnitee who has ceased to be a Director or officer and shall inure to the benefit of such person's heirs, executors and administrators.

(iv) For purposes of this Article VII, (A) "**Indemnitee**" shall mean each current or former Director and current or former officer of the Corporation who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any Proceeding, by reason of the fact that such person is or was a Director or officer of the Corporation or is or was serving in any capacity at the request or for the benefit of the Corporation as a Director, officer, employee, agent, partner, or fiduciary of, or in any other capacity for, another corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise; and (B) "**Proceeding**" shall mean any threatened, pending or completed action, suit or proceeding (including without limitation an action, suit or proceeding by or in the right of a the Corporation), whether civil, criminal, administrative, investigative or through arbitration. If a Director or officer of this Corporation serves as a director, officer, employee, agent, partner or fiduciary of another entity and (a) this Corporation has at least 50% equity in such other entity and such person has no equity interest in such other entity or (b) such other entity is directly or indirectly controlled by this Corporation, such person shall be presumed (unless this Corporation produces clear and convincing evidence to the contrary) to be serving in the position with the other entity at the request and for the benefit of this Corporation.

(b) Indemnification of Employees and Other Persons. The Corporation may, by action of its Board of Directors and to the extent provided in such action, indemnify employees and other persons as though they were Indemnitees. Directors and officers of entities which have merged into, or have been consolidated with, or have been liquidated into, the Corporation shall not be Indemnitees with respect to Proceedings involving any action or failure to act of such Director or officer prior to the date of such merger, consolidation or liquidation, but such persons may be indemnified by the Board of Directors pursuant to the first sentence of this Section 7.2(b).

(c) Claims for Indemnification and Advancement of Expenses. To the extent that a representative of the Corporation has been successful on the merits or otherwise in defense of any Proceeding or in defense of any claim, issue or matter therein, the Corporation shall indemnify such person against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. If indemnification under this Section 7.2 or advancement of expenses are not made or paid by the Corporation, or on its behalf, within 90 days after a written claim for indemnification or a request for an advancement of expenses by an Indemnitee has been received by the Corporation, such Indemnitee may, at any time thereafter, bring suit against the Corporation to recover the unpaid amount of the claim and/or the advancement of expenses. The right to indemnification and advancement of expenses provided hereunder shall be enforceable by an Indemnitee in any court of competent jurisdiction, and if indemnification and/or advancement of expenses is obtained by an Indemnitee in whole or in part, the expenses reasonably incurred by such Indemnitee in connection with obtaining such indemnification and/or advancement of expenses shall also be indemnified by the Corporation.

(d) Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses provided in this Article VII shall not be exclusive of any other rights that any person may have or hereafter acquire under any statute, provision of the Articles or these Bylaws, agreement, vote of shareholders or Directors, or otherwise.

(e) Insurance. The Corporation may purchase and maintain insurance, at its expense, for the benefit of any person on behalf of whom insurance is permitted to be purchased by Pennsylvania law against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person under Pennsylvania or other law. The Corporation may also purchase and maintain insurance to insure its indemnification obligations whether arising hereunder or otherwise.

(f) Fund for Payment of Expenses. The Corporation may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise may secure in any manner its indemnification obligations, whether arising hereunder, under the Articles, by agreement, vote of shareholders or Directors, or otherwise.

7.3 Amendment. The provisions of this Article VII relating to the limitation of Directors' or officers' liability, to indemnification and to the advancement of expenses shall constitute a contract between the Corporation and each of its Directors and officers which may be modified as to any Director or officer only with that person's consent or as specifically provided in this Section 7.3. Notwithstanding any other provision of these Bylaws relating to their amendment generally, any repeal or amendment of this Article VII which is adverse to any Director or officer shall apply to such Director or officer only on a prospective basis, and shall not reduce any limitation on the personal liability of a Director or officer of the Corporation, or limit the rights of an Indemnitee to indemnification or to the advancement of expenses with respect to any action or failure to act occurring prior to the time of such repeal or amendment. Notwithstanding any other provision of these Bylaws, no repeal or amendment of these Bylaws shall affect any or all of this Article VII so as either to reduce the limitation of Directors' or officers' liability or limit indemnification or the advancement of expenses in any manner unless adopted by (a) the unanimous vote of the Directors of the Corporation then serving, or (b) the affirmative vote of shareholders entitled to cast not less than a majority of the votes that all shareholders are entitled to cast in the election of Directors; provided that no such amendment shall have retroactive effect inconsistent with the preceding sentence.

7.4 Changes in Pennsylvania Law. References in this Article VII to Pennsylvania law or to any provision thereof shall be to such law as it existed on the date this Article VII was adopted or as such law thereafter may be changed; provided that (a) in the case of any change which expands the liability of Directors or officers or limits the indemnification rights or the rights to advancement of expenses which the Corporation may provide, the rights to limited liability, to indemnification and to the advancement of expenses provided in this Article VII shall continue as theretofore to the extent permitted by law; and (b) if such change permits the Corporation without the requirement of any further action by shareholders or Directors to limit further the liability of Directors or officers or to provide broader indemnification rights or rights to the advancement of expenses than the Corporation was permitted to

provide prior to such change, then liability thereupon shall be so limited and the rights to indemnification and the advancement of expenses shall be so broadened to the extent permitted by law.

ARTICLE VIII FISCAL YEAR

8.1 Fiscal Year. The Board of Directors shall have the power by resolution to fix the fiscal year of the Corporation. If the Board of Directors shall fail to do so, the President shall fix the fiscal year.

ARTICLE IX AMENDMENTS

9.1 Amended by Shareholders. Except as otherwise expressly provided in Section 7.3 hereof, the shareholders entitled to vote thereon shall have the power to alter, amend, or repeal these Bylaws, by the vote of at least 66 2/3% of the outstanding shares of capital stock entitled to vote at a duly convened regular or special meeting of shareholders; provided, however, that if the Board of Directors recommends that shareholders approve such amendment or repeal at such meeting of shareholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares of capital stock entitled to vote on such amendment or repeal, voting together as a single class. In the case of a meeting of shareholders to amend or repeal these Bylaws, notice shall be given to each shareholder entitled to vote thereon that the purpose, or one of the purposes, of the meeting is to consider the adoption, amendment or repeal of these Bylaws.

9.2 Amended by Board of Directors. Except as otherwise expressly provided in Section 7.3 hereof, the Board of Directors (but not a committee thereof), shall have the power to alter, amend, and repeal these Bylaws by the affirmative vote of a majority of the Directors then in office, regardless of whether the shareholders have previously adopted the Bylaw being amended or repealed, subject to the power of the shareholders to change such action, provided that the Board of Directors shall not have the power to amend these Bylaws on any subject that is expressly committed to the shareholders by the express terms hereof, by Section 1504 of the Pennsylvania BCL or otherwise.

ARTICLE X INTERPRETATION OF BYLAWS; SEVERABILITY

10.1 Interpretation. All words, terms and provision of these Bylaws shall be interpreted and defined by and in accordance with Pennsylvania BCL. If any provision of these Bylaws shall be inconsistent with any provision of the Articles, the provision of the Articles shall prevail. Where any provision of these Bylaws refers to a rule or a process set forth in these Bylaws, the reference shall be construed to include and be satisfied by any rule or process on the same subject set forth in the Articles.

10.2 Separability. The provisions of these Bylaws are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reasons any other or others of them may be invalid or unenforceable in whole or in part.

ARTICLE XI DETERMINATIONS BY THE BOARD

11.1 Effect of Board Determination. Any determination involving interpretation or application of these Bylaws made in good faith by the Board of Directors shall be final, binding and conclusive on all parties in interest.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into by and between Baudax Bio, Inc. (the "Company") and Jillian Dilmore (the "Executive"), on May 10, 2023, effective as of March 31, 2023 (the "Effective Date").

BACKGROUND

WHEREAS, the Company desires to continue to employ the Executive, and the Executive desires to continue employment with the Company, subject to the terms and further conditions set forth herein.

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

1. **Employment and Duties.** From and after the Effective Date, the Company shall continue to employ the Executive as its Corporate Controller. In such capacity, the Executive shall continue to perform all such duties as are assigned to her, consistent with the Executive's titled position, Corporate Controller/Principal Accounting Officer. The Executive will continue to devote her full business time and her reasonable best efforts to promote the interests of the Company. Nothing contained herein shall preclude the Executive from managing personal investments, participating in charitable, community, educational and professional activities, or, with the prior written consent of the Company (which shall not be unreasonably withheld), serving on the board of directors (or comparable governing body), including any board committees, of for-profit businesses that do not compete with the Company, provided that such activities do not materially interfere with the performance of her duties for the Company. The Executive represents and warrants that she is not a party to or otherwise bound by any agreement or restriction that could conflict with, or be violated by, the performance of her duties to the Company or her obligations under this Agreement.

2. **Term.** The term of the Executive's employment hereunder shall continue for one (1) year unless terminated pursuant to the terms of this Agreement. This Agreement will automatically renew, subject to earlier termination as expressly provided herein, for successive one (1) year periods, unless either Executive or the Company give notice of non-renewal at least thirty (30) days prior to the expiration of the applicable one-year period.

3. **Compensation.**

(a) **Base Salary.** The Company shall pay the Executive in accordance with its normal bi-weekly payroll practices an annual salary at the rate of \$280,000 per year (the "Base Salary"). The Executive's Base Salary shall be reviewed not less often than annually and may be adjusted from time to time in the sole discretion of the Company. The Base Salary, as in effect from time to time, may not be decreased without the prior written consent of the Executive, except as part of an across the board decrease in which the percentage decrease in the Executive's base salary is not greater than the smallest percentage decrease of any other senior executive officer.

(b) **Annual Bonus Opportunity.** Commencing with the 2023 calendar year, the Executive will participate in the Company's annual incentive bonus program. The Executive's target annual bonus amount (the "Target Bonus") will be 25% of the Base Salary. The terms of the Company's annual incentive bonus program, including the applicable performance goals and measures, will be determined from time to time in the discretion of the Company's Board of Directors (the "Board") or its Compensation Committee (the "Compensation Committee").

4. **Other Benefits.**

(a) **Benefit Plans.** The Executive shall be eligible to participate in all health insurance, savings and retirement, and other benefit plans, if any, that are from time to time generally applicable to other employees of the Company, subject to the terms and conditions of such plans.

(b) Vacation and Personal Days. The Executive shall be entitled to five (5) weeks of paid vacation time per year and three (3) paid personal days per year, in accordance with the plans, practices, policies, and programs of the Company.

(c) Expense Reimbursement. The Executive shall be entitled to receive reimbursement for all reasonable employment-related expenses incurred by the Executive upon the receipt by the Company of an accounting in accordance with practices, policies and procedures applicable to other employees of the Company.

5. Confidential Information.

(a) The Executive agrees at all times during the term of her employment with the Company and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person or entity ("Person") without prior written authorization of the Company, any Confidential Information of the Company. The Executive understands that "Confidential Information" means Inventions (as defined herein) and any other information of the Company and/or its affiliates disclosed or made available to the Executive, whether before or during the term hereof, including but not limited to financial information, technical and non-technical data, services, products, processes, operations, reports, analyses, test results, technology, samples, specifications, protocols, performance standards, formulations, compounds, know-how, methodologies, trade secrets, trade practices, marketing plans and materials, strategies, forecasts, research, concepts, ideas, and names, addresses and any other characteristics or identifying information of the Company's existing or potential investors, licensors, licensees, suppliers, customers or employees. Confidential Information shall not include any information the Executive can establish by competent proof is or becomes public knowledge or part of the public domain through no act or omission of the Executive. Notwithstanding the foregoing, the Executive shall be permitted to disclose Confidential Information pursuant to a court order, government order or any other legal requirement of disclosure if no suitable protective order or equivalent remedy is available, provided that the Executive gives the Company written notice of such court order, government order or legal requirement of disclosure immediately upon knowledge thereof and allows the Company a reasonable opportunity to seek to obtain a protective order or other appropriate remedy prior to such disclosure to the extent permitted by law. Further, it shall not be a violation of the Executive's confidentiality obligations, and the Executive shall not be held criminally or civilly liable under any federal or state trade secret law if disclosure of confidential information (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(b) The Executive agrees that she shall not, during her employment with the Company, improperly use or disclose any proprietary information or trade secrets of any former employer of the Executive or other Person and that the Executive will not bring onto the premises of the Company any unpublished documents or proprietary information belonging to any such former employer or Person unless consented to in writing by such former employer or Person.

(c) The Executive recognizes that the Company has received and in the future will receive from third parties certain confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. The Executive agrees to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any Person, or to use it except as necessary in carrying out her work for the Company consistent with the Company's agreement with such third party.

(d) Notwithstanding anything herein to the contrary, nothing in this Agreement shall (x) prohibit the Executive from making reports of possible violations of federal law or regulation to any governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934, as amended, or Section 806 of the Sarbanes-Oxley Act of 2002, or of any other whistleblower protection provisions of federal law or regulation, or (y) require notification or prior approval by the Company of any such report; provided that, the Executive is not authorized to disclose communications with counsel that were made for the purpose of receiving legal advice or that contain legal advice or that are protected by the attorney work product or similar privilege.

6. Inventions.

(a) The Executive agrees that she shall promptly make full written disclosure to the Company, shall hold in trust for the sole right and benefit of the Company, shall assign and hereby does assign to the Company, or its designee, all of the Executive's right, title, and interest in and to any and all inventions, original works of authorship, developments,

concepts, improvements, designs, discoveries, ideas, trademarks or trade secrets, whether or not patentable or registerable under copyright or similar laws, which the Executive may, solely or jointly, conceive or develop or reduce to practice during the period of time the Executive is in the employ of the Company that relate to the Company and/or its products (collectively referred to as "Inventions"). The Executive further acknowledges that all original works of authorship which are made by the Executive (solely or jointly with others) within the scope of and during the period of her employment with the Company and which are protectable by copyright are "works made for hire", as that term is defined in the United States Copyright Act. The Executive understands and agrees that the decision whether or not to commercialize or market any invention developed by the Executive (solely or jointly with others) is within the Company's sole discretion and for the Company's sole benefit and that no royalty will be due to the Executive as a result of the Company's efforts to commercialize or market any such invention.

(b) The Executive agrees to keep and maintain adequate and current written records of all Inventions made by the Executive (solely or jointly with others) during the term of her employment with the Company. The records will be in the form of notes, sketches, drawings, and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

(c) If the Company is unable because of the Executive's mental or physical incapacity or for any other reason to secure her signature on any such document, then the Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as her agent and attorney-in-fact to act for and in the Executive's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by the Executive.

7. Returning Company Documents. The Executive agrees that, at the time of leaving the employ of the Company, she shall deliver to the Company (and will not keep in her possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, materials, equipment, other documents or property, or reproductions of any of the aforementioned items developed by the Executive pursuant to her employment with the Company or otherwise belonging to the Company, its successors or assigns.

8. Nonsolicitation and Noncompetition.

(a) The Executive agrees that during the term of her employment with the Company and for a period of one (1) year immediately following the termination of the Executive's employment with the Company for any reason whatsoever, whether with or without cause, (i) the Executive shall not, either directly or indirectly, solicit, induce, recruit or encourage any employees of the Company and/or its affiliates to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company and/or its affiliates, either for the Executive or for any other Person and (ii) neither the Executive, nor any firm, organization or corporation in which she is interested, shall, for any reason, directly or indirectly, persuade or attempt to persuade any investor, licensor, licensee, supplier or customer of the Company or its affiliates, or any potential investor, licensor, licensee, supplier or customer to which the Company and/or its affiliates have made a presentation or with which the Company and/or its affiliates have been having discussions, to not transact business with the Company and/or its affiliates or to transact business with the Executive or any other Person as an alternative to or in addition to the Company and/or its affiliates.

(b) The Executive agrees that during the term of her employment with the Company and for a period of one (1) year immediately following the termination of the Executive's employment with the Company for any reason whatsoever, whether with or without cause, the Executive shall not, anywhere in the world, engage, either directly or indirectly, whether as a principal or as an agent, officer, director, employee, consultant, shareholder, partner or otherwise, alone or in association with any other Person, in any Directly Competing Business. For purposes of this Agreement, the term "Directly Competing Business" shall mean any Person engaged in the development or commercialization of products that are the same or substantially similar to, or that directly compete with, those products developed, commercialized or actively in development or commercialization by the Company or its affiliates.

(c) In the event that the provisions of subparagraphs (a) or (b) above should be determined by a court or other tribunal of competent jurisdiction to exceed the time, geographic, services or product limitations permitted by the applicable law in a jurisdiction in which enforcement of this Agreement is sought, then such provisions shall be deemed reformed in such jurisdiction to the maximum time, geographic, service or product limitations permitted by

such applicable law, and the parties hereby expressly grant any court or competent jurisdiction the authority to effect such reformation.

9. Equitable Relief. The parties confirm that a violation by the Executive of the provisions of this Agreement, including but not limited to, the restrictions in Sections 5 through 8, will cause the Company irreparable harm that cannot be remedied adequately by monetary damages. The Executive agrees that, in the event of such a violation, the Company shall be entitled to seek temporary, preliminary and permanent injunctive relief to restrain any such violation (without the posting of a bond) and to an equitable accounting of all earnings, profits and other benefits arising from the breach or violation, which rights shall be cumulative and in addition to any other rights or remedies to which the Company may be entitled. The Company shall be entitled to commence action for such relief in any state or federal court in the Commonwealth of Pennsylvania, and the Executive waives to the fullest extent permitted by law any objection that she may now or hereafter have to the jurisdiction and venue of the court in any such proceeding.

10. Termination of Employment.

(a) The Executive's employment shall terminate, or be subject to termination, as follows:

(i) Death or Disability. In the event the Executive dies, the Executive's employment shall terminate automatically. If the Executive becomes entitled to long-term disability benefits under the Company's then-current disability insurance policy(ies) applicable to the Executive, the Company may, at its option, terminate the Executive's employment hereunder effective immediately upon written notice. If the Company does not have in effect disability insurance covering the Executive and/or if "disabled" is not defined therein, the Executive shall be deemed disabled, and her employment may be terminated hereunder, at such time that she suffers a physical or mental disability that renders her unable to perform the duties of her employment on substantially a full-time basis, and such period of physical or mental disability continues without substantial interruption for more than one hundred eighty (180) days.

(ii) By Company for Cause. The Company may, at any time, terminate the Executive's employment hereunder for Cause. For purposes of this Agreement, the Company shall have "Cause" to terminate the Executive's employment hereunder upon (a) fraud or dishonesty in connection with Executive's employment with the Company; (b) the willful failure by the Executive to substantially perform her duties hereunder or the material violation by the Executive of any agreement with, or duty owed, to the Company or its affiliates, which, if curable, such willful failure or material violation continues for thirty (30) days or more following written notice to the Executive; (c) the Executive's loss of any permit, license, accreditation or other authorization necessary to the Executive's performance of her duties hereunder, as determined by the Company in its sole discretion; (d) the Executive's indictment of a felony or a plea by the Executive of nolo contendere to a felony; or (e) other willful conduct by the Executive likely, in the reasonable judgment of the Board, to materially adversely affect the reputation of the Company, which, if curable, such conduct continues for five (5) days or more following written notice to the Executive. No act, or omission to act, shall be considered "willful" unless such act or omission is done without a good faith belief by the Executive that such act or omission is in, or not opposed to, the best interests of the Company.

(iii) By Company for Convenience. The Company may terminate the Executive's employment hereunder at any time, without Cause, upon no less than thirty (30) days prior written notice to Executive.

(iv) By Executive for Convenience. The Executive may terminate her employment hereunder at any time upon no less than thirty (30) days prior written notice to the Company.

(v) By Executive with good reason Following a Change of Control. The Executive may terminate her employment for good reason hereunder at any time during the twelve (12) months following a Change of Control, if during such twelve-month period the Company and/or its successor (a) materially and adversely changes the status, or responsibilities of the Executive in her capacity as an employee of the Company and such change is not cured within thirty (30) days following written notice by the Executive to the Company, (b) materially reduces the Executive's Base Salary other than as permitted by Section 3 or the amount of the Target Bonus opportunity, or (c) requires the Executive to be principally based at any office or location more than fifty (50) miles from the Executive's principal office immediately prior to the Change of Control; provided, however, that the Executive shall not be entitled to resign pursuant to this Section 10(a)(v) unless the Executive notifies the Company in writing of the circumstances outlined in Section 10(a)(v)(a) through 10(a)(v)(c) within thirty (30) days after she first has notice of such circumstances, the Company fails to cure such circumstances within thirty (30) days after receipt of such notice, and

the Executive resigns her employment not later than ten (10) days after the end of such cure period. For purposes of this Agreement, a "Change of Control" shall be deemed to have occurred upon the happening of any of the following events: (i) the consummation of a plan of dissolution or liquidation of the Company; (ii) the consummation of the sale or disposition of all or substantially all of the assets of the Company; (iii) the consummation of a merger, consolidation or other shareholder-approved fundamental business transaction in which the Company is a participant with another entity where the stockholders of the Company, immediately prior to the referenced transaction, will not beneficially own, immediately after the referenced transaction, shares or other equity interests entitling such stockholders to more than 50% of all votes to which all equity holders of the surviving entity would be entitled in the election of directors; (iv) the date any entity, person or group, (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Securities Exchange Act of 1934, as amended), (other than the Company or any of its subsidiaries or any employee benefit plan (or related trust) sponsored or maintained by the Company or any of its subsidiaries), shall have become the beneficial owner of, or shall have obtained voting control over, more than fifty percent (50%) of the outstanding shares of the Common Stock; or (v) the first day after the date hereof when directors are elected such that a majority of the Board shall have been members of the Board for less than twenty-four (24) months, unless the nomination for election of each new director who was not a director at the beginning of such twenty-four (24) month period was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such period.

(b) Severance.

(i) In the event of any termination of the Executive's employment for any reason, the Executive (or her estate) shall be entitled to (A) her Base Salary through the date of termination, (B) the value of her accrued but unused vacation and paid time off through the date of termination, (C) except in the case of termination for Cause, any bonus earned in a prior year but not yet paid on the date of termination, (D) reimbursement of all business expenses properly incurred prior to the date of termination consistent with Company policy, and (E) any benefits, including any continuation or conversion rights, provided under any employee benefit plan or policy of the Company (not including any severance, separation pay, or supplemental unemployment benefit plan), in accordance with the terms of such plan or policy (the "Accrued Benefits").

(ii) In the event of termination of the Executive's employment by reason of death, the Company shall pay or provide to the Executive's estate: (A) the Accrued Benefits, (B) the Executive's Base Salary, in accordance with its normal payroll practices (but not less frequently than monthly), for a period of six (6) months from the effective date of such termination, (C) an amount equal to the Executive's Target Bonus for the fiscal year of termination pro-rated through the date of termination (determined based on the number of days that the Executive is employed by the Company in such year) and paid promptly following such termination, and (D) continued health benefits for the Executive's eligible dependents at the Company's expense (or such portion thereof as is then funded by the Company for other employees of the Company) for the period described above in clause (B).

(iii) In the event of a termination by the Company pursuant to Section 10(a)(iii), or if the Executive terminates this Agreement during the twelve (12) months after a Change of Control pursuant to Section 10(a)(v), the Company shall (A) pay or provide to the Executive the Accrued Benefits, (B) pay the Executive a pro-rata annual bonus in respect of the fiscal year in which the effective date of termination occurs (determined based on actual performance and the number of days the Executive is employed by the Company in such fiscal year), with such annual bonus (if any) paid at the same time it would have otherwise been paid absent the Executive's termination of employment, (C) continue to pay the Executive her Base Salary, in accordance with its normal payroll practices (but not less frequently than monthly), and shall continue the Executive's, and her eligible dependents', health insurance benefits at the Company's expense (or such portion thereof as is then funded by the Company for other employees of the Company) for a period of six (6) months from the effective date of such termination, and (D) provide the Executive, at the Company's expense, with senior executive level outplacement services for a period of six (6) months from the date of termination, using a reputable provider selected by the Executive with the Company's consent, which shall not be unreasonably withheld, provided that such outplacement expenses shall not exceed \$25,000 in any event.

(iv) Except as expressly provided in this Section 10(b), upon the termination of the Executive's employment, all payments hereunder shall cease.

(v) The payments and benefits described in Sections 10(b)(ii) and 10(b)(iii) are in lieu of, and not in addition to, any other severance arrangement maintained by the Company. The payments and benefits described in Sections 10(b)(ii)

and 10(b)(iii), other than the Accrued Benefits, (the “Severance Benefits”) are conditioned on clauses (A) and (B) below:

A. The Executive’s (or in the case of the Executive’s death, her estate’s) execution and delivery to the Company and the expiration of all applicable statutory revocation periods, by the sixtieth (60th) day following the effective date of her termination of employment, of a general release of claims against the Company and its affiliates substantially in the form attached hereto as Exhibit A (the “Release”). Subject to Section 11 below, the Severance Benefits will begin to be paid or provided ten (10) days after the Release becomes irrevocable (or with respect to any amount payment under Section 10(b)(iii)(B), at such later time as specified therein); provided that if the seventy (70) day period following the date of termination begins in one taxable year and ends in a second taxable year, such payments or benefits shall not commence until the second taxable year. The initial payment will include any Severance Benefits that, but for the above-described timing rule, would have otherwise been paid since the date of the Executive’s cessation of employment.

B. The Executive’s continued compliance with the provisions of Sections 5, 6, 7 and 8 of this Agreement.

(vi) The Executive shall not be required to seek or accept other employment, or otherwise to mitigate damages, as a condition to receipt of the benefits described in Sections 10(b)(ii) and 10(b)(iii), and such benefits shall not be reduced or offset by an amounts received by the Executive from any other source, except to the extent provided in Section 10(b)(vii), below.

(vii) Any continuation of health insurance under this Section 10(b) will be accomplished by the Company’s waiver or payment of the applicable premium for COBRA continuation coverage. To the extent Executive (or her eligible dependents, as applicable) are not eligible, or cease to be eligible, for COBRA continuation (for example, because of their enrollment in another employer’s group health plan), the Company’s obligation to continue group health coverage under this Section 10(b) will cease.

(c) Other Roles. Contemporaneous with any cessation of Executive’s employment, unless otherwise requested by the Board, Executive will resign from all officer and director positions with the Company and its affiliates and execute such documents as may be requested by the Company to confirm that resignation.

11. Compliance with Section 409A.

(a) The parties intend for this Agreement to comply with or be exempt from Section 409A of the Code, and this Agreement should be interpreted accordingly. Nonetheless, the Company does not guaranty the tax treatment of any compensation payable to Executive.

(b) Notwithstanding anything to the contrary in this Agreement, no portion of the benefits or payments to be made under Section 10(b) hereof will be payable until the Executive has a “separation from service” from the Company within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”). In addition, to the extent compliance with the requirements of Treas. Reg. § 1.409A-3(i)(2) (or any successor provision) is necessary to avoid the application of an additional tax under Section 409A of the Code to payments due to the Executive upon or following her “separation from service”, then notwithstanding any other provision of this Agreement (or any otherwise applicable plan, policy, agreement or arrangement), any such payments that are otherwise due within six months following the Executive’s “separation from service” (taking into account the preceding sentence of this paragraph) will be deferred without interest and paid to the Executive in a lump sum immediately following that six month period. This paragraph should not be construed to prevent the application of Treas. Reg. § 1.409A-1(b)(9)(iii) (or any successor provision) to amounts payable hereunder. For purposes of the application of Section 409A of the Code, each payment in a series of payments will be deemed a separate payment.

(c) Notwithstanding anything to the contrary in this Agreement, except to the extent any expense, reimbursement or in-kind benefit provided to the Executive does not constitute a “deferral of compensation” within the meaning of Section 409A of the Code, and its implementing regulations and guidance, (i) the amount of expenses eligible for reimbursement or in-kind benefits provided to the Executive during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to the Executive in any other calendar year, (ii) the reimbursements for expenses for which the Executive is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred and (iii) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

(d) Anything in this Agreement to the contrary notwithstanding, if at the time of the Executive’s separation from service within the meaning of Section 409A of the Code, the Company determines that the Executive is a “specified

employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Executive becomes entitled to under this Agreement or otherwise on account of the Executive’s separation from service would be considered deferred compensation otherwise subject to the 20 percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (A) six months and one day after the Executive’s separation from service, or (B) the Executive’s death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule.

12. Parachute Payment.

(a) If any payment or benefit the Executive would receive under this Agreement or otherwise (the “Total Payments”) would (i) constitute a “Parachute Payment” within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then such Total Payment shall be equal to the Reduced Amount. The “Reduced Amount” shall be either (x) the largest portion of the Total Payment that would result in no portion of the Total Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total of the Total Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Executive’s receipt, on an after-tax basis, of the greatest economic benefit notwithstanding that all or some portion of the Total Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting Parachute Payments is necessary so that the Total Payment equals the Reduced Amount, reduction shall occur in the manner that results in the greatest economic benefit for the Executive. In applying this principle, the reduction shall be made in a manner consistent with the requirements of Section 409A of the Code, and where two economically equivalent amounts are subject to reduction but payable at different times, such amounts shall be reduced on a pro rata basis but not below zero.

(b) In the event it is subsequently determined by the Internal Revenue Service that some portion of the Reduced Amount (as determined pursuant to clause (x) in the preceding paragraph) is subject to the Excise Tax, the Executive agrees to promptly return to the Company a sufficient amount of the Total Payment so that no portion of the Reduced Amount is subject to the Excise Tax. For the avoidance of doubt, if the Reduced Amount is determined in accordance with clause (y) in the preceding paragraph, the Executive will have no obligation to return any portion of the Total Payment pursuant to the preceding sentence. Unless the Executive and the Company agree on an alternative accounting or law firm, the accounting firm then engaged by the Company for general tax compliance purposes shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Company shall appoint a nationally recognized accounting, law or consulting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting, law or consulting firm required to be made hereunder.

(c) The Company shall use commercially reasonable efforts such that the accounting, law or consulting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Executive and the Company within fifteen (15) calendar days after the date on which the Executive’s right to a Total Payment is triggered (if requested at that time by the Executive or the Company) or such other time as requested by the Executive or the Company.

13. Notices. All notices, consents, waivers or other communications which are required or permitted hereunder will be sufficient if given in writing and delivered personally, by overnight mail service, by fax transmission (which is confirmed) or by registered or certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth below (or to such other addressee or address as will be set forth in a notice given in the same manner):

If to the Company: Baudax Bio, Inc.
490 Lapp Road
Malvern, PA 19355
Attn: Chief Executive Officer

If to the Executive: Address contained in Company personnel records.

All such notices will be deemed to have been given three business days after mailing if sent by registered or certified mail, one business day after mailing if sent by overnight courier service, or on the date delivered or transmitted if delivered personally or sent by fax transmission.

14. Indemnification. To the maximum extent permitted by applicable law, both during the term of this Agreement and at all times thereafter, regardless of the reason for termination, the Company shall indemnify the Executive and hold the Executive harmless against any cost, fee, expense, fine or penalty (a "cost") to which she may be subject as a result of serving as an employee or officer of the Company or any other entity at the Company's direction, shall advance to the Executive, as incurred, the reasonable costs (including fees and disbursements of legal counsel) incurred by her in defending any judicial or administrative proceeding, including any investigation, that may give rise to a cost, subject to the Executive's obligation to repay any such advance if it is subsequently determined that she was not entitled to indemnification, and shall provide for the Executive to be covered by its directors and officers, or any similar, insurance policy at the level applicable to its most senior active officers.

15. Non-disparagement. Both during the term of this Agreement and at all times thereafter, regardless of the reason for termination, the Executive shall not disparage the Company or any of its products, services, directors, officers, agents or employees, or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of the Company or any of its products, services, directors, officers, agents or employees. Notwithstanding the foregoing, nothing in this Agreement will prohibit the Executive from (a) responding to any inquiry from, or providing truthful testimony before any self-regulatory organization or any state or federal regulatory authority, (b) making any other truthful disclosure required by law or legal process, or (c) defending any charge, action, investigation or proceeding initiated by or on behalf of the other.

16. Miscellaneous.

(a) No provision of this Agreement may be amended unless such amendment, modification or discharge is agreed to in writing signed by the parties hereto.

(b) No waiver by any party hereto of any breach of, or compliance with, any condition or provision of this Agreement by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No such waiver shall be enforceable unless expressed in a written instrument executed by the party against whom enforcement is sought.

(c) This Agreement constitutes the entire agreement of the parties on the subject matter and no agreements or representations, oral or otherwise, expressed or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement. For the avoidance of doubt, any prior agreements or representations made by either party which are not set forth expressly in this Agreement, are hereby superseded. In the event of any conflict between this Agreement and any policy of the Company, the terms of this Agreement will control.

(d) This Agreement shall be binding upon and inure to the benefit of the Company, its successors and assigns, and the Executive and her heirs, executors, administrators and legal representatives. The Company may not assign its rights and obligations under this Agreement to any person without the prior written consent of the Executive, except to a successor to the Company's business that expressly adopts and agrees to be bound by this Agreement.

(e) This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania without giving effect to its principles of conflicts of law. Exclusive jurisdiction for any dispute between the parties arising from or in connection with this Agreement and/or the relationship between the Executive and the Company shall lie with the federal and state courts located in the Commonwealth of Pennsylvania, and each party hereby consents to the personal jurisdiction of such courts.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(g) This Agreement has been jointly drafted by the respective representatives of the Company and the Executive and no party shall be considered as being responsible for such drafting for the purpose of applying any rule construing

ambiguities against the drafter or otherwise. No draft of this Agreement shall be taken into account in construing this Agreement.

(h) The Executive agrees to be bound by Company policies as in effect from time to time, including without limitation any policies regarding clawbacks, securities trading, and hedging or pledging of securities.

[Execution page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year indicated below, respectively.

EXECUTIVE

/s/ Jillian Dilmore

Jillian Dilmore

Date: May 10, 2023

BAUDAX BIO, INC.

By: /s/ Gerri A. Henwood

Title: President and Chief Executive Officer

Date: May 10, 2023

[Signature Page to Employment Agreement]

CERTIFICATION

I, Gerri A. Henwood, certify that:

1. I have reviewed this Quarterly Report of Baudax Bio, 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: May 11, 2023

/s/ Gerri A. Henwood
Gerri A. Henwood
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Jillian Dilmore, certify that:

1. I have reviewed this Quarterly Report of Baudax Bio, 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: May 11, 2023

/s/ Jillian Dilmore
Jillian Dilmore
Corporate Controller
(Principal Financial and Accounting Officer)

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

In connection with the Quarterly Report of Baudax Bio, Inc. (the "Company") on Form 10-Q for the quarter ended March 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to such officer's knowledge:

- (1) 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: May 11, 2023

/s/ Gerri A. Henwood
Gerri A. Henwood
President and Chief Executive Officer
(Principal Executive Officer)

/s/ Jillian Dilmore
Jillian Dilmore
Corporate Controller
(Principal Financial and Accounting Officer)
