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

OR

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

For the transition period from _____ to _____

Commission File Number 001-36306

Eagle Pharmaceuticals, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**20-8179278**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification Number)

50 Tice Boulevard, Suite 315
Woodcliff Lake, NJ 07677
(201) 326-5300
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

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

Title of each class	**Trading symbol**	**Name of each exchange on which registered**
Common stock, $0.001 par value per share	EGRX	The Nasdaq Stock Market LLC

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" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	Accelerated filer	Non-accelerated filer	Smaller reporting company
☐	☒	☐	☐

Emerging growth company ☐

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

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

The number of shares outstanding of the registrant’s common stock as of May 2, 2023: 13,091,344 shares.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q, or this Quarterly Report, contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. All statements other than statements of historical fact contained in this Quarterly Report are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “may,” “could,” “will,” “would,” “should,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “intend,” “predict,” “seek,” “contemplate,” “project,” “continue,” “potential,” “ongoing,” “prospects,” “outlook,” “goal,” or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these identifying words. These forward-looking statements include, but are not limited to, statements about:

- statements related to our expectations with respect to the potential benefits to us from our acquisition of Acacia Pharma Group plc;
- the potential benefits and commercial potential of our approved products, including rapidly infused bendamustine ready-to-dilute (“RTD"), or Bendeka, Treakisym, Ryanodex® (dantrolene sodium), or Ryanodex, bendamustine ready-to-dilute, 500ml solution, or Belrapzo, BARHEMSYS®, BYFAVO®, PEMFEXY®, and vasopressin, for approved indications and any expanded uses;
- statements related to our expectations with respect to our investment in Enalare Therapeutics, Inc., or Enalare, including with respect to the anticipated financial impact on us of the agreement with Enalare, potential benefits to us, the achievement of related milestones and timing thereof, our potential further investment in Enalare pursuant to the terms of the agreement, the commercial potential of Enalare's product candidates and Enalare's development program, including with respect to current and future clinical trials and timing thereof, and expectations regarding our future growth and the expansion of our growth possibilities as a result of the investment in Enalare;
- the commercial potential of additional indications for our products;
- sales of our products in various markets worldwide, pricing for our products, level of insurance coverage and reimbursement for our products, timing regarding development and regulatory approvals for our products or for additional indications or in additional territories;
- future expansion of our commercial organization and transition to third-parties in certain jurisdictions to perform sales, marketing and distribution functions;
- the number and timing of potential product launches, development initiatives or new indications for the Company’s product candidates, and the commercial potential of additional indications for our products;
- the initiation, timing, design, progress and results of our preclinical studies and clinical trials, and our research and development programs;
- our ability to obtain and maintain regulatory approval of our products and product candidates, and any related restrictions, limitations, and/or warnings in the label of an approved product;
- our plans to research, develop and commercialize our products and product candidates and our ability to successfully commercialize our products and product candidates;
- our ability to conduct a strategic transaction on expected timing, favorable terms or at all;
- our ability to attract collaborators with development, regulatory and commercialization expertise;
- the size and growth potential of the markets for our products and product candidates, and our ability to serve those markets;
- the impact of the coronavirus 2019, or COVID-19, pandemic on our business and operations, results of operations and financial performance including: disruption in the sales of our marketed products; delays, interruptions or other adverse effects to clinical trials and patient enrollment; delays in regulatory review; manufacturing and supply chain interruptions; and the adverse effects on healthcare systems, volatility of the financial and credit markets and disruption of the global economy overall;
- the impact of geopolitical events, such as the ongoing conflict between Russia and Ukraine and related sanctions, and macroeconomic conditions, such as rising inflation and interest rates, recent and potential disruptions in banking systems and uncertainty in credit and financial markets, on our business and operations, results operations and financial performance;
- the diversion of healthcare resources away from the conduct of clinical trials as a result of the COVID-19 pandemic, including the diversion of hospitals and doctor offices serving as locations for administration of our products, including Bendeka and hospital staff supporting the conduct of such administration;
- the rate and degree of market acceptance of our products;
- our ability to significantly grow our commercial sales and marketing organization, whether alone or with potential future collaborators;
- the performance of our strategic collaborators and success of our current strategic collaborators;
- regulatory developments in the United States and foreign countries;
- the performance of our third-party suppliers and manufacturers;
- the success of competing drugs that are or become available;

- the retention of key scientific or management personnel;
- our ability to obtain additional funding for our operations;
- our ability to obtain, maintain, protect and enhance intellectual property rights and proprietary technologies and operate our business without infringing the intellectual property rights and proprietary technology of third parties;
- our ability to prevent or minimize the effects of litigation and other contingencies; and
- our expectations regarding anticipated future costs, operating expenses and capital requirements.

Any forward-looking statements in this Quarterly Report reflect our current views with respect to future events or to our future financial performance and involve known and unknown risks, uncertainties, assumptions and other factors described under the “Risk Factors” section and elsewhere in this Quarterly Report, that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by these forward-looking statements. Given these uncertainties, you should not place undue reliance on these forward-looking statements.

In addition, statements such as “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this report, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. Also, these forward-looking statements represent our plans, objectives, estimates, expectations and intentions only as of the date of this filing. You should read this report completely and with the understanding that our actual future results and the timing of events may be materially different from what we expect, and we cannot otherwise guarantee that any forward-looking statement will be realized. We hereby qualify all of our forward-looking statements by these cautionary statements. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements as predictions of future events. Except as required by law, we assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future.

This Quarterly Report also contains estimates, projections and other information concerning our industry, our business, and the markets for certain diseases, including data regarding the estimated size of those markets, and the incidence and prevalence of certain medical conditions. Information that is based on estimates, forecasts, projections, market research or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances reflected in this information. Unless otherwise expressly stated, we obtained this industry, business, market and other data from reports, research surveys, studies and similar data prepared by market research firms and other third parties, industry, medical and general publications, government data and similar sources.

NOTE REGARDING COMPANY REFERENCES

References to the “Company,” “Eagle Pharmaceuticals,” “Eagle,” “we,” “us” or “our” mean Eagle Pharmaceuticals, Inc., a Delaware corporation, together with its subsidiaries, references to “Eagle Biologics” mean Eagle Biologics, Inc., “Eagle Research Lab” means Eagle Research Lab Limited, and "Acacia Pharma" means Acacia Pharma Group plc.

NOTE REGARDING TRADEMARKS

All trademarks, trade names and service marks appearing in this Quarterly Report are the property of their respective owners. Solely for convenience, trademarks and trade names referred to in this Quarterly Report may appear without the ® or TM symbols, but such references are not intended to indicate in any way that the Company will not assert, to the fullest extent under applicable law, its rights or the rights of the applicable licensor to these trademarks and trade names. The Company does not intend its use or display of other entities’ trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of the Company by, any other entity.

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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

EAGLE PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)
(In thousands, except share amounts)

	March 31, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	$ 21,897	$ 55,321
Accounts receivable, net	114,953	72,439
Inventories	44,140	47,794
Prepaid expenses and other current assets	11,501	13,200
Total current assets	192,491	188,754
Property and equipment, net	1,116	1,168
Intangible assets, net	112,875	118,327
Goodwill	45,033	45,033
Deferred tax asset, net	29,150	27,146
Other assets	33,510	25,732
Total assets	$ 414,175	$ 406,160
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 17,108	$ 18,993
Accrued expenses and other liabilities	73,201	85,844
Short-term debt	7,500	6,250
Total current liabilities	97,809	111,087
Long-term debt	68,829	56,216
Other long-term liabilities	4,692	5,297
Total liabilities	171,330	172,600
Commitments and Contingencies		
Stockholders' equity:		
Preferred stock, 1,500,000 shares authorized and no shares issued or outstanding as of March 31, 2023 and December 31, 2022	—	—
Common stock, $0.001 par value; 50,000,000 shares authorized; 17,636,973 and 17,569,375 shares issued as of March 31, 2023 and December 31, 2022, respectively	18	18
Additional paid in capital	369,800	366,265
Accumulated other comprehensive (loss)	(1,112)	(1,112)
Retained earnings	117,254	111,504
Treasury stock, at cost, 4,552,730 and 4,552,730 shares as of March 31, 2023 and December 31, 2022, respectively	(243,115)	(243,115)
Total stockholders' equity	242,845	233,560
Total liabilities and stockholders' equity	$ 414,175	$ 406,160

See accompanying notes to condensed consolidated financial statements (unaudited).

EAGLE PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)
(In thousands, except share and per share amounts)

	Three Months Ended March 31,	
	2023	**2022**
Revenue:		
Product sales, net	$ 46,221	$ 90,088
Royalty revenue	20,084	25,786
Total revenue	66,305	115,874
Operating expenses:		
Cost of product sales	17,300	25,176
Cost of royalty revenue	—	2,579
Research and development	9,272	6,108
Selling, general and administrative	27,960	22,182
Total operating expenses	54,532	56,045
Income from operations	11,773	59,829
Interest income	212	154
Interest expense	(1,516)	(366)
Other expense	(238)	(1,957)
Total other expense, net	(1,542)	(2,169)
Income before income tax provision	10,231	57,660
Income tax provision	(4,481)	(13,602)
Net income	$ 5,750	$ 44,058
Earnings per share attributable to common stockholders:		
Basic	$ 0.44	$ 3.47
Diluted	$ 0.44	$ 3.41
Weighted average number of common shares outstanding:		
Basic	13,059,153	12,710,646
Diluted	13,153,271	12,906,811

See accompanying notes to condensed consolidated financial statements (unaudited).

EAGLE PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (UNAUDITED)
(In thousands)

	Three Months Ended March 31,	
	2023	**2022**
Net income	$ 5,750	$ 44,058
Other comprehensive income, net of tax:		
Unrealized gain for convertible promissory note	—	512
Total other comprehensive income	—	512
Comprehensive income	$ 5,750	$ 44,570

EAGLE PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (UNAUDITED)
(In thousands)

	Common Stock		Additional Paid-In Capital	Treasury Stock	Accumulated Other Comprehensive (Loss)	Retained Earnings	Total Stockholders' Equity
	Number of Shares	Amount					
Balance as of December 31, 2022	17,569	$ 18	$ 366,265	$ (243,115)	$ (1,112)	$ 111,504	$ 233,560
Stock-based compensation expense	—	—	4,639	—	—	—	4,639
Issuance of common stock upon exercise of stock option grants	68	—	(1,104)	—	—	—	(1,104)
Net income	—	—	—	—	—	5,750	5,750
Balance as of March 31, 2023	17,637	$ 18	$ 369,800	$ (243,115)	$ (1,112)	$ 117,254	$ 242,845

	Common Stock		Additional Paid-In Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total Stockholders' Equity
	Number of Shares	Amount					
Balance as of December 31, 2021	16,903	$ 17	$ 325,779	$ (225,111)	$ (94)	$ 75,862	$ 176,453
Stock-based compensation expense	—	—	4,295	—	—	—	4,295
Issuance of common stock upon exercise of stock option grants	73	—	(1,305)	—	—	—	(1,305)
Common stock repurchases	—	—	—	(8,053)	—	—	(8,053)
Other comprehensive income	—	—	—	—	512	—	512
Net income	—	—	—	—	—	44,058	44,058
Balance as of March 31, 2022	16,976	$ 17	$ 328,769	$ (233,164)	$ 418	$ 119,920	$ 215,960

See accompanying notes to unaudited condensed consolidated financial statements.

EAGLE PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)
(In thousands)

	Three Months Ended March 31,	
	2023	**2022**
Cash flows from operating activities:		
Net income	5,750	$ 44,058
Adjustments to reconcile net income to net cash provided by operating activities:		
Deferred income taxes	(2,183)	(2,432)
Depreciation expense	110	177
Noncash operating lease expense related to right-of-use assets	333	290
Amortization expense of intangible assets	5,450	731
Fair value adjustments on equity investment	403	2,530
Stock-based compensation expense	4,639	4,295
Convertible promissory note related credit losses	—	36
Amortization of debt issuance costs	113	118
Fair value adjustments related to derivative instruments	(77)	(608)
Accretion of discount on convertible promissory note	—	(45)
Changes in operating assets and liabilities which provided (used) cash:		
Accounts receivable	(42,515)	(89,710)
Inventories	3,654	(2,910)
Prepaid expenses and other current assets	1,700	(1,948)
Accounts payable	(1,884)	(1,651)
Accrued expenses and other liabilities	(8,633)	30,800
Other assets and other long-term liabilities, net	(372)	(342)
Net cash used in operating activities	(33,512)	(16,611)
Cash flows from investing activities:		
Purchase of equity investment security	(12,500)	—
Purchase of property and equipment	(58)	(168)
Net cash used in investing activities	(12,558)	(168)
Cash flows from financing activities:		
Proceeds from revolving credit facility	15,000	—
Employee withholding taxes related to stock-based awards	(1,104)	(1,305)
Payment of debt	(1,250)	(2,000)
Repurchases of common stock	—	(8,053)
Net cash provided by (used in) financing activities	12,646	(11,358)
Net decrease in cash and cash equivalents	(33,424)	(28,137)
Cash and cash equivalents at beginning of period	55,321	97,659
Cash and cash equivalents at end of period	$ 21,897	$ 69,522
Supplemental disclosures of cash flow information:		
Cash paid during the period for:		
Income taxes, net	$ 200	$ 41
Interest	1,316	265

See accompanying notes to condensed consolidated financial statements (unaudited).

EAGLE PHARMACEUTICALS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)
(In thousands, except share and per share amounts)

1. Basis of Presentation and Other Company Information

The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States (“U.S. GAAP”) for interim information and pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) for reporting quarterly information. Accordingly, certain information and footnote disclosures required for complete financial statements are not included herein. The condensed consolidated balance sheet at December 31, 2022 was derived from audited financial statements, but certain information and footnote disclosures normally included in our annual consolidated financial statements have been condensed or omitted. In the opinion of management, all adjustments (consisting only of normal recurring adjustments) necessary for the fair presentation of the financial information for the interim periods reported have been made. Results of operations for the three months ended March 31, 2023 are not necessarily indicative of the results for the year ending December 31, 2023 or any period thereafter. These unaudited interim condensed consolidated financial statements should be read in conjunction with the audited financial statements and related notes included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on March 23, 2023.

Eagle Pharmaceuticals, Inc. (the "Company", "Eagle", or "we") is an integrated pharmaceutical company focused on finding ways to help medicines do more for patients. We and our collaborators have the capabilities to take a molecule from preclinical research through regulatory approval and into the marketplace, including development, manufacturing and commercialization. Our business model applies our scientific expertise, proprietary research-based insights and marketplace proficiency to identify challenging-to-treat diseases of the central nervous system or metabolic critical care therapeutic areas as well as in oncology. By focusing on patients' unmet needs, we strive to provide healthcare professionals with urgently needed treatment solutions that are designed to improve patient care and outcomes and create near- and long-term value for our stakeholders, including patients and healthcare providers and our employees, marketing partners, collaborators and investors. Our science-based business model has a proven track record with the U.S. Food and Drug Administration ("FDA") approval and commercial launches of six products: PEMFEXY® (pemetrexed for injection), vasopressin, an A-rated generic alternative to Vasostrict®, Ryanodex® (dantrolene sodium) ("Ryanodex"), bendamustine ready-to-dilute ("RTD") 500ml solution ("Belrapzo"), and rapidly infused bendamustine RTD ("Bendeka") and bendamustine ready-to-dilute and rapidly infused RTD in Japan (“Treakisym”). We market our products through marketing partners and/or our internal direct sales force. We market PEMFEXY, vasopressin, Ryanodex and Belrapzo, and Teva Pharmaceutical Industries Ltd. ("Teva") markets Bendeka through its subsidiary Cephalon, Inc. SymBio Pharmaceuticals Limited ("SymBio"), markets Treakisym, a RTD product, in Japan.

On June 9, 2022, we acquired all of the outstanding share capital of Acacia Pharma Group plc (“Acacia”), which added two FDA approved new chemical entities with patent protection, BARHEMSYS® (amisulpride for injection) and BYFAVO® (remimazolam for injection). Refer to Note 13 for further details.

2. Summary of Significant Accounting Policies

Significant Accounting Policies

Our significant accounting policies are described in the audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2022 and the notes thereto filed with the SEC on March 23, 2023. Since the date of those consolidated financial statements, there have been no material changes to our significant accounting policies.

Change in Functional Currency

Effective January 1, 2023, the Company adopted the US dollar as its functional currency for Acacia subsidiaries. Prior to January 1, 2023, the functional currency of the Acacia was the Pound Sterling.

The change in functional currency of Acacia is due to the integration of Acacia and the legacy Eagle businesses being completed beginning in the first quarter of 2023. As a result of the integration, the nature and volume of the UK operations and

funding received by the UK entities are denominated in the US dollar. Therefore, the UK operations of Acacia are considered integrated and parent dependent.

The Company's financial results have been reported in US dollars. The effect of a change in the functional currency is accounted for prospectively. More specifically, translation adjustments for prior periods are not removed from equity and the translated amounts for nonmonetary assets at the end of the prior period became the accounting basis for those assets, effective January 1, 2023. Exchange differences arising from the translation that were previously recognized in other comprehensive income are not reclassified from equity to profit and loss until the disposal of the operations attributable to Acacia.

Use of Estimates

These condensed consolidated financial statements are presented in U.S. dollars and are prepared in accordance with U.S. GAAP. The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements including disclosure of gross to net estimates as of the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period and accompanying notes. Our critical accounting policies are those that are both most important to our financial condition and results of operations and also require the most difficult, subjective or complex judgments on the part of management in their application, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. As of the date of issuance of these condensed consolidated financial statements, we are not aware of any specific event or circumstance that would require us to update our estimates, assumptions and judgments or revise the carrying value of our assets or liabilities. Because of the uncertainty of factors surrounding the estimates or judgments used in the preparation of the condensed consolidated financial statements, actual results may materially vary from these estimates, and any such differences may be material to our condensed consolidated financial statements.

Cash and Cash Equivalents

We consider all highly liquid investments with an original maturity of three months or less to be cash equivalents. All cash and cash equivalents are held in United States financial institutions. The carrying amount of cash and cash equivalents approximates its fair value due to its short-term nature.

We, at times, maintain balances with financial institutions in excess of the Federal Deposit Insurance Corporation ("FDIC") limit.

Fair Value Measurements

U.S. GAAP establishes a framework for measuring fair value under generally accepted accounting principles and enhances disclosures about fair value measurements. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The standard describes the following fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value:

- Level 1: Quoted prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3: Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The fair value of interest-bearing cash, cash equivalents, accounts receivable and accounts payable approximate fair value due to their life being short term in nature, and are classified as Level 1 for all periods presented.

Financial assets and liabilities measured and recognized at fair value are as follows:

	March 31, 2023			
	Total	Level 1	Level 2	Level 3
Assets:				
Money market funds	$ 17,702	$ 17,702	$ —	$ —
Investment in Syros Pharmaceuticals, Inc. ("Syros")	1,170	1,170	—	—
Investment in Enalare Therapeutics, Inc.	16,952	—	—	16,952
Acquisition rights of Enalare Therapeutics, Inc.	8,125	—	—	8,125

	December 31, 2022			
	Total	Level 1	Level 2	Level 3
Assets:				
Money market funds	$ 47,567	$ 47,567	$ —	$ —
Investment in Syros Pharmaceuticals, Inc. ("Syros")	1,573	1,573	—	—
Investment in Enalare Therapeutics, Inc.	8,438	—	—	8,438
Acquisition rights of Enalare Therapeutics, Inc.	8,125	—	—	8,125
Liabilities:				
Forward Liability	$ 4,063	$ —	$ —	$ 4,063

We recognize transfers between levels within the fair value hierarchy, if any, at the end of each quarter. There were no transfers in or out of Level 1, Level 2 or Level 3 during the three months ended March 31, 2023.

Our investment in Enalare Therapeutics Inc., related acquisition right and forward liability were classified as Level 3. We used a probability factor to value the asset related to the acquired acquisition rights based on management's best estimate, including the probability of completion of certain development milestones. The equity stake was accounted for as non-readily determinable fair value (“RDFV”) investment. The equity investment and acquisition right was reported at fair value as of March 31, 2023. Refer to Note 14, Investment in Enalare Therapeutics Inc. for further information.

Our investment in restricted shares of common stock of Syros Pharmaceuticals, Inc. ("Syros"), following the merger of Tyme Technologies, Inc. (“Tyme”) and Syros on September 16, 2022, are classified as Level 1. Refer to Note 12, License and Collaboration Agreements for further details.

The fair value of debt is classified as Level 2 for the periods presented and approximates its fair value due to the variable interest rate.

Intangible Assets

We review the recoverability of our finite-lived intangible assets and long-lived assets for indicators of impairments. Events or circumstances that may require an impairment assessment include negative clinical trial results, a significant decrease in the market price of the asset, or a significant adverse change in legal factors or the manner in which the asset is used. If such indicators are present, we assess the recoverability of affected assets by determining if the carrying value of such assets is less than the sum of the undiscounted future cash flows of the assets. If such assets are found to not be recoverable, we measure the amount of the impairment by comparing to the carrying value of the assets to the fair value of the assets. We determined that no indicators of impairment of finite-lived intangible assets or long-lived assets existed as of March 31, 2023.

Goodwill

Goodwill represents the excess of purchase price over the fair value of net assets acquired in the Eagle Biologics and Acacia acquisitions. Goodwill is not amortized, but is evaluated for impairment on an annual basis, in the fourth quarter, or more frequently if events or changes in circumstances indicate that the reporting unit’s goodwill is less than its carrying amount. We did not identify any impairment to goodwill during the periods presented.

Concentration of Major Customers and Vendors

The Company is exposed to risks associated with extending credit to customers related to the sale of products. The Company does not require collateral to secure amounts due from its customers. The Company uses an expected loss methodology to calculate allowances for trade receivables. The Company's measurement of expected credit losses is based on relevant information about past events, including historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported amount. The Company does not currently have a material allowance for collectible trade receivables.

Further, the Company is dependent on its commercial partner to market and sell Bendeka; therefore, the Company's future revenues are highly dependent on the collaboration and distribution arrangement with Teva.

Teva markets Bendeka through a license agreement with the Company. Pursuant to that license agreement, Teva pays the Company a royalty based on net sales of the product and also purchases the product from the Company. A disruption in this arrangement, caused by, among other things, a supply disruption, loss of exclusivity or the launch of a superior product would have a material adverse effect on our balance sheet, results of operations and cash flows.

The total revenues and accounts receivables broken down by major customers as a percentage of the total are as follows:

	Three Months Ended March 31,	
	2023	**2022**
Total revenues		
Teva - See *Revenue Recognition*	32 %	24 %
Customer A	38 %	19 %
Customer B	11 %	15 %
Customer C	7 %	13 %
Customer D	6 %	9 %
Other	6 %	20 %
	100 %	100 %

	March 31, 2023	December 31, 2022
Accounts receivable		
Teva - See *Revenue Recognition*	19 %	31 %
Customer A	36 %	1 %
Customer B	22 %	57 %
Customer C	0 %	5 %
Customer D	4 %	2 %
Other	19 %	4 %
	100 %	100 %

Inventories

Inventories are recorded at the lower of cost and net realizable value, with cost determined on a first-in first-out basis. We periodically review the composition of inventory in order to identify obsolete, slow-moving or otherwise non-saleable items. If these items are observed and there are no alternate uses for the inventory, we will record a write-down to lower of cost and net realizable value in the period that the decline in value is first recognized.

Research and Development Expense

Costs for research and development are charged to expense as incurred and include; employee-related expenses including salaries, benefits, travel and stock-based compensation expense for research and development personnel; expenses incurred under agreements with contract research organizations, contract manufacturing organizations and service providers that assist in conducting clinical and preclinical studies; costs associated with preclinical activities and development activities, costs associated with regulatory operations; and depreciation expense for assets used in research and development activities.

Costs for certain development activities, such as in licensing intellectual property related to new projects, clinical studies, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations, or information provided to us by our vendors on their actual costs incurred. Payments for these activities are based on the terms of the individual arrangements, which may differ from the patterns of costs incurred, and are reflected in the condensed consolidated financial statements as prepaid expenses or accrued expenses as deemed appropriate. Recoveries of previously recognized research and development expenses from third parties are recorded as a reduction to research and development expense in the period it becomes realizable.

Advertising and Marketing

Advertising and marketing costs are expensed as incurred. Advertising and marketing costs were $3.7 million and $1.7 million for the three months ended March 31, 2023 and 2022, respectively.

Income Taxes

We account for income taxes using the liability method in accordance with ASC 740 - Income Taxes (“ASC 740”). Deferred tax assets and liabilities are determined based on temporary differences between financial reporting and tax bases of assets and liabilities and are measured by applying enacted rates and laws to taxable years in which differences are expected to be recovered or settled. Further, the effect on deferred tax assets and liabilities of a change in tax rates is recognized in income (loss) in the period that the rate changes. A valuation allowance is required when it is “more likely than not” that all or a portion of deferred tax assets will not be realized. ASC 740 also prescribes a comprehensive model for how a company should recognize, measure, present and disclose in its financial statements uncertain tax positions that a company has taken or expects to take on a tax return, including a decision whether to file or not file a return in a particular jurisdiction. We recognize any interest and penalties accrued related to unrecognized tax benefits as income tax expense.

Revenue Recognition

Revenue is recognized when a customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of ASC 606 - Revenue from Contracts with Customers ("ASC 606"), the Company performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that the entity will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract and determines those that are performance obligations, and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied. Sales, value add, and other taxes collected on behalf of third parties are excluded from revenue.

Product revenue - The Company recognizes net revenue on sales to its commercial partners and to end users. In each instance, revenue is generally recognized when the customer obtains control of the Company’s product, which occurs at a point in time, and may be upon shipment or upon delivery based on the contractual shipping terms of a contract. Receivables from our product sales have payment terms ranging from 30 to 75 days with select extended terms to wholesalers on purchases of product launch quantities.

Revenue is measured as the amount of consideration the Company expects to receive in exchange for transferring products or services to a customer. To the extent the transaction price includes variable consideration, the Company estimates the amount of variable consideration that should be included in the transaction price generally utilizing the expected value method to which the Company expects to be entitled. As such, revenue on sales to end users for vasopressin, Pemfexy, Belrapzo, Ryanodex, Barhemsys, and Byfavo are recorded net of chargebacks, rebates, returns, prompt pay discounts, wholesaler fees and other deductions. Our products are contracted with a limited number of oncology distributors and hospital buying groups with narrow differences in ultimate realized contract prices used to estimate our allowance for chargebacks and rebate reserves. The Company has a product returns policy on some of its products that allows the customer to return pharmaceutical products within a specified period of time both prior to and subsequent to the product’s expiration date. The Company's estimate of the provision for returns is analyzed quarterly and is based upon many factors, including historical experience of actual returns and analysis of the level of inventory in the distribution channel, if any. The Company has terms on sales of Ryanodex by which the Company does not accept returns. Variable consideration is included in the transaction price if, in the Company’s judgment, it is probable that a significant future reversal of cumulative revenue under the contract will not occur. Estimates of variable consideration are made generally using the expected value method and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of the Company’s anticipated performance and all information (historical, current and forecasted) that is reasonably available. The Company believes that the estimates it has established are reasonable based upon current facts and circumstances. Applying different judgments to the same facts and circumstances could result in the estimated amounts to vary.

Components of Gross-to-Net (GTN) Estimates

Chargebacks: Chargebacks are discounts that occur when certain contracted customers, including group purchasing organizations (“GPOs”), public health service institutions and federal government entities purchasing via the Federal Supply Schedule, purchase from the Company's distributors. The Company's distributors purchase product from us at invoice price, then resell the product to certain contracted customers on the basis of prices negotiated between us and the providers. The difference between the distributors’ purchase price and the typically lower certain contracted customers’ purchase price is refunded to the distributors through a chargeback credit. We record estimates for these chargebacks at the time of sale as deductions from gross revenues, with corresponding adjustments to our accounts receivable reserves and allowances.

The provision for chargebacks is the most significant provision in the context of the Company’s gross-to-net adjustments in the determination of net revenue. Chargebacks are estimated based on payer mix and contracted price, adjusted for current period assumptions.

Commercial and Medicaid Rebates: The Company contracts with government agencies or collectively, third-party payors, so that vasopressin, Pemfexy, Belrapzo, Ryanodex, Barhemsys, and Byfavo will be eligible for purchase by, or partial or full reimbursement from, such third-party payors. The Company estimates the rebates it will provide to third-party payors and deducts these estimated amounts from total gross product revenues at the time the revenues are recognized. These reserves are recorded in the same period in which the revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability. The current liability is included in accrued expenses and other current liabilities on the consolidated balance sheets. The Company estimates the rebates that it will provide to third-party payors based upon (i) the Company’s contracts with these third-party payors, (ii) the government mandated discounts applicable to government-funded programs, (iii) a range of possible outcomes that are probability-weighted for the estimated payer mix, and (iv) information obtained from the Company’s distributors.

The information that the Company also considers when establishing its rebate reserves are purchases by customers, projected annual sales for customers, actual rebates payments made, processing time lags, and for indirect rebates, the level of inventory in the distribution channel that will be subject to indirect rebates. We do not provide incentives designed to increase shipments to our customers that we believe would result in out-of-the-ordinary course of business inventory for them. The Company regularly reviews and monitors estimated or actual customer inventory information at its largest distributors for its key products to ascertain whether customer inventories are in excess of ordinary course of business levels.

Product Returns: The Company's provision for product returns based on the factors noted above generally encompass a time range from 12 to 48 months after revenue is recognized. The Company’s distributors have the right to return unopened unprescribed vasopressin, Pemfexy, Belrapzo, Barhemsys, and Byfavo during certain time periods around the period beginning prior to the labeled expiration date and ending after the labeled expiration date. The Company estimates future product returns on sales of vasopressin, Pemfexy, Belrapzo, Barhemsys, and Byfavo based on: (i) data provided to the Company by its distributors (including weekly reporting of distributors’ sales and inventory held by distributors that provided the Company with visibility into the distribution channel in order to determine what quantities were sold to retail pharmacies and other providers), (ii) data provided to the Company by a third-party data provider which collects and publishes prescription data, and other third parties, (iii) historical industry information regarding return rates for similar pharmaceutical products, (iv) the estimated remaining shelf life of vasopressin, Pemfexy, Belrapzo, Barhemsys, and Byfavo previously shipped and currently being shipped to distributors and (v) contractual agreements intended to limit the amount of inventory maintained by the Company’s distributors. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability which is included in accrued expenses and other current liabilities on the consolidated balance sheets.

Wholesaler fees and other incentives: The Company generally provides invoice discounts on vasopressin, Pemfexy, Belrapzo, Ryanodex, Barhemsys, and Byfavo sales to its distributors for prompt payment and fees for distribution services, such as fees for certain data that distributors provide to the Company. The payment terms for sales to distributors generally include a 2% discount for prompt payment which is generally defined in invoice terms as a range from 15 to 45 days, while the fees for distribution services are based on contractual rates agreed with the respective distributors. Based on historical data, the Company expects its distributors to earn these discounts and fees, and deducts the full amount of these discounts and fees from its gross product revenues and accounts receivable at the time such revenues are recognized. In certain cases, the Company may record the fees as accrued expenses if the Company expects that the fees will be paid rather than deducted by the distributor.

Royalty Revenue — The Company recognizes revenue from license arrangements with its commercial partners' net sales of products. Royalties are recognized as earned in accordance with contract terms when they can be reasonably estimated and collectability is reasonably assured. The Company's commercial partners are obligated to report their net product sales and the resulting royalty due to the Company within 25 days from the end of each quarter. Based on historical product sales, royalty receipts and other relevant information, the Company accrues royalty revenue each quarter and subsequently determines a true-up when it receives royalty reports from its commercial partners. Historically, these true-up adjustments have been immaterial. Our receivables from royalty revenue are due 45-days from the end of the quarter.

License and other revenue — The Company analyzes each element of its licensing agreements to determine the appropriate revenue recognition. The terms of the license agreement may include payment to us of non-refundable up-front license fees, milestone payments if specified objectives are achieved, and/or royalties on product sales. The Company recognizes revenue from upfront payments at a point in time, typically upon fulfilling the delivery of the associated intellectual property to the customer.

If the contract contains a single performance obligation, the entire transaction price is allocated to the single performance obligation. Contracts that contain multiple performance obligations require an allocation of the transaction price based on the estimated relative standalone selling prices of the promised products or services underlying each performance obligation. The Company determines standalone selling prices based on the price at which the performance obligation is sold separately. If the standalone selling price is not observable through past transactions, the Company estimates the standalone selling price taking into account available information such as market conditions and internally approved pricing guidelines related to the performance obligations.

The Company recognizes sales-based milestone payments as revenue upon the achievement of the cumulative sales amount specified in the contract in accordance with ASC 606-10-55-65. For those milestone payments which are contingent on the occurrence of particular future events, the Company determined that these need to be considered for inclusion in the calculation of total consideration from the contract as a component of variable consideration using the most-likely amount method. As such, the Company assesses each milestone to determine the probability and substance behind achieving each milestone. Given the inherent uncertainty of the occurrence of these future events, the Company will not recognize revenue from the milestone until there is not a high probability of a reversal of revenue, which typically occurs near or upon achievement of the event.

When determining the transaction price of a contract, an adjustment is made if payment from a customer occurs either significantly before or significantly after performance, resulting in a significant financing component. Applying the practical expedient in paragraph 606-10-32-18, the Company does not assess whether a significant financing component exists if the period between when the Company performs its obligations under the contract and when the customer pays is one year or less. None of the Company’s contracts contained a significant financing component as of March 31, 2023.

Stock-Based Compensation

The Company utilizes stock-based compensation in the form of stock options, restricted stock units ("RSUs") and performance-based stock units ("PSUs"), each of which may be granted separately or in tandem with other awards.

Compensation expense is recognized in the Consolidated Statements of operations based on the estimated fair value of the awards at grant date ratably over the requisite service period, which generally equals the vesting period of the award.

The grant-date fair value of stock awards is based upon the underlying price of the stock on the date of grant. The grant-date fair value of stock option awards must be determined using an option pricing model. The Company uses the Black-Scholes option pricing formula for determining the grant-date fair value of such awards. Option pricing models require the use of estimates and assumptions as to (a) the expected term of the option, (b) the expected volatility of the price of the underlying stock and (c) the risk-free interest rate for the expected term of the option.

The Company may also grant performance-based stock awards to employees from time-to-time in form of market condition or performance condition. The grant-date fair value of awards that vest based on achievement of certain market condition are determined using a Monte Carlo simulation technique. The grant-date fair value of awards that vest based on achievement of

certain performance condition are determined using the accelerated attribution method once it is probable that the performance condition will be achieved.

Earnings Per Share

Basic earnings per common share is computed using the weighted average number of shares outstanding during the period. Diluted earnings per share is computed in a manner similar to the basic earnings per share, except that the weighted-average number of shares outstanding is increased to include all common shares, including those with the potential to be issued by virtue of options. Diluted earnings per share contemplate a complete conversion to common shares of all convertible instruments only if they are dilutive in nature with regards to earnings per share, as calculated under the treasury method.

The anti-dilutive common share equivalents outstanding for the three months ended March 31, 2023 and 2022 were as follows:

	Three Months Ended March 31,	
	2023	**2022**
Stock options	2,384,769	2,103,544
Restricted stock units	163,950	79,724
Total	2,548,719	2,183,268

The following table sets forth the computation for basic and diluted net earnings per share for the three months ended March 31, 2023 and 2022:

	Three Months Ended March 31,	
	2023	**2022**
Numerator		
Net income	$ 5,750	$ 44,058
Denominator		
Basic weighted average common shares outstanding	13,059,153	12,710,646
Dilutive effect of stock awards	94,118	196,165
Diluted weighted average common shares outstanding	13,153,271	12,906,811
Basic net earnings per share		
Basic net earnings per share	$ 0.44	$ 3.47
Diluted net earnings per share		
Diluted net earnings per share	$ 0.44	$ 3.41

Recent Accounting Pronouncements

There are several new accounting pronouncements issued by the FASB that we have adopted or will adopt, as applicable. We do not believe any of these accounting pronouncements have had, or will have, a material impact on our condensed consolidated financial statements or disclosures.

3. Property and Equipment, net

Property and equipment consisted of the following:

	March 31, 2023	December 31, 2022	Estimated Useful Life (years)
Furniture and fixtures	$ 1,525	$ 1,525	7
Office equipment	1,077	1,077	3
Equipment	4,070	4,012	7
Leasehold improvements	1,155	1,155	2
	7,827	7,769	
Less accumulated depreciation	(6,711)	(6,601)	
Property and equipment, net	$ 1,116	$ 1,168	

Depreciation expense related to property and equipment amounted to $0.1 million and $0.2 million for the three months ended March 31, 2023 and 2022, respectively.

4. Inventories

Inventories consist of the following:

	March 31, 2023	December 31, 2022
Raw materials	$ 12,198	$ 12,348
Work in process	9,386	14,064
Finished products	22,556	21,382
Total inventories	$ 44,140	$ 47,794

5. Balance Sheet Accounts

Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following:

	March 31, 2023	December 31, 2022
Prepaid income taxes	$ 306	$ 90
Prepaid FDA user fee and advances to clinical research organization	1,506	3,022
Prepaid insurance	1,661	258
Advances to commercial manufacturers	3,630	5,464
Prepaid R&D	754	106
Pass-through receivables	1,069	1,001
All other	2,575	3,259
Total prepaid expenses and other current assets	$ 11,501	$ 13,200

Accrued Expenses

Accrued expenses consist of the following:

	March 31, 2023	December 31, 2022
Accrued product sales reserves	$ 38,327	$ 33,000
Income taxes payable	12,583	5,182
Royalties payable to commercial partners	6,306	7,205
Accrued salary and other compensation	3,856	5,293
Accrued professional fees	5,688	5,541
Accrued research & development	628	1,549
Current portion of lease liability	1,587	1,534
Inventory received but not invoiced	3,319	6,779
Forward liability related to Enalare	—	4,063
PEMFEXY royalty buy-down payable	—	15,000
Accrued other	907	698
Total accrued expenses	$ 73,201	$ 85,844

Leases

We lease office space in Woodcliff Lake, New Jersey for our principal office under an amended lease agreement through June 2025. We also lease a lab space in Cambridge, Massachusetts under a lease agreement through April 2024, office space located in Indianapolis, Indiana through November 2023, and an office space located in Palm Beach Gardens, Florida. All of our leases are classified as operating leases and have remaining lease terms of approximately 1.9 years. The principal office and the lab space leases include renewal options to extend the lease for up to 5 years. Furthermore, we have not elected the practical expedient to separate lease and non-lease components for all classes of underlying assets.

The table below summarizes our total lease costs included in the condensed consolidated financial statements, as well as other required quantitative disclosures (in thousands):

	March 31, 2023	December 31, 2022
Operating lease cost	$ 421	$ 1,507
Total lease cost	$ 421	$ 1,507
Other information:		
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows for operating leases	$ 421	$ 1,507
Right-of-use assets obtained in exchange for new operating lease liabilities	$ —	$ —
Weighted-average remaining lease term - operating leases	1.9 years	2.1 years
Weighted-average discount rate - operating leases	6.0 %	6.0 %

Balance Sheet Classification as of March 31, 2023:	
Current lease liabilities (included with Accrued expenses and other liabilities)	$ 1,587
Long-term lease liabilities (included with Other long-term liabilities)	1,055
Total lease liabilities	$ 2,642

6. Intangible Assets, Net

The gross carrying amounts and net book value of our intangible assets are as follows:

		March 31, 2023		
	Useful Life (In Years)	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Barhemsys intangible *(1)*	9	$ 70,319	$ (6,423)	$ 63,896
Byfavo intangible *(1)*	9	33,714	(2,902)	30,812
Ryanodex intangible *(2)*	9	15,000	(8,098)	6,902
PEMFEXY intangible (3)	2	15,000	(3,735)	11,265
Vasopressin milestone (4)	1	750	(750)	—
Total		$ 134,783	$ (21,908)	$ 112,875

		December 31, 2022		
	Useful Life (In Years)	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Barhemsys intangible *(1)*	9	$ 70,319	$ (4,462)	$ 65,857
Byfavo intangible *(1)*	9	33,714	(1,989)	31,725
Ryanodex intangible *(2)*	9	15,000	(7,402)	7,598
PEMFEXY intangible (3)	2	15,000	(1,888)	13,112
Vasopressin milestone (4)	1	750	(715)	35
Total		$ 134,783	$ (16,456)	$ 118,327

(1) Represents intangible assets acquired in the Acacia acquisition as detailed in Note 13.

(2) Represents a one-time payment made to reduce the royalties payable to a third party on Ryanodex net sales.

(3) Represents a one-time payment made to reduce the royalties payable to a third party on PEMFEXY net sales.

(4) Represents milestone paid to a third party upon FDA approval of vasopressin.

Amortization expense was $5.5 million and $0.7 million for the three months ended March 31, 2023 and 2022, respectively.

Estimated Amortization Expense for Intangible Assets

Based on definite-lived intangible assets recorded as of March 31, 2023, and assuming that the underlying assets will not be impaired and that we will not change the expected lives of the assets, future amortization expenses are estimated as follows:

	Estimated Amortization Expense
Year Ending December 31,	
2023 (remainder)	16,483
2024	19,780
2025	13,917
2026	11,615
2027	11,615
Thereafter	39,465
Total estimated amortization expense	$ 112,875

7. Common Stock and Stock-Based Compensation

Common Stock

Share Repurchase Program

In March 2020, our board of directors approved our current share repurchase program (the "Share Repurchase Program"), providing for the repurchase of up to an aggregate of $160 million of our outstanding common stock.

Under the Share Repurchase Program, we are authorized to repurchase shares through open market purchases, privately-negotiated transactions, accelerated share repurchases or otherwise in accordance with applicable federal securities laws, including through Rule 10b5-1 trading plans and under Rule 10b-18 of the Exchange Act. The repurchases have no time limit and may be suspended or discontinued completely at any time. The specific timing and amount of repurchases will vary based on available capital resources and other financial and operational performance, market conditions, securities law limitations, and other factors. The repurchases will be made using our cash resources.

On September 23, 2020, our Board of Directors approved a $25 million accelerated share repurchase (“ASR”) transaction with JPMorgan Chase Bank, National Association (“JP Morgan”) as part of our existing $160 million share repurchase program. The specific number of shares to be repurchased pursuant to the ASR is based on the average of the daily volume weighted average share prices of our common stock, less a discount, during the term of the ASR program. Under the terms of our agreement with JP Morgan, we paid $25 million to JP Morgan on September 24, 2020, and received 550,623 shares, representing the notional amount of the ASR, based on the average of the daily volume weighted average share prices of our common stock, less a discount, during the term of the ASR, which was $45.40. The ASR was completed in the fourth quarter of 2020. We determined the ASR contained a forward contract and therefore we recorded fair value adjustments on the accelerated share repurchase agreement in the amount of $3 million which was a loss recorded in Other expense on our consolidated statements of operations in the year ended December 31, 2020.

As of March 31, 2023, we had repurchased an aggregate of 4,552,730 shares of common stock for an aggregate of $246.1 million pursuant to our share repurchase programs in effect since August 2016.

Stock-Based Compensation

In November 2013, our Board of Directors approved the 2014 Equity Incentive Plan (the "2014 Plan") which became effective on February 11, 2014. The 2014 Plan provides for the awards of incentive stock options, non-qualified stock options, restricted stock, restricted stock units and other stock-based awards. Awards generally vest equally over a period of four years from grant date. Vesting may be accelerated under a change in control of the Company or in the event of death or disability to the recipient. In the event of termination, any unvested shares or options are forfeited.

In 2018, we introduced a new long-term incentive program with the objective to better align the stock-based awards granted to management with our focus on improving total shareholder return over the long-term. The stock-based awards granted under this long-term incentive program consist of time-based stock options, time-based RSUs and PSUs. PSUs are comprised of awards: i) that would have vested upon achievement of certain share price appreciation conditions or ii) that would have vested upon achievement of certain milestone events.

A summary of stock option, RSU and PSU activity under the 2014 Plan during the three months ended March 31, 2023 and 2022 is presented below:

	Stock Options	RSUs	PSUs
Outstanding as of December 31, 2021	2,814,878	263,306	137,300
Granted	86,700	148,000	228,200
Stock options exercised/RSUs vested/PSUs vested	—	(99,698)	—
Forfeited or expired	(3,130)	(728)	—
Outstanding as of March 31, 2022	2,898,448	310,880	365,500
Outstanding as of December 31, 2022	2,425,833	269,163	319,100
Granted	111,268	245,850	211,800
Stock options exercised/RSUs vested/PSUs vested	—	(103,672)	—
Forfeited or expired	(6,696)	(4,041)	—
Outstanding as of March 31, 2023	2,530,405	407,300	530,900

Stock Options

The fair value of stock options granted to employees, directors, and consultants were estimated using the following assumptions:

	Three Months Ended March 31,	
	2023	2022
Risk-free interest rate	3.54% - 4.23%	1.47% - 2.53%
Volatility	44.24%	46.79%
Expected term (in years)	5.57 years	5.63 years
Expected dividend yield	0.0%	0.0%

RSUs

Each vested time-based RSU represents the right of a holder to receive one share of our common stock. The fair value of each RSU granted was estimated based on the trading price of our common stock on the date of grant.

PSUs

During the first quarter of 2023, we granted 211,800 market condition PSUs based on our total shareholder return ("TSR") relative to the TSR of each member of the S&P Biotechnology Select Industry Index (the defined peer group) with a weighted-average grant date fair value of $41.72 for other executives per respective PSU. The fair value of PSUs granted to employees was estimated using a Monte Carlo simulation model. Inputs used in the calculation include a risk-free interest rate of 4.39%, an expected volatility of 44%, contractual term of 4 years, and no expected dividend yield.

The fair value of market condition PSUs granted to employees was estimated using a Monte Carlo simulation model. Inputs used in the calculation are described above.

The fair value of performance condition PSUs granted to employees was estimated based on the trading price of our common stock on the date of grant adjusted for probability of achievement of the performance conditions as described above.

We did not recognize any expense for performance based PSUs granted to employees based on our estimated probability of achievement as described above.

We recognized stock-based compensation in our condensed consolidated statements of operations for the three months ended March 31, 2023 and 2022 as follows:

	Three Months Ended March 31,	
	2023	2022
Stock options	$ 1,481	$ 1,863
RSUs	1,647	1,635
PSUs	1,511	797
Stock-based compensation expense	$ 4,639	$ 4,295
Selling, general and administrative	$ 3,952	$ 3,652
Research and development	687	643
Stock-based compensation expense	$ 4,639	$ 4,295

8. Commitments

Our future material contractual obligations as of March 31, 2023, included the following:

Obligations	Total	2023	2024	2025	2026	Beyond
Operating leases (1)	$ 2,792	$ 1,257	$ 1,122	$ 413	$ —	$ —
Credit facility and Term Loans (2)	77,500	5,000	10,000	62,500	—	—
Purchase obligations (3)	86,491	86,491	—	—	—	—
Total obligations	$ 166,783	$ 92,748	$ 11,122	$ 62,913	$ —	$ —

(1) We lease our corporate office location. The term of our existing lease expires on June 30, 2025. We also lease our lab space under a lease agreement through April 2024, office space located in Indianapolis, Indiana through November 2023, and an office space in Palm Beach Gardens, Florida, through October 31, 2024. Rental expense for the operating leases was $0.4 million and $0.4 million, for the three months ended March 31, 2023 and 2022, respectively. The remaining future lease payments under the operating leases are $2.8 million as of March 31, 2023.

(2) Refer to Note 9, “Debt” for further information regarding our Credit Agreement and Term Loans.

(3) As of March 31, 2023, we had purchase obligations in the amount of $86.5 million which represents the contractual commitments under contract manufacturing and supply agreements with suppliers. The obligations under the supply agreements are primarily for finished product, inventory, and research and development.

9. Debt

On November 1, 2022, we entered into the Third Amended and Restated Credit Agreement, which replaced the Second Amended Credit Agreement. The terms and amounts borrowed under the Third Amended Credit Agreement includes a drawn term loan of $50 million and a $100 million revolving credit facility of which $15 million was drawn on November 1, 2022 and an additional $15 million was drawn on February 8, 2023. On the effective date for the Third Amended Credit Agreement, we borrowed $15 million under the revolving credit facility and $50 million under the term loan facility. Approximately $35.4 million of the proceeds of the credit facility were used to refinance all amounts outstanding under the Second Amended Credit Agreement, to repay €25 million indebtedness of Acacia, and for other corporate purposes. All amounts outstanding under the Third Amended Credit Agreement shall be due and payable on October 31, 2025, unless otherwise accelerated or extended pursuant to the terms of the Third Amended Credit Agreement.

The Third Amended Credit Agreement contains customary representations and warranties and customary affirmative and negative covenants applicable to us and our consolidated subsidiaries, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness and dividends and other distributions. Under the terms of the Third Amended Credit Agreement, we are required to comply with (a) a maximum total net leverage ratio, (b) a fixed charge coverage ratio and (c) a minimum liquidity covenant. As of March 31, 2023, we were in compliance with total net leverage ratio; fixed charge coverage ratio; and liquidity covenants.

Loans under the Third Amended Credit Agreement bear interest, at our option, at a rate equal to either (a) the SOFR rate, plus a credit adjustment spread, plus an applicable margin ranging from 2.50% to 3.25% per annum, based upon the total net leverage ratio (as defined in the Third Amended Credit Agreement), or (b) the prime lending rate, plus an applicable margin ranging from 1.50% to 2.25% per annum, based upon the total net leverage ratio. We are required to pay a commitment fee on the unused portion of the new revolving credit facility in the Third Amended Credit Agreement at a rate ranging from 0.38% to 0.48% per annum based upon the total net leverage ratio.

The term loan facility payments will be made in quarterly installments in an amount equal to $1.25 million per fiscal quarter for each fiscal quarter ended after the closing date for the Third Amended Credit Agreement through the fiscal quarter ended September 30, 2023, and in an amount equal to $2.5 million per fiscal quarter for each fiscal quarter thereafter. As of March 31, 2023, we classified debt related to term loan of $7.5 million as current on our condensed consolidated balance sheet.

As of March 31, 2023, we had $1.2 million of unamortized deferred debt issuance costs as part of current debt in our condensed consolidated balance sheets.

Debt Maturities	**As of March 31, 2023**
2023 (remainder)	$ 5,000
2024	10,000
2025	62,500
2026	—
Total	$ 77,500

10. Income Taxes

	Three Months Ended March 31,	
	2023	**2022**
Income tax provision	$ (4,481)	$ (13,602)
Effective tax rate	44 %	24 %

For interim periods, we recognize an income tax provision based on our estimated annual effective tax rate expected for the entire year plus the effects of certain discrete items occurring in the quarter. The interim annual estimated effective tax rate is

based on the statutory tax rates then in effect, as adjusted for changes in estimated permanent differences, and certain discrete items whose tax effect, when material, is recognized in the interim period in which they occur.

The effective tax rate for the three months ended March 31, 2023, reflects an interim tax provision resulting from impact of certain non-deductible executive compensation and the impact of the acquisition of Acacia, partially offset by credits for research and development activity.

The effective tax rate for the three months ended March 31, 2022, reflects an interim tax provision resulting from impact of certain non-deductible executive compensation, partially offset by credits for research and development activity. The effective tax rate for the three months ended March 31, 2021, reflects the impact of a valuation allowance established and adjusted for the fair value adjustments on our investment in Tyme, certain non-deductible executive compensation, partially offset by credits for research and development activity. We review the realizability of our deferred tax assets on a quarterly basis, or whenever events or changes in circumstances indicate that a review is required. In determining the requirement for a valuation allowance, the historical and projected financial results of the legal entity or consolidated group recording the net deferred tax asset are considered, along with any other positive or negative evidence. Since future financial results, including the fair value adjustment on our investment in Tyme may differ from previous estimates, periodic adjustments to our valuation allowances may be necessary.

Deferred income tax assets as of March 31, 2023 consisted of temporary differences primarily related to the net operating losses of Acacia, stock-based compensation and research and development tax credit carryforwards, partially offset by temporary differences related to intangible assets and research and development expenses.

We file income tax returns in the U.S. federal jurisdiction and several states. We are currently under audit by the Internal Revenue Service (IRS) and three State tax jurisdictions. We had no amount recorded for any unrecognized tax benefits as of March 31, 2023. We regularly evaluate our tax positions for additional unrecognized tax benefits and associated interest and penalties, if applicable. There are many factors that are considered when evaluating these tax positions including: interpretation of tax laws, recent tax litigation on a position, past audit or examination history, and subjective estimates and assumptions. We reflect interest and penalties attributable to income taxes, to the extent they arise, as a component of income tax provision or benefit.

11. Legal Proceedings

In addition to the below legal proceedings, from time to time, we may be a party to litigation and subject to claims incident to the ordinary course of business. Although the results of litigation and claims cannot be predicted with certainty and we cannot ensure that we will be successful in defending against such claims, we currently believe that the final outcome of these ordinary course matters, or matters discussed below, will not have a material adverse effect on our business nor have we recorded any loss in connection with these matters because we believe that loss is neither probable nor estimable. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

Commercial Litigation

Curia's Claims in Arbitration and Litigation

On January 23, 2023, Curia Global, Inc. ("Curia") filed a demand for arbitration against Eagle ("the Company") with the American Arbitration Association (the "Arbitration"). Curia makes claims for breach of contract, account stated and breach of the implied covenant of good faith and fair dealing arising from the parties' supply agreement relating to the vasopressin product. Curia seeks damages in excess of $76.7 million. On March 10, 2023, the Company responded to the demand denying the allegations and asserting counterclaims for breach of contract, unjust enrichment, breach of the implied covenant of good faith and fair dealing, and a declaration that the supply agreement for the vasopressin product is terminated. On February 28, 2023, Curia and its subsidiary Curia New Mexico, LLC filed an action against the Company in New York State Court, making claims for breach of contract and account stated arising from the parties' supply agreement relating to the PEMFEXY product (the "NY Action"). Curia seeks damages in excess of $4.2 million. On April 21, 2023, the Company filed a motion to dismiss certain claims in the NY Action. The Company believes it has meritorious defenses to all of Curia's claims and intends to defend the Arbitration and the NY Action vigorously.

In Re: Taxotere (Docetaxel)

Beginning in May 2022, the Company was named as a defendant, among various other manufacturers, in several product liability suits that are consolidated in the U.S. District Court for the Eastern District of Louisiana as part of MDL 3023 (Civil Action No 22-1347 H(5)), or the Multidistrict Litigation. The claims are for personal injuries allegedly arising out of the use of docetaxel. The Company believes it has meritorious defenses to the claims and intends to defend the suits vigorously.

Patent Litigation

Eagle Pharmaceuticals, Inc., et al. v. Slayback Pharma Limited Liability Company; Eagle Pharmaceuticals, Inc., et al. v. Apotex Inc. and Apotex Corp.; Eagle Pharmaceuticals, Inc., et al. v. Fresenius Kabi USA, LLC; Eagle Pharmaceuticals, Inc., et al. v. Mylan Laboratories Limited; Eagle Pharmaceuticals, Inc. et al. v. Hospira, Inc; Eagle Pharmaceuticals, Inc. et al. v. Lupin, Ltd. and Lupin Pharmaceuticals, Inc.; Teva Pharmaceuticals Int'l GmbH et al v. Aurobindo Pharma Ltd., Aurobindo Pharma USA, Inc., and Eugia Pharma Specialities Ltd.; Teva Pharmaceuticals Int'l GmbH et al v. Accord Healthcare Inc., Accord Healthcare Ltd., and Intas Pharmaceuticals Ltd.; Teva Pharmaceuticals Int'l GmbH et al v. Dr. Reddy's Laboratories, Ltd., and Dr. Reddy's Laboratories, Inc.; Teva Pharmaceuticals Int'l GmbH et al v. BendaRX Corp. - (Bendeka®)

Bendeka, which contains bendamustine hydrochloride, is an alkylating drug that is indicated for the treatment of patients with chronic lymphocytic leukemia, as well as for the treatment of patients with indolent B-cell non-Hodgkin's lymphoma that has progressed during or within six months of treatment with rituximab or a rituximab-containing regimen. Slayback Pharma Limited Liability Company ("Slayback"), Apotex Inc. and Apotex Corp. ("Apotex"), Fresenius Kabi USA, LLC ("Fresenius"), Mylan Laboratories Limited ("Mylan"), Lupin, Ltd. and Lupin Pharmaceuticals, Inc. ("Lupin"), and Aurobindo Pharma, Ltd, Aurobindo Pharma USA, Inc., and Eugia Pharma Specialities Ltd ("Aurobindo") have filed Abbreviated New Drug Applications ("ANDA's") referencing Bendeka® that include challenges to one or more of the Bendeka® Orange Book-listed patents. Hospira, Inc. ("Hospira") filed a 505(b)(2) NDA.

We, Cephalon, Inc. and/or Teva Pharmaceuticals International GMBH (together the "Patentees"), filed separate suits against Slayback, Apotex, Fresenius, Mylan, Hospira, Lupin, and Aurobindo in the United States District Court for the District of Delaware on August 16, 2017 (Slayback ("Slayback I")), August 18, 2017 (Apotex), August 24, 2017 (Fresenius), December 12, 2017 (Mylan), January 19, 2018 (Slayback ("Slayback II")), July 19, 2018 (Hospira), and July 2, 2019 (Lupin) and May 11, 2020 (Aurobindo). In these Complaints, the Patentees allege infringement of the challenged patents, namely U.S. Patent Nos. 8,791,270 and 9,572,887 against Slayback (Slayback I and Slayback II), and of U.S. Patent Nos. 8,609,707, 8,791,270, 9,000,021, 9,034,908, 9,144,568, 9,265,831, 9,572,796, 9,572,797, 9,572,887, 9,579,384, 9,597,397, 9,597,398, 9,597,399 against Fresenius, Apotex, and Mylan, and of U.S. Patent Nos. 9,572,887, 10,010,533, 9,034,908, 9,144,568, 9,597,397, 9,597,398, 9,597,399, 9,000,021, 9,579,384 against Hospira, and of U.S. Patent Nos. 8,609,707, 9,000,021, 9,034,908, 9,144,568, 9,265,831, 9,572,796, 9,572,797, 9,572,887, 9,579,384, 9,597,397, 9,597,398, 9,597,399, 10,010,533, and 10,052,385 against Lupin and of U.S. Patent Nos. 8,609,707, 9,265,831, 9,572,796, 9,572,797, 9,034,908, 9,144,568, 9,572,887, 9,597,397, 9,597,398, 9,597,399, 9,000,021, 9,579,384, 10,010,533, and 10,052,385 against Aurobindo. The parties stipulated to dismiss without prejudice U.S. Patent No. 8,791,270 as to Apotex, Fresenius and Mylan on July 24, 2018, August 2, 2018, and August 3, 2018, respectively. Slayback, Apotex, Fresenius, and Mylan answered their Complaints and some filed various counterclaims on September 29, 2017 (Slayback I), February 12, 2018 (Slayback II), November 27, 2017, September 15, 2017, and February 14, 2018, respectively. The Patentees answered the Slayback I, Slayback II, Fresenius, and Apotex counterclaims on October 20, 2017, March 5, 2018, October 6, 2017, and December 18, 2017, respectively. On October 15, 2018, the Patentees filed a suit against Fresenius and Mylan in the United States District Court for the District of Delaware, alleging patent infringement of U.S. Patent Nos. 10,010,533 and 10,052,385. The Slayback I, Slayback II, Apotex, Fresenius and Mylan cases have been consolidated for all purposes (the "Consolidated Bendeka Litigation"), and a bench trial in these cases was held September 9-19, 2019. On April 27, 2020, the district court held that the asserted patents are valid and infringed by Slayback, Apotex, Fresenius and Mylan. On July 6, 2020, the district court entered a final judgment reflecting this decision, stating that pursuant to 35 U.S.C. § 271(e)(4)(A), the FDA shall not approve Apotex's, Fresenius's, Mylan's, or Slayback's ANDA products on a date which is earlier than January 28, 2031, and enjoining Apotex, Fresenius, Mylan, and Slayback from commercially manufacturing, using, offering to sell, or selling within the US or importing into the US, their ANDA products before that date. On August 4, 2020, Apotex, Fresenius, and Mylan appealed this final judgment, and filed their opening briefs on November 4, 2020. Plaintiffs' responsive appeal brief was filed on February 12, 2021. Defendants' reply briefs were filed April 5, 2021. On August 2, 2021, Fresenius's appeal was dismissed pursuant to a settlement agreement reached with Patentees. Oral argument for the remaining defendants occurred on August 3, 2021. On August 13, 2021, the appeals court affirmed the trial court's decision. The mandate was issued on October 22, 2021. Apotex filed a petition for certiorari on December 14, 2021, which the Supreme Court denied on February 22, 2022.

Hospira filed a motion to dismiss, which was fully briefed on November 16, 2018. On December 16, 2019, the United States District Court for the District of Delaware denied Hospira's motion to dismiss with respect to U.S. Patent No. 9,572,887 and granted that motion with respect to the remaining patents. On December 15, 2020, the Court held a claim construction hearing, ruling in our favor on all claim terms. Fact discovery closed on April 1, 2021. Expert discovery ended on February 10, 2022. The parties reached a settlement on April 19, 2022, resulting in dismissal of the action.

Patentees filed suit against Hospira, Inc. on November 16, 2021. Patentees have asserted U.S. Patent No. 11,103,483. Hospira filed its Answer on December 8, 2021. The parties reached a settlement on April 19, 2022, resulting in dismissal of the action.

On March 10, 2020, the parties filed a stipulation and order of dismissal without prejudice as to Lupin, which the Court entered March 11, 2020.

Aurobindo answered the Complaint on July 20, 2020. The parties exchanged initial disclosures on December 11, 2020. Plaintiffs provided their infringement contentions on March 12, 2021. On October 20, 2021 the Court entered a stipulation of dismissal based on a settlement between the parties.

Patentees filed suit against Dr. Reddy's Laboratories on May 13, 2021. Patentees have asserted U.S. Patent Nos. 8,609,707, 9,265,831, 9,572,796, 9,572,797, 9,034,908, 9,144,568, 9,572,887, 9,597,397, 9,597,398, 9,597,399, 9,000,021, 9,579,384, 10,010,533, and 10,052,385. Dr. Reddy's answer was filed August 16, 2021. On December 27, 2021, Dr. Reddy's moved for judgment on the pleadings, seeking a dismissal of all patents except the '887 patent. On January 27, 2022, the Court entered an agreed stipulation by the parties dismissing all patents except the '887. On February 8, 2022, consistent with that stipulation, Patentees filed an Amended Complaint removing the dismissed patents and adding U.S. Patent No 11,103,483. Dr. Reddy's filed its Answer and Counterclaims to that Amended Complaint on February 22, 2022. Patentees' filed their Counterclaim Answer on March 15, 2022. A claim construction hearing was held on September 15, 2022. On April 5, 2023, the Court entered a stipulation of dismissal based on a settlement between the parties.

Patentees filed suit against Accord Healthcare on June 29, 2021. Patentees have asserted U.S. Patent Nos. 8,609,707, 9,265,831, 9,572,796, 9,572,797, 9,034,908, 9,144,568, 9,572,887, 9,597,397, 9,597,398, 9,597,399, 9,000,021, 9,579,384, 10,010,533, and 10,052,385. On January 13, 2022, Accord filed a Motion to Dismiss for failure to state a claim. On January 26, 2022, Patentees filed a First Amended Complaint, removing all patents except the '887 patent and additionally asserting U.S. Patent No. 11,103,483. Accord filed its Answer and Counterclaims to that Amended Complaint on February 10, 2022. On February 28, 2022, Patentees filed their Answer to Accord's Counterclaims. On March 29, 2022, the Court entered a schedule and consolidated this case with the above Dr. Reddy's case. The parties reached a settlement on December 9, 2022, resulting in dismissal of the action.

Patentees filed suit against BendaRX Corp. ("BendaRX") on May 4, 2023. Patentees have asserted U.S. Patent Nos. 8,436,190, 8,445,524, 8,609,863, 8,669,279, 8,791,270, 8,883,836, 8,895,756, 9,533,955, 9,572,887, 8,076,366, and 8,461,350. On May 5, 2023, the patentees filed their First Amended Complaint.

Eagle Pharmaceuticals, Inc. v. Slayback Pharma Limited Liability Company - (Belrapzo®)

Slayback filed an ANDA referencing Eagle's Belrapzo NDA. Slayback's ANDA includes challenges to one or more of the Belrapzo Orange Book-listed patents. On September 20, 2018, the Company filed a suit against Slayback in the United States District Court for the District of Delaware, alleging patent infringement of U.S. Patent Nos. 8,609,707, 9,265,831, 9,572,796, 9,572,797 and 10,010,533. On October 10, 2018, Slayback answered the Complaint and filed various counterclaims. On October 31, 2018, the Company answered Slayback's counterclaims. Pursuant to a stipulation between the parties, Slayback is bound by any final judgment entered in the Consolidated Bendeka Litigation. On January 24, 2023, the parties submitted a proposed judgment consistent with that stipulation, which the Court entered on January 25, 2023.

Eagle Pharmaceuticals, Inc. v. Slayback Pharma Limited Liability Company, Apotex, Inc. and Apotex Corp., Celerity Pharmaceuticals, LLC - (Belrapzo®)

Slayback, Apotex, and Celerity Pharmaceuticals, LLC ("Celerity") filed NDAs referencing Eagle's Belrapzo NDA. The Company filed suits against Slayback, Apotex, and Celerity in the United States District Court for the District of Delaware on August 31, 2021 (Slayback and Apotex) and on January 11, 2022 (Celerity) alleging infringement of U.S. Patent No. 11,103,483. On September 22, 2021, both Slayback and Apotex filed their Answers. On September 29, 2022, trial was held in the suit against Slayback and Apotex. On October 25, 2022, the Court issued its opinion and entered a judgment of non-infringement with respect to Slayback and Apotex. The Company filed a notice of appeal on October 26, 2022. The appeal is ongoing. The Company filed its opening brief on November 22, 2022. Slayback and Apotex filed their response brief on January 18, 2023. The Company filed its reply brief on February 8, 2023. On February 2, 2022, Celerity moved to dismiss the pending complaint. In response, the Company filed an Amended Complaint on March 1, 2022. Celerity filed its answer to the

Company's Amended Complaint on March 22, 2022. On April 19, 2022, Celerity moved for judgment on the pleadings. On June 24, 2022, the Court entered a schedule coordinated with the above Accord and Dr. Reddy's cases. A claim construction hearing was held on September 15, 2022. On October 28, 2022, the parties filed a proposed stipulated judgment of non-infringement, which the Court entered that day. The Company reserved its right to seek vacatur of the judgment pending the outcome of the above-referenced appeal in the Slayback and Apotex action.

Eagle Pharmaceuticals, Inc. v. Accord Healthcare Inc., Accord Healthcare Ltd., and Intas Pharmaceuticals Ltd. - (Belrapzo®)

Accord filed an NDA referencing Eagle's Belrapzo NDA. Accord's NDA includes challenges to one or more of the Belrapzo Orange Book-listed patents. On May 27, 2022, the Company filed a suit against Accord in the United States District Court for the District of Delaware, alleging patent infringement of U.S. Patent Nos. 8,609,707, 9,265,831, 9,572,796, 9,572,797, 10,010,533, and 11,103,483. On July 6, 2022 the Company filed a First Amended Complaint, removing all patents except the '483 patent. Accord filed its Answer and Counterclaims on July 20, 2022. The Company filed its Answer to Accord's Counterclaims August 9, 2022. On September 20, 2022, the Court entered a schedule consolidating this case with the above Accord and Dr. Reddy's cases. On November 18, 2022, the parties filed a proposed stipulated judgment of non-infringement, which was entered by the Court on November 21, 2022. The Company reserved its right to seek vacatur of the judgment pending the outcome of the above-referenced appeal in the Slayback and Apotex action.

Eagle Pharmaceuticals, Inc. & SymBio Pharmaceuticals Ltd. v. Towa Pharmaceutical Co., Ltd.; *Eagle Pharmaceuticals, Inc. & SymBio Pharmaceuticals Ltd. v. Pfizer Japan Inc. - (Treakisym)*

The Company, together with its exclusive licensee SymBio Pharmaceuticals Ltd. ("SymBio"), initiated lawsuits in the Tokyo District Court against Towa Pharmaceutical Co., Ltd. ("Towa") on December 16, 2022 and against Pfizer Japan Inc. ("Pfizer") on December 26, 2022 for patent infringement of Eagle's Japanese Patent No. 6570601 for TREAKISYM injection solution 100 mg/4mL (bendamustine hydrochloride hydrate). In their complaint, Eagle and SymBio sought remedies that include an injunction against the manufacture or sale of Towa and Pfizer's generic products and compensation for damages. Towa and Pfizer answered the complaint. A first hearing occurred before the Tokyo District Court in the Towa infringement action on February 6, 2023, in which the Court determined a timetable for the case. In the Towa action, the parties will give technical presentation before the judges and experts on October 30, 2023, and the court will reveal its view on infringement and validity on November 20, 2023. A first hearing occurred before the Tokyo District Court in the Pfizer infringement action on April 25, 2023, in which the Court determined a timetable for the case. In the Pfizer action, the parties will give technical presentation before the judges on December 13, 2023, and the court will review its view on infringement and validity on January 15, 2024.

Par Pharmaceutical, Inc. et al. v. Eagle Pharmaceuticals, Inc. (Vasopressin)

On May 31, 2018, Par Pharmaceutical, Inc., Par Sterile Products, LLC, and Endo Par Innovation Company, LLC (together, "Par") filed suit against the Company in the United States District Court for the District of Delaware. Par alleged patent infringement based on the filing of the Company's ANDA seeking approval to manufacture and sell the Company's vasopressin product. The Company's vasopressin product is an alternative to Vasostrict, which is indicated to increase blood pressure in adults with vasodilatory shock (e.g., post-cardiotomy or sepsis) who remain hypotensive despite fluids and catecholamines. The Company answered the complaint on August 6, 2018, and filed an amended answer and counterclaims on October 30, 2019. The court issued a Markman ruling on July 1, 2019. On December 20, 2019, Par dismissed with prejudice claims of three of the patents asserted against Eagle, and the Court entered an Order reflecting that dismissal on December 27, 2019. Mediation took place on March 3, 2020. On April 17, 2020, we submitted a letter requesting leave to file a motion for summary judgment of non-infringement. Par's responsive letter was submitted on May 8, 2020. On May 18, 2020, the court said it would hear non-infringement arguments at trial and not through summary judgment. Fact discovery ended in October 2019, and expert discovery ended in February 2020. Due to the COVID-19 pandemic, the trial, which was scheduled to begin May 18, 2020, was rescheduled to and occurred on July 7-9, 2021. Post-trial briefing was submitted on July 28, 2021. The Court issued an opinion on August 31, 2021 and entered a final judgment of non-infringement in favor of Eagle on September 16, 2021. Par filed a Notice of Appeal of the final judgment on September 22, 2021, and the appeal was docketed with the United States Court of Appeals for the Federal Circuit on September 23, 2021. Par filed its principal appeal brief on December 6, 2021, Eagle filed its responsive appeal brief on February 1, 2022, and Par filed its reply appeal brief on February 22, 2022. Oral argument occurred before the Federal Circuit on July 7, 2022. On August 18, 2022, the Federal Circuit affirmed the District Court's finding of non-infringement, and on September 26, 2022, the Federal Circuit issued the formal mandate. The FDA approved Eagle's ANDA on December 15, 2021. On December 16, 2021, Par filed an emergency motion for temporary restraining order and preliminary injunction in the district court to enjoin Eagle from launching its product, but Par voluntarily withdrew the motion on December

20, 2021. Eagle commercially launched its ANDA product in January 2022. The 30-month stay of FDA approval expired on October 17, 2020.

On December 7, 2020, Par filed a separate suit against us in the United States District Court for the District of New Jersey, asserting patent infringement of U.S. Patent No. 10,844,435, based on the filing of our ANDA seeking approval to manufacture and sell our vasopressin product. Eagle moved to dismiss Par's complaint on March 2, 2021. On March 22, 2021, Par amended its complaint to additionally assert U.S. Patent No. 10,920,278, and on April 5, 2021, Eagle moved to dismiss Par's amended complaint. Before the Court ruled on Eagle's Motion to Dismiss, on May 9, 2022, Par provided notice of the dismissal of the action under Rule 41(a)(1)(A)(i), and the Court granted the dismissal of the action on May 10, 2022.

12. License and Collaboration Agreements

License agreement with Combioxin

In August 2021, we entered into a license agreement with Combioxin, SA under which the Company was granted exclusive, worldwide development and commercialization rights to CAL02, a novel first-in-class anti-infective agent ready for Phase 2b/3 development for the treatment of severe pneumonia in combination with traditional antibacterial drugs. The Company will be solely responsible for the development, regulatory, manufacturing and commercialization activities of CAL02. Combioxin will assist the Company in transitioning the manufacturing and supply of CAL02 to the Company.

Under the terms of the agreement, we paid $10 million as upfront license consideration that was expensed immediately as research and development and is reflected within the operating activities of the consolidated statements of cash flows as of December 31, 2021. The Company may pay to Combioxin up to $105 million upon achievement of certain development, regulatory and sales based milestone payments plus royalty payments at royalty rates ranging in low double digit percentages on the net sales of all products sold, subject to certain adjustments as provided in the agreement. The Company is also obligated to make certain payments based upon amounts received by sublicensees under the agreement.

License agreement with AOP Orphan

In August 2021, we entered into a licensing agreement with AOP Orphan Pharmaceuticals GmbH ("AOP Orphan"), a privately owned Austrian company devoted to the treatment of rare and special diseases, for the commercial rights to its product, landiolol in the United States. Landiolol, a leading hospital emergency use product, is currently approved in Europe for the treatment of non-compensatory sinus tachycardia and tachycardic supraventricular arrhythmias. We supported the submission of a new drug application ("NDA") in the second quarter of 2022 by AOP Orphan to the FDA seeking approval for landiolol for the short term reduction of ventricular rate in patients with supraventricular tachycardia ("SVT"), including atrial fibrillation and atrial flutter.

Under the terms of the agreement, we paid a $5 million upfront license consideration that was expensed immediately as research and development and is reflected within the operating activities of the consolidated statements of cash flows as of December 31, 2021. We may pay to AOP Orphan up to $25 million upon achievement of certain regulatory milestone payments plus profit share payments, subject to certain adjustments as provided in the agreement. We also entered into a supply agreement at the same time as the licensing agreement.

Collaboration with Tyme (now merged with Syros)

On January 7, 2020, Tyme Technologies, Inc. ("Tyme") and we announced a strategic collaboration to advance SM-88, an oral product candidate for the treatment of patients with cancer. SM-88 is an investigational agent in two Phase II studies, one for pancreatic cancer and another for prostate cancer.

In September 2022, Syros announced the closing of its merger with Tyme pursuant to which Syros acquired Tyme. The combined company will be known as Syros going forward.

Under the terms of a related co-promotion agreement, we would be responsible for 25% of the promotional sales effort of SM-88 and would receive 15% royalty on the net revenues of SM-88 in the United States. Syros is responsible for clinical development, regulatory approval, commercial strategy, marketing, reimbursement and manufacturing of SM-88. Syros retains the remaining 85% of net U.S. revenues and reserves the right to repurchase our U.S. co-promotion right for $200.0 million.

Our equity investment in Syros is included in Other assets on our condensed consolidated balance sheet. For the three months ended March 31, 2023 and 2022, the fair value adjustments for the equity investment were a loss of $0.4 million and a loss of $2.5 million, respectively. These adjustments were recorded in Other (expense) income on our condensed consolidated statements of operations.

13. Business Acquisition

On June 9, 2022, we completed our previously announced acquisition of the entire issued share capital of Acacia for cash consideration and common stock totaling 94.7 million euros, the equivalent of 0.90 euros per share, and an aggregate of 516,024 shares of our common stock. Each shareholder of Acacia received 0.68 euros in cash and 0.0049 shares of our common stock. Acacia is a hospital pharmaceutical company focused on the development and commercialization of new products aimed at improving the care of patients undergoing significant treatments such as surgery and other invasive procedures. The transaction was entered to expand our current portfolio of FDA approved hospital products with the addition of Barhemsys and Byfavo.

We evaluated the Business Acquisition under ASC 805, Business Combinations and ASU 2017-01, Business Combinations: Clarifying the Definition of a Business. We concluded that substantially all of the fair value of the gross assets acquired is not concentrated in a single identifiable asset or a group of similar identifiable assets. The transaction does not pass the screen test and thus management performed an assessment to determine if the acquired entities met the definition of a business. For the assessment, management considered whether it has acquired (i) inputs, (ii) processes, and (iii) outputs. Under ASC 805, to be considered a business, a set of activities and assets is required to have only the first two of the three elements, which together are or will be used in the future to create outputs. Management determined that the acquired entities met the definition of a business since we acquired inputs, processes capable of producing outputs and outputs.

Therefore, the acquisition has been accounted for under the acquisition method of accounting. Under the acquisition method, the total purchase price of the acquisition is allocated to the net tangible and identifiable intangible assets acquired and liabilities assumed based on the fair values as of the date of the acquisition.

The fair value of the consideration totaled $100.4 million, summarized as follows (in thousands):

	Fair Value of Consideration
Cash consideration	$ 76,708
Fair value of Eagle common stock issued	23,645
	$ 100,353

The purchase price allocation resulted in the amounts being allocated to the assets acquired and liabilities assumed at the acquisition date based upon their respective fair values summarized below. The determination of fair value was finalized in the fourth quarter of 2022. During the year ended December 31, 2022, we recorded certain measurement period adjustments, which are summarized below. The impact of these measurement period adjustments were recorded as an increase to goodwill, increasing the goodwill balance to $5.3 million.

The following table presents the allocation of the purchase price to the estimated fair values of the assets acquired and liabilities assumed as of the acquisition date (in thousands):

	Purchase Price Allocation
Cash	$ 2,556
Net working capital, excluding cash	(2,158)
Inventory	17,548
Intangible assets	108,000
Debt	(26,659)
Deferred tax liability, net	(4,225)
Fair value of net assets acquired	95,062
Goodwill	5,291
	$ 100,353

The estimated fair value of acquired intangible assets was determined using the "income approach," which is a valuation technique that provides an estimate of the fair value of an asset based on market participant expectations of the cash flows an asset would generate over its remaining useful life. The inventory acquired was valued at expected profit margins for the acquired products. The fair value of working capital acquired approximates its book value. The fair value of debt acquired was

based on the present value of future cash outflows using the net present value approach and applying an interest rate that is considered to be a market participant equivalent rate. The assumptions, including the expected projected cash flows, utilized in the purchase price allocation and in determining the purchase price were based on management's best estimates as of the close date of the acquisition on June 9, 2022.

Some of the more significant assumptions inherent in the development of the intangible asset valuations included the estimated net cash flow for each year for each asset (including relevant market size and market share), the appropriate discount rate to select in order to measure the risk inherent in each future cash flow stream, as well as other factors.

The goodwill recorded related to the acquisition is the excess of the fair value of the consideration transferred by the acquirer over the fair value of the net identifiable assets acquired and liabilities assumed at the date of acquisition. The goodwill recorded is not deductible for tax purposes.

Pro Forma Financial Information:

The following table provides unaudited pro forma financial information for the three-month period ended March 31, 2022 as if the acquisition of Acacia had occurred as of January 1, 2022:

	Three Months Ended March 31,	
	2023	**2022**
	Actual	Pro forma
Total revenue	$ 66,305	$ 116,492
Net income	$ 5,750	$ 31,967

These amounts have been calculated after applying our accounting policies.

The pro forma results above include the impact of the following adjustments, as necessary: additional amortization expense relating to assets acquired; interest and other financing costs relating to the acquisition transaction; and the elimination of one-time or nonrecurring items. The one-time or nonrecurring items eliminated were primarily comprised of inventory fair value step-up adjustments; transaction costs, as well as certain Acacia-related share based payment charges and employee compensation expenses.

The pro forma results do not include any anticipated cost savings or other effects of the planned integration of Acacia. Accordingly, the pro forma results above are not necessarily indicative of the results that would have been if the acquisition had occurred on the date indicated, nor are the pro forma results indicative of results which may occur in the future.

14. Investment in Enalare Therapeutics Inc.

On August 8, 2022, we and Enalare Therapeutics Inc. (“Enalare”) entered into a Securities Purchase Agreement, pursuant to the terms of the Shares Purchase Agreement ("SPA"). In connection with the SPA we have invested a total of $25.0 million and may invest an additional $30 million, subject to the completion of certain development milestones. Concurrently with the execution of the SPA, we also entered into a Security Purchase Option Agreement ("SPOA"), pursuant to which we were granted an option to acquire all of the remaining outstanding shares of Enalare other than those that we already own, subject to the terms and conditions of the agreement. The term of the Purchase Option (the "Option Period") commenced on August 8, 2022 and will end upon the earlier of (x) 90 days following the FDA communication of proceed to clinical for a Phase 3 clinical study for a Product Candidate or (y) June 30, 2027. Enalare shall not initiate Phase 3 pivotal studies prior to the end of the Option Period and we shall have reasonable access to all relevant data and documents following the Phase 3 Milestone (as defined in the Option Agreement).

As of March 31, 2023, we had an equity investment in the amount of $17.0 million and an asset related to the acquisition right in the amount of $8.1 million. In the three months ended March 31, 2023, we settled the forward liability and invested another $12.5 million as part of the contractual obligation. We used a probability factor to value the asset related to the acquired acquisition rights based on management's best estimate, including the probability of completion of certain development milestones. The equity stake was accounted for as an non-RDFV investment and had a gain on settlement of the forward

liability of $0.1 million which was recorded in Other expense on our condensed consolidated statements of operations in the period ended March 31, 2023. The equity investment and the acquisition right was reported at fair value as of March 31, 2023.

Summarized financial information of our investment and equity ownership in Enalare for the three months ending March 31, 2023 is presented below:

	Beginning balance as of December 31, 2022	Fair Value Adjustment	Additions / Adjustments during period	Ending balance as of March 31, 2023
Non-RDFV Investment (Other assets)	$ 8,438	$ —	$ 8,514	$ 16,952
Acquisition Rights (Other assets)	8,125	—	—	8,125
Forward Liability (Accrued expenses and other liabilities)	(4,063)	77	3,986	—
Total, net	**$ 12,500**	**$ 77**	**$ 12,500**	**$ 25,077**

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

The following information should be read in conjunction with our unaudited consolidated financial statements and the notes thereto included in this Quarterly Report on Form 10-Q, or the Quarterly Report, and the audited financial information and the notes thereto included in our Annual Report on Form 10-K, which was filed with the Securities and Exchange Commission, or the SEC, on March 23, 2023, or our Annual Report. This discussion and analysis contains forward-looking statements that involve significant risks and uncertainties. Our actual results, performance or experience could differ materially from what is indicated by any forward-looking statement due to various important factors, risks and uncertainties, including, but not limited to, those set forth under "Risk Factors" included elsewhere in this Quarterly Report. Unless otherwise indicated or required by context, references throughout to "Eagle," the "Company," "we," "our," or "us" refer to financial information and transactions of Eagle Pharmaceuticals, Inc.

Overview

We are a fully integrated pharmaceutical company with research and development, clinical, manufacturing and commercial expertise. We are committed to developing innovative medicines that result in meaningful improvements in patients' lives.

Our science-based business model has a proven track record with the FDA approval and commercial launches of six products: PEMFEXY, vasopressin, Ryanodex, Belrapzo, Bendeka and Treakisym. We market our products through marketing partners and/or our internal direct sales force. We market PEMFEXY, vasopressin, Ryanodex and Belrapzo, Teva markets Bendeka and SymBio markets Treakisym.

We acquired Acacia as of June 9, 2022, which added two FDA approved new chemical entities with patent protection, BARHEMSYS and BYFAVO® (remimazolam for injection). The addition of these two products expands our presence in the acute care space.

With several pipeline projects underway and the potential for product launches over the next few years, we believe we have many growth opportunities ahead. We believe that each of our pipeline projects currently has the potential to enter the market as a first-in-class, first-to-file or best-in-class product. In particular, we are applying our expertise to conduct novel research regarding the potential for Ryanodex to address conditions including nerve agent, acute radiation syndrome, traumatic brain injury/concussion and Alzheimer's disease as well as investigations of compounds such as EA-114 (our fulvestrant product candidate) for patients with HR-positive advanced breast cancer. Our clinical development program also includes a license agreement with Combioxin, SA under which we were granted exclusive, worldwide development commercialization rights to CAL02, a novel first-in-class anti-infective agent for Phase 2b/3 development for the treatment of severe pneumonia in combination with traditional antibacterial drugs and a license agreement with AOP Health Group ("AOP Orphan"), for the commercial rights to its product, landiolol in the United States. Landiolol is a leading hospital emergency use product, which is currently approved in Europe for the treatment of non-compensatory sinus tachycardia and tachycardic supraventricular arrhythmias. Landiolol is not currently approved in the United States. We supported the submission of a NDA in the second quarter of 2022 by AOP Orphan to the FDA seeking approval for landiolol for the short term reduction of ventricular rate in patients with SVT, including atrial fibrillation and atrial flutter.

Recent Developments

Byfavo J-code

On May 1, 2023, the Company announced that the Centers for Medicare & Medicaid Services ("CMS") has established a unique, product-specific billing code for Byfavo, a short-acting sedative for procedures lasting 30 minutes or less. This new Healthcare Common Procedure Coding System (HCPCS) Level II code ("J-code") is J2249 "Injection, remimazolam, 1 mg." The J-code will be effective on July 1, 2023. J-codes are reimbursement codes used by commercial insurance plans, Medicare, Medicare Advantage, and other government payers for physician-administered drugs like Byfavo and are intended to simplify the claims submission and documentation process, facilitating access for patients.

Discontinuance of Vasopressin

During the first quarter of 2023, the Company gave notice to customers and the FDA that it was withdrawing from the vasopressin market. Inventory on hand and in the distribution channel is expected to be depleted by the end of the second quarter of 2023.

Third Amended and Restated Credit Agreement

On November 1, 2022, we entered into the Third Amended and Restated Credit Agreement (the "Third Amended Credit Agreement"), with JPMorgan Chase Bank, N.A., as administrative agent (the "Administrative Agent") and the lenders party thereto, which replaced our prior credit agreement, dated as of November 8, 2019 (the "Second Amended Credit Agreement"). The terms and amounts borrowed under the Third Amended Credit Agreement include a drawn term loan of $50 million and a $100 million revolving credit facility of which $15.0 million was drawn on November 1, 2022 and an additional $15.0 million was drawn on February 8, 2023. In addition, approximately $35.4 million of the proceeds of the credit facility were used to refinance all amounts outstanding under the Second Amended Credit Agreement, [and we currently intend to use the remaining proceeds to repay certain indebtedness of our wholly-owned subsidiary, Acacia Pharma, and for other corporate purposes. All amounts outstanding under the Third Amended Credit Agreement shall be due and payable on October 31, 2025, unless otherwise accelerated or extended pursuant to the terms of the Third Amended Credit Agreement.

Enalare Investment

On August 8, 2022, we and Enalare Therapeutics Inc. (“Enalare”) entered into a Securities Purchase Agreement, pursuant to which we have committed to provide equity investments of up to $55 million in Enalare, subject to the completion of certain development milestones (the “Purchase Agreement”). Concurrently with the execution of the Purchase Agreement, we, Enalare and holders of all of the outstanding capital stock, and any securities or options exercisable for capital stock, of Enalare (the “Securityholders”) entered into a Security Purchase Option Agreement, pursuant to which we were granted an option (the “Purchase Option”) to acquire all of the remaining outstanding shares of Enalare other than those that we already own, subject to the terms and conditions of the agreement (the “Option Agreement”). The term of the Purchase Option (the “Option Period”) commenced on August 8, 2022 and will end upon the earlier of (x) 90 days following FDA authorization to begin a Phase 3 clinical study for a Product Candidate or (y) June 30, 2027. Pursuant to the terms of the Option Agreement, Enalare shall not initiate Phase 3 pivotal studies prior to the end of the Option Period and we shall have reasonable access to all relevant data and documents following the Phase 3 Milestone (as defined in the Option Agreement).

ENA-001 is an investigational, new chemical entity being developed by Enalare as an agnostic respiratory stimulant for multiple patient populations experiencing acute respiratory depression. The initial targeted indications include post-operative respiratory depression; community drug overdose; and Apnea of Prematurity, a common condition in preterm infants. FDA granted Orphan Drug Designation to ENA-001 for the treatment of Apnea of Prematurity (“AoP”). AoP is a development disorder attributed to immaturity of the pulmonary system characterized by either cessation of breathing for more than 20 seconds or cessation of breathing that lasts less than 20 seconds but is accompanied by either bradycardia or hypoxemia.

Acacia Acquisition

On June 9, 2022, we completed the acquisition of Acacia Pharma Group plc ("Acacia"), formerly a public company organized under the laws of England and Wales, through an offer of approximately $76 million in cash and 516,024 shares of our common stock for the entire issued and to be issued share capital of Acacia by means of a court sanctioned scheme of arrangement under Part 26 of the UK Companies Act 2006. The acquisition added two FDA approved currently marketed, acute care, hospital products, both of which are new chemical entities with strong patent protection:

- BARHEMSYS (amisulpride for injection), the first and only antiemetic approved by the FDA for rescue treatment of postoperative nausea and vomiting, after failed prophylaxis, and
- BYFAVO (remimazolam for injection), indicated for the induction and maintenance of procedural sedation in adults undergoing procedures lasting 30 minutes or less.

Landiolol

On June 1, 2022, we announced that AOP Orphan, with whom we entered into a licensing agreement in August 2021, submitted an NDA to the FDA for landiolol, a short-acting, intravenous (“IV”), cardio-selective beta-1 adrenergic blocker product candidate. The submission seeks approval for landiolol for the short-term reduction of ventricular rate in patients with supraventricular tachycardia (“SVT”), including atrial fibrillation and atrial flutter. The FDA’s decision with respect to approval is expected in mid-2023. Patient enrollment for a study of pediatric patients with supraventricular tachycardia is underway in Europe.

PEMFEXY

In December 2022, the FDA approved an additional indication for PEMFEXY (pemetrexed injection) in combination with pembrolizumab and platinum chemotherapy for the initial treatment of patients with metastatic, non-squamous, non-small cell lung cancer with no EGFR or ALK genomic tumor aberrations. In December 2022, we also amended our agreement with Robert One to amend the applicable royalty rates due by us on Gross Profits derived from the Robert One 2009 Subject Products to (i) thirty percent with respect to a 505(b)(2) application; (ii) thirty percent with respect to an ANDA application; and (iii) with respect to pemetrexed parenteral formulation, (a) ten percent on Gross Profits greater than $85,000,000 and (b) twelve percent on Gross Profits greater than $115,000,000. In addition, under the terms of the amendment, no royalty payment is due on Gross Profits derived from pemetrexed parenteral formulation that are less than $85,000,000. In exchange for the foregoing amended royalty rates, we made a one-time lump sum payment of $15,000,000 to Robert One on January 3, 2023. See “*Business—License Agreements—Development and License Agreement with Robert One, LLC (pemetrexed)*.”

On February 1, 2022, we announced the commercial availability of our novel product PEMFEXY® (pemetrexed for injection). A branded alternative to ALIMTA®, Eagle's PEMFEXY is a ready-to-use liquid with a unique J-code approved to treat nonsquamous non-small cell lung cancer and mesothelioma.

CAL02

In November 2022, the FDA accepted Eagle's IND application for CAL02. The Phase 2 study is expected to begin enrollment of approximately 276 patients with severe community-acquired pneumonia at approximately 120 sites worldwide beginning in 2023.

BENDEKA

On December 9, 2022, we entered into a definitive settlement agreement, or the Accord Settlement Agreement, with Accord Healthcare Inc., or Accord, relating to our product BENDEKA® (rapidly infused bendamustine hydrochloride). This settlement resolves patent litigation brought by us and our marketing partners Teva Pharmaceuticals International, GmbH and Cephalon, Inc. relating to the alleged infringement of Orange Book listed United States Patent Nos. 8,609,707; 9,265,831; 9,572,796; 9,572,797; 9,034,908; 9,144,568; 9,572,887; 9,597,397; 9,597,398; 9,597,399; 9,000,021; 9,579,384; 10,052,385; 10,010,533; and 11,103,483, or the Asserted Patents, with respect to Accord's 505(b)(2) NDA, No. 215749. Pursuant to the terms of the Accord Settlement Agreement, we will grant Accord a license to market Accord's product made under NDA No. 215749 in the United States beginning on January 17, 2028 (subject to FDA approval), or earlier under certain circumstances. Additionally, in accordance with the Agreement, the parties will terminate all ongoing litigation among us, Teva Pharmaceuticals International, GmbH and Cephalon, Inc. and Accord regarding BENDEKA® and the Asserted Patents pending in the United States District Court for the District of Delaware. The Agreement is confidential and subject to review by the U.S. Federal Trade Commission and the U.S. Department of Justice.

On April 19, 2022, we entered into a definitive settlement agreement, or the Hospira Settlement Agreement, with Hospira, Inc., or Hospira, relating to our product BENDEKA® (rapidly infused bendamustine hydrochloride). This settlement resolves patent litigation brought by us and our marketing partners Teva Pharmaceuticals International, GmbH and Cephalon, Inc. relating to the alleged infringement of Orange Book listed United States Patent Nos. 11,103,483 and 9,572,887, or the Asserted Patents, with respect to Hospira's 505(b)(2) NDA, No. 211530. Pursuant to the terms of the Hospira Settlement Agreement, we will grant Hospira a license to market Hospira's product made under NDA No. 211530 in the United States beginning on January 17, 2028 (subject to FDA approval), or earlier under certain circumstances. Additionally, in accordance with the Agreement, the parties will terminate all ongoing litigation among us, Teva Pharmaceuticals International, GmbH and Cephalon, Inc. and Hospira regarding the Asserted Patents pending in the United States District Court for the District of Delaware. The Agreement is confidential and subject to review by the U.S. Federal Trade Commission and the U.S. Department of Justice.

TREAKISYM

Eagle's bendamustine franchise continues to grow, including the launch of the TREAKISYM rapid infusion ("RI") (50ml) liquid formulation in the first quarter of 2022, and the launch of the ready-todilute ("RTD") formulation in Japan in the first quarter of 2021.

COVID-19 and Macroeconomic Environment Business Update

In response to the COVID-19 pandemic, we have taken measures designed to address and mitigate the impact of the COVID-19 pandemic on our business, such as remote working policies, facilitating management's daily communication to address employee and business concerns and providing frequent updates to the Board. We anticipate that the COVID-19 pandemic may have an impact on the clinical development timeline for EA-114. We anticipate that the COVID-19 pandemic may continue to delay our supply chain and marketing and sales efforts for certain of our products, including Bendeka, although it is not currently expected that any disruption would be material. The COVID-19 pandemic have resulted in a decrease in healthcare utilization broadly and specifically lead to a continuing reduction in the utilization of physician-administered oncology products including Belrapzo and Bendeka. While we have experienced variable financial impacts to date, the COVID-19 pandemic, including the global economic slowdown, government measures taken in response thereto, the overall disruption of global healthcare systems and other risks and uncertainties associated with the pandemic, could materially adversely affect our business, financial condition, results of operations and growth prospects. We continue to monitor COVID-19 as we evaluate and evolve our business plans. The impact of the COVID-19 pandemic on our business and financial condition is more fully described below in *Trends and Uncertainties*. In addition, we continue to monitor the impacts of other global and worsening macroeconomic conditions, such as global geopolitical tension, increasing inflation and interest rates, exchange rate fluctuations, supply chain disruptions and increases in commodity, energy and fuel prices. The U.S. government and other nations have imposed significant restrictions on most companies' ability to do business in Russia as a result of the ongoing military conflict between Russia and Ukraine. It is not possible to predict the broader or longer-term consequences of this conflict, which could include further sanctions, embargoes, regional instability, geopolitical shifts and adverse effects on macroeconomic conditions, security conditions, currency exchange rates and financial markets. Such geopolitical instability and uncertainty could have a negative impact on our ability to further expand our business and to otherwise generate revenues and develop our product candidates. In addition, a significant escalation or expansion of economic disruption or the conflict's current scope could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Financial Operations Overview

Revenue

Our revenue consists of product sales, royalty revenue and license and other revenue.

Product Sales. Through March 31, 2023, we have recognized revenues from product sales including Pemfexy, vasopressin, Ryanodex, Belrapzo, Bendeka, Treakisym, BARHEMSYS and BYFAVO. Sales of Bendeka and Treakisym were made to our commercial partners, Teva and SymBio, respectively. Sales to our commercial partners are typically made at little or no profit for resale. Pemfexy, vasopressin, Ryanodex Belrapzo, BARHEMSYS and BYFAVO were sold directly to wholesalers, hospitals and surgery centers through a third-party logistics partner.

We typically enter into agreements with group purchasing organizations acting on behalf of their hospital members, in connection with the hospitals' purchases of our direct commercial products. Based on these agreements, most of our hospital customers have contracted prices for products and volume-based rebates on product purchases. These amounts are estimated and recorded at the time of sale. In the case of discounted pricing, we typically provide a chargeback, representing the difference between the price invoiced to the wholesaler and the customer contract price.

Royalty Revenue. We recognize revenue from royalties based on a percentage of Teva's net sales of Bendeka and Symbio's net sales of Treakisym, net of discounts, returns and allowances incurred by our commercial partners. Royalty revenue is recognized as earned in accordance with contract terms when it can be reasonably estimated and collectability is reasonably assured.

License and Other Revenue. Our revenues may either be in the form of the recognition of deferred revenues upon milestone achievement for which cash has already been received or recognition of revenue upon milestone achievement for which the payment for which is reasonably assured to be received in the future.

The primary factors that determine our revenues derived from Bendeka are:

- the level of orders submitted by our commercial partner, Teva;
- the rate at which Teva can convert the current market to Bendeka;
- the level of institutional demand for Bendeka;
- unit sales prices charged by Teva, net of any sales reserves; and
- the level of orders submitted to Teva by wholesalers, hospitals and surgery centers.

The primary factors that determine our revenues derived from Treakisym are:

- the level of orders submitted by our commercial partner, SymBio;
- the level of institutional demand for Treakisym; and
- unit sales prices charged by SymBio, net of any sales reserves.

The primary factors that may determine our revenues derived from Pemfexy, vasopressin, Ryanodex, Belrapzo, BARHEMSYS, BYFAVO and our future products are:

- the effectiveness of our sales force;
- the level of orders submitted by wholesalers, hospitals and surgery centers;
- the level of institutional demand for our products; and
- unit sales prices, net of any sales reserves.

Cost of Revenues

Cost of revenue consists of the costs associated with producing our products for our commercial partners. In particular, our cost of revenue includes production costs of our products paid to a contract manufacturing organization coupled with shipping and customs charges, cost of royalty and the amortization of intangible assets. Cost of revenue may also include the effects of product recalls, if applicable.

Research and Development

Costs for research and development are charged to expenses as incurred and include: employee-related expenses including salaries, benefits, travel and stock-based compensation expense for research and development personnel; expenses incurred under agreements with contract research organizations, contract manufacturing organizations and service providers that assist in conducting clinical and preclinical studies; costs associated with preclinical activities and development activities; costs associated with regulatory operations; and depreciation expense for assets used in research and development activities.

Costs for certain development activities, such as clinical studies, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations, or information provided to the Company by its vendors on their actual costs incurred. Payments for these activities are based on the terms of the individual arrangements, which may differ from the patterns of costs incurred, and are reflected in the condensed consolidated financial statements as prepaid expenses or accrued expenses as deemed appropriate. Recoveries of previously recognized research and development expenses from third parties are recorded as a reduction to research and development expense in the period it becomes realizable.

Selling, General and Administrative

Selling, general and administrative costs consist of employee-related costs including salaries, benefits and other related costs, stock-based compensation for executive, finance, sales and operations personnel. Selling, general and administrative expenses also include facility and related costs, professional fees for legal, consulting, tax and accounting services, insurance, selling, marketing, market research, advisory board and key opinion leaders, depreciation and general corporate expenses.

Income Taxes

We account for income taxes using the liability method in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 740 - Income Taxes, or ASC 740. Deferred tax assets and liabilities are determined based on temporary differences between financial reporting and tax bases of assets and liabilities and are measured by applying enacted rates and laws to taxable years in which differences are expected to be recovered or settled. Further, the effect on deferred tax assets and liabilities of a change in tax rates is recognized in income (loss) in the period that the rate changes. A valuation allowance is required when it is “more likely than not” that all or a portion of deferred tax assets will not be realized. ASC 740 also prescribes a comprehensive model for how a company should recognize, measure, present and disclose in its financial statements uncertain tax positions that it has taken or expects to take on a tax return, including a decision whether to file or not file a return in a particular jurisdiction. We recognize any interest and penalties accrued related to unrecognized tax benefits as income tax expense.

The provision for income taxes was based on the applicable federal and state tax rates for those periods. The effective tax rate for the three months ended March 31, 2023 reflects certain non-deductible executive compensation, partially offset by credits for research and development activity. The effective tax rate for the three months ended March 31, 2022 reflects the impact of a valuation allowance established and adjusted for the fair value adjustments on our investment in Syros Pharmaceuticals, Inc. ("Syros"), following the merger of Tyme Technologies, Inc. (“Tyme”) and Syros on September 16, 2022, certain non-deductible executive compensation and changes in state filing positions, partially offset by credits for research and development activity.

Results of Operations

Comparison of Three Months Ended March 31, 2023 and 2022

Revenues

	Three Months Ended March 31,		
	2023	2022	(Decrease)
	(in thousands)		
Product sales, net	$ 46,221	$ 90,088	$ (43,867)
Royalty revenue	20,084	25,786	(5,702)
Total revenue	$ 66,305	$ 115,874	$ (49,569)

Our product sales decreased $43.9 million during the three months ended March 31, 2023 as compared to the three months ended March 31, 2022. The decrease was primarily attributable to decreased product sales of $30.8 million for vasopressin and Pemfexy of $14.2 million, each of which was launched during the first quarter of 2022 and a decrease of $2.2 million for Bendeka primarily driven by volume decreases. This was partially offset by increase of $2.1 million and $0.4 million for Ryanodex and Belrapzo, respectively primarily driven by volume increases and our recently acquired Barhemsys and Byfavo products, which totaled $0.9 million.

Our royalty revenue decreased $5.7 million during the three months ended March 31, 2023 as compared to the three months ended March 31, 2022, primarily as a result of a decrease in royalty revenue from our share of Teva's Bendeka sales.

Cost of revenue

	Three Months Ended March 31,		
	2023	2022	(Decrease)
	(in thousands)		
Cost of product sales	$ 17,300	$ 25,176	$ (7,876)
Cost of royalty revenue	—	2,579	(2,579)
Total cost of revenue	$ 17,300	$ 27,755	$ (10,455)

Our cost of product sales decreased by $7.9 million during the three months ended March 31, 2023 as compared to the three months ended March 31, 2022. This was primarily attributable to the decrease in cost of product sales of vasopressin of $8.5 million, which was launched during the first quarter of 2022 and a decrease of $2.2 million for Bendeka. This was partially offset by increase of $2.9 million of amortization expense related to intangible assets acquired with Acacia in June 2022.

Our cost of royalty revenue decreased by $2.6 million during the three months ended March 31, 2023 as compared to the three months ended March 31, 2022. The decrease was related to us achieving our contractual terms with our license partner on our bendamustine franchise products in 2022.

Research and development

The table below details the Company's research and development expenses by significant project for the periods presented.

	Three Months Ended March 31,		Increase / (Decrease)
	2023	2022	
	(in thousands)		
Fulvestrant	$ 141	$ 620	$ (479)
Ryanodex related projects	—	358	(358)
CAL02	3,018	969	2,049
Landiolol	115	114	1
All other projects	1,676	492	1,184
Salary and other personnel related costs	4,322	3,555	767
Research and development	$ 9,272	$ 6,108	$ 3,164

Our research and development expenses increased $3.2 million during the three months ended March 31, 2023 as compared to the three months ended March 31, 2022. The increase was primarily due to higher spend of $2.0 million on CAL02, $1.0 million on Byfavo and Barhemsys pediatric studies, and $0.8 million in salary and other personnel related costs. This was partially offset by lower spend on fulvestrant of $0.5 million and the Ryanodex Nerve Agent project of $0.4 million compared to the three months ended March 31, 2022.

Selling, general and administrative

	Three Months Ended March 31,		
	2023	2022	Increase
	(in thousands)		
Selling, general and administrative	$ 27,960	$ 22,182	$ 5,778

Our selling, general and administrative expenses increased $5.8 million during the three months ended March 31, 2023 as compared to the three months ended March 31, 2022. This increase was primarily related to $3.3 million of salary and personnel-related costs, $2.0 million of external sales and marketing, $0.8 million of travel and entertainment, $0.7 million of finance and other professional fees, partially offset by $2.0 million lower spend on legal related costs.

Other expense, net

	Three Months Ended March 31,		
	2023	2022	Decrease
	(in thousands)		
Interest income	$ 212	$ 154	$ 58
Interest expense	(1,516)	(366)	(1,150)
Other expense	(238)	(1,957)	1,719
Total other expense, net	$ (1,542)	$ (2,169)	$ 627

Our interest income increased by $0.1 million for the three months ended March 31, 2023 as compared to the three months ended March 31, 2022. This increase was primarily due to higher interest rates associated with money market funds as compared to the three months ended March 31, 2022.

Our interest expense increased by $1.2 million for the three months ended March 31, 2023 as compared to the three months ended March 31, 2022. This increase was due to our higher level of outstanding debt and higher borrowing rates during the three months ended March 31, 2023.

Our other expense decreased by $1.7 million for the three months ended March 31, 2023 as compared to a net expense of $2.0 million for the three months ended March 31, 2022. The change was primarily due to lower loss related to fair value adjustments on our investment in Syros of $2.1 million, partially offset by $0.6 million of non-recurrence of forward contract during the three months ended March 31, 2023 as compared to the three months ended March 31, 2022.

Income tax provision

	Three Months Ended March 31,	
	2023	2022
	(in thousands)	
Provision for income taxes	$ (4,481)	$ (13,602)
Effective tax rate	44 %	24 %

Our effective tax rate for the three months ended March 31, 2023, reflects an interim tax provision resulting from the impact of certain non-deductible executive compensation and the impact of certain non-deductible costs from the acquisition of Acacia, partially offset by credits for research and development activity. The effective tax rate for the three months ended March 31, 2022, reflects an interim tax provision resulting from impact of certain non-deductible executive compensation, partially offset by credits for research and development activity.

Liquidity and Capital Resources

Our principal sources of liquidity are our cash and cash equivalents, cash flows from operations and availability of borrowing under our revolving credit facility. Our primary uses of cash are to fund working capital requirements, including repayment of debt, product development costs and operating expenses. We may also use cash for business acquisitions or other strategic transactions, such as in our acquisition of Acacia. Cash and cash equivalents were $21.9 million and $69.5 million as of March 31, 2023 and March 31, 2022, respectively.

On November 1, 2022, we entered into the Third Amended and Restated Credit Agreement (“Third Amended Credit Agreement”),with the Administrative Agent and the lenders party thereto, which replaced the Prior Credit Agreement. The terms and amounts borrowed under the Third Amended Credit Agreement include a drawn term loan of $50 million and a $100 million revolving credit facility of which $15.0 million was drawn on November 1, 2022 and an additional $15.0 million was drawn on February 8, 2023. In addition, approximately $35.4 million of the proceeds of the credit facility were used to refinance all amounts outstanding under the Prior Credit Agreement, and we currently intend to use the remaining proceeds to repay certain indebtedness of our wholly-owned subsidiary, Acacia Pharma Group Limited, and for other corporate purposes. The new maturity date of the schedule of principal payments for each of the revolving credit facility and the term loan facility is October 31, 2025, unless required to mature earlier or extended pursuant to the terms of the Third Amended Credit Agreement.

For the three months ended March 31, 2023, we generated net income of $5.8 million. As of March 31, 2023, our working capital surplus was $94.7 million.

We believe that our cash and cash equivalents and future cash flows from operations will be sufficient to fund our currently anticipated working capital requirements for at least the next 12 months. We believe we will be able to meet our expected future cash and working capital requirements through a combination of cash flows from operations, cash and cash equivalents, availability of borrowings under our revolving credit facility and additional funding in the capital markets, if needed. We have based this estimate on assumptions that may prove to be wrong.

We may opportunistically seek access to additional capital to fund potential licenses, acquisitions or investments to expand our operations or for general corporate purposes. Raising additional capital could be accomplished through one or more public or private debt or equity financings, collaborations or partnering arrangements. In addition to macroeconomic conditions including rising inflation, the global credit and financial markets have experienced significant volatility and disruption. If these market conditions persist and deepen, we could experience an inability to access additional capital or our liquidity could otherwise be impacted, which could in the future negatively affect our capacity for certain corporate development transactions or our ability to make other important, opportunistic investments or acquisitions. An inability to borrow or raise additional capital in a timely manner and on attractive terms could prevent us from expanding our business or taking advantage of acquisition opportunities, and could otherwise have a material adverse effect on our business and growth prospects. In addition, if we use a substantial amount of our funds for any such potential acquisition or investment activities, we may not have sufficient additional funds to conduct all of our operations in the manner we would otherwise choose. Furthermore, any equity financing would be dilutive to our shareholders, and any financing could require the consent of the lenders under our credit facility.

Operating Activities:

Net cash used in operating activities for the three months ended March 31, 2023 was $33.5 million. Net income for the period was $5.8 million enhanced by the net of non-cash adjustments of approximately $8.8 million from deferred income taxes, depreciation expense, noncash operating lease expense related to right-of-use assets, amortization expense of intangible assets, fair value adjustments on equity investment, stock-based compensation expense, amortization of debt issuance costs, fair value adjustments related to derivative instruments. Net changes in working capital decreased cash from operating activities by approximately $33.5 million, due to changes in working capital accounts. The total amount of accounts receivable at March 31, 2023 was approximately $115.0 million, which included $94.7 million related to product sales and $20.1 million related to royalty revenue. Receivables from our product sales have payment terms ranging from 30 to 75 days with select extended terms to wholesalers on initial purchases of product launch quantities. Our receivables from royalty revenue are due 45 days from the end of the quarter.

Investing Activities:

Net cash used in investing activities for the three months ended March 31, 2023 was $12.6 million, primarily as a result of our acquisition of Acacia coupled with an equity investment in Enalare of $12.5 million and $0.1 million for purchases of property and equipment.

Financing Activities:

Net cash provided by financing activities for the three months ended March 31, 2023 was $12.6 million, as a result of $15 million from a drawdown from our revolving credit facility under the Credit Agreement, partially offset by $1.25 million of principal payments for debt, and $1.1 million of payments associated with employee withholding tax upon vesting of stock-based awards.

Trends and Uncertainties

During the three months ended March 31, 2023, we have not experienced a material impact on our business and financial condition due to the ongoing military conflict between Russia and Ukraine and the related sanctions imposed against Russia.

The U.S. government and other nations have imposed significant restrictions on most companies' ability to do business in Russia as a result of the ongoing military conflict between Russia and Ukraine. It is not possible to predict the broader or longer-term consequences of this conflict, which could include further sanctions, embargoes, regional instability, geopolitical shifts and adverse effects on macroeconomic conditions, security conditions, currency exchange rates and financial markets. Such geopolitical instability and uncertainty could have a negative impact on our ability to further expand our business and to

otherwise generate revenues and develop our product candidates. In addition, a significant escalation or expansion of economic disruption or the conflict's current scope could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We continue to monitor the impacts of other global and worsening macroeconomic conditions, such as global geopolitical tension, increasing inflation and interest rates, exchange rate fluctuations, supply chain disruptions and increases in commodity, energy and fuel prices.

We believe that our future cash and cash equivalents and availability of borrowings under our Third Amended Credit Agreement flows from operations will be sufficient to fund our currently anticipated working capital requirements for the next 12 months. We have based this estimate on assumptions that may prove to be wrong While the ongoing military conflict between Russia and Ukraine and the related sanctions imposed against Russia has not had, and we do not expect it to have, a material adverse effect on our liquidity, the situation continues to evolve and has already resulted in a significant disruption of global financial markets. If the disruption persists or deepens, we could experience an inability to access additional capital when and if needed. If we are unable to obtain funding, we could be forced to delay, reduce or eliminate distribution of our commercialized products, product portfolio expansion or some or all of our research and development programs, which would adversely affect our business prospects. We expect to be able to obtain future funding under the terms of the Third Amended Credit Agreement, for general corporate purposes and any strategic acquisitions.

Contractual Obligations

Other than as set forth below, there have been no material changes to our contractual and commercial obligations during the three months ended March 31, 2023, as compared to the obligations disclosed in our Annual Report.

Our future material contractual obligations included the following as of March 31, 2023 (in thousands):

Obligations	Total	2023	2024	2025	2026	Beyond
Operating leases (1)	$ 2,792	$ 1,257	$ 1,122	$ 413	$ —	$ —
Credit facility and Term Loans (2)	77,500	5,000	10,000	62,500	—	—
Purchase obligations (3)	86,491	86,491	—	—	—	—
Total obligations	$ 166,783	$ 92,748	$ 11,122	$ 62,913	$ —	$ —

(1) We lease our corporate office location. On August 8, 2019, we amended the lease for our corporate office location in order to rent additional office space and extend the term of our existing lease to June 30, 2025. We also lease lab space under a lease agreement that expires on April 1, 2024, office space located in Indianapolis, Indiana through November 2023, and an office space located in Palm Beach Gardens, Florida, through October 31, 2024.

(2) Refer to Note 9 for details of the Third Amended Credit Agreement and term loans.

(3) As of March 31, 2023, we had purchase obligations in the amount of $86.5 million which represents the contractual commitments under contract manufacturing and supply agreements with suppliers. The obligation under the supply agreement is primarily for finished product, inventory, and research and development.

Critical Accounting Policies and Estimates

Our significant accounting policies and estimates are disclosed in “Note 2. Summary of Significant Accounting Policies” in our audited financial statements for the year ended December 31, 2022 included in our Annual Report. Since the date of such financial statements, there have been no changes to our significant accounting policies and estimates other than those described in Note 2 of the notes to our unaudited condensed consolidated financial statements included elsewhere in this Quarterly Report.

Recent Accounting Pronouncements

There are several new accounting pronouncements issued by the FASB that we have adopted or will adopt, as applicable. We do not believe any of these accounting pronouncements have had, or will have, a material impact on our condensed consolidated financial statements or disclosures.

Impact of Inflation

While it is difficult to accurately measure the impact of inflation due to the imprecise nature of the estimates required, we believe the effects of inflation, if any, on our results of operations and financial condition have been immaterial.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

During the three months ended March 31, 2023, there were no material changes to our market risk disclosures as set forth in Part II, Item 7A “Quantitative and Qualitative Disclosures About Market Risk” in our Annual Report.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain “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”, that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. Management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation at March 31, 2023, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the three months ended March 31, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II-OTHER INFORMATION

Item 1. Legal Proceedings

The disclosures under Note 11. Legal Proceedings in the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report are incorporated into this Part II, Item 1 by reference.

Item 1A. Risk Factors

An investment in our securities involves a high degree of risk. Our business is subject to risks and events that, if they occur, could adversely affect our financial condition and results of operations and the trading price of our securities. Below we are providing, in supplemental form, changes to our risk factors from those previously disclosed in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022. Our risk factors disclosed in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022 provide additional discussion about these supplemental risks and we encourage you to read and carefully consider the risk factors disclosed in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022 for a more complete understanding of the risks and uncertainties material to our business.

Our business, financial condition and results of operations have been and may in the future be adversely affected by macroeconomic conditions and by geopolitical events

Our financial condition, results of operations, business and cash flow may be negatively affected by general economic, industry and market conditions in the global economy and in the global financial markets, such as rising inflation and interest rates, increased costs of goods, supply chain disruptions and uncertainty about economic stability and the financial markets. The global economy has experienced extreme volatility and disruptions from the impacts of the COVID-19 pandemic, international conflicts, terrorism or other geopolitical events, such as the ongoing conflict between Russian and Ukraine, and related sanctions and other economic disruptions or concerns. On February 24, 2022, Russia initiated significant military action against Ukraine. In response, the United States and certain other countries imposed significant sanctions and trade actions against Russia and could impose further sanctions, trade restrictions, and other retaliatory actions if the conflict continues or worsens. It is not possible to predict the broader consequences of the conflict, including related geopolitical tensions, and the measures and retaliatory actions that will be taken by the United States and other countries in respect thereof, as well as any countermeasures or retaliatory actions Russia may take in response, are likely to cause regional instability and geopolitical shifts and could materially adversely affect global trade, currency exchange rates, regional economies, and the global economy. Additional actions that the United States or others may take in response to the conflict could increase our costs, disrupt our supply chain, impair our ability to raise or access additional capital when needed on acceptable terms, if at all, or otherwise adversely affect our business, financial condition, and results of operations.

In addition, the recent closures of Silicon Valley Bank and Signature Bank has resulted in broader financial institution liquidity risk and concerns, and future adverse developments with respect to specific financial institutions or the broader financial services industry may lead to market-wide liquidity shortages. The failure of any bank in which we deposit our funds could reduce the amount of cash we have available for our operations or corporate development, or delay our ability to access such funds. Any such failure may increase the possibility of a sustained deterioration of financial market liquidity, or illiquidity at clearing, cash management and/or custodial financial institutions. In the event we have a commercial relationship with a bank that has failed or is otherwise distressed, we may experience delays or other issues in meeting our financial obligations. If other banks and financial institutions fail or become insolvent in the future in response to financial conditions affecting the banking system and financial markets, our ability to access our cash and cash equivalents and investments may be threatened and our ability to borrow or raise additional capital when needed to grow our business could be substantially impaired. Additionally, there is ongoing uncertainty regarding the federal budget and federal spending levels, including the possible impacts of a failure to increase the “debt ceiling.” Any U.S. government default on its debt could have broad macroeconomic effects that could, among other things, disrupt access to capital markets and deepen recessionary conditions.

There can be no assurance that further deterioration in credit and financial markets and confidence in economic conditions will not occur. A severe or prolonged economic downturn could result in a variety of risks to our business, including weakened demand for our products or products of our partners and our ability to raise additional capital when needed on acceptable terms, or at all. A weak or declining economy could also strain our suppliers, possibly resulting in supply disruption. If the equity and credit markets deteriorate, it may make any necessary debt or equity financing more difficult, more costly, and more dilutive. Failure to secure any necessary financing in a timely manner and on favorable terms could impair our ability to achieve our growth strategy, including our ability to expand our business and take advantage of acquisition opportunities, could harm our

financial performance and stock price, could require us to delay or abandon our plans and programs and could otherwise have a material adverse effect on our business and growth prospects. In addition, there is a risk that our current or future service providers, manufacturers or other collaborators may not survive such difficult economic times, which could directly affect our ability to attain our operating goals on schedule and on budget. We cannot anticipate all of the ways in which the current economic climate and financial market conditions could adversely impact our business.

Current and future legislation may increase the difficulty and cost for us to commercialize our products and product candidates and affect the prices we may obtain for our products.

The United States and some foreign jurisdictions are considering, or have enacted, a number of legislative and regulatory proposals to change the health care system in ways that could affect our ability to sell our products and our product candidates, once they are approved for sale, profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in health care systems with the stated goals of containing health care costs, improving quality and/or expanding access. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives.

By way of example, in March 2010, the ACA was passed, which significantly changed health care financing by both governmental and private insurers. There have been executive, judicial and Congressional challenges to certain aspects of the ACA. For example, on June 17, 2021, the U.S. Supreme Court dismissed a challenge on procedural grounds that argued the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress. Prior to the U.S. Supreme Court ruling, on January 28, 2021, President Biden issued an executive order that initiated a special enrollment for purposes of obtaining health insurance coverage through the ACA marketplace. The executive order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA. On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022, or IRA, into law, which among other things, extends enhanced subsidies for individuals purchasing health insurance coverage in ACA marketplaces through plan year 2025. The IRA also eliminates the "donut hole" under the Medicare Part D program beginning in 2025 by significantly lowering the beneficiary maximum out-of-pocket cost and through a newly established manufacturer discount program. It is possible that the ACA will be subject to judicial or Congressional challenges in the future. It is unclear how such challenges and the healthcare reform measures of the Biden administration will impact ACA and our business. We cannot predict how future federal or state legislative or administrative changes relating to healthcare reform will affect our business.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. For example, in August 2011, President Obama signed into law the Budget Control Act of 2011, which, among other things, created the Joint Select Committee on Deficit Reduction to recommend proposals for spending reductions to Congress. The Joint Select Committee on Deficit Reduction did not achieve its targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, triggering the legislation's automatic reductions to several government programs. These reductions include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, which went into effect on April 1, 2013 and, following passage of the Bipartisan Budget Act of 2015 as well as certain legislative amendments, will remain in effect through 2032 unless
additional Congressional action is taken. On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 into law, which eliminates the statutory Medicaid drug rebate cap, currently set at 100% of a drug's average manufacturer price, for single source and innovator multiple source drugs, beginning January 1, 2024. Additionally, in January 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, which, among other things, further reduced Medicare payments to several providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years.

Additionally, there has been increasing legislative and enforcement interest in the United States with respect to drug pricing practices. Specifically, there have been several recent U.S. Congressional inquiries, Presidential executive orders, and proposed and adopted federal and state legislation designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drugs. For example, the former U.S. Presidential administration used several means to propose or implement drug pricing reform, including through federal budget proposals, executive orders and policy initiatives. For example, in May 2019, the Centers for Medicare & Medicaid Services, or CMS, issued a final rule to allow Medicare Advantage Plans the option of using step therapy for Part B drugs beginning on January 1, 2020. The final rule codified a CMS policy change that was effective January 1, 2019. In a final rule issued by CMS on December 31, 2020, CMS established a broader definition for a "line extension" drug such that the line extension of the initial brand name listed drug would not need to be an oral solid dosage form. This final rule may impact the rebate amounts associated with our products and negatively affect the commercial success of our products. Additionally, on December 2, 2020, CMS published changes to the Medicare Physician Fee Schedule for Calendar Year 2021 that also may adversely impact the coverage and reimbursement of our products. Under the changes, CMS

assigned certain 505(b)(2) drug products to existing multiple source drug codes because, according to CMS, some drug products approved under the 505(b)(2) pathway share similar labeling and uses with generic drugs that are assigned to multiple source drug codes. CMS noted that this change was consistent with efforts to “curb drug prices” and encourages competition among products that are described by one billing code and share similar labeling. Additionally, in July 2021, the Biden administration released an executive order, “Promoting Competition in the American Economy,” with multiple provisions aimed at prescription drugs. In response to Biden’s executive order, on September 9, 2021, the U.S. Department of Health and Human Services, or HHS, released a Comprehensive Plan for Addressing High Drug Prices that outlines principles for drug pricing reform and sets out a variety of potential legislative policies that Congress could pursue as well as potential administrative actions HHS can take to advance these principles. In addition, the IRA, among other things, (1) directs HHS to negotiate the price of certain single-source drugs and biologics covered under Medicare and (2) imposes rebates under Medicare Part B and Medicare Part D to penalize price increases that outpace inflation. These provisions will take effect progressively starting in fiscal year 2023, although they may be subject to legal challenges. The IRA permits HHS to implement many of these provisions through guidance, as opposed to regulation, for the initial years. HHS has and will continue to issue and update guidance as these programs are implemented. It is currently unclear how the IRA will be implemented but is likely to have a significant impact on the pharmaceutical industry.

Further, in response to the Biden administration’s October 2022 executive order, on February 14, 2023, HHS released a report outlining three new models for testing by the CMS Innovation Center which will be evaluated on their ability to lower the cost of drugs, promote accessibility, and improve quality of care. It is unclear whether the models will be utilized in any health reform measures in the future. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing. The full impact of these laws, as well as other new laws and reform measures that may be proposed and adopted in the future remains uncertain, but may result in additional reductions in Medicare and other health care funding, or higher production costs which could have a material adverse effect on our customers and, accordingly, our financial operations.

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

Issuer Purchases of Equity Securities

Share Repurchase Program

In March 2020, our board of directors approved our current share repurchase program (the "Share Repurchase Program"), providing for the repurchase of up to an aggregate of $160 million of our outstanding common stock.

Under the Share Repurchase Program, we are authorized to repurchase shares through open market purchases, privately-negotiated transactions, accelerated share repurchases or otherwise in accordance with applicable federal securities laws, including through Rule 10b5-1 trading plans and under Rule 10b-18 of the Securities Exchange Act of 1934, as amended. The repurchases have no time limit and may be suspended or discontinued completely at any time. The specific timing and amount of repurchases will vary based on available capital resources and other financial and operational performance, market conditions, securities law limitations, and other factors. The repurchases will be made using our cash resources.

We did not make any purchases of our equity securities during the three months ended March 31, 2023. Approximately $86 million remained available for future purchases of our equity securities as of March 31, 2023.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

EXHIBIT INDEX

Exhibit Number		Description of Exhibit
3.1		Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1/A, SEC File No. 333-192984, filed January 28, 2014)
3.2		Amended and Restated Bylaws (incorporated by reference to Exhibit 3.4 to the Registrant's Registration Statement on Form S-1/A, SEC File No. 333-192984, filed January 28, 2014)
10.1		Settlement Agreement, by and between the Registrant, Teva Pharmaceuticals International GmbH, Cephalon, LLC, Dr. Reddy's Laboratories, Ltd. and Dr. Reddy's Laboratories, Inc., dated April 4, 2023 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, SEC File No 001-36306, filed on April 4, 2023
31.1	(1)	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	(1)	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	**	Certification of Principal Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS		XBRL Instance Document - the instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.
101.SCH		Inline XBRL Taxonomy Extension Schema Document
101.CAL		Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF		Inline XBRL Taxonomy Definition Linkbase Document
101.LAB		Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE		Inline XBRL Taxonomy Extension Presentation Linkbase Document
104		Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101).

(1) Filed herewith.

**The certifications attached as Exhibit 32.1 that accompany this Quarterly Report on Form 10-Q are not deemed filed with the SEC and are not to be incorporated by reference into any filing of Eagle Pharmaceuticals, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date hereof), irrespective of any general incorporation language contained in such filing.

SIGNATURES

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

EAGLE PHARMACEUTICALS, INC.

DATED: May 9, 2023

By: /s/ Scott Tarriff
Scott Tarriff
(On behalf of the Registrant and as President and Chief Executive Officer as Principal Executive Officer)

DATED: May 9, 2023

By: /s/ Brian J. Cahill
Brian J. Cahill
Chief Financial Officer
(Principal Accounting Officer and Principal Financial Officer)

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Scott Tarriff, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Eagle Pharmaceuticals, 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 9, 2023

/s/ Scott Tarriff

Scott Tarriff
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Brian J. Cahill, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Eagle Pharmaceuticals, 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 9, 2023

/s/ Brian J. Cahill

Brian J. Cahill
Chief Financial Officer
(Principal Accounting and Financial Officer)

Exhibit 32.1

Certification Pursuant to

18 U.S.C. Section 1350,

As Adopted Pursuant to

Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), **Scott Tarriff**, Chief Executive Officer of Eagle Pharmaceuticals, Inc. (the "Company"), and **Brian J. Cahill**, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended March 31, 2023, (the "Quarterly Report"), to which this Certification is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and

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

In Witness Whereof, the undersigned have set their hands hereto as of the 9th day of May 2023.

By: /s/ Scott Tarriff

Scott Tarriff
Chief Executive Officer
(Principal Executive Officer)

By: /s/ Brian J. Cahill

Brian J. Cahill
Chief Financial Officer
(Principal Financial and Accounting Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Eagle Pharmaceuticals, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.