UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

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

For the quarterly period ended September 30, 2023

OR

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

For the transition period from to

Commission file number: 001-35986

Esperion Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**26-1870780**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

3891 Ranchero Drive, Suite 150
Ann Arbor, MI 48108
(Address of principal executive office) (Zip Code)
Registrant's telephone number, including area code:
(734) 887-3903

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.001 per share	ESPR	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 x No o

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 x No o

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

Large accelerated filer o	Accelerated filer o
Non-accelerated filer x	Smaller reporting company x
	Emerging growth company o

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. o

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

As of November 1, 2023, there were 113,717,785 shares of the registrant's Common Stock, $0.001 par value per share, outstanding.

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Esperion Therapeutics, Inc.
Condensed Balance Sheets
(in thousands, except share data)

	September 30, 2023	December 31, 2022
	(unaudited)	
Assets		
Current assets:		
Cash and cash equivalents	$ 114,833	$ 124,775
Short-term investments	—	42,086
Accounts receivable	42,623	33,729
Prepaid clinical development costs	3,049	1,026
Inventories, net	51,435	35,201
Other prepaid and current assets	6,287	9,866
Total current assets	218,227	246,683
Property and equipment, net	6	164
Right of use operating lease assets	3,016	1,036
Intangible assets	56	56
Total assets	$ 221,305	$ 247,939
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 26,214	$ 23,040
Accrued clinical development costs	3,454	5,426
Accrued variable consideration	31,102	21,987
Other accrued liabilities	19,284	13,204
Revenue interest liability	37,013	24,760
Deferred revenue from collaborations	19,723	3,507
Operating lease liabilities	918	384
Total current liabilities	137,708	92,308
Convertible notes, net of issuance costs	261,165	259,899
Revenue interest liability	230,387	218,845
Operating lease liabilities	2,049	665
Total liabilities	631,309	571,717
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Preferred stock, $0.001 par value; 5,000,000 shares authorized and no shares issued or outstanding as of September 30, 2023 and December 31, 2022	—	—
Common stock, $0.001 par value; 480,000,000 shares authorized as of September 30, 2023 and 240,000,000 shares authorized as of December 31, 2022; 114,130,645 shares issued at September 30, 2023 and 76,564,396 shares issued at December 31, 2022	112	75
Additional paid-in capital	1,137,822	1,071,183
Treasury stock, at cost; 1,994,198 shares at September 30, 2023 and December 31, 2022	(54,998)	(54,998)
Accumulated other comprehensive loss	—	(2)
Accumulated deficit	(1,492,940)	(1,340,036)
Total stockholders' deficit	(410,004)	(323,778)
Total liabilities and stockholders' deficit	$ 221,305	$ 247,939

See accompanying notes to the condensed financial statements.

Esperion Therapeutics, Inc.
Condensed Statements of Operations and Comprehensive Loss
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenues:				
Product sales, net	$ 20,251	$ 13,964	$ 57,575	$ 40,896
Collaboration revenue	13,718	5,016	26,509	15,761
Total Revenues	33,969	18,980	84,084	56,657
Operating expenses:				
Cost of goods sold	13,377	6,506	31,815	22,807
Research and development	14,885	29,143	68,365	85,894
Selling, general and administrative	33,240	24,954	97,100	84,944
Total operating expenses	61,502	60,603	197,280	193,645
Loss from operations	(27,533)	(41,623)	(113,196)	(136,988)
Interest expense	(14,995)	(14,153)	(43,919)	(42,481)
Other income, net	1,278	659	4,211	1,297
Net loss	$ (41,250)	$ (55,117)	$ (152,904)	$ (178,172)
Net loss per common share - basic and diluted	$ (0.37)	$ (0.81)	$ (1.53)	$ (2.78)
Weighted-average shares outstanding - basic and diluted	111,869,478	67,806,292	99,973,647	64,021,248
Other comprehensive loss:				
Unrealized gain (loss) on investments	$ —	$ 204	$ 2	$ (62)
Comprehensive loss	$ (41,250)	$ (54,913)	$ (152,902)	$ (178,234)

See accompanying notes to the condensed financial statements.

Esperion Therapeutics, Inc.
Condensed Statements of Stockholders' Deficit
(in thousands, except share data)
(unaudited)

	Common Stock		Additional	Accumulated	Accumulated Other Comprehensive	Treasury	Total Stockholders'
	Shares	Amount	Paid-In Capital	Deficit	Income (Loss)	Stock	Deficit
Balance at December 31, 2021	60,879,496	$ 61	$ 964,401	$ (1,106,377)	$ (31)	$ (54,998)	$ (196,944)
Vesting of restricted stock units	55,286	—	—	—	—	—	—
Vesting of ESPP Shares	123,785	—	431	—	—	—	431
Stock-based compensation	—	—	4,436	—	—	—	4,436
Other comprehensive loss	—	—	—	—	(232)	—	(232)
Net loss	—	—	—	(56,731)	—	—	(56,731)
Balance at March 31, 2022	61,058,567	$ 61	$ 969,268	$ (1,163,108)	$ (263)	$ (54,998)	$ (249,040)
Vesting of restricted stock units	184,407	—	—	—	—	—	—
Stock-based compensation	—	—	3,527	—	—	—	3,527
Issuance of common stock from ATM program, net of issuance costs	3,353,000	4	20,169	—	—	—	20,173
Other comprehensive loss	—	—	—	—	(34)	—	(34)
Net loss	—	—	—	(66,324)	—	—	(66,324)
Balance at June 30, 2022	64,595,974	$ 65	$ 992,964	$ (1,229,432)	$ (297)	$ (54,998)	$ (291,698)
Vesting of restricted stock units	108,200	—	—	—	—	—	—
Vesting of ESPP Shares	82,423	—	301	—	—	—	301
Stock-based compensation	—		3,537	—	—	—	3,537
Issuance of common stock from ATM program, net of issuance costs	6,958,525	7	48,666	—	—	—	48,673
Other comprehensive income	—	—	—	—	204	—	204
Net loss	—	—	—	(55,117)	—	—	(55,117)
Balance at September 30, 2022	71,745,122	$ 72	$ 1,045,468	$ (1,284,549)	$ (93)	$ (54,998)	$ (294,100)

	Common Stock		Additional	Accumulated	Accumulated Other Comprehensive	Treasury	Total Stockholders'
	Shares	Amount	Paid-In Capital	Deficit	Income (Loss)	Stock	Deficit
Balance at December 31, 2022	74,570,198	$ 75	$ 1,071,183	$ (1,340,036)	$ (2)	$ (54,998)	$ (323,778)
Vesting of restricted stock units and performance-based restricted stock units	372,117	—	—	—	—	—	—
Vesting of ESPP Shares	95,654	—	502	—	—	—	502
Stock-based compensation	—	—	2,903	—	—	—	2,903
Issuance of common stock, warrants, and pre-funded warrants, net of issuance costs	12,205,000	12	52,416	—	—	—	52,428
Other comprehensive gain	—	—	—	—	1	—	1
Net loss	—	—	—	(61,719)	—	—	(61,719)
Balance at March 31, 2023	87,242,969	$ 87	$ 1,127,004	$ (1,401,755)	$ (1)	$ (54,998)	$ (329,663)
Vesting of restricted stock units	215,903	1		—	—	—	1
Stock-based compensation	—	—	3,160	—	—	—	3,160
Issuance of common stock from ATM program, net of issuance costs	3,312,908	3	4,445	—	—	—	4,448
Exercise of pre-funded warrants	10,098,747	10	—	—	—	—	10
Other comprehensive gain	—	—	—	—	1	—	1
Net loss	—	—	—	(49,935)	—	—	(49,935)
Balance at June 30, 2023	100,870,527	$ 101	$ 1,134,609	$ (1,451,690)	$ —	$ (54,998)	$ (371,978)
Vesting of restricted stock units	223,490	—	—	—	—	—	—
Vesting of ESPP Shares	175,430	—	238	—	—	—	238
Stock-based compensation	—	—	2,975	—	—	—	2,975
Exercise of pre-funded warrants	10,867,000	11	—	—	—	—	11
Net loss	—	—	—	(41,250)	—	—	(41,250)
Balance at September 30, 2023	112,136,447	$ 112	$ 1,137,822	$ (1,492,940)	$ —	$ (54,998)	$ (410,004)

See accompanying notes to the condensed financial statements.

Esperion Therapeutics, Inc.
Condensed Statements of Cash Flows
(in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2023	**2022**
Operating activities		
Net loss	$ (152,904)	$ (178,172)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expense	158	408
Amortization of premiums and discounts on investments	(412)	539
Amortization of debt issuance costs	1,266	1,207
Non-cash interest expense related to the revenue interest liability	34,703	33,323
Stock-based compensation expense	9,038	11,500
Changes in assets and liabilities:		
Accounts receivable	(8,894)	(8,555)
Prepaids and other assets	1,556	901
Deferred revenue	16,216	(2,272)
Inventories	(16,234)	4,849
Accounts payable	3,174	1,129
Other accrued liabilities	13,902	2,788
Net cash used in operating activities	(98,431)	(132,355)
Investing activities		
Purchases of investments	—	(18,102)
Proceeds from sales/maturities of investments	42,500	38,000
Net cash provided by investing activities	42,500	19,898
Financing activities		
Payments on revenue interest liability	(10,908)	(5,678)
Proceeds from issuance of common stock, warrants, and pre-funded warrants, net of issuance costs	52,428	—
Proceeds from issuance of common stock from ATM program, net of issuance costs	4,448	68,861
Proceeds from exercise of pre-funded warrants	21	—
Payment of issuance costs	—	(219)
Net cash provided by financing activities	45,989	62,964
Net decrease in cash and cash equivalents	(9,942)	(49,493)
Cash, cash equivalents and restricted cash at beginning of period	124,775	258,892
Cash, cash equivalents and restricted cash at end of period	$ 114,833	$ 209,399
Supplemental disclosure of cash flow information:		
Common stock issuance costs not yet paid	$ —	$ 15
Non cash right of use asset	62	8

See accompanying notes to the condensed financial statements.

Esperion Therapeutics, Inc.
Notes to Condensed Financial Statements
(unaudited)

1. The Company and Basis of Presentation

Esperion Therapeutics, Inc. ("the Company") is a pharmaceutical company focused on developing and commercializing accessible, oral, once-daily, non-statin medicines for patients struggling with elevated low-density lipoprotein cholesterol ("LDL-C"). Through commercial execution and completion of the CLEAR Outcomes trial as well as advancing the Company's pre-clinical pipeline, the Company continues to evolve into a differentiated, global cardiometabolic biotech. The Esperion team of lipid experts are dedicated to lowering bad cholesterol through the discovery, development and commercialization of innovative medicines and their combinations with established medicines. The Company's first two products were approved by the U.S. Food and Drug Administration ("FDA"), European Medicines Agency ("EMA") and Swiss Agency for Therapeutic Products ("Swissmedic") in 2020. Bempedoic acid and the bempedoic acid / ezetimibe combination tablet are oral, once-daily, non-statin, LDL-C lowering medicines for patients with atherosclerotic cardiovascular disease ("ASCVD") or heterozygous familial hypercholesterolemia ("HeFH").

The Company completed a global cardiovascular outcomes trial, or CVOT — known as **C**holesterol **L**owering via B**E**mpedoic Acid, an **A**CL-inhibiting **R**egimen (CLEAR) Outcomes. The trial was designed to evaluate whether treatment with bempedoic acid reduced the risk of cardiovascular events in patients who are statin averse and who have CVD or are at high risk for CVD. The Company initiated the CLEAR Outcomes CVOT in December 2016 and fully enrolled the study with over 14,000 patients in August 2019. The primary endpoint of the study was the effect of bempedoic acid on four types of major adverse cardiovascular events, or MACE (cardiovascular death, non-fatal myocardial infarction, non-fatal stroke, or coronary revascularization; also referred to as “four-component MACE”). CLEAR Outcomes was an event-driven trial and concluded once the predetermined number of MACE endpoints occurred. On December 7, 2022, the Company announced that the study had met its primary endpoint.

On March 4, 2023, the Company announced the full results from the CLEAR Outcomes trial. The study showed that bempedoic acid demonstrated significant cardiovascular risk reductions and significantly reduced the risk of heart attack and coronary revascularization as compared to placebo. These results were seen in a broad population of primary and secondary prevention patients who are unable to maximize or tolerate a statin. The proportions of patients experiencing adverse events and serious adverse events were similar between the active and placebo treatment groups. Bempedoic acid, contained in NEXLETOL® (bempedoic acid) tablets and NEXLIZET® (bempedoic acid and ezetimibe) tablets, became the first LDL-C lowering therapy since statins proven to lower hard ischemic events, not only in those with ASCVD but also in the large number of primary prevention patients for whom limited therapies exist.

On March 19, 2023, the Company entered into a Securities Purchase Agreement (the “Purchase Agreement”) with certain purchasers named therein (the “Purchasers”), pursuant to which the Company agreed to issue and sell, in a registered direct offering (the “Offering”), 12,205,000 shares of its common stock, par value $0.001 per share (the “Common Stock”), pre-funded warrants to purchase up to an aggregate of 20,965,747 shares of Common Stock (the “Pre-Funded Warrants”) in lieu of shares of Common Stock, and warrants to purchase up to 33,170,747 shares of Common Stock (the “Warrants”). The combined purchase price of each share of Common Stock and accompanying Warrant is $1.675 per share. The purchase price of each Pre-Funded Warrant and the accompanying Warrant is $1.674 (equal to the combined purchase price per share of Common Stock and accompanying Warrant, minus $0.001). The Purchase Agreement contains customary representations, warranties, covenants and indemnification rights and obligations of the Company and the Purchasers. The Offering closed on March 22, 2023. In connection with the Offering, the Company amended, pursuant to Warrant Amendment Agreements (the “Warrant Amendment Agreements”), certain existing warrants to purchase up to an aggregate of 9,024,212 shares of the Company's common stock that were previously issued in December 2021 at an exercise price of $9.00 per share and had an expiration date of December 7, 2023, effective upon the closing of the Offering, such that the amended warrants have a reduced exercise price of $1.55 per share and expire three and one half years following the closing of the Offering, for additional consideration of $0.125 per amended warrant. The Company received gross proceeds of approximately $55.5 million from the Offering, before deducting placement agent fees and related offering expenses. The net proceeds to the Company from the Offering, after deducting the placement agent fees and expenses and the Company’s estimated offering expenses, are approximately $51.3 million. In addition, the Company received approximately $ 1.2 million as the gross consideration in connection with the Warrant Amendment Agreements. The net proceeds of the Warrant Amendment Agreements after deducting placement fees were approximately $1.1 million. Refer to Note 13 "Stockholders' Deficit" for further information.

On June 1, 2023, the Company announced that it submitted Supplemental New Drug Applications ("sNDAs") to the FDA seeking to add the use of both NEXLETOL and NEXLIZET for cardiovascular risk reduction and also seeking to remove the statin limitation in the LDL-C indication. Subsequently, the FDA accepted the sNDAs with an anticipated Prescription Drug User Fee Act date, or target action date, of March 31, 2024. On June 28, 2023, the Company announced that the application was filed for a Type II(a) variation with the EMA for the Company’s oral non-statin products marketed as NILEMDO® (bempedoic acid) tablets and NUSTENDI® (bempedoic acid and ezetimibe) tablets in Europe. The application asks EMA to approve both

NILEMDO and NUSTENDI to reduce cardiovascular risk in patients with or at high risk for atherosclerotic cardiovascular disease. The Company anticipates EMA approval in the first half of 2024.

The Company's primary activities since incorporation have been conducting research and development activities, including nonclinical, preclinical and clinical testing, gaining commercial approval of its products, developing a commercial sales team, performing business and financial planning, recruiting personnel, and raising capital. The Company received approval by the FDA in February 2020 to commercialize NEXLETOL and NEXLIZET in the U.S., and accordingly commenced principal operations on March 30, 2020 with the commercialization of NEXLETOL. The Company is subject to risks and uncertainties which include the need to successfully commercialize its products, research, develop, and clinically test therapeutic products; obtain regulatory approvals for its products (or additional or expanded indications for approved products); manage its management, commercial and scientific staff; and finance its operations with an ultimate goal of achieving profitable operations.

The Company has sustained annual operating losses since inception and expects such losses to continue over the foreseeable future. While management believes current cash resources and future cash received from the Company's net product sales and collaboration agreements with Daiichi Sankyo Europe GmbH ("DSE"), Otsuka Pharmaceutical Co., Ltd ("Otsuka"), and Daiichi Sankyo Co. Ltd ("DS"), entered into on January 2, 2019, April 17, 2020 and April 26, 2021, respectively, will fund operations for the foreseeable future, management may continue to fund operations and advance the development of the Company's products and product candidates through a combination of collaborations with third parties, strategic alliances, licensing arrangements, permitted debt financings, permitted royalty-based financings, and permitted private and public equity offerings or through other sources.

If adequate funds are not available, the Company may not be able to continue the development of its current products or future product candidates, or to commercialize its current or future product candidates, if approved.

Basis of Presentation

The accompanying condensed interim financial statements are unaudited and were prepared by the Company in accordance with generally accepted accounting principles in the United States of America (“GAAP”). In the opinion of management, the Company has made all adjustments, which include only normal recurring adjustments necessary for a fair presentation of the Company’s financial position and results of operations for the interim periods presented. Certain prior year amounts have been reclassified to conform with current year presentation. Certain information and disclosures normally included in the annual financial statements prepared in accordance with GAAP, but that is not required for interim reporting purposes, have been condensed or omitted. These condensed interim financial statements should be read in conjunction with the audited financial statements as of and for the year ended December 31, 2022, and the notes thereto, which are included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2022. The results of operations for the interim periods are not necessarily indicative of the results to be expected for a full year, any other interim periods or any future year or period.

2. Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in accordance with generally accepted accounting principles in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, net revenues, expenses and related disclosures. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company invests its excess cash in bank deposits, money market accounts, and short-term investments. The Company considers all highly liquid investments with an original maturity of 90 days or less at the time of purchase to be cash equivalents. Cash equivalents are reported at fair value.

Investments

Investments are considered to be available-for-sale and are carried at fair value. Unrealized gains and losses, if any, are reported in accumulated other comprehensive income (loss). The cost of investments classified as available-for-sale are adjusted for the amortization of premiums and accretion of discounts to maturity and recorded in other income, net. Realized gains and losses, if any, are determined using the specific identification method and recorded in other income, net. Investments with original maturities beyond 90 days at the date of purchase and which mature at, or less than twelve months from, the

balance sheet date are classified as current. Investments with a maturity beyond twelve months from the balance sheet date are classified as long-term.

Concentration of Risk

The Company enters into a limited number of distribution agreements with distributors and specialty pharmacies. The Company's net product sales are with these customers. As of September 30, 2023 and December 31, 2022, eleven customers accounted for all of the Company's net trade receivables.

Revenue Recognition

In accordance with ASC 606, *Revenue from Contracts with Customers* , the Company recognizes revenue when a customer obtains control of promised goods or services, in an amount that reflects the consideration the Company expects to receive in exchange for the goods or services provided. To determine revenue recognition for arrangements within the scope of ASC 606, the Company performs the following five steps: identify the contracts with a customer; identify the performance obligations in the contract; determine the transaction price; allocate the transaction price to the performance obligations in the contract; and recognize revenue when or as the entity satisfies a performance obligation. At contract inception 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. The Company derives revenue through two primary sources: collaboration revenue and product sales. Collaboration revenue consists of the collaboration payments to the Company for collaboration arrangements outside of the United States for the development, manufacturing and commercialization, including royalties, of the Company's product candidates by the Company's partners and product sales consists of sales of NEXLETOL and NEXLIZET.

a. Collaboration Revenue

The Company has entered into agreements related to its activities to develop, manufacture, and commercialize its product candidates. The Company earns collaboration revenue in connection with a collaboration agreement to develop and/or commercialize product candidates where the Company deems the collaborator to be the customer. Revenue is recognized when (or as) the Company satisfies performance obligations under the terms of a contract. Depending on the terms of the arrangement, the Company may defer the recognition of all or a portion of the consideration received as the performance obligations are satisfied.

The collaboration agreements may require the Company to deliver various rights, services, and/or goods across the entire life cycle of a product or product candidate. In an agreement involving multiple goods or services promised to be transferred to a customer, the Company must assess, at the inception of the contract, whether each promise represents a separate performance obligation (i.e., is "distinct"), or whether such promises should be combined as a single performance obligation.

The terms of the agreement typically include consideration to be provided to the Company in the form of non-refundable up-front payments, development milestones, sales milestones, and royalties on sales of products within a respective territory. The Company recognizes regulatory and approval milestones as consideration when it is probable that a future reversal is unlikely to occur. For sales-based milestones and royalties based on sales of product in a territory, the Company applies the sales-based royalty exception in ASC 606-10-55-65 to all of these milestones and royalties.

At the inception of the contract, the transaction price reflects the amount of consideration the Company expects to be entitled to in exchange for transferring promised goods or services to its customer. In the arrangement where the Company satisfies performance obligation(s) during the regulatory phase over time, the Company recognizes collaboration revenue typically using an input method on the basis of regulatory costs incurred relative to the total expected cost which determines the extent of progress toward completion. The Company reviews the estimate of the transaction price and the total expected cost each period and makes revisions to such estimates as necessary. Under contracted supply agreements with collaborators, the Company, through its third party contract manufacturing partners, may manufacture and supply quantities of active pharmaceutical ingredient (“API”) or bulk tablets reasonably required by collaboration partners for the development or sale of licensed products in their respective territory. The Company recognizes revenue when the collaboration partner has obtained control of the API or bulk tablets. The Company records the costs related to the supply agreement in cost of goods sold on the condensed statements of operations and comprehensive (loss) income.

Under the Company's collaboration agreements, product sales and cost of sales may be recorded by the Company's collaborators as they are deemed to be the principal in the transaction. The Company receives royalties from the

commercialization of such products, and records its share of the variable consideration, representing a percentage of net product sales, as collaboration revenue in the period in which such underlying sales occur and costs are incurred by the collaborator.

b. Product Sales, Net

On February 21, 2020, the Company announced that the FDA approved NEXLETOL as an adjunct to diet and maximally tolerated statin therapy for the treatment of adults with HeFH or established ASCVD who require additional lowering of LDL-C. On February 26, 2020, the Company announced that the FDA approved NEXLIZET as an adjunct to diet and maximally tolerated statin therapy for the treatment of adults with HeFH or established ASCVD who require additional lowering of LDL-C. On March 30, 2020, NEXLETOL was commercially available in the U.S. through prescription and on June 4, 2020, NEXLIZET was commercially available in the U.S. through prescription. Net product sales totaled $20.3 million and $57.6 million for the three and nine months ended September 30, 2023, respectively, and $14.0 million and $40.9 million for the three and nine months ended September 30, 2022, respectively.

The Company sells NEXLETOL and NEXLIZET to wholesalers in the U.S. and, in accordance with ASC 606, recognizes revenue at the point in time when the customer is deemed to have obtained control of the product. The customer is deemed to have obtained control of the product at the time of physical receipt of the product at the customers' distribution facilities, or free on board ("FOB") destination, the terms of which are designated in the contract.

Product sales are recorded at the net selling price, which includes estimates of variable consideration for which reserves are established for (a) rebates and chargebacks, (b) co-pay assistance programs, (c) distribution fees, (d) product returns, and (e) other discounts. Where appropriate, these estimates take into consideration a range of possible outcomes which are probability-weighted for relevant factors such as current contractual and statutory requirements, and forecasted customer buying and payment patterns. Overall, these reserves reflect the Company's best estimates of the amount of consideration to which it is entitled based on the terms of the applicable contract. The amount of variable consideration may be constrained and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. Given the early stage of the Company's commercial operations it has provided constraint of its variable consideration due to its potential consumption trends. Actual amounts of consideration ultimately received may differ from the Company's estimates. If actual results in the future vary from estimates, the Company adjusts these estimates, which would affect net product revenue and earnings in the period such variances become known.

Liabilities for co-pay assistance, expected product returns, rebates, and distributor fees are classified as "Accrued variable consideration" in the condensed balance sheets. Discounts, such as prompt pay discounts, and chargebacks are recorded as a reduction to trade accounts receivable in the condensed balance sheets.

Forms of Variable Consideration

Rebates and Chargebacks: The Company estimates reductions to product sales for Public Health Service Institutions, such as Medicaid, Medicare and Veterans' Administration ("VA") programs, as well as certain other qualifying federal and state government programs, and other group purchasing organizations. The Company estimates these reductions based upon the Company's contracts with government agencies and other organizations, statutorily defined discounts and estimated payor mix. These organizations purchase directly from the Company's wholesalers at a discount and the wholesalers charge the Company back the difference between the wholesaler price and the discounted price. The Company's liability for Medicaid rebates consists of estimates for claims that a state will make for a current quarter. The Company's reserve for this discounted pricing is based on expected sales to qualified healthcare providers and the chargebacks that customers have already claimed.

Co-pay assistance: Eligible patients who have commercial insurance may receive assistance from the Company to reduce the patient's out of pocket costs. The Company will buy down the difference between the amount of the eligible patient's co-pay when the drug is purchased at the pharmacy at a determined price. Liabilities for co-pay assistance are calculated by actual program participation from third-party administrators.

Distribution Fees: The Company has written contracts with its customers that include terms for distribution fees and costs for inventory management. The Company estimates and records distribution fees due to its customers based on gross sales.

Product Returns: The Company generally offers a right of return based on the product's expiration date and certain spoilage and damaged instances. The Company estimates the amount of product sales that may be returned and records the estimate as a reduction of product sales in the period the related product sales is recognized. The Company's estimates for

expected returns are based primarily on an ongoing analysis of sales information and visibility into the inventory remaining in the distribution channel.

Discounts: The Company provides product discounts, such as prompt pay discounts, to its customers. The Company estimates cash discounts based on terms in negotiated contracts and the Company's expectations regarding future payment patterns.

Inventories

Inventories are stated at the lower of cost or net realizable value and recognized on a first-in, first-out ("FIFO") method. The Company uses standard cost to determine the cost basis for inventory. Inventory is capitalized based on when future economic benefit is expected to be realized.

The Company analyzes its inventory levels on a periodic basis to determine if any inventory is at risk for expiration prior to sale or has a cost basis that is greater than its estimated future net realizable value. Any adjustments are recognized through cost of goods sold in the period in which they are incurred.

Recently Implemented Accounting Pronouncements

There have been no other material changes to the significant accounting policies previously disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

3. Collaborations with Third Parties

DSE Agreement Terms

On January 2, 2019, the Company entered into a license and collaboration agreement with DSE, which was further amended on June 18, 2020. Pursuant to the amended agreement, the Company granted DSE exclusive commercialization rights to bempedoic acid and the bempedoic acid / ezetimibe combination tablet in the European Economic Area, Turkey, and Switzerland ("DSE Territory"). DSE is responsible for commercialization in the DSE Territory. DSE's designated affiliate in Turkey will be solely responsible, at its sole cost and expense, for all regulatory matters relating to such products in Turkey, including obtaining regulatory approval for such products in Turkey. The Company remains responsible for clinical development, regulatory and manufacturing activities for the licensed products globally, including in the DSE Territory outside of Turkey.

Pursuant to the agreement, the Company received upfront cash of $ 150.0 million in 2019 and a $ 150.0 million cash milestone payment in 2020 following the completion of the NUSTENDI Marketing Authorisation Applications ("MAA"). The Company is responsible for supplying DSE with certain manufacturing supply of the API or bulk tablets. The Company is also eligible to receive an additional regulatory milestone payment of either $200 million or $300 million upon inclusion of cardiovascular risk reduction data in the EU label, depending on the range of relative cardiovascular risk reduction in the CLEAR Outcomes study. Refer to Note 5 "Commitments and Contingencies" for further information. In addition, the Company is eligible to receive additional sales milestone payments related to total net sales achievements for DSE in the DSE Territory. Finally, the Company receives tiered fifteen percent (15%) to twenty-five percent (25%) royalties on net DSE Territory sales.

The agreement calls for both parties to participate in a Joint Collaboration Committee (the "DSE JCC"). The DSE JCC is comprised of executive management from each company and the Company will lead in all aspects related to development and DSE will lead in all aspects related to commercialization in the DSE Territory.

Collaboration Revenue

In the three and nine months ended September 30, 2023, the Company recognized collaboration revenue of approximately $ 13.4 million and $ 25.8 million, respectively, and in the three and nine months ended September 30, 2022, the Company recognized collaboration revenue of approximately $4.4 million and $14.7 million, respectively, related to royalty revenue from DSE from the sales of NILEMDO and NUSTENDI as well as the sales of bulk tablets to DSE pursuant to the supply agreement that was executed with DSE.

All remaining future potential milestone amounts were not included in the transaction price, as they were all determined to be fully constrained following the concepts of ASC 606 due to the fact that such amounts hinge on development activities,

regulatory approvals and sales-based milestones. Additionally, the Company expects that any consideration related to sales-based milestones will be recognized when the subsequent sales occur.

Otsuka Agreement Terms

On April 17, 2020, the Company entered into a license and collaboration agreement (the "Otsuka Agreement") with Otsuka. Pursuant to the Otsuka Agreement, the Company granted Otsuka exclusive development and commercialization rights to NEXLETOL and NEXLIZET in Japan. Otsuka will be responsible for all development, regulatory, and commercialization activities in Japan. In addition, Otsuka will fund all clinical development costs associated with the program in Japan.

Pursuant to the agreement, the consideration consists of a $ 60.0 million upfront cash payment and the Company will be eligible to receive additional payments of up to $450.0 million if certain regulatory and commercial milestones are achieved by Otsuka. The potential future milestone payments include up to $20.0 million upon first JNDA submissions in the Otsuka Territory, up to $ 70.0 million upon the first NHI Price Listing for NEXLETOL in the Otsuka Territory, and following Regulatory Approval and NHI Price Listing, up to $50.0 million upon the achievement of the primary major adverse cardiovascular events (“MACE”) endpoint in the CLEAR Outcomes study and the CV risk reduction rate in the U.S. label, depending on the range of relative risk reduction in the CLEAR Outcomes study. In addition, the Company is eligible to receive additional sales milestone payments up to $310.0 million related to total net sales achievements for Otsuka in Japan. Finally, the Company will receive tiered fifteen percent (15%) to thirty percent (30%) royalties on net sales in Japan.

Collaboration Revenue

The Company considered the guidance under ASC 606 and concluded that the agreement was in the scope of ASC 606. In the three and nine months ended September 30, 2023, the Company recognized $0.1 million in collaboration revenue related to sales of bulk tablets to Otsuka pursuant to the Otsuka Agreement. In the three and nine months ended September 30, 2022, the Company recognized $0.4 million in collaboration revenue related to sales of bulk tablets to Otsuka pursuant to the Otsuka Agreement.

All future potential milestone amounts were not included in the transaction price, as they were all determined to be fully constrained following the concepts of ASC 606 due to the fact that such amounts hinge on development activities, regulatory approvals and sales-based milestones. Additionally, the Company expects that any consideration related to royalties and sales-based milestones will be recognized when the subsequent sales occur.

The Company has not yet recognized any revenue for milestone payments as the related regulatory and commercial milestones have not yet been achieved.

DS Agreement Terms

In April 2021, the Company entered into a license and collaboration agreement with Daiichi Sankyo Co. Ltd (the "DS Agreement"). Pursuant to the DS Agreement, the Company granted DS exclusive rights to develop and commercialize bempedoic acid and the bempedoic acid / ezetimibe combination tablet in South Korea, Taiwan, Hong Kong, Thailand, Vietnam, Brazil, Macao, Cambodia and Myanmar (collectively the "DS Territory"). The agreement allows for potential expansion across geographies including Saudi Arabia, Kuwait, Oman, UAE, Qatar, Bahrain, Yemen, Colombia and other Latin American countries. Except for certain development activities in South Korea and Taiwan, DS will be responsible for development and commercialization in these territories. In addition, DS will fund all development costs associated with the program in the DS Territory. Pursuant to the agreement, the consideration consists of a $30.0 million upfront cash payment that is non-refundable, non-reimbursable and non-creditable. The Company also will be eligible to receive additional one-time payments of up to $175.0 million if certain commercial milestones are achieved by DS. Also, the Company will receive tiered royalties of five percent (5%) to twenty percent (20%) of net sales in the DS Territory.

Collaboration Revenue

The Company considered the guidance under ASC 606 and concluded that the agreement was in the scope of ASC 606. The Company concluded that the upfront payment of $30.0 million should be included in the transaction price and related to the following performance obligations under the agreement: 1) the license to the Company’s intellectual property and 2) the obligation to provide ongoing development activities. The Company used the adjusted market assessment approach in determining the standalone selling price of the Company’s intellectual property and the expected cost plus margin approach in determining the standalone selling price of the Company’s obligation to provide ongoing development activities. For the three and nine months ended September 30, 2023, the Company recognized $0.2 million and $0.6 million, respectively, of collaboration revenue related to the ongoing regulatory and development activities and for the three and nine months ended September 30, 2022, the Company recognized $0.2 million and $0.6 million, respectively, of collaboration revenue related to

the ongoing regulatory and development activities. The remaining $0.1 million of the upfront payment was deferred as of September 30, 2023 due to an on-going performance obligation related to the developmental activities in South Korea and Taiwan. This deferred revenue will be recognized ratably over the period leading up to the completion of these developmental activities.

All future potential milestone amounts were not included in the transaction price, as they were all determined to be fully constrained following the concepts of ASC 606 due to the fact that such amounts hinge on development activities, regulatory approvals and sales-based milestones. Additionally, the Company expects that any consideration related to royalties and sales-based milestones will be recognized when the subsequent sales occur.

Serometrix Agreement

On July 6, 2023, the Company provided notice to Serometrix of its intent to terminate the licensing agreement between the Company and Serometrix dated December 3, 2020. The agreement, which related to the in-license of a series of early stage compounds known as scaffolds related to its oral, small molecule PCSK9 inhibitor program, terminated as of August 5, 2023. The Company expects to continue to advance its internal pipeline assets, including next-generation ACLY inhibitors.

4. Inventories, net

Inventories, net consist of the following (in thousands):

	September 30, 2023	December 31, 2022
Raw materials	$ 49,158	$ 26,558
Work in process	625	6,548
Finished goods	1,652	2,095
	$ 51,435	$ 35,201

5. Commitments and Contingencies

On March 4, 2023, the Company announced the full results from its Cholesterol Lowering via Bempedoic acid, an ACL-Inhibiting Regimen (CLEAR) Outcomes trial. Based on the terms of the contract with DSE, the Company is eligible for partner milestone payments upon inclusion of cardiovascular risk reduction data in the EU label, for which payment is tied to the magnitude of the risk percentage reduction included in the label (among other requirements) and ranges from $200 million for the inclusion of cardiovascular risk reduction in the EU label that correlates with a relative risk reduction rate that, based on the CLEAR Outcomes data, is equal or greater than 15% but less than 20%, to $300 million if such risk reduction in the EU label that correlates with a relative risk reduction rate is equal or greater than 20%. Based on the CLEAR Outcomes data, the Company believes it would be entitled to receive $300 million in partner milestone payments upon inclusion of cardiovascular risk reduction data in the EU label.

The Company has had communications with DSE regarding potential milestone payments in which DSE has conveyed that it disagrees with the Company's assessment that the CLEAR Outcomes data would support the Company's right to receive any milestone payments upon inclusion of certain required cardiovascular risk reduction data in the EU label. Even if the Company is successful in enforcing its rights, there could be a delay in the Company's receipt of the milestone payments as a result of any dispute relating to such payments. Any failure to receive or any delay in receipt of the milestone payments may significantly impact the Company's future capital needs, ability to recognize revenue for the milestone upon inclusion of cardiovascular risk reduction data in the EU label, and ability to fund operations.

On March 27, 2023, the Company filed a complaint in the United States District Court for the Southern District of New York seeking declaratory judgment against DSE regarding the Company's right to receive a $300 million milestone payment upon inclusion of cardiovascular risk reduction in the EU label that correlates with a relative risk reduction rate of at least 20%, based on the CLEAR Outcomes trial demonstrating significant cardiovascular risk reductions.

On May 4, 2023, the Company filed an amended complaint against DSE in the Southern District of New York. The complaint seeks a judicial declaration, on an expedited basis, that DSE is contractually required to make a $300 million milestone payment to the Company upon applicable regulatory approval. On June 20, 2023, DSE filed a response to the amended complaint.

6. Investments

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

	September 30, 2023			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash equivalents:				
Money market funds	$ 88,374	$ —	$ —	$ 88,374
Certificates of deposit	402	—	—	402
Total	$ 88,776	$ —	$ —	$ 88,776

	December 31, 2022			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash equivalents:				
Money market funds	$ 105,078	$ —	$ —	$ 105,078
U.S. treasury notes	4,994	1	—	4,995
Certificates of deposit	401	—	—	401
Short-term investments:				
U.S. treasury notes	42,089	2	(5)	42,086
Total	$ 152,562	$ 3	$ (5)	$ 152,560

During the three and nine months ended September 30, 2023, other income, net in the statements of operations includes interest income on investments of $1.2 million and $3.5 million, respectively. During the three and nine months ended September 30, 2022, other income, net in the statements of operations includes interest income on investments of $0.8 million and $1.5 million, respectively. During the three months ended September 30, 2023, there was no accretion of premiums and discounts on investments. During the nine months ended September 30, 2023, other income, net in the statements of operations includes $0.4 million of accretion of premiums and discounts on investments. During the three and nine months ended September 30, 2022, other income, net in the statements of operations includes amortization of premiums and discounts on investments of $0.2 million and $0.6 million, respectively.

There were no unrealized gains or losses on investments reclassified from accumulated other comprehensive income (loss) to other income in the statements of operations during the three and nine months ended September 30, 2023 and 2022.

In the three and nine months ended September 30, 2023 and 2022, there were no allowances for credit losses and all unrealized gains (losses) for available-for-sale securities were recognized in accumulated other comprehensive income (loss). As of September 30, 2023, the Company had no accrued interest receivables.

7. Fair Value Measurements

The Company follows accounting guidance that emphasizes that fair value is a market-based measurement, not an entity-specific measurement. Fair value is defined as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." Fair value measurements are defined on a three level hierarchy:

Level 1 inputs:	Quoted prices for identical assets or liabilities in active markets;
Level 2 inputs:	Observable inputs other than Level 1 prices, such as quoted market prices for similar assets or liabilities or other inputs that are observable or can be corroborated by market data; and
Level 3 inputs:	Unobservable inputs that are supported by little or no market activity and require the reporting entity to develop assumptions that market participants would use when pricing the asset or liability.

The following table presents the Company's financial assets that have been measured at fair value on a recurring basis (in thousands):

Description	Total	Level 1	Level 2	Level 3
September 30, 2023				
Assets:				
Money market funds	$ 88,374	$ 88,374	$ —	$ —
Certificates of deposit	402	402	—	—
Total assets at fair value	$ 88,776	$ 88,776	$ —	$ —
December 31, 2022				
Assets:				
Money market funds	$ 105,078	$ 105,078	$ —	$ —
Certificates of deposit	401	401	—	—
U.S. treasury notes	47,081	47,081	—	—
Total assets at fair value	$ 152,560	$ 152,560	$ —	$ —

There were no transfers between Levels 1, 2 or 3 during the three and nine months ended September 30, 2023 and 2022.

8. Liability Related to the Revenue Interest Purchase Agreement

On June 26, 2019, the Company entered into a Revenue Interest Purchase Agreement ("RIPA") with Oberland, as agent for purchasers party thereto (the "Purchasers"), and the Purchasers named therein, to obtain financing in respect to the commercialization and further development of bempedoic acid and the bempedoic acid / ezetimibe combination tablet and other working capital needs. Pursuant to the RIPA, the Company received $125.0 million at closing, less certain issuance costs. The Company was entitled to receive up to approximately $75.0 million in subsequent installments subject to the terms and conditions set forth in the RIPA: (i) $25.0 million upon certain regulatory approval of its product candidates and (ii) $ 50.0 million, at the Company's option, upon reaching $100.0 million trailing worldwide six-month net sales any time prior to December 31, 2021 (the "Third Payment"). In March 2020, the Company received $25.0 million from Oberland upon receiving regulatory approval of NEXLETOL.

As consideration for such payments, the Purchasers will have a right to receive certain revenue interests (the "Revenue Interests") from the Company based upon net sales of the Company's certain products, once approved, which will be tiered payments initially ranging from 2.5% to 7.5% of the Company's net sales in the covered territory (the "Covered Territory"); provided that if annual net sales equal or exceed the Sales Threshold and if the Purchasers receive 100% of their invested capital by December 31, 2024, the revenue interest rate will be decreased to a single rate of 0.4% of the Company's net sales in the Covered Territory beginning on January 1, 2025. If the Third Payment is drawn down by the Company, the applicable royalty rates will increase by one-third. The Covered Territory is the United States, but is subject to expand to include the world-wide net sales if the Company's annual U.S. net sales are less than $350.0 million for the year ended December 31, 2021. The U.S. net sales milestone thresholds are not to be taken as financial guidance. The Purchasers' rights to receive the Revenue Interests shall terminate on the date on which the Purchasers have received Revenue Interests payments of 195% of the then aggregate purchase price (the "Cumulative Purchaser Payments") paid to the Company, unless the RIPA is terminated earlier.

Under the RIPA, the Company has an option (the "Call Option") to terminate the RIPA and repurchase future Revenue Interests at any time upon advance written notice. Additionally, the Purchasers have an option (the "Put Option") to terminate the RIPA and to require the Company to repurchase future Revenue Interests upon enumerated events such as a bankruptcy event, an uncured material breach, a material adverse effect or a change of control.

In addition, the RIPA contains various representations and warranties, information rights, non-financial covenants, indemnification obligations and other provisions that are customary for a transaction of this nature.

RIPA Amendments

On April 26, 2021, the Company entered into Amendment No. 2 (the “RIPA Amendment 2”) to the RIPA with Oberland, as agent for the purchaser parties thereto. Pursuant to the RIPA Amendment 2, Oberland waived the original trailing six-month world-wide net sales condition to the third installment payment under the RIPA and released the final $50 million payment payable to the Company under the terms of the RIPA. The Company and Oberland also agreed to amend additional terms of the RIPA such that the purchasers will have a right to receive certain revenue interests (the “Revenue Interests”) from the Company based on net sales of the Company’s certain products, once approved, which will be tiered payments ranging from 3.33% to 10% (the “Third Payment Applicable Percentage”) of the Company’s net sales in the covered territory (the “Covered Territory”); provided that (a) prior to December 31, 2024, with respect to each country defined in the Daiichi Territory, if the percentage of net sales that Company receives from Daiichi (the “Receivables Percentage”) is less than the Third Payment Applicable Percentage, then the Revenue Interest for such country payable to the purchasers will be equal to the Receivables Percentages, (b) if annual net sales equal or exceed $350 million and if the Purchasers receive 100% of their invested capital (Cumulative Purchaser Payments") by December 31, 2024, the revenue interest rate will be decreased to a single rate of 3.33% of the Company’s net sales in the Covered Territory for all subsequent calendar quarters and (c) if the Purchasers receive Revenue Interest payments less than 100% of Cumulative Purchaser Payments by December 31, 2024, the Third Payment Applicable Percentage will be increased to a single rate of the Company’s net sales that would have provided 100% of Cumulative Purchaser Payments had such rate applied from the initial funding by the Purchasers. The Covered Territory was originally the United States, but has been expanded to worldwide for all calendar years beginning on or after January 1, 2022.

Under the RIPA Amendment 2, the Company has an option (the “Call Option”) to terminate the RIPA and repurchase future Revenue Interests at any time upon advance written notice. Additionally, the Purchasers have an option (the “Put Option”) to terminate the RIPA and to require the Company to repurchase future Revenue Interests upon enumerated events such as a bankruptcy event, an uncured material breach, a material adverse effect or a change of control. If the Put Option or the Call Option are exercised, the required repurchase price will be 200% of the Cumulative Purchaser Payments (minus all payments Company has made to the Purchasers in connection with the Revenue Interests), if such option is exercised prior to the third anniversary of the closing date, and 225% of the Cumulative Purchaser Payments (minus all payments Company has made to the Purchasers in connection with the Revenue Interests), if such option is exercised thereafter.

On May 16, 2021, the Company entered into an Amendment to the Security Agreement and Waiver ("Amendment and Waiver") with the same parties to the Security Agreement, by and among the Company, Eiger Partners II LP (the "Purchaser") and Eiger III SA LLC (the "Purchaser Agent"), dated as of June 26, 2019 (the "Security Agreement"). Pursuant to the Amendment and Waiver, if (i) the net revenue from sales of NEXLETOL and NEXLIZET and certain other products in the United States (as reported in the Company’s financial statements as “product sales, net” in accordance with GAAP and excluding, for the avoidance of doubt, upfront or milestone payments and other collaboration revenue) (the “Specified Net Revenue”) for the calendar quarter ended September 30, 2021 does not exceed $15.0 million, or (ii) the Specified Net Revenue for any calendar quarter ending after September 30, 2021 does not exceed $15.0 million, then the Company shall deposit $ 50.0 million in a deposit account that is subject to a block account control agreement in favor of the Purchase Agent, no later than the earlier of (x) the date the Specified Net Revenue for such calendar quarter has been determined and (y) 45 days after the last day of such calendar quarter. Since the Specified Net Revenue for the calendar quarter ended September 30, 2021 did not exceed $15.0 million, the Company deposited $ 50.0 million in a deposit account that is subject to a block account control agreement, which is classified as restricted cash on the balance sheets. The Purchaser Agent shall have sole dominion and control over all funds deposited in the deposited account and such funds may be withdrawn therefrom only with the consent of the Purchaser Agent. Upon the occurrence and during the continuance of a Put Option Event, the Purchaser Agent shall have the right to apply amounts held in the deposit account in payment of certain secured obligations in the manner provided for in the Security Agreement. The Amendment and Wavier does not substitute, replace or release the Pledgors from any other obligations under the RIPA or Security Agreement.

On November 23, 2022, the Company entered into Waiver and Amendment No. 3 to Revenue Interest Purchase Agreement and Amendment No. 2 to Security Agreement (the “RIPA Amendment 3”), by and among the Company, the Purchasers and the Purchaser Agent, which amends (i) the Revenue Interest Purchase Agreement, by and among the Company, the Purchasers, and the Purchaser Agent, dated effective as of June 26, 2019 (as amended by Amendment No. 1 to Revenue Interest Purchase Agreement dated as of November 9, 2020 and Amendment No. 2 to Revenue Interest Purchase Agreement dated as of April 26, 2021, and as may be further amended, restated, supplemented or modified from time to time, the “RIPA”) and (ii) the Security Agreement, by the Company in favor of the Purchaser Agent, dated as of June 28, 2019 (as amended by the Amendment to Security Agreement and Waiver by and among the Company, the Purchaser and the Purchaser Agent, effective as of May 16, 2021, and as may be further amended, restated, supplemented or modified from time to time, the “Security Agreement”). Pursuant to the RIPA Amendment 3, among other things, (a) the Company agreed to make a one-time partial call payment with regards to the Revenue Interests (as defined in the RIPA) in an amount equal to $50 million from the restricted cash account (the “Partial Call”), (b) the amount of the Cumulative Purchaser Payments (as defined in the RIPA) was reduced to

$177,777,778, and (c) the Purchasers and Purchaser Agent waived certain claimed defaults, breaches and Put Option Events under the RIPA and other related documents that may have occurred as a result of the Company's opening of a new bank account.

In accordance with the guidance in ASC 470-50, "Debt—Modifications and Extinguishments," the RIPA Amendment 3 was accounted for as a debt modification. The amendment resulted in a less than $0.1 million loss on modification of debt, consisting of third-party fees associated with the transaction, which is included in selling, general, and administrative expenses in the statements of operations for the year ended December 31, 2022.

In connection with the arrangement, as of September 30, 2023, the Company has recorded a liability, referred to as the "Revenue interest liability" on the balance sheet, of $267.4 million, net of $0.3 million of capitalized issuance costs in connection with the RIPA, which will be amortized to interest expense over the estimated term of the RIPA. The total redemption amount is equal to 225% of the Cumulative Purchaser Payments, or $ 400 million. At September 30, 2023, the remaining redemption amount is $377.2 million. The Company imputes interest expense associated with this liability using the effective interest rate method. The effective interest rate is calculated based on the rate that would enable the debt to be repaid in full over the anticipated life of the arrangement. The interest rate on this liability may vary during the term of the agreement depending on a number of factors, including the level of forecasted net sales. The Company evaluates the interest rate quarterly based on its current net sales forecasts utilizing the prospective method.

A significant increase or decrease in future net sales will materially impact the revenue interest liability, interest expense and the time period for repayment. The Company recorded approximately $11.9 million and $34.7 million in interest expense related to this arrangement for the three and nine months ended September 30, 2023, respectively, and approximately $11.1 million and $33.3 million in interest expense related to this arrangement for the three and nine months ended September 30, 2022, respectively.

The repayment of the RIPA to Oberland does not have a fixed repayment schedule, rather it will be completely repaid and extinguished when the Company has repaid 225% of the Cumulative Purchaser Payments. Since there is not a fixed repayment schedule, the Company does not project its future repayments by year. Each period, the Company estimates the future expected sales of its products in the covered territory and determines the effective annual imputed interest rate, which updates and changes the timing of the Company's payments. Under the terms of the agreement, every $100 million of net sales generated, less than or equal to $ 250 million in an annual aggregate year, would result in a repayment obligation of approximately $10.0 million or 10.0% at the stated repayment rate in the first year. Annual net sales for a calendar year exceeding $ 250 million would result in a repayment obligation of approximately $3.3 million or 3.3% for every $100 million of sales above the threshold. As the U.S. net sales were less than $350 million for the year ended December 31, 2021, the Covered Territory was expanded to include worldwide sales beginning in 2022. The Company's repayments of the RIPA are directly tied to the growth of its net sales, and as the Company's net sales grow, the Company expects the related repayments of the RIPA to grow as well. The Company currently expects to repay $37.0 million in the next twelve months.

The effective annual imputed interest rate is 17.9% as of September 30, 2023. Payments made to Oberland as a result of the Company's net sales will reduce the revenue interest liability.

The following table summarizes the revenue interest liability activity during the nine months ended September 30, 2023:

	(in thousands)
Total revenue interest liability at December 31, 2022	$ 243,605
Interest expense recognized	34,703
Revenue Interests payments	(10,908)
Total revenue interest liability at September 30, 2023	$ 267,400

9. Convertible Notes

In November 2020, the Company issued $ 280.0 million aggregate principal amount of 4.0% senior subordinated convertible notes due November 2025. The net proceeds the Company received from the offering was approximately $271.1 million, after deducting the initial purchasers' discounts and commissions and offering expenses payable by the Company (the "Convertible Notes") of $8.9 million. The Company used approximately $46.0 million of the net proceeds from the offering of the notes to pay the cost of the Capped Call (as defined below) and $55.0 million of the net proceeds from the offering of the initial notes to finance the Prepaid Forward (as defined below). The Convertible Notes are the Company's senior

unsecured obligations and mature on November 15, 2025 (the “Maturity Date”), unless earlier repurchased or converted into shares of common stock under certain circumstances described below. The Convertible Notes are convertible into shares of the Company’s common stock, can be repurchased for cash, or a combination thereof, at the Company’s election, at an initial conversion rate of 30.2151 shares of common stock per $1,000 principal amount of the Convertible Notes, which is equivalent to an initial conversion price of approximately $33.096 per share of common stock, subject to adjustment. The Company will pay interest on the Convertible Notes semi-annually in arrears on May 15 and November 15 of each year.

The Convertible Notes are general unsecured obligations of the Company that are subordinated in right of payment to indebtedness, obligations and other liabilities under the Company’s RIPA, the revenue interests issued pursuant to such agreement, and any refinancing of the foregoing.

Holders may convert their Convertible Notes at their option at any time prior to the close of business on the business day immediately preceding August 15, 2025 in the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ended on March 31, 2021 (and only during such calendar quarter), if the last reported sale price per share of the Company’s common stock, par value $0.001 per share (“common stock”), is greater than or equal to 130% of the conversion price for each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter; (2) during the five business days after any five consecutive trading day period (such five consecutive trading day period, the “measurement period”) in which the trading price per $1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of the Company’s common stock and the conversion rate for the notes on each such trading day; (3) if the Company calls such notes for redemption, any such notes that have been called for redemption may be converted at any time prior to the close of business on the second scheduled trading day immediately preceding the redemption date, but only with respect to the notes called for redemption; and (4) upon the occurrence of specified corporate events, as provided in the Indenture. On or after August 15, 2025, to the close of business on the second scheduled trading day immediately before the maturity date, holders may convert all or any portion of their notes at the applicable conversion rate at any time at the option of the holder regardless of the foregoing conditions.

In addition, following certain corporate events or following issuance of a notice of redemption, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its notes in connection with such a corporate event or to convert its notes called (or deemed called) for redemption during the related redemption period, as the case may be.

The Convertible Notes will be redeemable, in whole or in part, at the Company’s option at any time, and from time to time, on or after November 20, 2023 and before the 41st scheduled trading day immediately before the maturity date, at a cash redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest, if any, but only if the last reported sale price per share of the Company’s common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date the Company sends the related redemption notice, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company sends such redemption notice. No sinking fund is provided for the notes. If the Company redeems less than all the outstanding notes, at least $125.0 million aggregate principal amount of notes must be outstanding and not subject to redemption as of the relevant redemption notice date.

If the Company undergoes a “fundamental change” (as defined in the Indenture), holders may require the Company to repurchase their notes for cash all or any portion of their notes at a fundamental change repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest, to, but excluding, the fundamental change repurchase date. The Indenture includes customary terms and covenants, including certain events of default.

On October 22, 2021, the Company entered into a privately negotiated exchange agreement (the “Exchange Agreement”) with two co-managed holders (the “Holders”) of its Convertible Notes. Under the terms of the Exchange Agreement the Holders agreed to exchange (the “Exchange”) with the Company $15.0 million aggregate principal amount of the Convertible Notes held in the aggregate by them (and accrued interest thereon) for shares of the Company’s common stock. Pursuant to the Exchange Agreement, the number of shares of common stock to be issued by the Company to the Holders upon consummation of the Exchange was determined based upon the volume-weighted-average-price per share of common stock, subject to a floor of $5.62 per share, during the five trading-day averaging period, commencing on the trading day immediately following the date of the Exchange Agreement. The Exchange closed on November 3, 2021, with 1,094,848 shares of the Company's common stock being exchanged.

As of September 30, 2023, the principal amount of convertible notes was $ 265.0 million, and the unamortized debt discount and issuance costs were $3.8 million, for a net carrying amount of $ 261.2 million.

The Company recorded $3.1 million and $9.2 million of interest expense during the three and nine months ended September 30, 2023, respectively, and $3.1 million and $9.2 million of interest expense during the three and nine months ended September 30, 2022, respectively, relating to the cash interest on the convertible notes due semi-annually and amortization of the debt issuance costs.

As of September 30, 2023, no Convertible Notes were convertible pursuant to their terms. The estimated fair value of the Convertible Notes was $137.5 million as of September 30, 2023 and $ 145.9 million as of December 31, 2022. The estimated fair value of the Convertible Notes was determined through consideration of quoted market prices. As of September 30, 2023, the if-converted value of the Convertible Notes did not exceed the principal value of those notes.

Capped Call Transactions

In connection with the offering of the Convertible Notes, the Company entered into privately-negotiated capped call transactions with one of the initial purchasers of the convertible notes or its affiliate and certain other financial institutions. The Company used approximately $46.0 million of the net proceeds from the offering of the Convertible Notes to pay the cost of the capped call transactions. The capped call transactions are expected generally to reduce potential dilution to the Company's common stock upon any conversion of the Convertible Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted notes, as the case may be, in the event that the market value per share of the Company's common stock, as measured under the terms of the capped call transactions at the time of exercise, is greater than the strike price of the capped call transactions (which initially corresponds to the initial conversion price of the Convertible Notes, and is subject to certain adjustments), with such reduction and/or offset subject to a cap initially equal to approximately $55.16 (which represents a premium of approximately 100% over the last reported sale price of the Company's common stock on November 11, 2020), subject to certain adjustments. The capped call transactions are separate transactions, entered into by the Company and are not part of the terms of the Convertible Notes.

Given that the transactions meet certain accounting criteria, the convertible note capped call transactions are recorded in stockholders' equity, and they are not accounted for as derivatives and are not remeasured each reporting period. As of September 30, 2023 and December 31, 2022, the Company had not purchased any shares under the convertible note capped call transactions.

Prepaid Forward

In connection with the offering of the Convertible Notes, the Company entered into a prepaid forward stock repurchase transaction ("Prepaid Forward") with a financial institution ("Forward Counterparty"). Pursuant to the Prepaid Forward, the Company used approximately $55.0 million of the net proceeds from the offering of the Convertible Notes to fund the Prepaid Forward. The aggregate number of shares of the Company's common stock underlying the Prepaid Forward was approximately 1,994,198. The expiration date for the Prepaid Forward is November 15, 2025, although it may be settled earlier in whole or in part. Upon settlement of the Prepaid Forward, at expiration or upon any early settlement, the Forward Counterparty will deliver to the Company the number of shares of common stock underlying the Prepaid Forward or the portion thereof being settled early. The shares purchased under the Prepaid Forward are treated as treasury stock and not outstanding for purposes of the calculation of basic and diluted earnings per share, but will remain outstanding for corporate law purposes, including for purposes of any future stockholders' votes, until the Forward Counterparty delivers the shares underlying the Prepaid Forward to the Company. As of September 30, 2023, 448,698 shares had been delivered to the Company. The Company's Prepaid Forward hedge transaction exposes the Company to credit risk to the extent that its counterparty may be unable to meet the terms of the transaction. The Company mitigates this risk by limiting its counterparty to a major financial institution.

10. Other Accrued Liabilities

Other accrued liabilities consist of the following (in thousands):

	September 30, 2023	December 31, 2022
Accrued compensation	$ 8,246	$ 9,053
Accrued professional fees	6,773	2,547
Accrued interest on convertible notes	3,975	1,325
Accrued other	290	279
Total other accrued liabilities	$ 19,284	$ 13,204

11. Stock Compensation

2022 Stock Option and Incentive Plan

In May 2022, the Company's stockholders approved the 2022 Stock Option and Incentive Plan (the "2022 Plan"). The number of shares of common stock available for awards under the 2022 Plan was set to 4,400,000, with any shares underlying awards that are forfeited, canceled, held back upon exercise of an option or settlement of an award to cover the exercise price or tax withholding, reacquired by the Company prior to vesting, satisfied without the issuance or shares, or otherwise terminated (other than by exercise) under the 2022 Plan may be added back to the shares of common stock available for issuance under the 2022 Plan. The 2022 Plan provides for the award of stock options (both incentive and non-qualified options), stock appreciation rights, restricted stock, restricted stock units, unrestricted stock, cash-based awards, and dividend equivalent rights. Following the approval of the 2022 Plan, no further awards will be issued under the Company's 2013 Stock Option and Incentive Plan (the "2013 Plan"). In June 2023, the Company's stockholders approved an amendment to the 2022 Plan, which increased the number of shares of common stock reserved for awards under the 2022 Plan to 10,650,000.

Employee Stock Purchase Plan

In April 2020, the Company's board of directors approved the Esperion Therapeutics, Inc. 2020 Employee Stock Purchase Plan (the "ESPP") which was approved by the Company's stockholders on May 28, 2020. The ESPP allows eligible employees to authorize payroll deductions of up to 10% of their base salary or wages up to $25,000 annually to be applied toward the purchase of shares of the Company's common stock on the last trading day of the offering period. Participating employees will purchase shares of the Company's common stock at a discount of up to 15% on the lesser of the closing price of the Company's common stock on the NASDAQ Global Select Market ("Nasdaq") (i) on the first trading day of the offering period or (ii) the last day of any offering period. Offering periods under the ESPP will generally be in six months increments, commencing on September 1 and March 1 of each calendar year with the administrator having the right to establish different offering periods. In the three and nine months ended September 30, 2023, the Company recognized $0.1 million and $0.3 million of stock compensation expense related to the ESPP, respectively. In the three and nine months ended September 30, 2022, the Company recognized approximately $0.1 million and $0.3 million of stock compensation expense related to the ESPP, respectively. As of September 30, 2023, there have been 610,506 shares issued and 214,494 shares reserved for future issuance under the ESPP. The Company paused the ESPP effective as of September 1, 2023, such that the offering period which would otherwise have begun on September 1, 2023 did not commence. The administrator will determine the next offering period, pursuant to the ESPP.

2017 Inducement Equity Plan

In May 2017, the Company's board of directors approved the Esperion Therapeutics, Inc. 2017 Inducement Equity Plan (as amended in November 2019 and August 2023, the "2017 Plan"). The number of shares of common stock available for awards under the 2017 Plan is 2,650,000, with any shares of common stock that are forfeited, cancelled, held back upon the exercise or settlement of an award to cover the exercise price or tax withholding, reacquired by the Company prior to vesting, satisfied without the issuance of common stock, or otherwise terminated (other than by exercise) under the 2017 Plan added back to the shares of common stock available for issuance under the 2017 Plan. The 2017 Plan provides for the granting of stock options, stock appreciation rights, restricted stock awards, restricted stock units ("RSUs"), unrestricted stock awards and dividend equivalent rights.

Stock Options

The following table summarizes the activity relating to the Company's options to purchase common stock for the nine months ended September 30, 2023:

	Number of Options	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
				(in thousands)
Outstanding at December 31, 2022	3,842,737	$ 27.75	4.86	$ 1,658
Granted	1,550,200	$ 3.53		
Forfeited or expired	(1,686,746)	$ 36.05		
Exercised	—	$ —		
Outstanding at September 30, 2023	3,706,191	$ 13.84	7.70	$ —
Vested and expected to vest at September 30, 2023	3,706,191	$ 13.84	7.70	$ —
Exercisable at September 30, 2023	1,563,571	$ 25.48	5.77	$ —

Stock-based compensation related to stock options was $0.9 million and $2.9 million for the three and nine months ended September 30, 2023, respectively, including $0.1 million and $0.2 million that was capitalized into inventory, respectively, and $1.4 million and $4.3 million for the three and nine months ended months ended September 30, 2022, respectively, including $0.2 million and $0.4 million that was capitalized into inventory, respectively. As of September 30, 2023, there was $7.6 million of unrecognized stock-based compensation expense related to unvested options, which will be recognized over a weighted-average period of 2.5 years.

Performance-Based Stock Options ("PBSOs")

In 2021, the Company granted PBSOs from the 2013 Plan that vest upon various performance-based milestones as set forth in the individual grant agreements, such as achievement of predetermined clinical or regulatory outcomes. The actual number of units (if any) received under these awards will depend on continued employment and actual performance over the performance period. Each quarter, the Company updates their assessment of the probability that the performance milestone will be achieved. The Company amortizes the fair value of the PBSOs based on the expected performance period to achieve the performance milestone. The Company expects the performance criteria to be met.

In 2022, the Company granted PBSOs from the 2022 Plan that vest upon various performance-based milestones as set forth in the individual grant agreements, such as achievement of predetermined clinical or regulatory outcomes. The actual number of units (if any) received under these awards will depend on continued employment and actual performance over the performance period. Each quarter, the Company updates their assessment of the probability that the performance milestone will be achieved. The Company amortizes the fair value of the PBSOs based on the expected performance period to achieve the performance milestone. The Company expects the performance criteria to be met.

The following table summarizes the activity relating to the Company's PBSOs for the nine months ended September 30, 2023:

	Number of Options	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
				(in thousands)
Outstanding at December 31, 2022	499,200	$ 6.73	9.32	$ 12
Granted	227,900	$ 1.62		
Forfeited or expired	(65,250)	$ 6.76		
Exercised	—	$ —		
Outstanding at September 30, 2023	661,850	$ 4.97	8.88	$ —
Vested and expected to vest at September 30, 2023	661,850	$ 4.97	8.88	$ —
Exercisable at September 30, 2023	48,100	$ 8.94	6.12	$ —

Stock-based compensation related to PBSOs was $ 0.2 million and $0.6 million for the three and nine months ended September 30, 2023, respectively, and $0.3 million and $0.5 million for the three and nine months ended September 30, 2022, respectively. As of September 30, 2023, there was approximately $0.8 million of unrecognized stock-based compensation expense related to unvested PBSOs, which will be recognized over a weighted-average period of approximately 0.7 years.

Restricted Stock Units (or RSUs)

The following table summarizes the activity relating to the Company's RSUs for the nine months ended September 30, 2023:

	Number of RSUs	Weighted-Average Fair Value Per Share
Outstanding and unvested December 31, 2022	1,768,185	$ 8.80
Granted	2,290,785	$ 3.38
Forfeited	(265,328)	$ 7.65
Vested	(610,785)	$ 8.35
Outstanding and unvested September 30, 2023	3,182,857	$ 7.71

Stock-based compensation related to RSUs was approximately $ 1.6 million and $4.9 million for the three and nine months ended September 30, 2023, respectively, including $0.2 million and $0.3 million that was capitalized into inventory, respectively, and approximately $ 1.5 million and $5.1 million for the three and nine months ended September 30, 2022, respectively, including $0.2 million and $0.5 million that was capitalized into inventory, respectively. As of September 30, 2023, there was $15.1 million of unrecognized stock-based compensation expense related to unvested RSUs, which will be recognized over a weighted-average period of 2.7 years.

Performance-based Restricted Stock Units ("PBRSUs")

In 2021, the Company granted PBRSUs from the 2013 Plan that vest upon various performance-based milestones as set forth in the individual grant agreements, such as achievement of predetermined milestones based on the Company's U.S. net product sales or clinical or regulatory outcomes. The actual number of units (if any) received under these awards will depend on continued employment and actual performance over the performance period. Each quarter, the Company updates their assessment of the probability that the performance milestone will be achieved. The Company amortizes the fair value of the PBRSUs based on the expected performance period to achieve the performance milestone. The fair value of the PBRSUs is based on the quoted market price of the Company's common stock on the date of grant. The Company expects the performance criteria to be met.

The following table summarizes the activity relating to the Company's PBRSUs for the nine months ended September 30, 2023:

	Number of PBRSUs	Weighted-average fair value per share
Outstanding December 31, 2022	461,250	$ 9.50
Granted	—	$ —
Forfeited	(85,750)	$ 11.93
Vested	(200,725)	$ 8.94
Outstanding and unvested September 30, 2023	174,775	$ 15.21

Stock-based compensation related to the PBRSUs was $ 0.1 million and $0.3 million for the three and nine months ended September 30, 2023, respectively, including less than $0.1 million and less than $0.1 million that was capitalized into inventory, respectively, and $ 0.2 million and $1.3 million for the three and nine months ended September 30, 2022, respectively, including less than $0.1 million and $0.1 million that was capitalized into inventory, respectively. As of September 30, 2023, there was approximately $0.4 million of unrecognized stock-based compensation expense related to unvested PBRSUs, which will be recognized over a weighted-average period of approximately 0.7 years.

12. Income Taxes

There was no provision for income taxes for the three and nine months ended September 30, 2023 and 2022, because the Company has incurred annual operating losses since inception. At September 30, 2023, the Company continues to conclude that it is not more likely than not that the Company will realize the benefit of its deferred tax assets due to its history of losses. Accordingly, a full valuation allowance has been applied against the net deferred tax assets.

13. Stockholders' Deficit

ATM Offering

On April 15, 2022, the Company filed a new registration statement on Form S-3 to replace its prior automatically effective registration statement on Form S-3ASR filed on August 3, 2021, which registers the offering, issuance and sale of up to $239 million of common stock from time to time in “at-the-market” offerings (the “New ATM Program”). On February 21, 2023, the Company terminated the open market sales agreement with Jefferies LLC and entered into a Controlled Equity Offering Sales Agreement with Cantor Fitzgerald & Co., as sales agent, to provide for the issuance and sale by the Company of up to $70 million of common stock from time to time in “at-the-market” offerings (the "2023 ATM Program"), pursuant to its existing Form S-3 and the prospectus supplement filed on February 21, 2023. The Company may continue to use the 2023 ATM Program to address potential short-term or long-term funding requirements that may arise. Such program will continue to be subject to the volatility of the price of the Company's common stock and general market conditions. During the three and nine month periods ended September 30, 2022, the Company issued 6,958,525 and 10,311,525 shares of common stock, respectively, resulting in net proceeds of approximately $48.6 million and $68.8 million after deducting $1.6 million and $2.4 million of underwriting discounts and commissions and other expenses, respectively, pursuant to the New ATM Program. During the three month period ended September 30, 2023, the Company did not issue shares pursuant to the 2023 ATM Program. During the nine month period ended September 30, 2023, the Company issued 3,312,908 shares of common stock resulting in net proceeds of approximately $ 4.4 million after deducting $0.4 million of underwriting discounts and commissions and other expenses, pursuant to the 2023 ATM Program.

Warrants

In connection with an underwriting agreement with H.C. Wainwright & Co., LLC ("Wainwright") on December 2, 2021, the Company issued warrants to purchase 36,964,286 shares of common stock at an exercise price of $ 9.00. The warrants will terminate on December 7, 2023. The warrants were recorded at fair value of $61.9 million to additional-paid-in-capital in accordance with ASC 815-10 based upon the allocation of the proceeds between the common shares issued with the Offering and the warrants.

Registered Direct Offering and Warrant Amendment

On March 19, 2023, the Company entered into a Securities Purchase Agreement (the “Purchase Agreement”) with certain purchasers named therein (the “Purchasers”), pursuant to which the Company agreed to issue and sell, in a registered direct

offering (the “Offering”), 12,205,000 shares of its common stock, par value $ 0.001 per share (the “Common Stock”), pre-funded warrants to purchase up to an aggregate of 20,965,747 shares of Common Stock (the “Pre-Funded Warrants”) in lieu of shares of Common Stock, and warrants to purchase up to 33,170,747 shares of Common Stock (the “Warrants”). The combined purchase price of each share of Common Stock and accompanying Warrant is $1.675 per share. The Warrants expire on September 22, 2026 and have an exercise price of $ 1.55. The purchase price of each Pre-Funded Warrant is $1.674 (equal to the combined purchase price per share of Common Stock and accompanying Warrant, minus $ 0.001). The Purchase Agreement contains customary representations, warranties, covenants and indemnification rights and obligations of the Company and the Purchasers. The Offering closed on March 22, 2023. The warrants and pre-funded warrants were recorded at fair value of $22.8 million to additional-paid-in-capital in accordance with ASC 815-10 based upon the allocation of the proceeds between the common shares issued with the Offering and the warrants and pre-funded warrants. The Company estimated the fair value of the warrants using a Black-Scholes option-pricing model, which is based, in part, upon subjective assumptions including but not limited to stock price volatility, the expected life of the warrant, the risk-free interest rate and the fair value of the common stock underlying the warrant. The Company estimates the volatility based on its historical volatility that is in line with the expected remaining life of the warrants. The risk-free interest rate is based on the U.S. Treasury daily rate for a maturity similar to the expected remaining life of the warrants. The expected remaining life of the warrants is assumed to be equivalent to its remaining contractual term. The Company estimated the fair value of the pre-funded warrants based on the market price of the Company's common stock at issuance.

In connection with the Offering, the Company amended, pursuant to Warrant Amendment Agreements (the “Warrant Amendment Agreements”), certain existing warrants to purchase up to an aggregate of 9,024,212 shares of the Company's common stock that were previously issued in December 2021 at an exercise price of $9.00 per share and had an expiration date of December 7, 2023, effective upon the closing of the Offering, such that the amended warrants have a reduced exercise price of $1.55 per share and expire three and one half years following the closing of the Offering, or September 22, 2026, for additional consideration of $0.125 per amended warrant. Based on the change in the fair value of the amended warrants, the Company recorded issuance costs to additional paid-in capital of $2.9 million.

The Company received gross proceeds of approximately $ 55.5 million from the Offering, before deducting placement agent fees and related offering expenses. The net proceeds to the Company from the Offering, after deducting the placement agent fees and expenses and the Company’s estimated offering expenses of $4.2 million, were approximately $51.3 million. In addition, the Company received approximately $ 1.2 million as the gross consideration in connection with the Warrant Amendment Agreements. The net proceeds of the Warrant Amendment Agreements after deducting placement fees of $0.1 million were approximately $1.1 million.

During the three and nine month periods ended September 30, 2023, 10,867,000 and 20,965,747 shares of pre-funded warrants were exercised. As of September 30, 2023, no pre-funded warrants were outstanding. The following table summarizes the warrants outstanding for the Company as of September 30, 2023 and December 31, 2022:

	September 30, 2023	December 31, 2022	Weighted average exercise price
Warrants outstanding from 2021 agreement, expiring December 7, 2023	27,940,074	36,964,286	$ 9.00
Warrants outstanding from Warrant Amendment Agreements, expiring September 22, 2026	9,024,212	—	$ 1.55
Warrants outstanding from Purchase Agreement, expiring September 22, 2026	33,170,747	—	$ 1.55
Total warrants outstanding	70,135,033	36,964,286	

14. Net Loss Per Common Share

Basic net loss per share is calculated by dividing net loss by the weighted-average number of common shares outstanding during the period, without consideration for common stock equivalents. Pre-Funded Warrants are included in the weighted-average number of common shares outstanding during the periods. Diluted net loss per share is computed by dividing net loss by the weighted-average number of common stock equivalents outstanding for the period, including shares that potentially could be dilutive if they were exercised or vested during the period, determined using the treasury-stock method. For purposes of this calculation, warrants for common stock, stock options, PBSOs, unvested RSUs and PBRSUs, shares issuable under the ESPP and shares issuable upon conversion of the convertible notes are considered to be common stock equivalents and are only included in the calculation of diluted net loss per share when their effect is dilutive.

The shares outstanding at the end of the respective periods presented below were excluded from the calculation of diluted net loss per share due to their anti-dilutive effect:

	September 30,	
	2023	2022
Common shares under option	3,706,191	3,784,955
Common shares under PBSOs	661,850	499,200
Unvested RSUs	3,182,857	1,654,600
Unvested PBRSUs	174,775	461,250
Shares issuable related to the ESPP	—	9,237
Shares issuable upon conversion of convertible notes	8,007,010	8,007,010
Warrants	70,135,033	36,964,286
Total potential dilutive shares	85,867,716	51,380,538

15. Statements of Cash Flows and Restricted Cash

The following table provides a reconciliation of cash and cash equivalents and restricted cash presented on the balance sheets to the same amounts presented on the statements of cash flows on September 30, 2023 and 2022 and December 31, 2022 and 2021 (in thousands):

	September 30, 2023	September 30, 2022	December 31, 2022	December 31, 2021
Cash and cash equivalents	$ 114,833	$ 159,399	$ 124,775	$ 208,892
Restricted cash	—	50,000	—	50,000
Total cash and cash equivalents and restricted cash shown on the condensed statements of cash flows	$ 114,833	$ 209,399	$ 124,775	$ 258,892

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and our annual report on Form 10-K for the fiscal year ended December 31, 2022 and other filings that we make with the Securities and Exchange Commission.

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). These forward-looking statements are based on our management's belief and assumptions and on information currently available to management. Although we believe that the expectations reflected in these forward-looking statements are reasonable, these statements relate to future events, including our clinical development and commercialization plans, or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements, including in relation to the clinical development, commercialization plans, approval of expanded indications for bempedoic acid and the bempedoic acid / ezetimibe combination tablet and expectations regarding future transactions to further improve our balance sheet to be materially different from any future results, performance or achievements, including in relation to the clinical development, commercialization plans, or approval of expanded indications for bempedoic acid and the bempedoic acid / ezetimibe combination tablet, clinical activities and commercial development plans, expressed or implied by these forward-looking statements.

Forward-looking statements are often identified by the use of words such as, but not limited to, "may," "will," "should," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continue" or the negative of these terms or other similar terminology. These statements are only predictions. You should not place undue reliance on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, which are, in some cases, beyond our control and that could materially affect results. Factors that may cause actual results to differ materially from current expectations include, among other things, those referred to or discussed in or incorporated by reference into the section titled "Risk Factors" included in Item 1A of Part II of this Quarterly Report on Form 10-Q. If one or more of these risks or uncertainties occur, or if our underlying assumptions prove to be incorrect, actual events or results may vary significantly from those implied or projected by the forward-looking statements. No forward-looking statement is a guarantee of future performance.

The forward-looking statements in this report represent our views as of the date of this quarterly report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

We use the terms "we," "us," "our," or the "Company" in this report to refer to Esperion Therapeutics, Inc.

Overview

Corporate Overview

We are a pharmaceutical company focused on developing and commercializing accessible, oral, once-daily, non-statin medicines for patients struggling with elevated low-density lipoprotein cholesterol, or LDL-C. Through commercial execution and completion of our CLEAR Outcomes trial as well as advancing our pre-clinical pipeline, we continue to evolve into a differentiated, global cardiometabolic biotech. Our team of lipid experts are dedicated to lowering bad cholesterol through the discovery, development and commercialization of innovative medicines and their combinations with established medicines. Our first two products were approved by the U.S. Food and Drug Administration, or FDA, European Medicines Agency, or EMA and Swiss Agency for Therapeutic Products, or Swissmedic, in 2020. Bempedoic acid and the bempedoic acid / ezetimibe combination tablet are oral, once-daily, non-statin, LDL-C lowering medicines for patients with atherosclerotic cardiovascular disease, or ASCVD, or heterozygous familial hypercholesterolemia, or HeFH.

We completed a global cardiovascular outcomes trial, or CVOT — known as **C**holesterol **L**owering via B**E**mpedoic Acid, an **A**CL-inhibiting **R**egimen (CLEAR) Outcomes. The trial was designed to evaluate whether treatment with bempedoic acid reduced the risk of cardiovascular events in patients who are statin averse and who have CVD or are at high risk for CVD. We initiated the CLEAR Outcomes CVOT in December 2016 and fully enrolled the study with over 14,000 patients in August 2019. The primary endpoint of the study was the effect of bempedoic acid on four types of major adverse cardiovascular events, or MACE (cardiovascular death, non-fatal myocardial infarction, non-fatal stroke, or coronary revascularization; also referred

to as “four-component MACE”). CLEAR Outcomes was an event-driven trial and concluded once the predetermined number of MACE endpoints occurred. On December 7, 2022, we announced that the study had met its primary endpoint.

On March 4, 2023, we announced the full results from the CLEAR Outcomes trial. The study showed that bempedoic acid demonstrated significant cardiovascular risk reductions and significantly reduced the risk of heart attack and coronary revascularization as compared to placebo. These results were seen in a broad population of primary and secondary prevention patients who are unable to maximize or tolerate a statin. The proportions of patients experiencing adverse events and serious adverse events were similar between the active and placebo treatment groups. Bempedoic acid, contained in NEXLETOL® and NEXLIZET® (bempedoic acid and ezetimibe) tablets, became the first LDL-C lowering therapy since statins proven to lower hard ischemic events, not only in those with ASCVD but also in the large number of primary prevention patients for whom limited therapies exist.

On March 19, 2023, we entered into a Securities Purchase Agreement, or the Purchase Agreement, with certain purchasers named therein, or the Purchasers, pursuant to which we agreed to issue and sell, in a registered direct offering, or the Offering, 12,205,000 shares of our common stock, par value $0.001 per share, or the Common Stock, pre-funded warrants to purchase up to an aggregate of 20,965,747 shares of Common Stock, or the Pre-Funded Warrants, in lieu of shares of Common Stock, and warrants to purchase up to 33,170,747 shares of Common Stock, or the Warrants. The combined purchase price of each share of Common Stock and accompanying Warrant is $1.675 per share. The purchase price of each Pre-Funded Warrant and the accompanying Warrant is $1.674 (equal to the combined purchase price per share of Common Stock and accompanying Warrant, minus $0.001). The Purchase Agreement contains customary representations, warranties, covenants and indemnification rights and obligations of the Company and the Purchasers. The Offering closed on March 22, 2023. In connection with the Offering, we amended, pursuant to Warrant Amendment Agreements, or the Warrant Amendment Agreements, certain existing warrants to purchase up to an aggregate of 9,024,212 shares of our common stock that were previously issued in December 2021 at an exercise price of $9.00 per share and had an expiration date of December 7, 2023, effective upon the closing of the Offering, such that the amended warrants have a reduced exercise price of $1.55 per share and expire three and one half years following the closing of the Offering, for additional consideration of $0.125 per amended warrant. We received gross proceeds of approximately $55.5 million from the Offering, before deducting placement agent fees and related offering expenses. The net proceeds from the Offering, after deducting the placement agent fees and expenses and the Company’s estimated offering expenses, are approximately $51.3 million. In addition, we received approximately $1.2 million as the gross consideration in connection with the Warrant Amendment Agreements. The net proceeds of the Warrant Amendment Agreements after deducting placement fees were approximately $1.1 million. Refer to Note 13 "Stockholders' Deficit" in our condensed financial statements included in this Form 10-Q for the quarter ended September 30, 2023 for further information.

On June 1, 2023, we announced that we submitted Supplemental New Drug Applications, or sNDAs, to the FDA seeking to add the use of both NEXLETOL and NEXLIZET for cardiovascular risk reduction and also seeking to remove the statin limitation in the LDL-C indication. Subsequently, the FDA accepted the sNDAs with an anticipated Prescription Drug User Fee Act date, or target action date, of March 31, 2024. On June 28, 2023, we announced that the application was filed for a Type II(a) variation with the EMA for our oral non-statin products marketed as NILEMDO® (bempedoic acid) tablets and NUSTENDI® (bempedoic acid and ezetimibe) tablets in Europe. The application asks EMA to approve both NILEMDO and NUSTENDI to reduce cardiovascular risk in patients with or at high risk for atherosclerotic cardiovascular disease. We anticipate EMA approval in the first half of 2024.

Based on the terms of the contract with Daiichi Sankyo Europe GmbH, or DSE, we are eligible for partner milestone payments upon inclusion of cardiovascular risk reduction data in the EU label, for which payment is tied to the magnitude of the cardiovascular risk percentage reduction included in the label (among other requirements) and ranges from $200 million to $300 million. Based on the CLEAR Outcomes data, we believe we would be entitled to receive $300 million in partner milestone payments upon inclusion of cardiovascular risk reduction data in the EU label.

DSE has conveyed that it disagrees with our assessment that the CLEAR Outcomes data would support our right to receive any milestone payments upon inclusion of certain required cardiovascular risk reduction data in the EU label. On March 27, 2023, we filed a complaint in the United States District Court for the Southern District of New York seeking declaratory judgment against DSE regarding the Company's right to receive a $300 million milestone payment upon inclusion of cardiovascular risk reduction in the EU label. On May 4, 2023, we filed an amended complaint against DSE in the Southern District of New York. The complaint seeks a judicial declaration, on an expedited basis, that DSE is contractually required to make a $300 million milestone payment to Esperion upon applicable regulatory approval. On June 20, 2023, DSE filed a response to the amended complaint. Refer to Note 5 "Commitments and Contingencies" in our condensed financial statements included in this Form 10-Q for the quarter ended September 30, 2023 for further information.

Even if we are successful in enforcing our rights, there could be a delay in our receipt of the milestone payments as a result of any dispute relating to such payments. Any failure to receive or any delay in receipt of the milestone payments may

significantly impact our future capital needs, ability to recognize revenue for the milestone upon inclusion of cardiovascular risk reduction data in the EU label, and ability to fund operations.

We were incorporated in Delaware in January 2008 and commenced our operations in April 2008. Since our inception, we have focused substantially all of our efforts and financial resources on developing and commercializing bempedoic acid and the bempedoic acid / ezetimibe combination tablet. In February 2020, the FDA approved NEXLETOL and NEXLIZET. NEXLETOL was commercially available in the U.S. on March 30, 2020 and NEXLIZET was commercially available in the U.S. on June 4, 2020. We have funded our operations to date primarily through proceeds from sales of preferred stock, convertible promissory notes, warrants and pre-funded warrants, public offerings of common stock, the incurrence of indebtedness, through collaborations with third parties and revenue interest purchase agreements, and we have incurred losses in each year since our inception.

We have never been profitable and our net losses were $41.3 million and $152.9 million for the three and nine months ended September 30, 2023, respectively, and $55.1 million and $178.2 million for the three and nine months ended September 30, 2022, respectively. Substantially all of our net losses resulted from costs incurred in connection with research and development programs and selling, general and administrative costs associated with our operations. We expect to incur significant expenses and operating losses for the foreseeable future in connection with our ongoing activities, including, among others:

- commercializing NEXLETOL and NEXLIZET in the U.S; and
- pursuing other research and development activities.

Accordingly, we may need additional financing to support our continuing operations and further the development and commercialization of our products. We may seek to fund our operations and further development activities through collaborations with third parties, strategic alliances, licensing arrangements, permitted debt financings, permitted royalty-based financings, permitted public or private equity offerings or through other sources. Adequate additional financing may not be available to us on acceptable terms, or at all. Our failure to raise capital as and when needed would have a material adverse effect on our financial condition and our ability to pursue our business strategy or continue operations. We will need to generate significant revenues to achieve profitability, and we may never do so.

Product Overview

NEXLETOL is a first-in-class ATP Citrate Lyase, or ACL, inhibitor that lowers LDL-C by reducing cholesterol biosynthesis and up-regulating the LDL receptors. Completed Phase 3 studies conducted in more than 3,000 patients, with over 2,000 patients treated with NEXLETOL, demonstrated an average 18 percent placebo corrected LDL-C lowering when used in patients on moderate or high-intensity statins. NEXLETOL was approved by the FDA in February 2020 as an adjunct to diet and maximally tolerated statin therapy for the treatment of adults with HeFH or established ASCVD who require additional lowering of LDL-C.

NEXLIZET contains bempedoic acid and ezetimibe and lowers elevated LDL-C through complementary mechanisms of action by inhibiting cholesterol synthesis in the liver and absorption in the intestine. Phase 3 data demonstrated NEXLIZET lowered LDL-C by a mean of 38 percent compared to placebo when added on to maximally tolerated statins. NEXLIZET was approved by the FDA in February 2020 as an adjunct to diet and maximally tolerated statin therapy for the treatment of adults with HeFH or established ASCVD who require additional lowering of LDL-C.

NILEMDO is a first-in-class ACL inhibitor that lowers LDL-C by reducing cholesterol biosynthesis and up-regulating the LDL receptors. NILEMDO was approved by the European Commission, or EC, in March 2020 for use in adults with primary hypercholesterolemia (heterozygous familial and non-familial) or mixed dyslipidemia, as an adjunct to diet in combination with a statin or statin with other lipid-lowering therapies in adult patients unable to reach LDL-C goals with the maximum tolerated dose of a statin, or alone or in combination with other lipid-lowering therapies as an adjunct to diet in adult patients who are statin-intolerant, or for whom a statin is contraindicated.

NUSTENDI contains bempedoic acid and ezetimibe and lowers elevated LDL-C through complementary mechanisms of action by inhibiting cholesterol synthesis in the liver and absorption in the intestine. NUSTENDI was approved by the EC in March 2020 for use in adults with primary hypercholesterolemia (heterozygous familial and non-familial) or mixed dyslipidemia, as an adjunct to diet in combination with a statin in adult patients unable to reach LDL-C goals with the maximum tolerated dose of a statin in addition to ezetimibe, alone in patients who are either statin-intolerant or for whom a

statin is contraindicated, and are unable to reach LDL-C goals with ezetimibe alone, or as an adjunct to diet in adult patients already being treated with the combination of bempedoic acid and ezetimibe as separate tablets with or without statin.

During the nine months ended September 30, 2023, we incurred $39.4 million in expenses related to our CLEAR Outcomes CVOT and other ongoing clinical studies.

During the nine months ended September 30, 2022, we incurred $60.2 million in expenses related to our CLEAR Outcomes CVOT and other ongoing clinical studies.

Financial Operations Overview

Product sales, net

Product sales, net is related to our sales of NEXLETOL and NEXLIZET. NEXLETOL was commercially available in the U.S. on March 30, 2020 and NEXLIZET was commercially available in the U.S. on June 4, 2020.

Collaboration revenue

Collaboration revenue is related to our collaboration agreements with DSE, Otsuka Pharmaceutical Co., Ltd., or Otsuka, and Daiichi Sankyo Co. Ltd, or DS. Collaboration revenue in the three and nine months ended September 30, 2023 and September 30, 2022 was primarily related to sales of bulk tablets under supply agreements and royalty revenue received from collaboration partners. Under contracted supply agreements with ex-U.S. collaborators, we may manufacture and supply quantities of active pharmaceutical ingredient, or API, or bulk tablets reasonably required by ex-U.S. collaboration partners for the development or sale of licensed products in their respective territory. We recognize revenue when the collaboration partner has obtained control of the API or bulk tablets. We also receive royalties from the commercialization of such products, and record our share of the variable consideration, representing a percentage of net product sales, as collaboration revenue in the period in which such underlying sales occur and costs are incurred by the collaborators.

Cost of goods sold

Cost of goods sold is related to our net product sales of NEXLETOL and NEXLIZET and the cost of goods sold from our supply agreements with collaboration partners.

Research and Development Expenses

Our research and development expenses consist primarily of costs incurred in connection with the development of bempedoic acid and the bempedoic acid / ezetimibe combination tablet, which include:

- expenses incurred under agreements with consultants, contract research organizations, or CROs, and investigative sites that conduct our preclinical and clinical studies;
- the cost of acquiring, developing and manufacturing clinical study materials and commercial product manufacturing supply prior to product approval, including the procurement of ezetimibe in our continued development of our bempedoic acid / ezetimibe combination tablet;
- employee-related expenses, including salaries, benefits, stock-based compensation and travel expenses;
- allocated expenses for rent and maintenance of facilities, insurance and other supplies; and
- costs related to compliance with regulatory requirements.

We expense research and development costs as incurred. To date, substantially all of our research and development work has been related to bempedoic acid and the bempedoic acid / ezetimibe combination tablet. 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 us by our vendors. Our direct research and development expenses consist principally of external costs, such as fees paid to investigators, consultants, central laboratories and CROs in connection with our clinical studies. We do not allocate acquiring and manufacturing clinical study materials, salaries, stock-based compensation, employee benefits or other indirect costs related to our research and development function to specific programs.

We will continue to incur research and development expenses as they relate to other development programs or additional indications we choose to pursue. We expect research and development expenses to decrease in the second half of 2023 after having reported the full results of the CLEAR Outcomes CVOT and submitting regulatory filings to the FDA and EMA in the first half of 2023. We cannot determine with certainty the duration and completion costs associated with the ongoing or future clinical studies of bempedoic acid and the bempedoic acid / ezetimibe combination tablet. The duration, costs and timing associated with the development of bempedoic acid and the bempedoic acid / ezetimibe combination tablet will depend on a variety of factors, including uncertainties associated with the results of our clinical studies and our ability to obtain regulatory approval outside the U.S. and Europe. For example, if a regulatory authority were to require us to conduct clinical studies beyond those that we currently anticipate that will be required for the completion of clinical development or post-commercialization clinical studies of bempedoic acid or the bempedoic acid / ezetimibe combination tablet, we could be required to expend significant additional financial resources and time on the completion of clinical development or post-commercialization clinical studies of bempedoic acid and the bempedoic acid / ezetimibe combination tablet.

Selling, General and Administrative Expenses

Selling, general and administrative expenses primarily consist of salaries and related costs for personnel, including stock-based compensation, associated with our sales, executive, accounting and finance, commercial, operational and other administrative functions. Other general and administrative expenses include selling expenses, facility-related costs, communication expenses and professional fees for legal, patent prosecution, protection and review, consulting and accounting services.

We expect our selling, general and administrative expenses will increase at the end of 2023 in anticipation of potential additional global regulatory approvals for new product indications, expanded commercialization initiatives for NEXLETOL and NEXLIZET and increases in our headcount.

Interest Expense

Interest expense is related to our Revenue Interest Purchase Agreement, or RIPA, with Eiger III SA LLC, or Oberland, an affiliate of Oberland Capital and our convertible notes issued in November 2020.

Other Income, Net

Other income, net, primarily relates to interest income and the accretion or amortization of premiums and discounts earned on our cash, cash equivalents and investment securities and also includes other income related to the sale of lease vehicles.

Critical Accounting Policies and Significant Judgments and Estimates

Our discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States of America. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and the disclosure of contingent assets and liabilities in our financial statements. We evaluate our estimates and judgments on an ongoing basis. We base our estimates on historical experience, known trends and events, contractual milestones and other various factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Our actual results may differ from these estimates under different assumptions or conditions.

There have been no other material changes to the significant accounting policies previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

Results of Operations

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

	Three Months Ended September 30,		
	2023	2022	Change
	(unaudited, in thousands)		
Revenue:			
Product sales, net	$ 20,251	$ 13,964	$ 6,287
Collaboration revenue	13,718	5,016	8,702
Operating Expenses:			
Cost of goods sold	13,377	6,506	6,871
Research and development	14,885	29,143	(14,258)
Selling, general and administrative	33,240	24,954	8,286
Loss from operations	(27,533)	(41,623)	14,090
Interest expense	(14,995)	(14,153)	(842)
Other income, net	1,278	659	619
Net loss	$ (41,250)	$ (55,117)	$ 13,867

Product sales, net

Product sales, net for the three months ended September 30, 2023 was $20.3 million compared to $14.0 million for the three months ended September 30, 2022, an increase of $6.3 million. The increase is primarily due to prescription growth of NEXLETOL and NEXLIZET compared to the third quarter of 2022.

Collaboration revenue

Collaboration revenue recognized from our collaboration agreements for the three months ended September 30, 2023 was $13.7 million compared to $5.0 million for the three months ended September 30, 2022, an increase of $8.7 million. The increase is primarily due to increased product sales to our collaboration partners from our supply agreements and royalty sales growth within our partner territories.

Cost of goods sold

Cost of goods sold for the three months ended September 30, 2023 was $13.4 million compared to $6.5 million for the three months ended September 30, 2022, an increase of $6.9 million. The increase is primarily related to increased product sales to our collaboration partners from our supply agreements and increased net product sales of NEXLETOL and NEXLIZET.

Research and development expenses

Research and development expenses for the three months ended September 30, 2023, were $14.9 million, compared to $29.1 million for the three months ended September 30, 2022, a decrease of approximately $14.2 million. The decrease in research and development expenses was primarily attributable to a decrease in costs related to CLEAR Outcomes study following the announcement and presentation of our CLEAR Outcomes study results in March 2023.

Selling, general and administrative expenses

Selling, general and administrative expenses for the three months ended September 30, 2023, were $33.2 million, compared to $25.0 million for the three months ended September 30, 2022, an increase of approximately $8.2 million. The increase in selling, general and administrative expenses was primarily attributable to increased legal and promotional costs.

Interest expense

Interest expense for the three months ended September 30, 2023, was $15.0 million, compared to $14.2 million for the three months ended September 30, 2022, an increase of $0.8 million. The increase in interest expense was primarily due to additional interest expense attributable to our RIPA with Oberland.

Other income, net

Other income, net for the three months ended September 30, 2023, was $1.3 million, compared to $0.7 million for the three months ended September 30, 2022, an increase of $0.6 million. The increase in other income, net was primarily due to higher interest income on our investments due to higher interest rates.

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

	Nine Months Ended September 30,		
	2023	2022	Change
	(unaudited, in thousands)		
Revenue:			
Product sales, net	$ 57,575	$ 40,896	$ 16,679
Collaboration revenue	26,509	15,761	10,748
Operating Expenses:			
Cost of goods sold	31,815	22,807	9,008
Research and development	68,365	85,894	(17,529)
Selling, general and administrative	97,100	84,944	12,156
Loss from operations	(113,196)	(136,988)	23,792
Interest expense	(43,919)	(42,481)	(1,438)
Other income, net	4,211	1,297	2,914
Net loss	$ (152,904)	$ (178,172)	$ 25,268

Product sales, net

Product sales, net for the nine months ended September 30, 2023 was $57.6 million compared to $40.9 million for the nine months ended September 30, 2022, an increase of $16.7 million. The increase is primarily due to prescription growth of NEXLETOL and NEXLIZET compared to the nine months of 2022.

Collaboration revenue

Collaboration revenue recognized from our collaboration agreements for the nine months ended September 30, 2023 was $26.5 million compared to $15.8 million for the nine months ended September 30, 2022, an increase of $10.7 million. The increase is primarily due to increased product sales to our collaboration partners from our supply agreements and increased royalty sales growth within our partner territories.

Cost of goods sold

Cost of goods sold for the nine months ended September 30, 2023 was $31.8 million compared to $22.8 million for the nine months ended September 30, 2022, an increase of $9.0 million. The increase is primarily related to increased net product sales to our collaboration partners from our supply agreements and increased net product sales of NEXLETOL and NEXLIZET.

Research and development expenses

Research and development expenses for the nine months ended September 30, 2023, were $68.4 million, compared to $85.9 million for the nine months ended September 30, 2022, a decrease of $17.5 million. The decrease in research and development expenses was primarily attributable to a decrease in costs related to our CLEAR Outcomes study following the announcement and presentation of our CLEAR Outcomes study results in March 2023. Costs incurred in the nine months ended September 30, 2023 included the announcement and presentation of our CLEAR Outcomes study results, associated close-out activities and regulatory submissions.

Selling, general and administrative expenses

Selling, general and administrative expenses for the nine months ended September 30, 2023, were $97.1 million, compared to $84.9 million for the nine months ended September 30, 2022, an increase of $12.2 million. The increase in selling, general and administrative expenses was primarily attributable to increases in legal costs, consulting and other promotional related expenses.

Interest expense

Interest expense for the nine months ended September 30, 2023, was $43.9 million, compared to $42.5 million for the nine months ended September 30, 2022, an increase of $1.4 million. The increase in interest expense was primarily due to additional interest expense attributable to our RIPA with Oberland.

Other income, net

Other income, net for the nine months ended September 30, 2023, was $4.2 million, compared to $1.3 million for the nine months ended September 30, 2022, an increase of $2.9 million. The increase in other income, net was primarily due to higher interest income on our investments due to higher interest rates.

Liquidity and Capital Resources

While we began to generate revenue from the sales of our products in 2020, we have funded our operations to date primarily through proceeds from sales of preferred stock, convertible promissory notes and warrants, public offerings of common stock, warrants and pre-funded warrants, the incurrence of indebtedness, milestone payments from collaboration agreements and our revenue interest purchase agreement. Pursuant to the license and collaboration agreements with Daiichi Sankyo and Otsuka, we are eligible for substantial additional sales and regulatory milestone payments and royalties. Pursuant to the license and collaboration agreements entered into April 2021 with Daiichi Sankyo, we are eligible for substantial additional sales milestone payments and royalties. On February 21, 2023, we terminated the open market sales agreement with Jefferies LLC and entered into a Controlled Equity Offering Sales Agreement with Cantor Fitzgerald & Co., as sales agent, to provide for the issuance and sale by the Company of up to $70 million of common stock from time to time in “at-the-market” offerings, or the 2023 ATM Program, pursuant to our existing Form S-3 and the prospectus supplement filed on February 21, 2023. During the nine month period ended September 30, 2023, we issued 3,312,908 shares of common stock resulting in net proceeds of approximately $4.4 million after deducting $0.4 million of underwriting discounts and commissions and other expenses, pursuant to the 2023 ATM Program. We may continue to use the 2023 ATM program or issue stock through other capital markets to address potential funding requirements. On March 19, 2023, we entered into a Securities Purchase Agreement, pursuant to which we agreed to issue and sell, in a registered direct offering, shares of common stock, pre-funded warrants, and warrants to purchase common stock. In connection with the Securities Purchase Agreement, we amended certain existing warrants to purchase up to an aggregate of 9,024,212 shares of the Company's common stock that were previously issued in December 2021 at an exercise price of $9.00 per share and had an expiration date of December 7, 2023, effective upon the closing of the offering, such that the amended warrants have a reduced exercise price of $1.55 per share and expire three and one half years following the closing of the Offering, for additional consideration of $0.125 per amended warrant. We received net proceeds of approximately $51.3 million related to the offering and approximately $1.1 million in connection with the amended warrants. We anticipate that we will incur losses for the foreseeable future as we continue to incur substantial expenses related to the ongoing commercialization of NEXLETOL and NEXLIZET and expenses associated with our research and development activities. We anticipate that our current cash, cash equivalents, investments, expected future net product sales of NEXLETOL and NEXLIZET, and expected future revenue under our collaboration agreements is sufficient to fund continuing operations for the foreseeable future.

As of September 30, 2023, our primary sources of liquidity were our cash and cash equivalents which totaled $114.8 million. We invest our cash equivalents and investments in highly liquid, interest-bearing investment-grade securities and government securities to preserve principal.

The following table summarizes the primary sources and uses of cash for the periods presented below:

	Nine Months Ended September 30,	
	2023	2022
	(in thousands)	
Net cash used in operating activities	$ (98,431)	$ (132,355)
Net cash provided by investing activities	42,500	19,898
Net cash provided by financing activities	45,989	62,964
Net decrease in cash and cash equivalents	$ (9,942)	$ (49,493)

Operating Activities

We have incurred and expect to continue to incur, significant costs related to the commercialization of NEXLETOL and NEXLIZET and related to ongoing research and development, regulatory and other clinical study costs associated with the development of bempedoic acid and the bempedoic acid / ezetimibe combination tablet.

Net cash used in operating activities totaled $98.4 million for the nine months ended September 30, 2023, compared to $132.4 million for the nine months ended September 30, 2022. Net cash used for the nine months ended September 30, 2023 and 2022 consisted primarily of net product sales of NEXLETOL and NEXLIZET fully offset by cash used to fund the commercialization activities of NEXLETOL and NEXLIZET and the research and development costs related to bempedoic acid and the bempedoic acid / ezetimibe combination tablet, adjusted for non-cash expenses such as stock-based compensation expense, interest expense related to our RIPA with Oberland, depreciation and amortization and changes in working capital.

Investing Activities

Net cash provided by investing activities of $42.5 million for the nine months ended September 30, 2023 consisted of proceeds from the sales of highly liquid, interest bearing investment grade and government securities. Net cash provided by investing activities of $19.9 million for the nine months ended September 30, 2022 consisted primarily of proceeds from the sales of highly liquid, interest bearing investment grade and government securities.

Financing Activities

Net cash provided by financing activities of $46.0 million for the nine months ended September 30, 2023 related primarily to proceeds from our registered direct offering and net proceeds from our 2023 ATM Program, partially offset by payments on our revenue interest liability. Net cash provided by financing activities of $63.0 million for the nine months ended September 30, 2022 related primarily to proceeds from our New ATM program, as defined below, partially offset by payments on our revenue interest liability.

On April 15, 2022, we filed a new registration statement on Form S-3, which registers the offering, issuance and sale of up to $239 million of common stock from time to time in “at-the-market” offerings, or the New ATM Program. During the year ended December 31, 2022, we issued 13,043,797 shares of common stock, resulting in net proceeds of approximately $90.8 million after deducting $3.1 million of underwriting discounts and commissions and other expenses, pursuant to the New ATM Program. On February 21, 2023, we terminated the open market sales agreement with Jefferies LLC and entered into a Controlled Equity Offering Sales Agreement with Cantor Fitzgerald & Co., as sales agent, to provide for the issuance and sale by the Company of up to $70 million of common stock from time to time in “at-the-market” offerings, or the 2023 ATM Program, pursuant to our existing Form S-3 and the prospectus supplement filed on February 21, 2023. During the nine month period ended September 30, 2023, we issued 3,312,908 shares of common stock resulting in net proceeds of approximately $4.4 million after deducting $0.4 million of underwriting discounts and commissions and other expenses, pursuant to the 2023 ATM Program. We may continue to use the 2023 ATM Program to address potential short-term or long-term funding requirements that may arise. Such program will continue to be subject to the volatility of the price of our common stock and general market conditions.

In December 2021, we entered into an underwriting agreement where we sold 32,142,858 shares of common stock and accompanying warrants to purchase up to an aggregate of 32,142,858 shares of our common stock. We also granted the underwriters a 30-day option to purchase up to 4,821,428 additional shares of common stock and/or accompanying warrants to purchase an aggregate of up to 4,821,428 shares of our common stock. The underwriters exercised the option to purchase additional warrants to purchase 4,821,428 shares of Common Stock. The aggregate net proceeds received by us from the offering was $208.7 million, after deducting underwriting discounts and commissions and other estimated offering expenses payable by us and excluding the net proceeds, if any, from the exercise of the common warrants. The warrants are immediately

exercisable and will expire two years from the date of issuance, at an exercise price of $9.00 per share, which may provide us with additional funding, if such warrants are exercised by their holders.

On March 19, 2023, we entered into a Securities Purchase Agreement, pursuant to which the Company agreed to issue and sell, in a registered direct offering, 12,205,000 shares of common stock, pre-funded warrants to purchase up to an aggregate of 20,965,747 shares of Common Stock, and warrants to purchase up to 33,170,747 shares of Common Stock. The combined purchase price of each share of Common Stock and accompanying Warrant is $1.675 per share. The purchase price of each Pre-Funded Warrant and the accompanying Warrant is $1.674 (equal to the combined purchase price per share of Common Stock and accompanying Warrant, minus $0.001). The Offering closed on March 22, 2023. Each Warrant is exercisable for one share of Common Stock at an exercise price of $1.55 per share, which may provide us with additional funding, if such warrants are exercised by their holders. The Warrants are immediately exercisable and will expire 3.5 years from the original issuance date. Each Pre-Funded Warrant is exercisable for one share of Common Stock at an exercise price of $0.001 per share. The Pre-Funded Warrants are immediately exercisable and may be exercised at any time until all of the Pre-Funded Warrants are exercised in full. As of September 30, 2023, no pre-funded warrants were outstanding. In connection with the Offering, we amended certain existing warrants to purchase up to an aggregate of 9,024,212 shares of the Company's common stock that were previously issued in December 2021 at an exercise price of $9.00 per share and had an expiration date of December 7, 2023, effective upon the closing of the Offering, such that the amended warrants have a reduced exercise price of $1.55 per share and expire three and one half years following the closing of the Offering, for additional consideration of $0.125 per amended warrant. We received net proceeds of approximately $51.3 million related to the offering after deducting placement agent fees and related offering expenses of $4.2 million and approximately $1.1 million in connection with the amended warrants after deducting placement fees of $0.1 million. Refer to Note 13 "Stockholders' Deficit" in our condensed financial statements included in this Form 10-Q for the quarter ended September 30, 2023 for further information.

In 2019, we entered into a RIPA with Oberland. Pursuant to the RIPA, Oberland paid us $125.0 million at closing, less certain issuance costs, and, subject to the terms and conditions of the RIPA, we received an additional $25.0 million upon regulatory approval of NEXLETOL in 2020 and were eligible to receive an additional $50.0 million at our option upon reaching certain sales thresholds. In April 2021, we entered into Amendment No. 2 to the RIPA and Oberland waived the original trailing six-month world-wide net sales condition to the third installment payment under the RIPA and released the final $50 million payment payable to us under the terms of the RIPA. The amendment also updated the tiered payment percentage. As the quarterly net revenue from sales of NEXLETOL and NEXLIZET and certain other products in the United States did not exceed $15.0 million for the quarter ended September 30, 2021, we deposited $50.0 million in a deposit account with Oberland, which reduced our unrestricted cash. On November 23, 2022, we entered into a waiver and amendment to the RIPA with Oberland, in which we agreed to make a one-time partial call payment with regards to the Revenue Interests (as defined in the RIPA) in an amount equal to $50 million from the restricted cash account (the “Partial Call”). Under this amendment, the amount of the Cumulative Purchaser Payments (as defined in the RIPA) was reduced to $177,777,778. As consideration for the payments, Oberland has the right to receive certain revenue interests from us based on the net sales of certain products which will be tiered payments ranging from 3.3% to 10% of our net sales in the covered territory (as detailed in the RIPA). Esperion reacquires 100% revenue rights upon repayment completion. We recorded the proceeds from the RIPA as a liability on the balance sheets and are accounting for the RIPA under the effective-interest method over the estimated life of the RIPA. Future payments under the RIPA may range from $37.0 million in the next year to a maximum total payment of $340.2 million beyond one year. Per the terms of the agreement, every $100 million of net sales generated, less than or equal to $250 million in an annual aggregate, would result in a repayment obligation of approximately $10.0 million or 10% at the stated repayment rate in the first year. In the future, as net sales thresholds set forth in the agreement are met and the repayment percentage rate changes, the amount of the obligation and timing of payment is likely to change. As the U.S. net sales were less than $350 million for the year ended December 31, 2021, the Covered Territory was expanded to include worldwide sales beginning in 2022. A significant increase or decrease in net sales will materially impact the revenue interest liability, interest expense and the time period for repayment. Refer to Note 8 "Liability Related to the Revenue Interest Purchase Agreement" in our condensed financial statements included in this Form 10-Q for the quarter ended September 30, 2023 for further information.

On November 16, 2020, we issued $250.0 million aggregate principal amount of 4.00% convertible senior subordinated notes due 2025 to certain financial institutions as the initial purchasers of the convertible notes. An additional $30.0 million of additional convertible notes (collectively, the "Convertible Notes"), which were issued pursuant to the exercise of the initial purchasers' option to purchase such convertible notes, closed on November 18, 2020. On October 22, 2021, we entered into the Exchange Agreement with the Holders of our Convertible Notes. Under the terms of the Exchange Agreement the Holders agreed to exchange with us $15.0 million aggregate principal amount of Convertible Notes held in the aggregate by them (and accrued interest thereon) for shares of our common stock, which closed on November 3, 2021. Future payments under the convertible notes include annual interest of $10.6 million and a principal payment of $265.0 million in 2025. Refer to Note 9 "Convertible Notes" in our condensed financial statements included in this Form 10-Q for the quarter ended September 30, 2023 for further information.

Plan of Operations and Funding Requirements

We expect to continue to incur significant expenses and operating losses for the foreseeable future in connection with our continued commercialization activities associated with NEXLETOL and NEXLIZET in the U.S. Pursuant to the license and

collaboration agreements with DSE, Otsuka, and DS, we are eligible for substantial additional sales and regulatory milestone payments and royalties. We estimate that current cash resources, proceeds to be received in the future for product sales and proceeds under the collaboration agreements with Daiichi Sankyo and Otsuka are sufficient to allow us to fund continuing operations for the foreseeable future. We have based these estimates on assumptions that may prove to be wrong, and we may use our available capital resources sooner than we currently expect. We may need to secure additional cash resources or implement certain additional cost reduction initiatives to continue to fund the commercialization and further development of bempedoic acid and the bempedoic acid / ezetimibe combination tablet, particularly if our net product sales do not meet our expectations. We caution that receipt of any milestone payment amounts is subject to risks and uncertainties, including the Company obtaining the relevant regulatory approvals and marketing authorizations, the approval of the required EU and US labels, the absence of any material disagreements or disputes with regulators or our collaboration partners and the ultimate timing and payment of such milestone payment amounts by our collaboration partners. In addition, while we expect that we will be entitled to the foregoing milestone payments, our inability to receive or a delay in receipt of some or all of our milestone payments and other royalty amounts from our collaboration partners may significantly impact our future capital needs and ability to fund operations. Because of the numerous risks and uncertainties associated with the development and ongoing commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination tablet and the extent to which we entered and may enter into collaborations with pharmaceutical partners regarding the development and commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination tablet, we are unable to estimate the amounts of increased capital outlays and operating expenses associated with completing the development and commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination tablet. Our future funding requirements will depend on many factors, including, but not limited to:

- our ability to successfully develop and commercialize NEXLETOL and NEXLIZET or other product candidates;
- the costs, timing and outcomes of our ongoing clinical studies of bempedoic acid and the bempedoic acid / ezetimibe combination tablet;
- the time and cost necessary to obtain regulatory approvals for bempedoic acid and the bempedoic acid / ezetimibe combination tablet outside the U.S. and Europe and regulatory approvals for cardiovascular risk reduction in the U.S. and Europe;
- our ability to establish any future collaboration or commercialization arrangements on favorable terms, if at all;
- our ability to realize the intended benefits of our existing and future collaboration and partnerships, including receiving potential milestone payments from collaboration partners;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property-related claims; and
- the implementation of operational and financial information technology.

Until such time, if ever, as we can generate U.S. substantial product revenues, we expect to finance our cash needs through a combination of collaborations with third parties, strategic alliances, licensing arrangements, permitted debt financings, permitted royalty-based financings and equity offerings or other sources. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interest of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a common stockholder. Debt financing, if available and permitted under the terms of our RIPA, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through collaborations, strategic alliances or licensing arrangements with pharmaceutical partners or royalty-based financing arrangements, such as the collaboration arrangement with DSE, Otsuka and DS, and the RIPA with Oberland, we may have to relinquish valuable rights to our technologies, future revenue streams or grant licenses on terms that may not be favorable to us. For instance, as part of the RIPA with Oberland, Oberland has the right to receive certain revenue interests from us based on the net sales of certain products, and we have granted Oberland a senior security interest in certain of our assets. If our cash flows and capital resources are insufficient to allow us to make required payments, we may have to reduce or delay capital expenditures, sell assets or seek additional capital. If we raise funds by selling additional equity, such sale would result in dilution to our stockholders. If we are unable to raise additional funds through equity or permitted debt financings or through collaborations, strategic alliances or licensing arrangements or permitted royalty-based financing arrangements when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market bempedoic acid and the bempedoic acid / ezetimibe combination tablet that we would otherwise prefer to develop and market ourselves.

We do not currently have, nor did we have during the periods presented, any off-balance sheet arrangements as defined by Securities and Exchange Commission rules.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There have been no material changes with respect to the information appearing in Part II, Item 7A, “Quantitative and Qualitative Disclosures About Market Risk,” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Securities and Exchange Act of 1934 is (1) recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms and (2) accumulated and communicated to our management, including our President and Chief Executive Officer, who is our principal executive officer, and our Chief Financial Officer, who is our principal financial officer, to allow timely decisions regarding required disclosure.

As of September 30, 2023, our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934). Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our principal executive officer and principal financial officer have concluded based upon the evaluation described above that, as of September 30, 2023, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There were no changes to our internal control over financial reporting that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

The information required with respect to this item can be found under “Commitments and Contingencies” in Note 5 to our condensed financial statements included elsewhere in this Form 10-Q and is incorporated by reference into this Item 1.

In the future, we may become party to legal matters and claims arising in the ordinary course of business, the resolution of which we do not anticipate would have a material adverse impact on our financial position, results of operations or cash flows.

Item 1A. Risk Factors

Except for the historical information contained herein or incorporated by reference, this report and the information incorporated by reference contains forward-looking statements that involve risks and uncertainties. These statements include projections about our accounting and finances, plans and objectives for the future, future operating and economic performance and other statements regarding future performance. These statements are not guarantees of future performance or events. Our actual results could differ materially from those discussed in this report. Factors that could cause or contribute to these differences include, but are not limited to, those discussed in Part I, Item 2 entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere throughout this report and in any documents incorporated in this report by reference.

You should consider carefully the following risk factors, together with those set forth in Part I, Item 1A in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 and in all of the other information included or incorporated in this report. The following risk factors represent new risk factors or those containing changes, including material changes, to the risk factors set forth in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2022. If any of the previously identified or following risks, either alone or taken together, or other risks not presently known to us or that we currently believe to not be significant, develop into actual events, then our business, financial condition, results of operations or prospects could be materially adversely affected. If that happens, the market price of our common stock could decline, and stockholders may lose all or part of their investment.

Our stock price may be volatile and an investment in our stock may decline. If we fail to comply with the continuing listing standards of Nasdaq, our securities could be delisted.

Our common stock has experienced, and may continue to experience, substantial price volatility. The trading price of common stock may fluctuate significantly in response to a number of factors, many of which are beyond our control. For instance, if our financial results are below the expectations of securities analysts and investors, the market price of common stock could decrease, perhaps significantly. Other factors that may affect the market price of common stock, including announcements relating to significant corporate transactions, fluctuations in quarterly and annual financial results, operating and stock price performance of companies that investors deem comparable to us, changes in government regulation or related proposals and international conflict. In addition, the U.S. securities markets have experienced significant price and volume fluctuations, and these fluctuations often have been unrelated to the operating performance of companies in these markets. Any volatility of or a significant decrease in the market price of common stock could also limit our ability to raise capital by issuing additional equity. Further, if we were to be the object of securities class action litigation as a result of volatility in common stock price or for other reasons, it could result in substantial costs and diversion of management’s attention and resources, which could negatively affect our financial results. The occurrence of any one or more of the factors noted in these risk factors could cause the market price of our common stock to remain below the $1.00 Nasdaq minimum price requirement.

Inadequate funding for the FDA, the SEC and other government agencies, including from government shutdowns, or other disruptions to these agencies’ operations, could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal business functions on which the operation of our business may rely, which could negatively impact our business.

The ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, the ability to hire and retain key personnel and accept the payment of user fees, and statutory, regulatory and policy changes. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of the SEC and other government agencies on which our operations may rely, including those that fund research and development activities, is subject to the political process, which is inherently fluid and unpredictable.

Disruptions at the FDA and other agencies may also slow the time necessary for product applications to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. If a prolonged government shutdown occurs, if the FDA is required to furlough review staff or necessary employees, or if the agency operations are otherwise impacted, it could significantly affect the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business. Further, future government shutdowns could impact our ability to access the public markets and obtain necessary capital in order to properly capitalize and continue our operations.

If a collaborative partner terminates or fails to perform its obligations under an agreement with us, the commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination tablet could be delayed or terminated, and the receipt of any milestone payment could be delayed.

In January 2019, we entered into a license and collaboration agreement with Daiichi Sankyo Europe GmbH, or DSE, pursuant to which DSE will be responsible for the commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination tablet in the DSE Territory. In April 2020, we entered into a license and collaboration agreement with Otsuka Pharmaceutical Co., Ltd., or Otsuka, pursuant to which Otsuka will be responsible for the commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination tablet in Japan. Otsuka will be responsible for all development and regulatory activities in Japan. In addition, Otsuka will fund all clinical development costs associated with the program in Japan, if approved. In April 2021, we entered into a license and collaboration agreement with Daiichi Sankyo Co. Ltd, or DS, pursuant to which DS will be responsible for the commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination in South Korea, Taiwan, Hong Kong, Thailand, Vietnam, Brazil, Macao, Cambodia and Myanmar, or the DS Territory. Except for certain development activities in South Korea and Taiwan, DS will be responsible for development and commercialization in these territories. We may also enter into similar arrangements with other partners or collaborators to commercialize bempedoic acid and the bempedoic acid / ezetimibe combination tablet, outside of the United States, Europe, Japan, or the DS Territory, or to further commercialize bempedoic acid or the bempedoic acid / ezetimibe combination tablet in the broader cholesterol modifying market in the United States. If DSE, Otsuka, DS or any of our future collaborative partners does not devote sufficient time and resources to the collaboration arrangement with us, we may not realize the potential commercial benefits of the arrangement, and our results of operations may be materially adversely affected. In addition, if DSE, Otsuka or DS or any such future collaboration partner were to breach or terminate its arrangements with us, the commercialization of bempedoic acid or the bempedoic acid / ezetimibe combination tablet could be delayed, curtailed or terminated because we may not have sufficient financial resources or capabilities to continue commercialization of bempedoic acid or the bempedoic acid / ezetimibe combination tablet on our own in such locations. On March 27, 2023, we filed a complaint in the United States District Court for the Southern District of New York seeking declaratory judgment against DSE regarding the Company's right to receive a $300 million milestone payment upon inclusion of cardiovascular risk reduction in the EU label that correlates with a relative risk reduction rate of at least 20%, based on the results of the CLEAR Outcomes. On May 4, 2023, we filed an amended complaint against DSE in the Southern District of New York which seeks a judicial declaration, on an expedited basis, that DSE is contractually required to make a $300 million milestone payment to the Company upon applicable regulatory approval. On June 20, 2023, DSE filed a response to our amended complaint. Even if we are successful in enforcing our rights, there could be a delay in our receipt of the milestone payments as a result of this or any other dispute relating to such payments. Any failure to receive or any delay in receipt of the milestone payments may significantly impact our future capital needs.

Pursuant to the collaboration arrangement with DSE, we will receive significant commercial and regulatory milestone payments, as well as tiered fifteen percent (15%) to twenty-five percent (25%) royalties on certain net DSE Territory sales. Pursuant to the collaboration arrangement with Otsuka, we will receive significant commercial and regulatory milestone payments, as well as tiered fifteen percent (15%) to thirty percent (30%) royalties on certain net sales in Japan. Pursuant to the collaboration agreement with DS, we will receive significant commercial milestone payments, as well as tiered royalties ranging from five percent (5%) to twenty percent (20%) on net sales in the DS Territory. Similar to these collaboration arrangements, much of the potential revenue from future collaborations may consist of contingent payments, such as payments for achieving regulatory milestones or royalties payable on sales of drugs. The milestone and royalty revenue that we may receive under these collaborations will depend upon our collaborators' ability to successfully introduce, market and sell new products, and on our ability to obtain the relevant regulatory approvals. In addition, collaborators may decide to enter into arrangements with third parties to commercialize products developed under collaborations using our technologies, which could reduce the milestone and royalty revenue that we may receive, if any. DSE, Otsuka, DS and our future collaboration partners may fail to develop or effectively commercialize products using our products or technologies because they:

- decide not to devote the necessary resources due to internal constraints, such as limited personnel with the requisite expertise, limited cash resources or specialized equipment limitations, or the belief that other drug development programs may have a higher likelihood of obtaining marketing approval or may potentially generate a greater return on investment;

- decide to pursue other technologies or develop other product candidates, either on their own or in collaboration with others, including our competitors, to treat the same diseases targeted by our own collaborative programs;
- do not have sufficient resources necessary to carry the product candidate through clinical development, marketing approval and commercialization; or
- cannot obtain the necessary marketing approvals.

Receipt of any milestone payment amounts is subject to risks and uncertainties, including our obtaining the relevant regulatory approvals and marketing authorizations, the approval of the required EU and US labels, the absence of any material disagreements or disputes with regulators or our collaboration partners and the ultimate timing and payment of such milestone payment amounts by our collaboration partners. In addition, while we expect that we will be entitled to the foregoing milestone payments, our inability to receive some or all of our milestone payments and other royalty amounts from our collaboration partners may significantly impact our future capital needs.

Competition may negatively impact a partner's focus on and commitment to bempedoic acid or the bempedoic acid / ezetimibe combination tablet and, as a result, could delay or otherwise negatively affect the commercialization of bempedoic acid or the bempedoic acid / ezetimibe combination tablet outside of the United States or in the broader cholesterol modifying market in the United States. If DSE, Otsuka, DS and our future collaboration partners fail to develop or effectively commercialize bempedoic acid or the bempedoic acid / ezetimibe combination tablet for any of these reasons, our sales of bempedoic acid or the bempedoic acid / ezetimibe combination tablet may be limited, which would have a material adverse effect on our operating results and financial condition.

Conditions in the banking system and financial markets, including the failure of banks and financial institutions, could have an adverse effect on our operations and financial results.

Actual events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions, transactional counterparties or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, have in the past and may in the future lead to market-wide liquidity problems. These events exposed vulnerabilities in the banking sector, including legal uncertainties, significant volatility and contagion risk, and caused market prices of regional bank stocks to plummet.

As of the date of this Quarterly Report on Form 10-Q, we have not experienced any adverse impact to our liquidity or to our current and projected business operations, financial condition or results of operations as a result of these bank failures; however, we are unable to predict the extent or nature of the impacts of these evolving circumstances at this time. If, for example, other banks and financial institutions enter receivership or become insolvent in the future in response to financial conditions affecting the banking system and financial markets, our ability to access our existing cash, cash equivalents and investments may be threatened.

Item 6. Exhibits

The exhibits filed or furnished as part of this Quarterly Report on Form 10-Q are set forth on the Exhibit Index, which Exhibit Index is incorporated herein by reference.

EXHIBIT INDEX

		Incorporated by Reference to:			
Exhibit No.	Description	Form or Schedule	Exhibit No.	Filing Date with SEC	SEC File Number
3.1	Amended and Restated Certificate of Incorporation of the Registrant	8-K	3.2	June 12, 2013	333-188595
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Registrant	8-K	3.1	May 26, 2022	001-35986
3.3	Certificate of Validation relating to Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant dated May 26, 2022	8-K	3.1	September 20, 2022	001-35986
3.4	Certificate of Amendment No. 2 to Amended and Restated Certificate of Incorporation of the Registrant	8-K	3.1	June 15, 2023	001-35986
3.5	Second Amended and Restated Bylaws of the Registrant dated April 29, 2021	10-Q	3.1	May 4, 2021	001-35986
4.1	Specimen Common Stock Certificate	S-1	4.1	June 12, 2013	333-188595
10.1#	Second Amendment to 2017 Incentive Plan	S-8	99.3	August 24, 2023	333-274183
31.1*	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				
31.2*	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-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 Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				
101.SCH*	Inline XBRL Taxonomy Extension Schema Document				
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document				
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document				
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document				
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document				
104*	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101.*)				

* Filed herewith.

Management contract or compensatory plan or arrangement.

+ The certification furnished in Exhibit 32.1 hereto is deemed to be furnished with this Quarterly Report on Form 10-Q and will not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, except to the extent that the Registrant specifically incorporates it by reference.

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.

ESPERION THERAPEUTICS, INC.

November 7, 2023 By: /s/ Sheldon L. Koenig

Sheldon L. Koenig

President and Chief Executive Officer

(Principal Executive Officer)

November 7, 2023 By: /s/ Benjamin Halladay

Benjamin Halladay

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

Exhibit 31.1

Certification

I, Sheldon L. Koenig, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended September 30, 2023, of Esperion Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2023

/s/ Sheldon L. Koenig

Sheldon L. Koenig

President and Chief Executive Officer

(Principal Executive Officer)

Exhibit 31.2

Certification

I, Benjamin Halladay, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended September 30, 2023, of Esperion Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2023

/s/ Benjamin Halladay

Benjamin Halladay

Chief Financial Officer

(Principal Financial Officer and Principal Accounting 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

In connection with the quarterly report on Form 10-Q of Esperion Therapeutics, Inc. (the "Company") for the period ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of Esperion Therapeutics, Inc., hereby certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to my knowledge as of the date hereof:

1) the Report which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

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

Date: November 7, 2023

/s/ Sheldon L. Koenig

Sheldon L. Koenig

President and Chief Executive Officer

(Principal Executive Officer)

/s/ Benjamin Halladay

Benjamin Halladay

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)