

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

FORM 10-K/A

(Amendment No. 1)

(Mark One)

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

For the fiscal year ended December 31, 2023

OR

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

For the transition period from _____ to _____

Commission file number: 001-39094

PHATHOM PHARMACEUTICALS, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

100 Campus Drive, Suite 102
Florham Park, New Jersey
(Address of Principal Executive Offices)

82-4151574
(I.R.S. Employer
Identification No.)

07932
(Zip Code)

Registrant's Telephone Number, Including Area Code: (877) 742-8466

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 \$0.0001 per share	PHAT	The Nasdaq Global Select Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

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

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

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

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes Oxley Act (15 U.S.C. 7262 (b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

As of June 30, 2023, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately \$526.0 million, based on the closing price of the registrant's common stock on the Nasdaq Global Select Market of \$14.32 per share.

As of March 4, 2024, the registrant had 58,477,351 shares of common stock (\$0.0001 par value) outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Certain sections of the registrant's definitive proxy statement for the 2024 annual meeting of stockholders to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Form 10-K are incorporated by reference into Part III of this Form 10-K.

EXPLANATORY NOTE

Phathom Pharmaceuticals, Inc., or the Company, is filing this Amendment No. 1, or the Amendment, on Form 10-K/A to amend its original Annual Report on Form 10-K for the fiscal year ended December 31, 2023, or the Original Form 10-K, originally filed with the Securities and Exchange Commission, or SEC, on March 7, 2024, for the sole purpose of filing revised Exhibits 31.1 and 31.2 in order to include in the certifications set forth in such exhibits the language of revised paragraph 4(b), which language was inadvertently omitted from the certifications when originally filed as Exhibits 31.1 and 31.2. This Amendment consists solely of the preceding cover page, this explanatory note, Item 8, Item 9A, Item 15, the list of exhibits filed with this Amendment, the signature page and the revised certifications filed as Exhibits 31.1 and 31.2 to this Amendment and the required certifications required by the Sarbanes-Oxley Act in connection with the filing of this Amendment.

Except as described above, this Amendment does not reflect events occurring after the date of the filing of the Original Form 10-K or modify or update any of the other disclosures contained therein in any way. Accordingly, this Amendment should be read in conjunction with the Original Form 10-K and the Company's other filings with the SEC. This Amendment does not reflect events that may have occurred subsequent to the filing of the Original Form 10-K. The filing of this Amendment is not an admission that the Original Form 10-K, when filed, included any untrue statement of a material fact or omitted to state a material fact necessary to make a statement not misleading.

PART II

Item 8. Financial Statements and Supplementary Data

The financial statements required pursuant to this item are incorporated by reference herein from the applicable information included in Item 15 of this annual report on Form 10-K/A and are presented beginning on page F-1.

Item 9A. Controls and Procedures

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our periodic and current reports that we file with the SEC is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable and not absolute assurance of achieving the desired control objectives. In reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, the design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, control may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act as of the end of the period covered by this annual report. Based on such evaluation, our principal executive officer and principal financial officer have concluded that as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act). Internal control over financial reporting is a process designed under the supervision and with the participation of our management to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. Management conducted an assessment of the effectiveness of our internal control over financial reporting based on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework (2013 Framework). Based on this assessment, our management concluded that, as of December 31, 2023, our internal control over financial reporting was effective.

Attestation Report of the Registered Public Accounting Firm

This annual report on Form 10-K/A does not include an attestation report of our registered public accounting firm due to an exemption provided by the JOBS Act for "emerging growth companies."

Changes in Internal Control Over Financial Reporting

During the quarter ended December 31, 2023, we implemented processes and internal controls to record product revenue, cost of product revenues, accounts receivable, and inventory as a result of the FDA approval and the U.S commercial launch of VOQUEZNA, VOQUEZNA TRIPLE PAK, and VOQUEZNA DUAL PAK. The implementation of these processes resulted in material changes to our internal controls over financial reporting. There were no other changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act), identified in connection with the evaluation of such internal control that occurred during the fourth quarter ended December 31, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART IV

Item 15. Exhibits, Financial Statement Schedules

1. All financial statements.

The financial statements of Phathom Pharmaceuticals, Inc., together with the report thereon of Ernst & Young LLP, an independent registered public accounting firm, are included in this annual report on Form 10-K/A beginning on page F-1.

2. Financial statement schedules.

All schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

3. Exhibits

A list of exhibits is set forth on the Exhibit Index immediately preceding the signature page of this annual report on Form 10-K/A and is incorporated herein by reference.

Phathom Pharmaceuticals, Inc.
Index to Financial Statements

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Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Phathom Pharmaceuticals, Inc.

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Phathom Pharmaceuticals, Inc. (the Company) as of December 31, 2023 and 2022, the related statements of operations and comprehensive loss, stockholders' equity (deficit) and cash flows for each of the two years in the period ended December 31, 2023, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2023, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2019.

Iselin, New Jersey

March 7, 2024

PHATHOM PHARMACEUTICALS, INC.
Balance Sheets
(in thousands, except share and par value amounts)

	December 31, 2023	December 31, 2022
Assets		
Current assets:		
Cash and cash equivalents	\$ 381,393	\$ 155,385
Prepaid expenses and other current assets	13,194	5,127
Accounts receivable, net	1,637	—
Inventory	1,208	—
Total current assets	397,432	160,512
Property, plant and equipment, net	2,146	1,207
Operating lease right-of-use assets	1,475	2,287
Restricted cash	2,863	505
Inventory, noncurrent	8,234	—
Other long-term assets	1,692	299
Total assets	\$ 413,842	\$ 164,810
Liabilities and Stockholders' Deficit		
Current liabilities:		
Accounts payable (including related party amounts of \$25 and \$35, respectively)	\$ 12,601	\$ 9,997
Accrued expenses (including related party amounts of \$2,694 and \$2,499, respectively)	17,197	14,678
Accrued interest	1,146	854
Operating lease liabilities, current	726	708
Current portion of revenue interest financing liability	7,111	—
Total current liabilities	38,781	26,237
Long-term debt, net of discount	137,842	95,264
Revenue interest financing liability	299,816	109,525
Operating lease liabilities	462	1,098
Other long-term liabilities	9,700	7,500
Total liabilities	486,601	239,624
Commitments and contingencies (Note 4)		
Stockholders' deficit:		
Preferred stock, \$0.0001 par value; authorized shares — 40,000,000 at December 31, 2023 and December 31, 2022; no shares issued and outstanding at December 31, 2023 and December 31, 2022	—	—
Common stock, \$0.0001 par value; authorized shares — 400,000,000 at December 31, 2023 and December 31, 2022; issued shares — 57,970,044 and 41,723,308 at December 31, 2023 and December 31, 2022, respectively; outstanding shares — 57,970,044 and 41,468,871 at December 31, 2023 and December 31, 2022, respectively	5	3
Treasury stock — 19 shares at December 31, 2023 and December 31, 2022	—	—
Additional paid-in capital	855,921	652,276
Accumulated deficit	(928,685)	(727,093)
Total stockholders' deficit	(72,759)	(74,814)
Total liabilities and stockholders' deficit	\$ 413,842	\$ 164,810

See accompanying notes.

PHATHOM PHARMACEUTICALS, INC.
Statements of Operations and Comprehensive Loss
(in thousands, except share and per share amounts)

	Years Ended December 31,	
	2023	2022
Product revenue, net	\$ 682	\$ —
Cost of revenue	167	—
Gross profit	515	—
Operating expenses:		
Research and development (includes related party amounts of \$760 and \$2,123, respectively)	49,899	71,441
Selling, general and administrative (includes related party amounts of \$55 and \$0, respectively)	117,928	100,999
Total operating expenses	167,827	172,440
Loss from operations	(167,312)	(172,440)
Other income (expense):		
Interest income	7,876	2,132
Interest expense	(41,968)	(27,305)
Other (expense), net	(188)	(110)
Total other expense	(34,280)	(25,283)
Net loss and comprehensive loss	\$ (201,592)	\$ (197,723)
Net loss per share, basic and diluted	\$ (3.93)	\$ (5.05)
Weighted-average shares of common stock outstanding, basic and diluted	51,289,092	39,118,215

See accompanying notes

PHATHOM PHARMACEUTICALS, INC.
Statements of Stockholders' Equity (Deficit)
(in thousands, except share amounts)

	Common Stock		Treasury Stock	Additional Paid-in	Accumulated	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Capital	Deficit	
Balance at December 31, 2022	41,468,871	\$ 3	19	\$ 652,276	\$ (727,093)	\$ (74,814)
401(k) matching contribution	135,956	—	—	1,612	—	1,612
Vesting of restricted shares, performance stock units, and restricted stock units	1,843,954	—	—	6	—	6
Stock-based compensation	—	—	—	45,025	—	45,025
ESPP shares issued	196,873	—	—	1,417	—	1,417
Issuance of common stock under ATM facility	1,514,219	1	—	14,072	—	14,073
Issuance of common stock from exercise of stock options	16,421	—	—	124	—	124
Issuance of common stock in connection with underwritten public offering, net	12,793,750	1	—	141,389	—	141,390
Net loss	—	—	—	—	(201,592)	(201,592)
Balance at December 31, 2023	57,970,044	\$ 5	19	\$ 855,921	\$ (928,685)	\$ (72,759)

	Common Stock		Treasury Stock	Additional Paid-in	Accumulated	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Capital	Deficit	
Balance at December 31, 2021	30,511,226	\$ 3	1	\$ 601,523	\$ (529,370)	\$ 72,156
Cashless exercise of common stock warrants	7,359,285	—	18	—	—	—
401(k) matching contribution	101,540	—	—	1,116	—	1,116
Vesting of restricted shares and restricted stock units	992,825	—	—	—	—	—
Issuance of common stock under ATM facility	2,414,897	—	—	24,595	—	24,595
Stock-based compensation	—	—	—	24,133	—	24,133
ESPP shares issued	89,098	—	—	909	—	909
Net loss	—	—	—	—	(197,723)	(197,723)
Balance at December 31, 2022	41,468,871	\$ 3	19	\$ 652,276	\$ (727,093)	\$ (74,814)

See accompanying notes

PHATHOM PHARMACEUTICALS, INC.
Statements of Cash Flows
(in thousands)

	Years Ended December 31,	
	2023	2022
Cash flows from operating activities		
Net loss	\$ (201,592)	\$ (197,723)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	575	620
Stock-based compensation	45,025	24,133
Issuance of PIK interest debt	3,583	3,484
Accrued interest on revenue interest financing liability	24,727	14,079
Amortization of debt discount	1,877	2,110
Other	1,869	1,329
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets	(8,067)	(1,860)
Accounts receivable, net	(1,637)	—
Accounts payable and accrued expenses (includes changes in related party amounts of \$184 and \$1,139, respectively)	6,410	8,679
Accrued clinical trial expenses	—	(1,402)
Accrued interest	292	377
Operating right-of-use assets and lease liabilities	194	(238)
Inventory	(9,442)	—
Other long-term assets	(1,394)	(118)
Net cash used in operating activities	<u>(137,580)</u>	<u>(146,530)</u>
Cash flows from investing activities		
Cash paid for property, plant and equipment	(1,634)	(1,041)
Net cash used in investing activities	<u>(1,634)</u>	<u>(1,041)</u>
Cash flows from financing activities		
Proceeds from issuance of common stock from exercise of stock options	124	—
Net proceeds from issuance of debt	39,318	—
Net proceeds from underwritten public offering	141,390	—
Net proceeds from revenue interest financing transaction	172,675	95,446
Net proceeds from issuance of common stock under ATM facility	14,073	24,596
Net cash provided by financing activities	<u>367,580</u>	<u>120,042</u>
Net increase (decrease) in cash and cash equivalents and restricted cash	228,366	(27,529)
Cash and cash equivalents and restricted cash – beginning of period	155,890	183,419
Cash and cash equivalents and restricted cash – end of period	<u>\$ 384,256</u>	<u>\$ 155,890</u>
Supplemental disclosure of cash flow information		
Interest paid	\$ 11,133	\$ 7,033
Supplemental disclosure of noncash investing and financing activities:		
Property and equipment purchases included in accounts payable and accrued expenses	\$ 18	\$ 138
Final interest payment fee	\$ 2,200	\$ —
Settlement of ESPP liability in common stock	\$ 1,417	\$ 909
Settlement of 401(k) liability in common stock	\$ 1,612	\$ 1,116
Operating lease liabilities arising from obtaining right-of-use assets	\$ —	\$ 554

See accompanying notes.

PHATHOM PHARMACEUTICALS, INC.

Notes to Financial Statements

1. Organization, Basis of Presentation and Summary of Significant Accounting Policies

Organization and Basis of Presentation

Phathom Pharmaceuticals, Inc., or the Company or Phathom, was incorporated in the state of Delaware in January 2018. The Company is a biopharmaceutical company focused on developing and commercializing novel treatments for gastrointestinal diseases. The Company's financial statements are prepared in accordance with U.S. generally accepted accounting principles, or GAAP.

On October 27, 2023, the U.S. Food and Drug Administration, or FDA, approved the prior approval supplements to our new drug applications, or NDAs, for VOQUEZNA TRIPLE PAK and VOQUEZNA DUAL PAK. Additionally, on November 1, 2023, the FDA approved our NDA for VOQUEZNA tablets. As a result, the Company initiated commercial launch for VOQUEZNA for both the Erosive GERD and *H. pylori* indications, and VOQUEZNA TRIPLE PAK and VOQUEZNA DUAL PAK for treatment of *H. pylori* infection in the fourth quarter of 2023.

Liquidity and Capital Resources

From inception to December 31, 2023, the Company has devoted substantially all of its efforts to organizing and staffing the Company, business planning, raising capital, in-licensing its initial and approved product candidate, vonoprazan, meeting with regulatory authorities, managing the clinical trials of vonoprazan, preparing for commercialization of its initial products containing vonoprazan, commercial launch of approved products, and providing other selling, general and administrative support for these operations. The Company has a limited operating history, generated limited revenue to date, and the sales and income potential of its business is unproven. The Company has incurred net losses and negative cash flows from operating activities since its inception and expects to continue to incur additional net losses in the future. From inception to December 31, 2023, the Company has funded its operations through the issuance of convertible promissory notes, commercial bank debt, revenue interest financing debt, the sale of 10,997,630 shares of common stock for net proceeds of approximately \$191.5 million in its 2019 IPO, the sale of 2,250,000 shares of common stock for net proceeds of approximately \$88.6 million in its December 2020 follow-on public offering, the sale of 3,929,116 shares of common stock for net proceeds of approximately \$38.7 million in its issuances of common stock pursuant to the Open Market Sale AgreementSM, or the Sales Agreement, with Jefferies LLC, or the Sales Agent, under which the Company may, from time to time, sell shares of its common stock having an aggregate offering price of up to \$150 million, or the ATM Offering, and the sale of 12,793,750 shares of common stock for net proceeds of approximately \$141.4 million in its May 2023 public offering.

The accompanying financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business, and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or amounts and classification of liabilities. Management is required to perform a two-step analysis over the Company's ability to continue as a going concern. Management must first evaluate whether there are conditions and events that raise substantial doubt about the Company's ability to continue as a going concern (Step 1). If management concludes that substantial doubt is raised, management is also required to consider whether its plans alleviate that doubt (Step 2).

Management believes that it has sufficient working capital on hand to fund operations through at least the next twelve months from the date these financial statements were available to be issued. There can be no assurance that the Company will be successful in acquiring additional funding, if needed, that the Company's projections of its future working capital needs will prove accurate, or that any additional funding would be sufficient to continue operations in future years.

Use of Estimates

The preparation of the Company's financial statements requires management to make estimates and assumptions that impact the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingent assets and liabilities in the Company's financial statements and accompanying notes. The most significant estimates in the Company's financial statements relate to accruals for net product revenues and research and development expenses, the valuation for the revenue interest financing liability, and various other equity instruments. In addition, management's assessment of the Company's ability to continue as a going concern involves the estimation of the amount and timing of future cash inflows and outflows. Although these estimates are based on the Company's knowledge of current events and actions it may undertake in the future, actual results could differ materially from those estimates and assumptions.

Fair Value Measurements

The accounting guidance defines fair value, establishes a consistent framework for measuring fair value and expands disclosure for each major asset and liability category measured at fair value on either a recurring or non-recurring basis. Fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, the accounting guidance establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

Level 1: Observable inputs such as quoted prices in active markets.

Level 2: Inputs, other than the quoted prices in active markets that are observable either directly or indirectly.

Level 3: Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

The carrying amounts of the Company's financial instruments, including cash and cash equivalents, are classified within the Level 1 designation discussed above, while accounts receivable, prepaid and other current assets, accounts payable, and accrued liabilities, approximate fair value due to their short-term maturities.

The Company has no financial assets measured at fair value on a recurring basis. None of the Company's non-financial assets or liabilities are recorded at fair value on a non-recurring basis. No transfers between levels have occurred during the periods presented.

As of December 31, 2023 and 2022, the estimated fair value of the Company's long-term debt approximated the carrying amount given its floating interest rate basis. The fair value of the Company's long-term debt was estimated for disclosure purposes only and was determined based on quoted market data for valuation, and thus categorized as Level 2 in the fair value hierarchy.

Cash and Cash Equivalents

The Company considers all highly liquid investments with original maturities of three months or less when purchased to be cash equivalents. Cash and cash equivalents include cash in readily available checking accounts and money market funds. Restricted cash primarily consists of cash deposited by the Company to secure corporate leased vehicles.

Accounts Receivable, Net

Accounts receivable consists of amounts due from customers, primarily wholesale distributors, net of customer allowances for prompt pay discounts, distribution service fees, and other adjustments. Our contracts with customers have standard payment terms. The Company assesses the need for an allowance for doubtful accounts primarily based on creditworthiness, historical payment experience and general economic conditions. The Company has not experienced any credit losses to date given our limited commercial operations with any of its customers, and has not currently recognized any allowance for doubtful accounts.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and cash equivalents. The Company maintains deposits in federally insured financial institutions in excess of federally insured limits. The Company has not experienced any losses in such accounts and management believes that the Company is not exposed to significant credit risk due to the financial position of the depository institutions in which those deposits are held.

The Company is also subject to credit risk from our accounts receivable related to our product sales. The Company monitors exposure within accounts receivable and records a reserve against uncollectible accounts receivable as necessary. The Company extends credit primarily to pharmaceutical wholesale distributors. Customer creditworthiness is monitored and collateral is not required. The amount of the allowance for credit losses is determined primarily on the basis of collection experience and known financial factors regarding specific customers.

As of December 31, 2023, three customers accounted for 87% of the accounts receivable balance, with each of these individual customers ranging from 28% to 30% of the accounts receivable balance. For the year ended December 31, 2023, three customers accounted for 86% of our product sales, with each of these individual customers ranging from 27% to 30% of our product sales.

Inventory

The Company capitalizes inventory costs related to products to be sold in the ordinary course of business. The Company makes a determination of capitalizing inventory costs for a product based on, among other factors, status of regulatory approval, information regarding safety, efficacy and expectations relating to commercial sales and recoverability of costs. Inventory currently consists of bulk active pharmaceutical ingredients that will be used to manufacture vonoprazan tablets. Inventory related to indications prior to regulatory approval has been included in research and development expense in the period of purchase.

The Company values its inventory at the lower of cost or net realizable value. The Company measures inventory using actual cost under a first-in, first-out basis. The Company assesses recoverability of inventory each reporting period to determine any write down to net realizable value resulting from excess or obsolete inventories.

Property, Plant, and Equipment, Net

Property, plant and equipment are recorded at cost, less accumulated depreciation. Depreciation expense is recognized using the straight-line method over the useful life of the asset. Computer equipment and related software are depreciated over two to three years. Equipment is depreciated over five years. Furniture and fixtures are depreciated over three years. Leasehold improvements are amortized over the lesser of the lease term or the estimated useful lives of the related assets. Expenditures for repairs and maintenance of assets are charged to expense as incurred. Upon retirement or sale, the cost and related accumulated depreciation of assets disposed of are removed from the accounts and any resulting gain or loss is included in loss from operations.

Impairment of Long-Lived Assets

The Company reviews long-lived assets, including property, plant and equipment, for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than the carrying amount. The impairment loss, if recognized, would be based on the excess of the carrying value of the impaired asset over its respective fair value. No impairment losses have been recorded through December 31, 2023 and 2022.

Other Long-Term Assets

Other long-term assets consist of deposits relating to our copay and patient support programs and security deposits on our leased properties.

Leases

At the inception of a contractual arrangement, the Company determines whether the contract contains a lease by assessing whether there is an identified asset and whether the contract conveys the right to control the use of the identified asset in exchange for consideration over a period of time. If both criteria are met, the Company records the associated lease liability and corresponding right-of-use asset upon commencement of the lease using the implicit rate or a discount rate based on a credit-adjusted secured borrowing rate commensurate with the term of the lease. The Company additionally evaluates leases at their inception to determine if they are to be accounted for as an operating lease or a finance lease. A lease is accounted for as a finance lease if it meets one of the following five criteria: the lease has a purchase option that is reasonably certain of being exercised, the present value of the future cash flows is substantially all of the fair market value of the underlying asset, the lease term is for a significant portion of the remaining economic life of the underlying asset, the title to the underlying asset transfers at the end of the lease term, or if the underlying asset is of such a specialized nature that it is expected to have no alternative uses to the lessor at the end of the term. Leases that do not meet the finance lease criteria are accounted for as an operating lease. Operating lease assets represent a right to use an underlying asset for the lease term and operating lease liabilities represent an obligation to make lease payments arising from the lease. Operating lease liabilities with a term greater than one year and their corresponding right-of-use assets are recognized on the balance sheet at the commencement date of the lease based on the present value of lease payments over the expected lease term. Certain adjustments to the right-of-use asset may be required for items such as initial direct costs paid or incentives received. As the Company's leases do not typically provide an implicit rate, the Company utilizes the appropriate incremental borrowing rate, determined as the rate of interest that the Company would have to pay to borrow on a collateralized basis over a similar term and in a similar economic environment. Lease cost is recognized on a straight-line basis over the lease term and variable lease payments are recognized as operating expenses in the period in which the obligation for those payments is incurred. Variable lease payments primarily include common area maintenance, utilities, real estate taxes, insurance, and other operating costs that are passed on from the lessor in proportion to the space leased by the Company. The Company has elected the practical expedient to not separate between lease and non-lease components.

Revenue Interest Financing Liability

The Company entered into a revenue interest financing agreement, or the Revenue Interest Financing Agreement, with entities managed or advised by NovaQuest Capital Management, or NQ, Sagard Holdings Manager LP, or Sagard, and Hercules Capital, Inc., or Hercules, together with NQ and Sagard, the Initial Investors, in which the Company received funds in return for royalties on net sales of products containing vonoprazan, in May 2022. Subsequently, in October 2022, the Company entered into a Joinder Agreement with the Initial Investors and CO Finance LVS XXXVII LLC or the Additional Investor, together as the Investors. The net proceeds received under the transactions are recognized as short-term and long-term liabilities with interest expense based on an imputed effective rate derived from the expected future payments to the Investors. The Company recalculates the effective interest rate each period based on the current carrying value and the revised estimated future payments to the Investors. Changes in future payments to the Investors from previous estimates are included in current and future financing expense.

Revenue Recognition

Pursuant to Accounting Standards Codification 606, Revenue from Contracts with Customers or ASC 606, the Company recognizes revenue when a customer obtains control of promised goods or services. The Company records the amount of revenue that reflects the consideration that it expects to receive in exchange for those goods or services. The Company applies the following five-step model in order to determine this amount: (i) identification of the promised goods or services in the contract; (ii) determination of whether the promised goods or services are performance obligations, including whether they are distinct in the context of the contract; (iii) measurement of the transaction price, including the constraint on variable consideration; (iv) allocation of the transaction price to the performance obligations; and (v) recognition of revenue when (or as) the Company satisfies each performance obligation. The Company only applies the five-step model to contracts when it is probable that it will collect the consideration to which it is entitled in exchange for the goods or services that it transfers to the customer. Once a contract is determined to be within the scope of ASC 606 at contract inception, the Company reviews the contract to determine which performance obligations it must deliver and

which of these performance obligations are distinct. The Company recognizes as revenue the amount of the transaction price that is allocated to each performance obligation when that performance obligation is satisfied or as it is satisfied. Generally, the Company's performance obligations are transferred to customers at a point in time, typically upon delivery.

Product Revenue, Net

The Company sells its product to its customers in the United States. The Company's customers subsequently resell the products to pharmacies and health care providers. In accordance with ASC 606, the Company recognizes net product revenues from sales when the customers obtain control of the Company's products, which typically occurs upon delivery to the Customer.

Revenues from product sales are recorded at the net sales price, or transaction price, which includes estimates of variable consideration that result from (a) invoice discounts for prompt payment and distribution service fees, (b) government and private payor rebates, chargebacks, discounts and fees, (c) product returns and (d) costs of co-pay assistance programs for patients, as well as other incentives for certain indirect customers. Reserves are established for the estimates of variable consideration based on the amounts earned or to be claimed on the related sales. The reserves are classified as reductions to accounts receivable, net if payable to a customer or accrued expenses if payable to a third-party. Where appropriate, the Company utilizes the expected value method to determine the appropriate amount for estimates of variable consideration based on factors such as current contractual and statutory requirements, specific known market events and trends, industry data and forecasted customer buying and payment patterns. The amount of variable consideration that is included in the transaction price may be constrained and is included in net product revenues 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. Actual amounts of consideration ultimately received may differ from the Company's estimates. If actual results vary from the Company's estimates, the Company will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known.

Distribution Service Fees: The Company engages with wholesalers to distribute its products to end customers. The Company pays the wholesalers a fee for services such as: Data Reporting, Inventory Management, Chargeback Administration and Service Level Commitment. The Company estimates the amount of distribution services fees to be paid to the customers and adjusts the transaction price with the amount of such estimate at the time of sale to the customer.

Prompt Pay Discounts: The Company provides its customers with a percentage discount on their invoice if the customers pay within the agreed upon timeframe. The Company estimates the probability of customers paying promptly and the percentage of discount outlined in the agreement, and deducts the full amount of these discounts from its gross product revenues and accounts receivable at the time such revenues are recognized.

Product Returns: The Company provides customers a return credit in the amount of the purchase price paid by customers for all products returned in accordance with the Company's returned goods policy. In the initial sales period, the Company estimates its provision for sales returns based on industry data and adjusts the transaction price with such estimate at the time of sale to the customer. Once sufficient history has been collected for product returns, the Company will utilize that history to inform its estimate assumption. Once the product is returned, it is destroyed. The Company does not record a right-of-return asset.

Chargebacks: A chargeback is the difference between the manufacturer's invoice price to the wholesaler and the contract price the wholesaler's customer has negotiated directly with the manufacturer. The wholesaler tracks these sales and "charges back" the manufacturer for the difference between the negotiated prices paid between the wholesaler's customers and wholesaler's acquisition cost. The Company estimates the percentage of goods sold that are eligible for chargeback and adjusts the transaction price for such discount at the time of sale to the customer.

Administration Fees: The Company engages with Pharmacy Benefit Managers, or PBMs, to administer prescription-drug plans for people with third-party insurance through a self-insured employer, health insurance plan, labor union or government plan. The Company pays PBMs "administrative fees" for their role in providing utilization data, administering rebates, and administering claims payments. The Company estimates the amount of administration fees to be paid to PBMs and adjusts the transaction price with the amount of such estimate at the time of sale to the customer.

Rebates: Rebates apply to:

- Medicaid, managed care, and supplemental rebates to all applicable states as defined by the statutory government pricing calculation requirements under the Medicaid Drug Rebate Program, and;
- Medicare Part D and Commercial Managed Care rebates are paid based on the contracts with PBMs and Managed Care Organizations. Rebates are paid to these entities upon receipt of an invoice from the contracted entity which is based on the utilization of the product by the members of the contracted entity. The Company estimates the percentage of goods sold that are eligible for rebates and adjusts the transaction price for such discounts at the time of sale to the customers.

Coverage Gap: The Medicare Part D coverage gap, also called the donut hole, is a period of consumer payment for prescription medication costs which lies between the initial coverage limit and the catastrophic-coverage threshold, when the patient is a member of a Medicare Part D prescription-drug program administered by the Centers for Medicare & Medicaid Services. The Company estimates the percentage of goods sold under Coverage Gap and adjusts the transaction price for such discount at the time of sale to the Customer. The Company makes significant estimates and judgments that materially affect its recognition of net product revenue. Claims by third-party payors for rebates, chargebacks and discounts frequently are submitted to the Company significantly after the related sales, potentially resulting in adjustments in the period in which the new information becomes known. The Company will adjust its estimates based on new information, including information regarding actual rebates, chargebacks and discounts for its products, as it becomes available.

Cost of Revenue

Cost of revenue includes the cost of producing and distributing inventories that are related to product sales. This also includes royalties payable to Takeda Pharmaceutical Company Limited, or Takeda, pursuant to the Takeda License Agreement (Refer to Note 4 for further details). In addition, shipping and handling costs for product sales are recorded as incurred. Finally, cost of revenue may also include costs related to excess or obsolete inventory adjustment charges.

In connection with the FDA approvals of VOQUEZNA, VOQUEZNA TRIPLE PAK, and VOQUEZNA DUAL PAK, the Company began capitalizing inventory manufactured or purchased. As a result, certain manufacturing costs associated with product shipments were expensed prior to FDA approval and, therefore, are not included in cost of goods sold during the current period. These previously expensed costs were not material for the year ended December 31, 2023.

Research and Development Expenses and Accruals

All research and development costs are expensed in the period incurred and consist primarily of salaries, payroll taxes, employee benefits, stock-based compensation charges for those individuals involved in research and development efforts, external research and development costs incurred under agreements with contract research organizations, or CROs, and consultants to conduct and support the Company's ongoing clinical trials of vonoprazan, and costs related to manufacturing vonoprazan for clinical trials.

The Company has entered into various research and development contracts with clinical research organizations, clinical manufacturing organizations and other companies. Payments for these activities are based on the terms of the individual agreements, which may differ from the pattern of costs incurred, and payments made in advance of or after performance are reflected in the accompanying balance sheets as prepaid expenses or accrued liabilities, respectively. The Company records accruals for estimated costs incurred for ongoing research and development activities. When evaluating the adequacy of the accrued liabilities, the Company analyzes progress of the services, including the phase or completion of events, invoices received and contracted costs. Significant judgments and estimates may be made in determining the prepaid or accrued balances at the end of any reporting period. Actual results could differ from the Company's estimates.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist of salaries, stock-based compensation, facilities and third-party expenses. Selling, general and administrative expenses are associated with the activities of the commercial, executive, finance, accounting, information technology, legal, medical affairs and human resource functions.

Advertising and Marketing Costs

Advertising and marketing costs are expensed as incurred. Advertising and marketing costs are included in selling, general and administrative expenses and were not material for the years ended December 31, 2023 and 2022.

Stock-Based Compensation

Stock-based compensation expense represents the cost of the grant date fair value of equity awards recognized over the requisite service period of the awards (generally the vesting period) on a straight-line basis with forfeitures recognized as they occur.

The Company also maintains an employee stock purchase program, or ESPP, under which it may issue shares. The Company estimates the fair value of shares that will be issued under the ESPP, and of stock options using the Black-Scholes valuation model, which requires the use of estimates. The Company recognizes stock-based compensation cost for shares that it will issue under the ESPP on a straight-line basis over the requisite service period of the award.

Income Taxes

The Company accounts for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are determined on the basis of the differences between the financial statements and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the statements of operations in the period that includes the enactment date.

The Company recognizes net deferred tax assets to the extent that the Company believes these assets are more likely than not to be realized. In making such a determination, management considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations. If management determines that the Company would be able to realize its deferred tax assets in the future in excess of their net recorded amount, management would make an adjustment to the deferred tax asset valuation allowance, which would reduce the provision for income taxes.

The Company records uncertain tax positions on the basis of a two-step process whereby (i) management determines whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (ii) for those tax positions that meet the more-likely-than-not recognition threshold, management recognizes the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority. The Company recognizes interest and penalties related to unrecognized tax benefits within income tax expense. Any accrued interest and penalties are included within the related tax liability.

Beginning in 2022, the Tax Cuts and Jobs Act eliminates the option to deduct research and development expenditures currently and requires taxpayers to amortize domestic and foreign research and development expenditures over 5 years and 15 years, respectively. The requirement did not impact cash from operations in the periods presented.

Comprehensive Loss

Comprehensive loss is defined as a change in equity during a period from transactions and other events and circumstances from non-owner sources. The Company's comprehensive loss was the same as its reported net loss for all periods presented.

Segment Reporting

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision maker in making decisions on how to allocate resources and assess performance. The Company views its operations and manages its business as one operating segment.

Net Loss Per Share

Basic net loss per share is computed by dividing the net loss by the weighted-average number of common shares outstanding for the period, without consideration for potentially dilutive securities. For the years ended December 31, 2023 and 2022, the Company has excluded weighted-average unvested shares of 34,503 and 686,703, respectively, from the weighted-average number of common shares outstanding. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of common shares and dilutive common stock equivalents outstanding for the period determined using the treasury-stock and if-converted methods. Dilutive common stock equivalents are comprised of unvested common stock, options and warrants. For the periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding as inclusion of the potentially dilutive securities (warrants, stock options, and common shares subject to repurchase) would be antidilutive.

Recently Adopted Accounting Standards

In June 2016, the FASB issued ASU 2016-13, Financial Instruments — Credit Losses, or ASU 2016-13, which changes the accounting for recognizing impairments of financial assets. Under the new guidance, credit losses for certain types of financial instruments will be estimated based on expected losses. ASU 2016-13 also modifies the impairment models for available-for-sale debt securities and for purchased financial assets with credit deterioration since their origination. ASU 2016-13 is effective for annual periods beginning after December 15, 2022 (fiscal year 2023 for the Company), and interim periods within those periods, with early adoption permitted. The Company adopted ASU 2016-13 effective January 1, 2023. The standard did not have a material impact on the financial statements.

Recently Issued Accounting Pronouncements

The Company assesses the adoption impacts of recently issued accounting standards by the Financial Accounting Standards Board or other standard setting bodies on the Company's financial statements as well as material updates to previous assessments. There were no new accounting standards issued or adopted in year of 2023 that materially impacted or are expected to materially impact the Company's financial statements.

2. Balance Sheet Details

Property, Plant and Equipment, net

Property, plant and equipment, net, consist of the following (in thousands):

	December 31,	
	2023	2022
Computer equipment and software	\$ 1,477	\$ 1,078
Furniture and fixtures	1,089	1,086
Leasehold improvements	139	115
Equipment	1,487	—
Construction in process	—	399
Total property, plant and equipment, gross	4,192	2,678
Less: accumulated depreciation and amortization	(2,046)	(1,471)
Total property, plant and equipment, net	\$ 2,146	\$ 1,207

Depreciation and amortization expense for both the years ended December 31, 2023 and 2022 was approximately \$0.6 million. No property, plant or equipment was disposed of during the years ended December 31, 2023 and 2022.

Accrued Expenses

Accrued expenses consist of the following (in thousands):

	December 31,	
	2023	2022
Accrued research and development expenses	\$ 1,009	\$ 3,080
Accrued compensation expenses	13,318	8,447
Accrued professional & consulting expenses	1,771	3,000
Accrued sales discounts and allowances	982	—
Accrued other	117	151
Total accrued expenses	<u>\$ 17,197</u>	<u>\$ 14,678</u>

Inventory

Inventory consist of the following (in thousands):

	December 31,	
	2023	
Finished goods	\$	647
Raw materials		561
Total inventory, current		1,208
Raw materials, noncurrent		8,234
Total inventory	<u>\$</u>	<u>9,442</u>

Raw materials consist of materials, including active pharmaceutical ingredients, to be consumed in the production of inventory related to FDA approved products. Prior to FDA approvals, all costs related to manufacturing were charged to research and development expense in the period incurred, therefore, inventory is not included as of December 31, 2022. Inventory that is used for clinical development purposes is expensed to research and development expense when consumed. Inventory, noncurrent includes inventory expected to remain on-hand beyond one year from the balance sheet date presented.

3. Related Party Transactions

Frazier is a principal stockholder of the Company with representation on the Board of Directors. Frazier is compensated for their participation on the Board of Directors and as of December 31, 2023 and December 31, 2022, the Company had \$28,000 and \$15,000, respectively, outstanding accounts payable and accrued expenses related to these services. For the years ended December 31, 2023 and 2022, the Company incurred \$55,000 and \$15,000, respectively, of expenses related to participation on the Board of Directors. Frazier is also a principal stockholder in PCI Pharma Services, or PCI. Starting in the third quarter of 2019, the Company engaged PCI for clinical manufacturing services. As of December 31, 2023 and 2022, the Company had \$1.2 million and \$1.1 million, respectively, in outstanding accounts payable and accrued expenses related to these manufacturing services. For the years ended December 31, 2023 and 2022, the Company incurred \$0.6 million and \$0.7 million, respectively, of expenses related to services performed by PCI.

Takeda became a common stockholder of the Company in connection with the May 2019 license agreement (see Note 4). In connection with the Takeda License, the Company entered into a temporary services agreement, or the Temporary Services Agreement, with Takeda on November 24, 2020. Pursuant to the Temporary Services Agreement, Takeda agreed to provide or procure the provision of services related to the ongoing clinical development of vonoprazan. The Temporary Services Agreement will terminate immediately upon termination of the Takeda License in accordance with its terms. As of December 31, 2023 and December 31, 2022, the Company had \$1.5 million and \$1.4 million, respectively, in outstanding accounts payable and accrued expenses related to these agreements. For the years ended December 31, 2023 and 2022, the Company incurred \$0.1 million and \$1.4 million, respectively, of expenses related to these agreements. The Company has no remaining minimum purchase obligation related to these agreements.

4. Commitments and Contingencies

License Agreement

On May 7, 2019, the Company entered into a license agreement with Takeda pursuant to which it was granted an exclusive license to commercialize vonoprazan fumarate in the United States, Canada and Europe, or the Takeda License. The Company also has the right to sublicense its rights under the agreement, subject to certain conditions. The agreement will remain in effect, on a country-by-country and product-by-product basis, until the later of (i) the expiration of the last to expire valid patent claim covering vonoprazan fumarate alone or in combination with at least one other therapeutically active ingredient, (ii) the expiration of the applicable regulatory exclusivity and (iii) 15 years from the date of first commercial sale, unless earlier terminated. The Company may terminate the Takeda License upon six months' written notice. The Company and Takeda may terminate the Takeda License in the case of the other party's insolvency or material uncured breach. Takeda may terminate the Takeda License if the Company challenges, or assists in challenging, licensed patents.

In consideration of the Takeda License, the Company (i) paid Takeda \$25 million in cash, (ii) issued Takeda 1,084,000 shares of its common stock at a fair value of \$5.9 million, (iii) issued the Takeda Warrant to purchase 7,588,000 shares of its common stock at an exercise price of \$0.00004613 per share at an initial fair value of \$47.9 million, and (iv) issued a right to receive an additional common stock warrant, or, the Takeda Warrant Right, should Takeda's fully-diluted ownership of the Company represent less than a certain specified percentage of the fully-diluted capitalization, including shares issuable upon conversion of then outstanding convertible promissory notes, calculated immediately before the closing of the Company's IPO, with a nominal initial fair value due to the low probability of issuance. The Takeda Warrant Right expired without effect since no fair value had been allocated to it upon completion of the IPO, and no additional warrant was issued. In addition, the Company is obligated to pay Takeda up to an aggregate of \$250 million in sales milestones upon the achievement of specified levels of product sales, and a low double-digit royalty rate on aggregate net sales of licensed products, subject to certain adjustments. The Takeda Warrant had an exercise price of \$0.00004613 per share, and was to expire on May 7, 2029 and became exercisable upon the consummation of the IPO. All Takeda Warrants were exercised in 2022.

During the year ended December 31, 2023, the Company recorded \$0.1 million of royalty expense under the Takeda License, which is included within accrued expenses as of December 31, 2023.

Purchase Commitments

In December 2020, the Company entered into a supply agreement with Sandoz pursuant to which Sandoz will supply commercial quantities of amoxicillin capsules and clarithromycin tablets, package these antibiotics with vonoprazan, and provide in finished convenience packs. The supply agreement commits the Company to a minimum purchase obligation of €2.9 million, or approximately \$3.2 million, in the first 24-month period following the launch of the final product. The Company has incurred \$0.3 million and no expenses under the agreement during the years ended December 31, 2023 and 2022, respectively.

Contingencies

In the event the Company becomes subject to claims or suits arising in the ordinary course of business, the Company would accrue a liability for such matters when it is probable that future expenditures will be made and such expenditures can be reasonably estimated.

5. Lease Commitments

As of December 31, 2023, the Company had operating leases for office space in both Buffalo Grove, Illinois and Florham Park, New Jersey, with weighted average remaining lease terms of 1.3 years and 1.7 years, respectively. All operating leases contain an option to extend the term for one additional five-year period, which was not considered in the determination of the right-of-use asset or lease liability as the Company did not consider it reasonably certain that it would exercise such options.

The total rent expense for the years ended December 31, 2023 and 2022 was approximately \$1.1 million and \$1.0 million, respectively.

The following table summarizes supplemental balance sheet information related to the operating leases (in thousands):

	December 31,	
	2023	2022
Assets:		
Operating lease right-of-use assets	\$ 1,475	\$ 2,287
Total right-of-use assets	<u>1,475</u>	<u>2,287</u>
Liabilities:		
Operating lease liabilities, current	726	708
Operating lease liabilities, non-current	462	1,098
Total operating lease liabilities	<u>\$ 1,188</u>	<u>\$ 1,806</u>

As of December 31, 2023, the future minimum annual lease payments under the operating leases were as follows (in thousands):

2024	\$ 752
2025	513
Total minimum lease payments	<u>1,265</u>
Less: amount representing interest	(77)
Present value of operating lease liabilities	<u>1,188</u>
Less: operating lease liabilities, current	(726)
Operating lease liabilities	<u>\$ 462</u>
Weighted-average remaining lease term (in years)	1.6
Weighted-average incremental borrowing rate	8.21%

Operating cash flows for both the years ended December 31, 2023 and 2022 included cash payments for operating leases of \$1.1 million, of which \$0.1 million as of December 31, 2023 were prepaid lease payments.

6. Debt

Total debt consists of the following (in thousands):

	December 31,	
	2023	2022
Long-term debt, current portion	\$ —	\$ —
Long-term debt, non-current portion	148,057	104,474
Unamortized debt discount	(10,215)	(9,210)
Total debt, net of debt discount	<u>\$ 137,842</u>	<u>\$ 95,264</u>

On September 17, 2021, or the Closing Date, the Company entered into a Loan and Security Agreement, or the Loan Agreement, with Hercules Capital, Inc., in its capacity as administrative agent and collateral agent and as a lender, or, in such capacity, the Agent or Hercules, and the other financial institutions that from time to time become parties to the Loan Agreement as lenders, or, collectively, the Lenders.

The Loan Agreement provides for term loans in an aggregate principal amount of up to \$200 million, or the Term Loan, under multiple tranches. The tranches consist of (i) a first tranche consisting of term loans in an aggregate principal amount of \$100 million, all of which was funded on the Closing Date, or the First Advance, (ii) a second tranche consisting of up to an additional \$50 million, (iii) a third and fourth tranches consisting of an additional total \$50 million, which became available to us in May 2022.

On September 27, 2022, the Company entered into an amendment to the Loan Agreement, or the Second Loan Amendment, pursuant to which the date the second tranche of funding of \$50 million will remain available to the Company has been moved until May 15, 2023, rather than December 15, 2022.

On May 9, 2023, the Company entered into the Third Amendment to Loan and Security Agreement, or the Third Loan Amendment, with the lenders, pursuant to which, among other things, (i) the second tranche availability was extended from through May 15, 2023, to through December 15, 2023, and became available on October 1, 2023, (ii) the third tranche availability was extended from through September 30, 2023, to through December 15, 2023, and became available on October 1, 2023, (iii) the effective date of the Performance Covenants was amended to provide an option to extend the covenant trigger date to May 15, 2024, subject to the achievement of the FDA approval of vonoprazan for Erosive GERD or the EE Milestone, prior to February 15, 2024, and (iv) the warrant agreement with Hercules was amended as described below. On November 1, 2023 the EE Milestone was achieved and the covenant trigger date was extended to May 15, 2024. In connection with the Third Loan Amendment, a tranche extension amendment fee of \$150,000 and a covenant extension amendment fee of \$100,000 was paid to the Agent. These fees have been recorded as debt discount and are being amortized to interest expense using the effective interest method over the remaining term of the Term Loan.

On December 14, 2023, the Company entered into a Fourth Amendment to Loan and Security Agreement, or the Fourth Loan Amendment, with the lenders, pursuant to which, among other things, (i) increases the aggregate principal amount of the term loans from \$200 million to \$300 million; (ii) provides for the possibility of accessing the remaining \$200 million commitment through five tranches referred to as the second through sixth tranches, which are available subject to certain milestones and conditions: (a) Second Tranche: \$50 million, \$40 million of which was funded on December 14, 2023, available through March 15, 2024, (b) Third Tranche: \$25 million available through June 15, 2024, (c) Fourth Tranche: \$25 million available through December 15, 2024, (d) Fifth Tranche: \$50 million available, subject to the achievement of trailing three month net revenues greater than \$60 million, or the Fifth Tranche milestone, through June 30, 2025, and (e) Sixth Tranche: \$50 million available, subject to the achievement of trailing three month net revenues greater than \$80 million, or the Sixth Tranche milestone, through December 31, 2025; (iii) extends the interest only period and the maturity date from October 2026 to December 2027, (iv) reduces the cash interest rate from 10.75% (floating annual rate equal to the greater of (a) 5.50% and (b) the Prime Rate (as reported in the Wall Street Journal) plus 2.25% to 9.85% (floating rate based on the greater of (a) 9.85% or (b) US WSJ Prime + 1.35%), provided that the cash interest rate shall be capped at 10.35% and upon the Company achieving the Sixth Tranche milestone, the cash interest floating rate shall be decreased by 0.35% to 9.50%, and (v) decreases the payment-in-kind interest rate from 3.35% per annum to 2.15% per annum. In connection with the Fourth Loan Amendment, an amendment fee of \$250,000 was paid to the Agent and was recorded as a debt discount and being amortized to interest expense using the effective interest method over the remaining term of the Term Loan.

The Term Loan will mature on December 1, 2027, or the Maturity Date. The Term Loan bears (i) cash interest at a variable annual rate equal to the greater of (a) 9.85% and (b) the Prime Rate (as reported in the Wall Street Journal) plus 1.35%, or the Interest Rate, and (ii) payment-in-kind interest at a per annum rate of interest equal to 2.15%. The Company may make payments of interest only through the Maturity Date. After the interest-only period, the principal balance and related interest will be required to be repaid in full on the Maturity Date.

In addition, the Company is obligated to pay a final payment fee of 7.50% of the original principal amount of amounts actually advanced under the Term Loan, or each a Term Loan Advance and together, the Term Loan Advances. In connection with the Fourth Loan Amendment, the final payment fee was amended to be \$1 million plus 3.00% of any future tranche drawdowns under the agreement, due upon final maturity. Additionally, the initial final payment fee for the first term Loan advance was amended to become payable on October 1, 2026. As of December 31, 2023, the aggregate final payment fee for the first Term Loan Advance of \$7.5 million and \$2.2 million for the second Term Loan Advance, have both been recorded within other long-term liabilities.

Under the Fourth Loan Amendment the Company may elect to prepay all or a portion of the Term Loan Advances prior to maturity, subject to a prepayment fee of up to 1.25% of the then outstanding principal balance of the Term Loan Advances being prepaid when such prepayment occurs prior to October 1, 2026, or 0.50% if such prepayment occurs on or after October 1, 2026. After repayment, no Term Loan amounts may be borrowed again.

As collateral for the obligations, the Company has granted to Hercules a senior security interest in all of Company's right, title, and interest in, to and under substantially all of Company's property, inclusive of intellectual property.

The Loan Agreement contains customary closing fees, prepayment fees and provisions, events of default, and representations, warranties and covenants, including financial covenants. The financial covenants under the Fourth Loan Amendment include (i) a minimum cash covenant and (ii) a performance covenant as follows:

- (i) Minimum cash covenant - The Company must maintain a minimum cash balance of 20% of the outstanding principal balance at all times. The minimum cash balance may be increased to 35% or 50% under performance covenant (b) below if the performance covenants (a) or (c) are not met beginning September 30, 2024 and all times thereafter.
- (ii) Performance covenant- Beginning September 30, 2024 and all times thereafter the Company must satisfy any one of the following:
 - a. Market capitalization exceeding \$900 million;
 - b. Minimum cash balance exceeding (x) outstanding principal amount of term loans, multiplied by (y) (A) 50%, prior to achieving trailing three months net product revenue of greater than \$35 million, and (B) 35% thereafter;
 - c. Trailing three months net product revenue of at least (x) 30% of agreed upon projected net revenues for periods in the calendar year 2024 and 25% for all periods thereafter or (y) \$120 million.

Upon the occurrence of an event of default, subject to any specified cure periods, all amounts owed by the Company may be declared immediately due and payable by Hercules, as collateral agent. As of December 31, 2023, the Company was in compliance with all applicable covenants under the Loan Agreement.

In connection with the entry into the Loan Agreement, the Company issued to Hercules a warrant, or the Warrant, to purchase a number of shares of the Company's common stock equal to 2.5% of the aggregate amount of the Term Loan advances funded, and will issue to Hercules additional warrants when future Term Loan advances are funded. On the Closing Date, the Company issued a Warrant for 74,782 shares of common stock. The Warrant will be exercisable for a period of seven years from the date of issuance at a per-share exercise price equal to \$33.43, which was the closing price of the Company's common stock on September 16, 2021. In connection with the entry into the Third Loan Amendment, we amended the form of warrants to be issued upon drawdowns of future tranches such that the exercise price of such warrants shall be equal to the lesser (i) of \$11.6783, which was the trailing ten-day VWAP prior to entering into the Third Loan Amendment and (ii) the trailing ten-day VWAP preceding the date on which we drawdown future tranches. In connection with the entry into the Fourth Loan Amendment, we eliminated the warrant agreement for all future tranches. The Warrant issued with the initial tranche was not modified as part of this amendment. The exercise price and terms of the outstanding Warrant remain unchanged.

The initial \$1.3 million fair value of the Warrant, the \$9.7 million final interest payment fees and \$3.5 million of debt issuance costs have been recorded as debt discount and are being amortized to interest expense using the effective interest method over the term of the Term Loan.

Future minimum principal payments under the Term Loan, including the final payment fees, as of December 31, 2023 are as follows (in thousands):

Year ending December 31:	
2024	\$ —
2025	—
2026	7,500
2027	163,444
2028	—
Total principal and interest payments	170,944
Less: payment-in-kind and final payment fee	(30,944)
Total term loan borrowings	\$ 140,000

During the years ended December 31, 2023 and 2022, the Company recognized \$17.1 million and \$13.0 million, respectively, of interest expense, including amortization of the debt discount, in connection with the Hercules Loan Agreement. As of December 31, 2023 and 2022, the Company had outstanding loan balance of \$148.1 million and \$104.5 million, respectively, and accrued interest of \$1.1 and \$0.9 million, respectively.

7. Revenue Interest Financing Liability

On May 3, 2022, the Company entered into a Revenue Interest Financing Agreement with Initial Investors NQ, Sagard, and Hercules pursuant to which the Company will receive up to \$260 million in funding from the Initial Investors. Under the terms of the Revenue Interest Financing Agreement, the Company received \$100 million at the initial closing and received an additional \$160 million upon FDA approval of VOQUEZNA for treatment of Erosive GERD during the fourth quarter of 2023.

Additionally, on October 31, 2022, the Company entered into a Joinder Agreement with the Initial Investors and CO Finance LVS XXXVII LLC, or the Additional Investor, and Hercules, together as the investors. Under the terms of the Joinder Agreement, we received \$15 million in additional funding upon FDA approval of vonoprazan for Erosive GERD, or Approval Additional Funding, during the fourth quarter of 2023, and provides for \$25 million in additional funding for achievement of a sales milestone, or Milestone Additional Funding, and, together with the Approval Additional Funding, or the Additional Investor Funding. The Initial Investors waived their rights of first offer regarding the Additional Investor Funding and the Additional Investor and joined the Revenue Interest Financing Agreement to extend commitments for the Additional Investor Funding. The total amount funded by the Initial Investors and any subsequent investors is referred to herein as the Investment Amount.

Under the Revenue Interest Financing Agreement, the investors are entitled to receive a 10% royalty on net sales of products containing vonoprazan. The royalty rate is subject to a step-down on net sales exceeding certain annual thresholds and if the Company receives FDA approval for vonoprazan for an indication relating to the treatment of heartburn associated with Non-Erosive GERD. The investors' right to receive royalties on net sales will terminate when the investors have aggregate payments equal to 200% of the Investment Amount. In addition, at any time after the earlier of (i) April 30, 2024 and (ii) the date that the payment for Erosive GERD regulatory approval is made, the Company has the right to make a cap payment equal to 200% of the Investment Amount less any royalties already paid, at which time the agreement will terminate.

If the investors have not received aggregate payments of at least 100% of the Investment Amount by December 31, 2028, and at least 200% of the Investment Amount by December 31, 2037, each a Minimum Amount, then the Company will be obligated to make a cash payment to the investors in an amount sufficient to gross the investors up to the applicable Minimum Amount.

Upon the occurrence of an event of default taking place prior to April 1, 2025, between April 1, 2025 and April 1, 2028, and after April 1, 2028, the Company is obligated to pay 1.30 times Investment Amount, 1.65 times Investment Amount, and 2.0 times investment amount, respectively, less any amounts the Company previously paid pursuant to the agreement.

During the year ended December 31, 2023, the Company received gross proceeds of \$175.0 million before deducting transaction costs of \$2.3 million, resulting in net proceeds of \$172.7 million. During the year ended December 31, 2022, the Company received gross proceeds of \$100.0 million before deducting transaction costs of \$4.6 million, which resulted in net proceeds of \$95.4 million.

The Company has evaluated the terms of the Revenue Interest Financing Agreement and concluded that the features of the Investment Amount are similar to those of a debt instrument. Accordingly, the Company has accounted for the transaction as a debt obligation with interest expense based on an imputed effective rate derived from the initial carrying value of the obligation and the expected future payments. The Company recalculates the effective interest rate each period based on the current carrying value and the revised estimated future payments. Changes in future payments from previous estimates are included in the current and future financing expense. The carrying value of the revenue interest financing liability was \$306.9 million and \$109.5 million as of December 31, 2023 and 2022, respectively.

Total revenue interest financing liability consists of the following (in thousands):

Liability balance as of January 1, 2022	\$	-
Proceeds from the Revenue Interest Financing Agreement		100,000
Less: transaction costs		(4,554)
Less: royalty payments and payables		—
Plus: interest expense		14,079
Ending liability balance as of December 31, 2022	\$	<u>109,525</u>
Liability balance as of January 1, 2023	\$	109,525
Proceeds from the Revenue Interest Financing Agreement		175,000
Less: transaction costs		(2,325)
Less: royalty payments and payables		—
Plus: interest expense		24,727
Ending liability balance as of December 31, 2023		<u>306,927</u>
Less: current portion		(7,111)
Long-term liability balance as of December 31, 2023	\$	<u>299,816</u>

During the years ended December 31, 2023 and 2022, the Company recognized \$24.7 million and \$14.1 million, respectively, of interest expense in connection with the revenue interest financing liability.

The Company will record liabilities associated with achievement of the sales milestone when such contingent event occurs. To determine the accretion of the liability related to the Revenue Interest Financing Agreement, the Company is required to estimate the total amount of future royalty payments and estimated timing of such payments based on the Company's revenue projections. As royalty payments are made, the balance of the debt obligation will be effectively repaid. Based on the Company's periodic review, the exact timing of repayment is likely to be different in each reporting period as compared to those estimated in the Company's initial revenue projections. A significant increase or decrease in actual net sales of vonoprazan compared to the Company's revenue projections could impact the interest expense associated with the revenue interest financing liability. Also, the Company's total obligation can vary depending on default events and achievement of the sales milestone.

8. Stockholders' Equity

Common Stock

In March 2019, the founders granted the Company a repurchase right for the 3,373,408 shares of common stock originally purchased in 2018. The Company has the right, but not the obligation, to repurchase unvested shares in the event the founder's relationship with the Company is terminated, subject to certain limitations, at the original purchase price of the stock. The repurchase right lapsed for 843,352 shares in March 2019 and the repurchase right for the remaining 2,530,056 shares lapses in equal monthly amounts over the following 48-month period ending March 2023. The fair value of the founder shares at the date the repurchase right was granted was recognized as stock-based compensation expense on a straight-line basis over the vesting period. As of December 31, 2023 and 2022, no shares and 79,064 shares, respectively, of common stock were subject to repurchase by the Company. The amount of recognized and unrecognized stock-based compensation related to the founder stock was immaterial for all periods presented.

From inception through December 31, 2023, the Company sold 26,041,380 shares of common stock, generating net proceeds of approximately \$421.5 million, after deducting underwriting discounts, commissions and offering costs. This includes the May 2023 underwritten public offering, in which the Company sold 12,793,750 shares of its common stock, which included the exercise in full by the underwriters of their option to purchase 1,668,750 shares, at a price of \$11.75 per share for total gross proceeds of \$150.3 million. The net purchase price after deducting underwriting discounts and commissions was \$11.08 per share, which generated net proceeds of \$141.8 million. The Company incurred an additional \$0.4 million of offering expenses in connection with this public offering.

ATM Agreements

In November 2020, the Company entered into the Sales Agreement, pursuant to which, the Company will pay the Sales Agent a commission for its services in acting as an agent in the sale of common stock in an amount equal to 3% of the gross sales price per share sold. In September 2022, the Company sold 2,414,897 shares for net proceeds of approximately \$24.6 million under the 2020 ATM Offering after deducting \$0.8 million of issuance costs. In February 2023, the Company sold 1,514,219 shares for net proceeds of approximately \$14.1 million under the ATM Offering after deducting \$0.4 million of issuance costs. The Company utilized \$39.9 million of the available \$125 million under the ATM Offering prior to expiration in November 2023.

On November 9, 2023, the Company entered into an Open Market Sale AgreementSM, or the 2023 Sales Agreement, with Jefferies LLC, or the Sales Agent, under which the Company may, from time to time, sell shares of the Company's common stock having an aggregate offering price of up to \$150 million through the Sales Agent, or the ATM Offering. Sales of the Company's common stock made pursuant to the 2023 Sales Agreement, if any, will be made under the Company's shelf registration statement on Form S-3 which was filed on November 9, 2023 and declared effective by the SEC on November 17, 2023. As of December 31, 2023, the Company utilized none of the available \$150 million under the ATM Offering.

A summary of the Company's unvested shares is as follows:

Balance at December 31, 2022	254,437
Share vesting	(254,437)
Balance at December 31, 2023	<u>—</u>

For accounting purposes, unvested awards are considered issued, but not outstanding until they vest.

Common stock reserved for future issuance consists of the following:

	December 31, 2023
Common stock warrants	91,228
Stock options, restricted stock units, and performance-based awards outstanding	7,203,973
Shares available for issuance under the 2019 Incentive Plan	1,110,376
Shares available for issuance under the ESPP Plan	973,298
Balance at December 31, 2023	<u>9,378,875</u>

Preferred Stock

The Company is authorized to issue up to 40 million shares of preferred stock. As of December 31, 2023, and December 31, 2022, there were no shares of preferred stock issued or outstanding.

Equity Incentive Plan

The Company's 2019 Equity Incentive Plan, or the Existing Incentive Plan, provides for the grant of incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, and other stock awards to eligible recipients, including employees, directors or consultants of the Company. The Company had 2,231,739 shares of common stock authorized for issuance under the Existing Incentive Plan, of which, 1,400,528 stock options and 16,260 restricted stock awards were granted in 2019. As a result of the adoption of the 2019 Incentive Award Plan, or the 2019 Plan, in October 2019, no further shares are available for issuance under the Existing Incentive Plan.

2019 Incentive Award Plan

In October 2019, the Board of Directors adopted, and the Company's stockholders approved, the 2019 Plan, which became effective in connection with the IPO. Under the 2019 Plan, the Company may grant stock options, stock appreciation rights, restricted stock, restricted stock units and other awards to individuals who are then employees, officers, non-employee directors or consultants of the Company or its subsidiaries. The number of shares initially available for issuance will be increased by (i) the number of shares subject to stock options or similar awards granted under the Existing Incentive Plan that expire or otherwise terminate without having been exercised in full after the effective date of the 2019 Plan and unvested shares issued pursuant to awards granted under the Existing Incentive Plan that are forfeited to or repurchased by the Company after the effective date of the 2019 Plan, with the maximum number of shares to be added to the 2019 Plan pursuant to clause (i) above or equal to 1,416,788 shares, and (ii) an annual increase on January 1 of each calendar year beginning in 2020 and ending in 2029, equal to the lesser of (a) 5% of the shares of common stock outstanding on the final day of the immediately preceding calendar year and (b) such smaller number of shares as determined by the Board of Directors.

On July 14, 2023, the Company completed a voluntary, one-time stock option exchange program, or the Option Exchange, pursuant to which eligible employees were able to exchange certain outstanding stock options granted under the 2019 Plan for a lesser amount of new RSUs issued under the 2019 Plan. Participants in the Option Exchange received one RSU for every two shares of Phathom common stock underlying the eligible options surrendered. This exchange ratio was applied on a grant by grant basis. The Option Exchange resulted in 2,406,622 options being exchanged for 1,203,341 RSUs. The Company is recognizing an additional \$2.2 million of incremental expense related to the Option Exchange to be recognized over a three-year vesting period.

As of December 31, 2023, 1,110,376 shares remain available for issuance, which reflects 4,492,336 stock options, performance-based units, and restricted stock units, or RSUs, awards granted, and 2,558,662 of awards cancelled or forfeited, during the year ended December 31, 2023 as well as an annual increase of 2,086,165 shares authorized on January 1, 2023.

Performance-Based Units

During 2020, the Company granted the initial performance-based units, or PSUs, whereby vesting depends upon the approval by the FDA of vonoprazan for *H. pylori* and then, or concurrent with, Erosive GERD. As of December 31, 2023, the PSU milestones have been achieved upon FDA approval of vonoprazan for *H. pylori* and Erosive GERD during the fourth quarter of 2023. As a result, stock-based compensation cost of \$19.3 million was recognized within the statements of operations and comprehensive loss during the year ended December 31, 2023.

The following table summarizes PSU activity under the 2019 Incentive Award Plan during the years ended December 31, 2023 and 2022:

	Number of Stock Units	Weighted- Average Grant Date Fair Value Per Share
Unvested balance at January 1, 2022	394,300	\$ 32.23
Granted	37,500	20.06
Vested	—	—
Forfeited	(19,500)	35.39
Unvested balance at December 31, 2022	412,300	\$ 30.97
Granted	597,650	10.89
Vested	(1,009,950)	19.09
Forfeited	—	—
Unvested balance at December 31, 2023	—	\$ —

Restricted Stock Units

The following table summarizes RSU activity under the 2019 Incentive Award Plan during the years ended December 31, 2023 and 2022:

	Number of Stock Units	Weighted- Average Grant Date Fair Value Per Share
Unvested balance at January 1, 2022	—	\$ —
Granted	1,010,437	10.79
Vested	(102,453)	8.51
Forfeited	(30,517)	12.14
Unvested balance at December 31, 2022	877,467	\$ 11.03
Granted ⁽¹⁾	2,419,776	11.77
Vested	(579,567)	9.85
Forfeited	(63,784)	13.07
Unvested balance at December 31, 2023	2,653,892	\$ 11.91

(1) The number of RSUs granted includes those exchanged in the Option Exchange (as defined above).

As of December 31, 2023, the Company had \$26.6 million of unrecognized stock-based compensation expense, which is expected to be recognized over a weighted-average period of 2.4 years. The total fair value of RSUs vested during the years ended December 31, 2023 and 2022, was approximately \$5.7 million and \$0.9 million, respectively.

Employee Stock Purchase Plan

In October 2019, the Board of Directors adopted, and the Company's stockholders approved, the Employee Stock Purchase Plan, or the ESPP, which became effective in connection with the IPO. The ESPP permits participants to purchase common stock through payroll deductions of up to 20% of their eligible compensation, which includes a participant's gross base compensation for services to the Company, including overtime payments and excluding sales commissions, incentive compensation, bonuses, expense reimbursements, fringe benefits and other special payments. A total of 270,000 shares of common stock was initially reserved for issuance under the ESPP. In addition, the number of shares available for issuance under the ESPP will be annually increased on January 1 of each calendar year beginning in 2020 and ending in 2029, by an amount equal to the lesser of: (i) 1% of the shares outstanding on the final day of the immediately preceding calendar year and (ii) such smaller number of shares as is determined by the Board of Directors. As of December 31, 2023, 973,298 shares of common stock remain available for issuance, which includes the 196,873 shares sold to employees during the year ended December 31, 2023 as well as an annual increase of 417,233 shares authorized on January 1, 2023.

The ESPP is considered a compensatory plan, and the Company recorded related stock-based compensation of \$0.6 million and \$0.5 million for the years ended December 31, 2023 and 2022, respectively. The weighted-average assumptions used to estimate the fair value of ESPP awards using the Black-Scholes option valuation model were as follows:

	Years Ended December 31,	
	2023	2022
Assumptions:		
Expected term (in years)	0.49	0.50
Expected volatility	69.73 %	68.59 %
Risk free interest rate	5.03 %	2.04 %
Dividend yield	—	—

The estimated weighted-average fair value of ESPP awards during 2023 and 2022 was \$3.64 and \$3.98, respectively. As of December 31, 2023, the total unrecognized compensation expense related to the ESPP was less than \$0.1 million, which is expected to be recognized over a weighted-average period of approximately 0.5 months.

401(k) Plan

The Company established a 401(k) savings plan during the year ended December 31, 2020. The Company's contributions to the plan are discretionary. During the years ended December 31, 2023 and 2022, the Company incurred \$1.9 million and \$1.3 million, respectively, of expense related to estimated employer contribution liabilities, which was based on a 75% match of employees' contributions during the periods. During the years ended December 31, 2023 and 2022, the Board of Directors approved employer matching contributions settled by contributing 135,956 and 101,540, respectively, shares of Company stock.

Stock Options

The fair value of each employee and non-employee stock option grant is estimated on the date of grant using the Black-Scholes option-pricing model. The Company, prior to the IPO on October 29, 2019, was a private company and lacked company-specific historical and implied volatility information. Therefore, it estimated its expected volatility based on the historical volatility of a publicly traded set of peer companies. Due to the lack of historical exercise history, the expected term of the Company's stock options for employees was determined utilizing the "simplified" method for awards. The expected term of stock options granted to non-employees was equal to the contractual term of the option award. The risk-free interest rate was determined by reference to the U.S. Treasury yield curve in effect at the time of grant of the award for time periods approximately equal to the expected term of the award. Expected dividend yield was zero based on the fact that the Company has never paid cash dividends and does not expect to pay any cash dividends in the foreseeable future.

A summary of the Company's stock option activity and related information is as follows during the years ended December 31, 2023 and 2022:

	Options Outstanding	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term	Aggregate Intrinsic Value (in thousands)
Balance at January 1, 2022	4,186,729	\$ 27.53	7.91	\$ 13,973
Options granted	1,741,931	14.62		
Options exercised	—	—		
Options cancelled	(342,190)	29.32		
Balance at December 31, 2022	5,586,470	\$ 23.40	7.90	\$ 4,476
Options granted	1,474,910	8.54		
Options exercised	(16,421)	7.54		
Options cancelled ⁽¹⁾	(2,494,878)	35.96		
Balance at December 31, 2023	4,550,081	\$ 11.75	7.50	\$ 3,379
Options exercisable as of December 31, 2023	2,272,248	\$ 12.65	6.14	\$ 2,088
Vested and expected to vest as of December 31, 2023	4,550,081	\$ 11.75	7.50	\$ 3,379

(1) The number of stock options cancelled includes those exchanged in the Option Exchange (as defined above).

The aggregate intrinsic value of stock options is calculated as the difference between the exercise price of the stock options and the fair value of the Company's common stock for those stock options that had exercise prices lower than the fair value of the Company's common stock at December 31, 2023. The total intrinsic value of stock options exercised for the year ended December 31, 2023 was approximately \$0.1 million.

The estimated weighted-average fair value of employee and nonemployee director stock options granted during 2023 was \$5.34 and during 2022 was \$8.40 per option. As of December 31, 2023, the Company had \$13.2 million of unrecognized stock-based compensation expense, which is expected to be recognized over a weighted-average period of 2.4 years.

The weighted-average assumptions used to estimate the fair value of stock options using the Black-Scholes option valuation model were as follows:

	Years Ended December 31,	
	2023	2022
Assumptions:		
Expected term (in years)	6.04	5.88
Expected volatility	66.05 %	66.00 %
Risk free interest rate	3.65 %	2.06 %
Dividend yield	—	—

Stock-Based Compensation Expense

Stock-based compensation expense recognized for all equity awards, including founder stock, has been reported in the statements of operations and comprehensive loss as follows (in thousands):

	Years Ended December 31,	
	2023	2022
Research and development expense	\$ 12,302	\$ 5,534
Selling, general and administrative expense	32,723	18,599
Total	\$ 45,025	\$ 24,133

9. Revenue Recognition

To date, our only source of revenue has been from the U.S. sales of VOQUEZNA products, which the Company began selling in November 2023. The Company records its best estimate of chargebacks, sales discounts and other reserves to which customers are likely to be entitled as contra accounts receivable charges on the balance sheet as of December 31, 2023. During the year ended December 31, 2023, we recognized \$0.7 million of net product revenues related to sales of VOQUEZNA. Sales allowances and accruals mostly consisted of distribution fees and rebates.

10. Income Taxes

For the years ended December 31, 2023 and 2022, the Company did not record a provision for income taxes due to a full valuation against its deferred taxes. A reconciliation between the provision for income taxes and income taxes computed using the U.S. federal statutory corporate tax rate is as follows (in thousands):

	Years Ended December 31,	
	2023	2022
Income taxes computed at the statutory rate	\$ (42,334)	\$ (41,522)
State income taxes, net of federal benefit	(4,310)	—
Permanent items	1,310	1,605
Officers' compensation	2,534	1,109
Research and development credit	(2,971)	(2,453)
Change in state rate	(3,762)	—
Change in valuation allowance	49,745	41,137
Other	(212)	124
Provision (benefit) for income taxes	\$ —	\$ —

Significant components of the Company's net deferred tax assets are as follows (in thousands):

	Years Ended December 31,	
	2023	2022
Deferred tax assets:		
Net operating loss carryforwards	\$ 120,092	\$ 85,918
Research credits	11,815	8,897
Intangible assets	33,095	25,319
Other	11,256	6,517
Gross deferred tax assets	176,258	126,651
Less valuation allowance	(175,915)	(126,170)
Deferred tax assets, net of valuation allowance	343	481
Deferred tax liabilities:		
Other	(343)	(481)
Net deferred tax assets	\$ —	\$ —

Based upon the Company's history of operating losses, the Company is unable to conclude that it is more likely than not that the benefit of its deferred tax assets will be realized. Accordingly, the Company has provided a full valuation allowance for its deferred tax assets as of December 31, 2023 and 2022.

As of December 31, 2023 and 2022, the Company had federal net operating loss carryforwards of approximately \$554.7 million and \$408.7 million, respectively, which are carried over indefinitely.

As of December 31, 2023, the Company had approximately \$62.3 million of state net operating loss carryforwards that begins to expire in 2036.

As of December 31, 2023, the Company has available federal research and development credits of \$13.7 million which begin to expire in 2038. The Company has \$1.3 million of state research and development credits, some of which, begin to expire in 2025.

The Company has not completed a formal analysis of the potential impact of Section 382 on its deferred tax assets as of December 31, 2023. Until this analysis has been completed, the Company has not adjusted any of its deferred tax assets, including net operating losses or research and development credits. The Company will reassess the amount of net operating losses and credits subject to limitation under Section 382 when a study is complete. Due to the existence of the valuation allowance, future changes in the deferred tax assets related to these tax attributes will not impact the Company's effective tax rate.

The Company recognizes liabilities for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement. While the Company believes that it has appropriate support for the positions taken on its tax returns, the Company regularly assesses the potential outcome of examinations by tax authorities in determining the adequacy of its provision for income taxes.

The following table summarizes the activity related to the Company's gross unrecognized tax benefits (in thousands):

	Years Ended December 31,	
	2023	2022
Beginning balance	\$ 2,327	\$ 1,704
Increases related to prior year tax positions	51	—
Increases related to current year tax positions	632	623
Ending balance	<u>\$ 3,010</u>	<u>\$ 2,327</u>

As of December 31, 2023 and 2022, the Company has gross unrecognized tax benefits of \$3,010 and \$2,327, respectively, none of which would affect the effective tax rate due to a full valuation allowance. The Company does not anticipate any significant changes in its unrecognized tax benefits over the next 12 months. The Company's policy is to recognize the interest expense and/or penalties related to income tax matters as a component of income tax expense. The Company has no accrual for interest or penalties on its balance sheet as of December 31, 2023 and 2022, and has not recognized interest and/or penalties in its statement of operations for the years ended December 31, 2023 and 2022.

The Company is subject to taxation in the United States and various states. The Company is not currently under examination by any taxing authorities. Due to the carryover of tax attributes, the statute of limitations is currently open for tax years since inception.

EXHIBIT INDEX

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
3.1	Amended and Restated Certificate of Incorporation	8-K	10-29-2019	3.1	
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation, as filed with the Secretary of the State of Delaware on May 26, 2023	8-K	5-30-2023	3.1	
3.3	Amended and Restated Bylaws, effective as of December 13, 2023	8-K	12-15-2023	3.1	
4.1	Form of Common Stock Certificate	S-1/A	10-15-2019	4.1	
4.2	Warrant to purchase stock issued to Silicon Valley Bank, dated May 14, 2019	S-1	9-30-2019	4.3	
4.3	Warrant to purchase stock issued to WestRiver Innovation Lending Fund VIII, L.P., dated May 14, 2019	S-1	9-30-2019	4.4	
4.4	Note Purchase Agreement, dated May 7, 2019, by and among the Registrant and the other parties party thereto, as amended	S-1/A	10-15-2019	4.5	
4.5	Warrant to purchase stock issued to Hercules Capital, dated September 17, 2021	10-Q	11-8-2021	10.2	
4.6	Form of Warrant to purchase stock issuable pursuant to the Loan and Security Agreement, as amended, by and between the Registrant and Hercules Capital, Inc.	10-Q	5-10-2023	4.6	
4.7	First Amendment to Warrant to purchase stock issued to Hercules Capital, dated May 9, 2023	10-Q	5-10-2023	4.5	
4.8	Description of Registered Securities				X
10.1#	Phathom Pharmaceuticals, Inc. 2019 Equity Incentive Plan	S-1	9-30-2019	10.1	
10.2#	Form of Stock Option Grant Notice and Stock Option Agreement under the Phathom Pharmaceuticals, Inc. 2019 Equity Incentive Plan	S-1	9-30-2019	10.2	
10.3#	Form of Restricted Stock Grant Notice and Restricted Stock Agreement under Phathom Pharmaceuticals, Inc. 2019 Equity Incentive Plan	S-1	9-30-2019	10.3	
10.4#	Phathom Pharmaceuticals, Inc. 2019 Incentive Award Plan	S-1/A	10-15-2019	10.4	
10.5#	Form of Stock Option Grant Notice and Stock Option Agreement under the Phathom Pharmaceuticals, Inc. 2019 Incentive Award Plan	10-Q	8-6-2020	10.3	
10.6#	Phathom Pharmaceuticals, Inc. 2019 Employee Stock Purchase Plan	S-1/A	10-15-2019	10.5	
10.7#	Amended and Restated Non-Employee Director Compensation Policy	10-Q	8-10-2023	10.2	

10.8#	Amended and Restated Employment Letter Agreement, dated September 25, 2019, by and between Azmi Nabulsi, M.D., M.P.H. and the Registrant	S-1	9-30-2019	10.9	
10.9#	Form of Indemnification Agreement for Directors and Officers	S-1	9-30-2019	10.11	
10.10†	License Agreement, dated May 7, 2019, by and between Takeda Pharmaceuticals Company Limited and the Registrant	S-1	9-30-2019	10.12	
10.11#	Employment Letter Agreement, dated August 29, 2019, by and between Terrie Curran and the Registrant	S-1	9-30-2019	10.14	
10.12†	Amendment No. 1 to Takeda License Agreement, dated September 21, 2020	10-K	3-30-2021	10.20	
10.13†	Supply and Packaging Services Agreement, by and between Sandoz GmbH and the Registrant, dated December 30, 2020	10-K	3-30-2021	10.21	
10.14†	Commercial Supply Agreement with Catalent Pharma Solutions, LLC entered into on July 2, 2021	10-Q	8-10-2021	10.4	
10.15	Loan and Security Agreement, dated September 17, 2021, by and among Hercules Capital and the Registrant	10-Q	11-8-2021	10.1	
10.16†	First Amendment to the Supply and Packaging Services Agreement, by and between Sandoz GmbH and the Registrant, dated December 4, 2021	10-K	3-1-2022	10.30	
10.17#	Employment Letter Agreement, dated March 22, 2022, by and between Molly Henderson and the Company	10-Q	5-10-2022	10.1	
10.18#	Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement under Phathom Pharmaceuticals, Inc. 2019 Equity Incentive Plan	10-Q	8-1-2022	10.2	
10.19†	Revenue Interest Financing Agreement, dated May 3, 2022, by and among NovaQuest Capital Management, Sagard Holding Manager, Hercules Capital and the Registrant	10-Q	8-1-2022	10.3	
10.20	First Amendment to the Loan and Security Agreement, dated September 17, 2021, by and among Hercules Capital and the Registrant	10-Q	8-1-2022	10.4	
10.21†	Commercial Supply Agreement with Evonik Operations GmbH entered into on August 1, 2022	10-Q	11-9-2022	10.1	
10.22	Second Amendment to the Loan and Security Agreement, dated September 17, 2021, by and among Hercules Capital and the Registrant	10-Q	11-9-2022	10.2	
10.23†	Joinder and Waiver agreement dated October 31, 2022 by and among Hercules Capital, CO Finance LVS XXXVII LLC and the Registrant	10-K	2-28-2023	10.37	
10.24^	Third Amendment to the Loan and Security Agreement, dated May 9, 2023, by and among Hercules Capital and the Registrant	10-Q	5-10-2023	10.1	
10.25^	First Amendment to Vonoprazan Commercial Supply Agreement, dated August 1, 2022, by and among Evonik Operations GmbH and the Registrant	10-Q	8-10-2023	10.1	
10.26†	First Amendment to the Commercial Supply Agreement, dated as of December 6, 2023, by and among Catalent Pharma Solutions, LLC and the Registrant				X
10.27^	Fourth Amendment to the Loan and Security Agreement, dated December 14, 2023, by and among Hercules Capital and the Registrant				X
10.28#	Phathom Pharmaceuticals Inc. 2024 Bonus Plan				X
23.1	Consent of Independent Registered Public Accounting Firm				X
24.1	Power of Attorney				X

31.1	Certification of Chief Executive Officer of Phathom Pharmaceuticals, Inc., as required by Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended	X
31.2	Certification of Principal Financial Officer of Phathom Pharmaceuticals, Inc., as required by Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended	X
32.1*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X
32.2*	Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X
97	Policy for Recovery of Erroneously Awarded Compensation	X
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File as its XBRL tags are embedded within the Inline XBRL document	X
101.SCH	Inline XBRL Taxonomy Extension Schema With Embedded Linkbase Documents	X
104	Cover Page formatted as Inline XBRL and contained in Exhibit 101	X

Indicates management contract or compensatory plan.

† Portions of this exhibit have been omitted for confidentiality purposes.

* These certifications are being furnished solely to accompany this annual report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of the Registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

^ Certain exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant hereby undertakes to furnish supplementally a copy of any omitted exhibit or schedule upon request by the SEC.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this annual report on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized.

PHATHOM PHARMACEUTICALS, INC.

/s/ Terrie Curran

Terrie Curran
Chief Executive Officer

Date: June 14, 2024

DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

As of December 31, 2023, Phathom Pharmaceuticals, Inc. (“we,” “us” and “our”) had one class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended: our common stock.

Description of Common Stock

General

The following description summarizes some of the terms of our common stock. Because it is only a summary, it does not contain all the information that may be important to you and is subject to and qualified in its entirety by reference to our amended and restated certificate of incorporation (the “certificate of incorporation”), and amended and restated Bylaws (“bylaws”), which are filed as exhibits to our most recent Annual Report on Form 10-K and are incorporated by reference herein. We encourage you to read our certificate of incorporation and our bylaws for additional information.

As of December 31, 2023, our authorized capital stock consisted of 400,000,000 shares of common stock, \$0.0001 par value per share, and 40,000,000 shares of preferred stock, \$0.0001 par value per share.

Voting Rights

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders, including the election of directors, and do not have cumulative voting rights. Accordingly, the holders of a majority of the outstanding shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they so choose, other than any directors that holders of any preferred stock we may issue may be entitled to elect. Subject to the supermajority votes for some matters, other matters shall be decided by the affirmative vote of our stockholders having a majority in voting power of the votes cast by the stockholders present or represented and voting on such matter. Our amended and restated certificate of incorporation and amended and restated bylaws also provide that our directors may be removed only for cause and only by the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock entitled to vote thereon. In addition, the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock entitled to vote thereon is required to amend or repeal, or to adopt any provision inconsistent with, several of the provisions of our amended and restated certificate of incorporation.

Dividend Rights

Subject to preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive ratably those dividends, if any, as may be declared by the board of directors out of legally available funds.

Liquidation Rights

In the event of our liquidation, dissolution or winding up, the holders of common stock will be entitled to share ratably in the assets legally available for distribution to stockholders after the payment of or provision for all of our debts and other liabilities, subject to the prior rights of any preferred stock then outstanding.

Rights and Preferences

Holders of common stock have no preemptive or conversion rights or other subscription rights and there are no redemption or sinking funds provisions applicable to the common stock.

Fully paid and nonassessable

The outstanding shares of common stock are duly authorized, validly issued, fully paid and nonassessable.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

The Nasdaq Global Market Listing

Our common stock is listed and traded on the Nasdaq Global Select Market under the ticker symbol "PHAT."

Anti-Takeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws

Some provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws contain provisions that could make the following transactions more difficult: an acquisition of us by means of a tender offer; an acquisition of us by means of a proxy contest or otherwise; or the removal of our incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interests, including transactions which provide for payment of a premium over the market price for our shares. These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids.

These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of the increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

Undesignated Preferred Stock

The ability of our board of directors, without action by the stockholders, to issue up to 40,000,000 shares of undesignated preferred stock with voting or other rights or preferences as designated by our board of directors could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

Stockholder Meetings

Our amended and restated bylaws provide that a special meeting of stockholders may be called only by our chairman of the board of directors, chief executive officer or president, or by a resolution adopted by a majority of our board of directors.

Requirements for Advance Notification of Stockholder Nominations and Proposals

Our amended and restated bylaws establish advance notice procedures with respect to stockholder proposals to be brought before a stockholder meeting and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors.

Elimination of Stockholder Action by Written Consent

Our amended and restated certificate of incorporation and amended and restated bylaws eliminate the right of stockholders to act by written consent without a meeting.

Staggered Board of Directors

Our board of directors is divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. This system of electing and removing directors may tend to discourage a third party from attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

Removal of Directors

Our amended and restated certificate of incorporation provides that no member of our board of directors may be removed from office except for cause and, in addition to any other vote required by law, upon the approval of not less than two thirds of the total voting power of all of our outstanding voting stock then entitled to vote in the election of directors.

Stockholders Not Entitled to Cumulative Voting

Our amended and restated certificate of incorporation does not permit stockholders to cumulate their votes in the election of directors. Accordingly, the holders of a majority of the outstanding shares of our common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they choose, other than any directors that holders of our preferred stock may be entitled to elect.

Delaware Anti-Takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits persons deemed to be “interested stockholders” from engaging in a “business combination” with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. Generally, an “interested stockholder” is a person who, together with affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation’s voting stock. Generally, a “business combination” includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors.

Choice of Forum

Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative form, the Court of Chancery of the State of Delaware will be the sole and exclusive forum under Delaware statutory or common law for: (i) any derivative action or proceeding brought on our behalf; (ii) any action asserting a claim of breach of a fiduciary duty or other wrongdoing by any of our directors, officers, employees or agents to us or our stockholders, creditors or other constituents; (iii) any action asserting a claim against us arising pursuant to any provision of the General Corporation Law of the State of Delaware or our amended and restated certificate of incorporation or amended and restated bylaws; (iv) any action to interpret, apply, enforce or determine the validity of our certificate of incorporation or bylaws; or (v) any action asserting a claim governed by the internal affairs doctrine. This provision would not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934 (the “Exchange Act”), or any other claim for which the federal courts have exclusive jurisdiction.

In addition, our bylaws provide that unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended (the “Securities Act”). Our certificate of incorporation and bylaws each provide that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and to have consented to this choice of forum provision.

While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions, and there can be no assurance that such provisions will be enforced by a court in those other jurisdictions. We note that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

Amendment of Charter Provisions

The amendment of any of the above provisions, except for the provision making it possible for our board of directors to issue preferred stock, would require approval by holders of at least two thirds of the total voting power of all of our outstanding voting stock.

The provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in the composition of our board of directors and management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

**FIRST AMENDMENT TO
COMMERCIAL SUPPLY AGREEMENT**

This First Amendment to the Commercial Supply Agreement (this “**Amendment**”), is made as of this December 6, 2023 (“**Amendment Effective Date**”), by and between Phathom Pharmaceuticals, Inc., an Illinois company, with a place of business at 2150 E. Lake Cook Road, Suite 800 Buffalo Grove, Illinois 60089, USA (“**Client**” or “**Phathom**”), and Catalent Pharma Solutions, LLC, a Delaware limited liability company with a place of business at 14 Schoolhouse Road, Somerset, New Jersey 08873, USA (“**Catalent**”) (each, a “**Party**” and, collectively, the “**Parties**”).

RECITALS

- A. WHEREAS Catalent and Phathom entered into a Commercial Supply Agreement effective as of June 30, 2021 (“**Agreement**”), pursuant to which Catalent manufactures and supplies to Phathom the Product;
- B. WHEREAS Catalent and Phathom desire to provide for and include language covering the Prices of the Product, and other changes as set forth herein; and
- C. WHEREAS Catalent and Phathom desire to amend the Agreement and to record their mutual understanding of certain revised terms and conditions.

THEREFORE, in consideration of the mutual covenants, terms and conditions set forth below, the Parties agree as follows:

- 1. **Definitions.** Capitalized terms used and not otherwise defined in this Amendment shall have the meanings assigned to them in the Agreement. For clarity, the term “**Agreement**” as used in the Agreement and herein shall mean the Agreement as amended hereby.
- 2. **Specific Amendments.** In connection with and/or as a result of the revised terms and conditions agreed by the Parties, the Agreement is hereby amended as follows:
 - A. The Definition of “**Facility**” as set forth in Section 1.25 of the Agreement is hereby deleted in its entirety and replaced with the following:

“**Facility**” means Catalent’s facility located in [***] USA, and/or [***] USA or such other facility as agreed by the parties in writing.”

- B. The Definition of “**Commencement Date**” as set forth in Section 1.19 of the Agreement is hereby deleted in its entirety and replaced with the following:

“**Commencement Date**” means the first date on which Catalent is scheduled to deliver (pursuant to Section 6.1) to Client Product intended for commercial sale, excluding validation Batches, and the parties agree such Commencement Date to be January 1, 2024.”

C. A new Section 7.1.E is hereby added to the Agreement:

“Annual volume tiers work as follows: Based on the forecasted demand, Client will decide and notify Catalent at least [***] prior to the start of each Contract Year the annual Volume Tier for each strength that Client projects its orders will reflect (the “Forecasted Volume”) for that Contract Year, and Catalent shall notify Client [***] for that Contract Year. [***]. For all future years, pricing letters will be issued pursuant to Section 7 of the Agreement as amended. At the end of the Contract Year, [***]. For clarity the term “delivery” shall have the meaning ascribed to it in Section 6.1 of the Agreement. However, should the [***].

- D. Attachment C** to the Agreement is hereby deleted in its entirety and is hereby replaced with **Attachment C** attached hereto and made a part hereof, which sets forth the Unit Pricing for Product delivered pursuant to the Agreement.

3. **No Other Variation.** Except as expressly provided in this Amendment, all the terms, conditions and provisions of the Agreement (including the rights, duties, liabilities and obligations of the Parties thereunder) remain in full force and effect and shall apply to the construction of this Amendment.
4. **Entire Agreement.** This Amendment and the Agreement, including their respective Attachments and Exhibits, constitute the entire agreement between the Parties relating to the subject matter hereof and thereof, and may not be varied except in writing signed by a duly authorized representative of each Party.

5. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute this Amendment effective as of the Amendment Effective Date.

CATALENT PHARMA SOLUTIONS, LLC

PHATHOM PHARMACEUTICALS, INC.

By: /s/ Louis Weiner

By: /s/ Jay Buchanan

Name: Louis Weiner

Name: Jay Buchanan

Title: VP, Commercial Operations

Title: VP, Manuf. and Supply Chain

ATTACHMENT C
Unit Pricing and Fees

[***]

FOURTH AMENDMENT TO LOAN AND SECURITY AGREEMENT

THIS FOURTH AMENDMENT TO LOAN AND SECURITY AGREEMENT (this "Amendment"), dated as of December 14, 2023, is entered into by and among PHATHOM PHARMACEUTICALS, INC., a Delaware corporation ("Phathom"), each of its Subsidiaries from time to time party to the Loan Agreement (as defined below) as borrower (together with Phathom, individually or collectively, as the context may require, "Borrower"), the several banks and other financial institutions or entities parties to this Amendment (collectively, referred to as the "Lenders"), and HERCULES CAPITAL, INC., a Maryland corporation, in its capacity as administrative agent and collateral agent for itself and the Lenders (as defined in the Loan Agreement) (together with its successors and assigns, in such capacity, the "Agent").

A. Borrower, Lenders and the Agent are parties to that certain Loan and Security Agreement, dated as of September 17, 2021 (as amended by that certain Consent and First Amendment to Loan and Security Agreement dated as of May 3, 2022, as further amended by that certain Second Amendment to Loan and Security Agreement dated as of September 26, 2022, as further amended by that certain Third Amendment to Loan and Security Agreement dated as of May 9, 2023, and as further amended, restated, supplemented or otherwise modified from time to time prior to the date of this Amendment, the "Loan Agreement"). The Lenders have extended credit to Borrower for the purposes permitted in the Loan Agreement.

B. Borrower has requested that Agent and the Lenders amend the Loan Agreement to (i) adjust the availability of Tranche II, Tranche III and Tranche IV and the Term Loan Advances pursuant to Sections 2.1(a)(ii), 2.1(a)(iii) and 2.1(a)(iv) of the Loan Agreement, (ii) incorporate a new Tranche V and Tranche VI pursuant to Sections 2.1(a)(v) and 2.1(a)(vi) of the Loan Agreement, (iii) adjust the parameters of the financial covenants set forth in Section 7.20 of the Loan Agreement, and (iv) make certain other revisions to the Loan Agreement as more fully set forth herein. Agent and Lenders have agreed to so amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

SECTION 1 Definitions; Interpretation.

(a) **Terms Defined in Loan Agreement.** All capitalized terms used in this Amendment (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement (as amended by this Amendment).

(b) **Rules of Construction.** The rules of construction in Section 1.2 of the Loan Agreement shall be applicable to this Amendment and are incorporated herein by this reference.

SECTION 2 Amendments to the Loan Agreement.

(a) Upon the occurrence of the Fourth Amendment Effective Date, the Loan Agreement is hereby amended as follows:

(i) New Definition. The following definitions are added to Section 1.1 of the Loan Agreement in their proper alphabetical order:

“Base Rate” means the greater of (a) (i) the Prime Rate plus (ii) 1.35%, and (b) 9.85%.

“Fourth Amendment” means that certain Fourth Amendment to Loan and Security Agreement, dated as of December 14, 2023, by and among the Borrower, Agent and the Lenders party thereto.

“Fourth Amendment Effective Date” has the meaning given to such term in the Fourth Amendment.

“Modified Rate” means the greater of (a) (i) the Prime Rate plus (ii) 1.00%, and (b) 9.50%.

“Performance Covenant B Milestone Date” means the first date on which Borrower has reported to Agent, subject to verification by Agent (acting reasonably), that T3M Net Product Revenue was no less than \$35,000,000 for any three-month period ending on the final day of any month falling from the Fourth Amendment Effective Date until the Term Loan Maturity Date.

“Prime Rate” means the lesser of (a) the “prime rate” as reported in *The Wall Street Journal* or any successor publication thereto, and (b) 9.00%.

“Tranche I” means the advances pursuant to Section 2.1(a)(i).

“Tranche II Facility Charge” means 0.50% of the principal amount of any Advance pursuant to Tranche II, which is payable to Lenders in accordance with Section 4.2(d).

“Tranche III Milestone Date” means the earliest to occur of (a) March 15, 2024, and (b) the date on which Tranche II is drawn in full.

“Tranche IV Milestone Date” means the earliest to occur of (a) June 15, 2024, and (b) the date on which Tranche III is drawn in full.

“Tranche V” means the advances pursuant to Section 2.1(a)(v).

“Tranche V Facility Charge” means 0.50% of the principal amount of any Advance pursuant to Tranche V, which is payable to Lenders in accordance with Section 4.2(g).

“Tranche V Milestone Date” means the first date on which Borrower has reported to Agent, subject to verification by Agent (acting reasonably), that T3M Net Product Revenue was no less than \$60,000,000 for any three-month period ending on the final day of any month falling from the Fourth Amendment Effective Date until (and including) June 30, 2025.

“Tranche VI” means the advances pursuant to Section 2.1(a)(vi).

“Tranche VI Facility Charge” means 0.50% of the principal amount of any Advance pursuant to Tranche VI, which is payable to Lenders in accordance with Section 4.2(h).

“Tranche VI Milestone Date” means the first date on which Borrower has reported to Agent, subject to verification by Agent (acting reasonably), that T3M Net Product Revenue was no less than \$80,000,000 for any three-month period ending on the final day

of any month falling from the Fourth Amendment Effective Date until (and including) December 31, 2025.”

(ii) Amended and Restated Definitions. The following definitions appearing in Section 1.1 of the Loan Agreement are hereby amended in their entirety and replaced with the following:

“Amortization Date” means December 1, 2027.

“Performance Covenant B” means that Borrower at all times maintains Qualified Cash in an amount greater than or equal to (x) the outstanding principal amount of the Term Loan Advances, multiplied by (y) (i) at all times prior to the Performance Covenant B Milestone Date, 50%, and (ii) at all times on and after the Performance Covenant B Milestone Date, 35%.

“Performance Covenant C” means Borrower’s achievement of T3M Net Product Revenue equal to or greater than the least of (i) (x) as of any testing date occurring from January 1, 2024 until December 31, 2024, 30% of the amount set forth for the applicable month in the Performance Covenant C Schedule, or (y) thereafter, 25% of the amount set forth for the applicable month in the Performance Covenant C Schedule, and (ii) \$120,000,000, tested monthly.

“Performance Covenant C Schedule” means that certain Performance Covenant C Schedule delivered by Borrower to the Agent, and approved by the Agent, after the Third Amendment Effective Date but prior to the Fourth Amendment Effective Date.

“Term Loan Cash Interest Rate” means, for any day, a per annum rate of interest equal to (a) prior to the Fourth Amendment Effective Date, the greater of (i) (x) the prime rate as reported in The Wall Street Journal plus (y) 2.25%, and (ii) 5.50%, and (b) on and from the Fourth Amendment Effective Date, (i) prior to the Tranche VI Milestone Date, the Base Rate, and (ii) on and from the Tranche VI Milestone Date, the Modified Rate.

“Term Loan Maturity Date” means December 1, 2027; provided that if such day is not a Business Day, the Term Loan Maturity Date shall be the immediately preceding Business Day.

“Term Loan PIK Interest Rate” means, for any day, a per annum rate of interest equal to (a) on any day prior to the Fourth Amendment Effective Date, 3.35%, and (b) thereafter, 2.15%.

“Tranche III Facility Charge” means 0.50% of the principal amount of any Advance pursuant to Tranche II, which is payable to Lenders in accordance with Section 4.2(e).

“Tranche IV Facility Charge” means 0.50% of the principal amount of any Advance pursuant to Tranche II, which is payable to Lenders in accordance with Section 4.2(f).”

(iii) Deleted Definitions. The following defined terms set forth in Section 1.1 of the Loan Agreement hereby are deleted in their entirety: “*Availability Trigger*”; “*First Interest Only Extension Conditions*”; “*Initial Performance Covenant Test Date*”; “*Performance Test Period*”; “*PDUFA Action Date*”; “*Second Interest Only Extension Conditions*”.

(iv) Amended and Restated Cross References. The following terms appearing in Section 1.2 of the Loan Agreement are hereby amended in their entirety and replaced with the following:

Defined Term	Section
“Agent”	Preamble
“Assignee”	11.13
“Borrower”	Preamble
“Claims”	11.10
“Collateral”	3.1
“Confidential Information”	11.12
“End of Term Charge”	2.5
“Event of Default”	9
“Financial Statements”	7.1
“Initial End of Term Charge”	2.5
“Lenders”	Preamble
“Maximum Rate”	2.2
“Performance Covenant Cure”	7.20 Cure”
“Prepayment Charge”	2.4
“Publicity Materials”	11.18
“Register”	11.7
“Rights to Payment”	1.1
“SBA”	7.16
“SBIC”	7.16
“SBIC Act”	7.16
“Subsequent End of Term Charge”	2.5

(v) Tranche II Commitment. Section 2.1(a)(ii) of the Loan Agreement is hereby amended in its entirety and replaced with the following:

“(ii) *Tranche II*. Subject to the terms and conditions of this Agreement, beginning on the Fourth Amendment Effective Date and continuing through and including March 15, 2024, Borrower may request, and Lenders shall severally (and not jointly) make, one or more additional Term Loan Advances in minimum increments of \$10,000,000 (or if less than \$10,000,000, the remaining amount of Term Loan Advances available to be drawn pursuant to this Section 2.1(a)(ii)) in an aggregate principal amount up to \$50,000,000. Borrower shall request no less than \$40,000,000 in Term Loan Advances under this Section 2.1(a)(ii) on the Fourth Amendment Effective Date.”

(vi) Tranche III Commitment. Section 2.1(a)(iii) of the Loan Agreement is hereby amended in its entirety and replaced with the following:

“(iii) *Tranche III*. Subject to the terms and conditions of this Agreement, beginning on the occurrence of the Tranche III Milestone Date and continuing through and

including June 15, 2024, Borrower may request, and Lenders shall severally (and not jointly) make, a single Term Loan Advance in a principal amount of \$25,000,000.”

(vii) Tranche IV Commitment. Section 2.1(a)(iv) of the Loan Agreement is hereby amended in its entirety and replaced with the following:

“(iv) *Tranche IV*. Subject to the terms and conditions of this Agreement, beginning on the occurrence of the Tranche IV Milestone Date and continuing through and including December 15, 2024, Borrower may request, and Lenders shall severally (and not jointly) make, a single Term Loan Advance in a principal amount of \$25,000,000.”

(viii) Tranche V Commitment. The following new Section 2.1(a)(v) of the Loan Agreement is hereby inserted in Section 2.1 of the Loan Agreement immediately following Section 2.1(a)(iv):

“(v) *Tranche V*. Subject to the terms and conditions of this Agreement, beginning on the occurrence of the Tranche V Milestone Date and continuing through and including the earlier of (A) June 30, 2025 and (B) the date which is 90 days after the Tranche V Milestone Date, Borrower may request, and Lenders shall severally (and not jointly) make, one or more additional Term Loan Advances in minimum increments of \$25,000,000 (or if less than \$25,000,000, the remaining amount of Term Loan Advances available to be drawn pursuant to this Section 2.1(a)(v)) in an aggregate principal amount up to \$50,000,000.”

(ix) Tranche VI Commitment. The following new Section 2.1(a)(vi) of the Loan Agreement is hereby inserted in Section 2.1 of the Loan Agreement immediately following Section 2.1(a)(v):

“(vi) *Tranche VI*. Subject to the terms and conditions of this Agreement, beginning on the occurrence of the Tranche VI Milestone Date and continuing through and including the earlier of (A) December 31, 2025 and (B) the date which is 90 days after the Tranche VI Milestone Date, Borrower may request, and Lenders shall severally (and not jointly) make, one or more additional Term Loan Advances in minimum increments of \$25,000,000 (or if less than \$25,000,000, the remaining amount of Term Loan Advances available to be drawn pursuant to this Section 2.1(a)(vi)) in an aggregate principal amount up to \$50,000,000.”

(x) Advance Request. Section 2.1(b) of the Loan Agreement is hereby amended in its entirety and replaced with the following:

“(b) Advance Request. To obtain a Term Loan Advance, Borrower shall complete, sign and deliver an Advance Request to Agent at least ten (10) Business Days (or such shorter period as the Agent may agree to in its sole discretion) before the Advance Date, other than the Term Loan Advance to be made on the Closing Date or the Fourth Amendment Effective Date, which shall be at least one (1) Business Day before the Advance Date. Lenders shall fund the Term Loan Advance in the manner requested by the Advance Request provided that each of the conditions precedent to such Term Loan Advance is satisfied as of the requested Advance Date. The proceeds of any Term Loan Advance shall be deposited into an account that is subject to an Account Control Agreement.

(xi) Prepayment. Section 2.4 of the Loan Agreement is hereby amended in its entirety and replaced with the following:

“2.4 Prepayment. At its option, Borrower may at any time prepay all or a portion of the outstanding Advances by paying the entire principal balance (or such portion thereof), all accrued and unpaid interest thereon, together with a prepayment charge equal to (a) where such prepayment occurs prior to October 1, 2026, one and one quarter percent (1.25%) of the principal amount of the Advance being prepaid, or (b) where such prepayment occurs on or after October 1, 2026, one-half of one percent (0.50%) of the principal amount of the Advance being prepaid (a “Prepayment Charge”). Borrower agrees that the Prepayment Charge is a reasonable calculation of Lenders’ lost profits in view of the difficulties and impracticality of determining actual damages resulting from an early repayment of the Advances. Borrower shall prepay the outstanding amount of all principal and accrued interest through the prepayment date upon the occurrence of a Change in Control. Notwithstanding the foregoing, Agent and Lenders agree to waive the Prepayment Charge if (i) Borrower prepays all the outstanding advances as the result of the occurrence of a Change in Control, or (ii) Agent and Lenders or their respective Affiliates (in their sole and absolute discretion) agree in writing to refinance the Advances prior to the Term Loan Maturity Date. Any amounts paid under this Section shall be applied by Agent to the then unpaid amount of any Secured Obligations (including principal and interest) pro rata to all scheduled amounts owed. For the avoidance of doubt, if a payment hereunder becomes due and payable on a day that is not a Business Day, the due date thereof shall be the immediately preceding Business Day.”

(xii) End of Term Charge. Section 2.5 of the Loan Agreement is hereby amended in its entirety and replaced with the following:

“2.5 End of Term Charge. On the earliest to occur of (i) October 1, 2026, (ii) the date that Borrower prepays the outstanding Secured Obligations (other than any inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) in full, or (iii) the date that the Secured Obligations become due and payable in full pursuant to the terms of this Agreement, Borrower shall pay Lenders a charge of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “Initial End of Term Charge”). On the earliest to occur of (i) the Term Loan Maturity Date, (ii) the date that Borrower prepays the outstanding Secured Obligations (other than any inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) in full, or (iii) the date that the Secured Obligations become due and payable in full pursuant to the terms of this Agreement, Borrower shall pay Lenders a charge of the sum of (A) One Million Dollars (\$1,000,000), plus (B) 3.00% of the aggregate original principal amount of the Term Loan Advances made hereunder (but excluding the original principal amount of the Term Loan Advances made under Tranche I) (the “Subsequent End of Term Charge”; together with the Initial End of Term Charge, collectively, the “End of Term Charge”). Notwithstanding the required payment date of such End of Term Charge, the applicable pro rata portion of the End of Term Charge shall be deemed earned by Lenders on the date the applicable Term Loan Advance is made. For the avoidance of doubt, if a payment hereunder becomes due and payable on a day that is not a Business Day, the due date thereof shall be the immediately preceding Business Day.”

(xiii) Treatment of Prepayment Charge and End of Term Charge. All references to “the Closing Date” in Section 2.8 of the Loan Agreement shall hereby be amended in their entirety and replaced with “the Closing Date and the Fourth Amendment Effective Date”.

(xiv) Further Conditions Precedent. Section 4.2 of the Loan Agreement is hereby amended in its entirety and replaced with the following:

“4.2 All Advances. On each Advance Date:

(a) Agent shall have received (i) an Advance Request for the relevant Advance as required by Section 2.1(b), duly executed by Borrower’s Chief Executive Officer, Chief Financial Officer or Chief Accounting Officer, and (ii) any other documents Agent may reasonably request in its good faith business discretion.

(b) The representations and warranties set forth in this Agreement shall be true and correct in all material respects on and as of the applicable Advance Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.

(c) Borrower shall be in compliance with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed, and at the time of and immediately after such Advance no Event of Default shall have occurred and be continuing.

(d) With respect to any Advance pursuant to Tranche II, Borrower shall have paid the Tranche II Facility Charge.

(e) With respect to any Advance pursuant to Tranche III, Borrower shall have paid the Tranche III Facility Charge.

(f) With respect to any Advance pursuant to Tranche IV, Borrower shall have paid the Tranche IV Facility Charge.

(g) With respect to any Advance pursuant to Tranche V, Borrower shall have paid the Tranche V Facility Charge.

(h) With respect to any Advance pursuant to Tranche VI, Borrower shall have paid the Tranche VI Facility Charge.

Each Advance Request shall be deemed to constitute a representation and warranty by Borrower on the relevant Advance Date as to the matters specified in subsections (b) and (c) of this Section 4.2 and as to the matters set forth in the Advance Request.”

(xv) Minimum Cash. Section 7.20(a)(i) of the Loan Agreement is hereby amended in its entirety and replaced with the following:

“At all times, Borrower shall maintain Qualified Cash in an amount greater than or equal to (x) the outstanding aggregate principal amount of the Term Loan Advances, multiplied by (y) 20%.”

(xvi) Performance Covenant. Section 7.20(b) of the Loan Agreement is hereby amended in its entirety and replaced with the following:

“(b) Performance Covenant. Beginning on such date for which financial statements have been (or are required to be delivered) under Section 7.1(a) for the month ending September 30, 2024 and at all times thereafter, Borrower shall satisfy either of (i) Performance Covenant A or Performance Covenant B, tested at all times, or (ii) Performance Covenant C, tested monthly.”

(xvii) Exhibit A to the Loan Agreement is hereby replaced with Exhibit A attached hereto.

(xviii) Exhibit E to the Loan Agreement is hereby replaced with Exhibit E attached hereto.

(xix) Exhibit I to the Loan Agreement is hereby deleted in its entirety.

(xx) Schedule 1.1(a) to the Loan Agreement is hereby replaced with Schedule 1.1(a) attached hereto.

(b) **References Within Loan Agreement.** Each reference in the Loan Agreement to “this Agreement” and the words “hereof,” “herein,” “hereunder”, or words of like import, shall mean and be a reference to the Loan Agreement as amended by this Amendment. This Amendment shall be a Loan Document.

SECTION 3 Amendment Fee. Borrower will pay to Agent, for the account of the Lenders (in accordance with Section 2.6 of the Loan Agreement), an amendment fee (the “Amendment Fee”) equal to Two Hundred Fifty Thousand Dollars (\$250,000). The Amendment Fee shall be fully earned, due and payable on the date hereof.

SECTION 4 Conditions of Effectiveness. The effectiveness of this Amendment (the “Fourth Amendment Effective Date”) shall be subject to Agent’s receipt of the following documents, in form and substance satisfactory to Agent, or, as applicable, the following conditions being met:

(a) this Amendment, executed by Agent, each Lender and Borrower;

(b) Borrower shall have paid (i) the Amendment Fee, (ii) the Tranche II Facility Charge payable for the Term Loan Advances requested pursuant to Section 4(c), (iii) all invoiced costs and expenses then due in accordance with Section 7(d), and (iv) all other fees, costs and expenses, if any, due and payable as of the date hereof under the Loan Agreement;

(c) Borrower shall have submitted an Advance Request for Term Loan Advances under Tranche II in an amount that is no less than \$40,000,000;

(d) a good standing certificate of Borrower, certified by the Secretary of State of Delaware, dated as of a date no earlier than 30 days prior to the date hereof;

(e) certified copies, dated as of a recent date, of financing statement and other lien searches of Borrower, as Agent may request and which shall be obtained by Agent, accompanied by written evidence (including any UCC termination statements) that the Liens revealed in any such searches either (i) will be terminated prior to or in connection with the execution of this Amendment, or (ii) in the sole discretion of Agent, will constitute Permitted Liens; and

(f) on the Fourth Amendment Effective Date, immediately after giving effect to the amendment of the Loan Agreement contemplated hereby:

(i) the representations and warranties contained in Section 5 shall be true and correct on and as of the Fourth Amendment Effective Date as though made on and as of such date; and

(ii) there exist no Events of Default or events that with the passage of time would result in an Event of Default.

SECTION 5 Representations and Warranties. To induce Agent and Lenders to enter into this Amendment, Borrower hereby confirms, as of the date hereof, (a) that the representations and warranties made by it in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; *provided, further*, that to the extent such representations and warranties by their terms expressly relate only to a prior date such representations and warranties shall be true and correct as of such prior date, and (a) that no Event of Default has occurred and is continuing; (b) that there has not been and there does not exist a Material Adverse Effect; (c) Lenders have and shall continue to have valid, enforceable and perfected first-priority liens, subject only to Permitted Liens, on and security interests in the Collateral and all other collateral heretofore granted by Borrower to Lenders, pursuant to the Loan Documents or otherwise granted to or held by Lenders; (d) the agreements and obligations of Borrower contained in the Loan Documents and in this Amendment constitute the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by the application of general principles of equity; and (e) the execution, delivery and performance of this Amendment by Borrower will not violate any law, rule, regulation, order, contractual obligation or organizational document of Borrower and will not result in, or require, the creation or imposition of any lien, claim or encumbrance of any kind on any of its properties or revenues. For the purposes of this **Error! Reference source not found.5**, each reference in Section 5 of the Loan Agreement to "this Agreement," and the words "hereof", "herein", "hereunder", or words of like import in such Section, shall mean and be a reference to the Loan Agreement as amended by this Amendment.

SECTION 6 Release. In consideration of the agreements of Agent and each Lender contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, on behalf of itself and its successors, assigns, and other legal representatives, hereby to the extent possible under applicable law fully, absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and each Lender, and its successors and assigns, and its present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Agent, Lenders and all such other persons being hereinafter referred to collectively as the "**Releasees**" and individually as a "**Releasee**"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which Borrower, or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Amendment, for or on account of, or in relation to, or in any way in connection with the Loan Agreement, or any of the other Loan Documents or transactions thereunder or related thereto. Borrower understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such

release. Borrower agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.

SECTION 7 Miscellaneous.

(a) Loan Documents Otherwise Not Affected; Reaffirmation; No Novation.

(i) Except as expressly amended pursuant hereto or referenced herein, the Loan Agreement and the other Loan Documents shall remain unchanged and in full force and effect and are hereby ratified and confirmed in all respects. The Lenders' and Agent's execution and delivery of, or acceptance of, this Amendment shall not be deemed to create a course of dealing or otherwise create any express or implied duty by any of them to provide any other or further amendments, consents or waivers in the future.

(ii) Borrower hereby expressly (1) reaffirms, ratifies and confirms its Secured Obligations under the Loan Agreement and the other Loan Documents, (2) reaffirms, ratifies and confirms the grant of security under Section 3 of the Loan Agreement, (3) reaffirms that such grant of security in the Collateral secures all Secured Obligations under the Loan Agreement, including without limitation any Term Loan Advances funded on or after the Fourth Amendment Effective Date, as of the date hereof, and with effect from (and including) the Fourth Amendment Effective Date, such grant of security in the Collateral: (x) remains in full force and effect notwithstanding the amendments expressly referenced herein; and (y) secures all Secured Obligations under the Loan Agreement, as amended by this Amendment, and the other Loan Documents, (4) agrees that this Amendment shall be a "Loan Document" under the Loan Agreement, and (5) agrees that the Loan Agreement and each other Loan Document shall remain in full force and effect following any action contemplated in connection herewith.

(iii) This Amendment is not a novation and the terms and conditions of this Amendment shall be in addition to and supplemental to all terms and conditions set forth in the Loan Documents. Nothing in this Amendment is intended, or shall be construed, to constitute an accord and satisfaction of Borrower's Secured Obligations under or in connection with the Loan Agreement and any other Loan Document or to modify, affect or impair the perfection or continuity of Agent's security interest in, (on behalf of itself and the Lenders) security titles to or other liens on any Collateral for the Secured Obligations.

(b) **Conditions.** For purposes of determining compliance with the conditions specified in Section 4, each Lender that has signed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless Agent shall have received notice from such Lender prior to the date hereof specifying its objection thereto.

(c) **No Reliance.** Borrower hereby acknowledges and confirms to Agent and Lenders that Borrower is executing this Amendment on the basis of its own investigation and for its own reasons without reliance upon any agreement, representation, understanding or communication by or on behalf of any other Person.

(d) **Costs and Expenses.** Borrower agrees to pay to Agent on the date hereof the out-of-pocket costs and expenses of Agent and each Lender party hereto, and the documented out-of-pocket fees and disbursements of counsel to Agent and each Lender party hereto in connection with the negotiation, preparation, execution and delivery of this Amendment and any other documents to be delivered in connection herewith on the date hereof.

(e) **Binding Effect.** This Amendment binds and is for the benefit of the successors and permitted assigns of each party.

(f) **Governing Law.** THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA, EXCLUDING CONFLICT OF LAWS PRINCIPLES THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY OTHER JURISDICTION.

(g) **Complete Agreement; Amendments.** This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements with respect to such subject matter. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

(h) **Severability of Provisions.** Each provision of this Amendment is severable from every other provision in determining the enforceability of any provision.

(i) **Counterparts.** This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Amendment. Delivery of an executed counterpart of a signature page of this Amendment by facsimile, portable document format (.pdf) or other electronic transmission will be as effective as delivery of a manually executed counterpart hereof.

(j) **Electronic Execution of Certain Other Documents.** The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Amendment and the transactions contemplated hereby (including without limitation assignments, assumptions, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the California Uniform Electronic Transactions Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, as of the date first above written.

BORROWER:

PHATHOM PHARMACEUTICALS, INC.

Signature: /s/ Molly Henderson

Print Name: Molly Henderson

Title: Chief Financial and Business Officer

[SIGNATURES CONTINUE ON THE NEXT PAGE]

AGENT:
HERCULES CAPITAL, INC.

Signature: /s/ Seth Meyer

Print Name: Seth Meyer

Title: Chief Financial Officer

LENDERS:

HERCULES CAPITAL, INC.

Signature: /s/ Seth Meyer

Print Name: Seth Meyer

Title: Chief Financial Officer

**HERCULES VENTURE GROWTH CREDIT OPPORTUNITIES
FUND 1 L.P.**

By: Hercules Adviser LLC, its Investment Adviser

Signature: /s/ Seth Meyer

Print Name: Seth Meyer

Title: Authorized Signatory

HERCULES PRIVATE CREDIT FUND 1 L.P.

By: Hercules Adviser LLC, its Investment Adviser

By: /s/ Seth Meyer

Print Name: Seth Meyer

Title: Authorized Signatory

**HERCULES PRIVATE GLOBAL VENTURE GROWTH FUND I
L.P.**

By: Hercules Private Global Venture Growth Fund GP I LLC, its general partner

By: Hercules Adviser LLC, its sole member

Signature: /s/ Seth Meyer

Print Name: Seth Meyer

Title: Chief Financial Officer

SAGARD HEALTHCARE PARTNERS (DELAWARE), LP

By: Sagard Healthcare Royalty Partners GP LLC, its general partner

Signature: /s/ Jason Sneah

Print Name: Jason Sneah

Title: Manager

Signature: /s/ Adam Vigna

Print Name: Adam Vigna

Title: Chief Investment Officer

Table of Exhibits and Schedules

Exhibit A: Advance Request

Exhibit E: Compliance Certificate

Schedule 1.1(a): Term Commitments

PHATHOM PHARMACEUTICALS BONUS PLAN
Effective January 1, 2024

INTRODUCTION AND PURPOSE

The Phathom Pharmaceuticals (“Phathom” or the “Company”) Bonus Plan (the “Plan”) is designed to reward eligible employees for the achievement of corporate objectives, as well as measured individual objectives that are consistent with and support the overall corporate objectives. Since cooperation between departments and employees will be required to achieve corporate objectives that represent a significant portion of the Plan, the Plan should help foster teamwork and build a cohesive management team. For purposes of the Plan, the "Plan year" will mean each calendar year.

The Plan is designed to:

- Encourage high performance by providing an incentive program to achieve overall corporate objectives and to enhance shareholder value.
- Reward those individuals who significantly impact corporate results.
- Encourage increased teamwork among all disciplines within Phathom.
- Incorporate an incentive program in the Phathom overall compensation program to help attract and retain employees.
- Provide an incentive for eligible employees to remain employed by Phathom through and beyond the payout of any earned bonus.

ELIGIBILITY

All regular employees are eligible to participate in the Plan. Employees are not eligible if included in a separate formal incentive plan provided by the Company. In order to be eligible, a participant must remain employed through the date awards are paid for a Plan year. If the participant is not employed on the date awards are paid, the participant will not have earned any bonus. If the participant has been subject to a performance improvement plan or other disciplinary procedure during the Plan year, any award to such individual will be at the discretion of the CEO or Chief Human Resources Officer, with respect to executive officers, the Compensation Committee.

Change in Status During the Plan Period:

a. Participants hired during the Plan year:

- Participants hired during the Plan year are eligible for a prorated award based the number of days employed in an eligible position.

b. Promotion/change in level:

- For promotions that occur after the fourth month of the applicable Plan year, the calculation will be prorated, based on the number

of months at each bonus percentage level.

- c. *Transfer to a position that is included in a separate formal Incentive Plan:* Awards will be pro-rated using the same discipline as outlined for promotions above and in the separate formal incentive plan.
- d. *Termination of employment:*
 - If a participant's employment is terminated voluntarily prior to the date awards are paid, the participant will not be eligible to receive an award.
 - If a participant's employment is terminated involuntarily prior to the date awards are paid, it will be at the absolute discretion of the Company whether or not an award payment is made.
- e. *Leave of Absence:* Employee may be considered for a prorated award in the event of a leave of absence during the Plan year. The proration requirement can be waived at the discretion of the CEO or Chief Human Resources Officer, or for members of Executive Leadership team at the discretion of the Compensation Committee.

AWARD CALCULATION

Awards will be determined by applying a "bonus percentage" to the participant's base salary earned or hourly wages earned during the Plan year. While the Compensation Committee may change the bonus percentage for any Plan year, the following bonus percentages will initially be used for this purpose:

Position Title	Bonus Percentage
CEO	65%
COO	50%
Executive Leadership Team	45%
VP	30%
Senior Director, Director	25%
Associate Director	20%
Senior Manager, Manager	15%
Below Manager	10%

Corporate and Individual Performance Factors

The CEO will present to the Compensation Committee a list of weighted corporate objectives for the applicable Plan year, which are subject to approval by the Compensation Committee. All participants in the Plan will then develop a list of key individual objectives, which must be approved by the responsible Vice President or Senior Vice President and, in the case of executive officers, by the CEO.

The relative weight between corporate and individual performance factors varies based on the individual's assigned level within the organization. The weighting may be reviewed periodically and may be adjusted for any Plan year. The weighting for the performance factors will initially be as follows:

	<u>Corporate</u>	<u>Individual</u>
Executive Leadership Team	100%	—
Vice President and Above	80%	20%
Director Level	70%	30%
Senior Manager and Below	60%	40%

Performance Award Multipliers

Separate award multipliers will be established for both the corporate and, if applicable, the individual components of each award. The award multiplier for the corporate component shall be determined by the Compensation Committee each Plan year, in its sole discretion. The same award multiplier for the corporate component of the award shall be used for all Plan participants. The award multiplier for the individual component shall be determined by the responsible Vice President or Senior Vice President and by the President and / or CEO.

While the Compensation Committee may change the award multipliers for any Plan year, the following scale will be used to determine the actual performance award multiplier based upon the measurement of corporate and, if applicable, individual performance objectives.

Corporate Award Multipliers

<u>Performance Category</u>	<u>Award Multiplier</u>
1. Performance was truly outstanding or exceeded all objectives	125% - 150%
2. Performance met or exceeded all objectives or was excellent in view of prevailing conditions	100% - 125%
3. Performance generally met the year's objectives and was very acceptable in view of prevailing conditions	50% - 100%
4. Performance for the year met some, but not all, objectives	0% - 50%
5. Performance for the year was not acceptable in view of prevailing conditions	0%

Example for Employee (Other than Executive Leadership Team)

The example below shows a sample cash bonus award calculation under the Plan for a non-executive employee, which is determined after the end of the Plan year.

Step #1: A potential target bonus award is calculated by multiplying the employee's base salary by the participant's assigned target bonus percentage.

Step #2: The calculated potential target bonus award is then split between the corporate and individual performance factors by the employee's assigned level (per the weighting above). This calculation establishes specific potential dollar awards for the performance period based on both the individual and corporate performance factor components.

Step #3: After the end of the Plan year, corporate and individual award multipliers will be established using the criteria described above. Awards are determined by multiplying the potential target bonus awards in Step #2 by the actual corporate and individual award multipliers.

Example:

Step #1: Determine Target Bonus Award	
Position:	Associate Director
Base salary:	\$100,000
Target bonus percentage:	20%
Potential target bonus:	\$ 20,000

Step #2: Split Target Bonus Award Based on Corporate/Individual Weightings

Potential corporate performance bonus (70%): \$ 14,000 Potential individual performance bonus (30%): \$ 6,000

Step # 3: Actual Bonus Award Calculation

Assumed payment multipliers based on assessment of corporate and individual performance:

Corporate multiplier 75%-performance generally met objectives
Individual multiplier 125%-performance exceeded objectives

Cash Award:

Corporate component	\$ 10,500 (\$14,000 x 75%)
Individual component	\$ <u>7,500</u> (\$ 6,000 x 125%)
Total Award	\$ 17,500

AWARD PAYMENTS

Bonus award payments may be made in cash, through the issuance of stock, stock options or another form of equity award, or by a combination of cash, stock, stock options and/or another form of equity award, at the discretion of the Compensation Committee. All bonus award payments are subject to applicable tax withholdings. In the event that the Compensation Committee elects to pay bonus awards in stock or stock options, the Compensation Committee, in its sole discretion, will make a determination as to the number of shares of stock or stock options to be issued to each Plan participant in satisfaction of such bonus awards. The issuance of stock and stock options may also be subject to the approval of the Company's stockholders, and any stock options issued will be subject to the terms and conditions of the Company's equity plan.

Payment of bonus awards will be made at such times as determined by the Compensation Committee, but not later than four months following the Plan year.

PLAN PROVISIONS

Governance

The Plan will be administered by the Compensation Committee of the Board of Directors (the "Compensation Committee"). The CEO and Chief Human Resources Officer of Phathom will be responsible for the administration of the Plan with respect to non-executive employees. The Compensation Committee will be responsible for approving any compensation or incentive awards to executive officers of the Company. All determinations of the Compensation Committee or the CEO and Chief Human Resources Officer, as applicable, under the Plan, shall be final and binding on all Plan participants.

Compensation Committee's Absolute Right to Alter or Abolish the Plan

The Compensation Committee reserves the right in its absolute discretion to abolish the Plan at any time or to alter the terms and conditions under which incentive compensation will be paid. Such discretion may be exercised any time before, during, and after the Plan year is completed. No participant shall have any vested right to receive any compensation hereunder until actual delivery of such compensation. Participation in the Plan at any given time does not guarantee ongoing participation.

Employment Duration/Employment Relationship

This Plan does not, and Phathom's policies and practices in administering this Plan do not, constitute an express or implied contract or other agreement concerning the duration of any participant's employment with the Company. The employment relationship of each participant is "at will" and may be terminated at any time by Phathom or by the participant, with or without cause.

Plan Unfunded

The Plan shall be unfunded. Amounts payable under the Plan are not and will not be transferred into a trust or otherwise set aside. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any award under the Plan. Any accounts under the Plan are for bookkeeping purposes only and do not represent a claim against the specific assets of the Company.

Rights Not Transferable

No rights of any participant to payments of any amounts under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated. All

rights with respect to an award granted to a participant under the Plan shall be available during his or her lifetime only to the participant.

Governing Law

The Plan shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of New Jersey (without regard to principles of conflicts of law).

Any questions pertaining to this plan should be directed to the Human Resources Department.

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-234357) pertaining to the 2019 Equity Incentive Plan, 2019 Incentive Award Plan, and 2019 Employee Stock Purchase Plan of Phathom Pharmaceuticals, Inc.,
- (2) Registration Statement (Form S-8 No. 333-263420) pertaining to the 2019 Incentive Award Plan and 2019 Employee Stock Purchase Plan of Phathom Pharmaceuticals, Inc., and
- (3) Registration Statement (Form S-3 No. 333-275431) of Phathom Pharmaceuticals, Inc.;

of our report dated March 7, 2024, with respect to the financial statements of Phathom Pharmaceuticals, Inc. included in this Form 10-K/A.

/s/ Ernst & Young

Iselin, New Jersey
June 14, 2024

LIMITED POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person or entity whose signature appears below constitutes, designates and appoints each of Terrie Curran and Molly Henderson, each of whom are officers of Phathom Pharmaceuticals, Inc. (the "Company"), as its true and lawful attorneys-in-fact and agent, each with power of substitution, with full power to act without the other and on behalf of and as attorney for me, for the purpose of executing and filing with the Securities and Exchange Commission the Company's Annual Report on Form 10-K for the year ended December 31, 2023, and any and all amendments thereto, and to do all such other acts and execute all such other instruments which said attorney may deem necessary or desirable in connection therewith.

Signature	Title	Date
<u>/s/ Michael Cola</u> Michael Cola	Director	<u>March 7, 2024</u>
<u>/s/ Frank Karbe</u> Frank Karbe	Director	<u>March 7, 2024</u>
<u>/s/ Heidi Kunz</u> Heidi Kunz	Director	<u>March 7, 2024</u>
<u>/s/ Asit Parikh</u> Asit Parikh	Director	<u>March 7, 2024</u>
<u>/s/ David Socks</u> David Socks	Director	<u>March 7, 2024</u>
<u>/s/ Mark Stenhouse</u> Mark Stenhouse	Director	<u>March 7, 2024</u>
<u>/s/ James Topper</u> James Topper	Director	<u>March 7, 2024</u>

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Terrie Curran, certify that:

1. I have reviewed this Annual Report on Form 10-K/A of Phathom Pharmaceuticals, Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 14, 2024

/s/ Terrie Curran

Terrie Curran

Chief Executive Officer and President
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Molly Henderson, certify that:

1. I have reviewed this Annual Report on Form 10-K/A of Phathom Pharmaceuticals, Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 14, 2024

/s/ Molly Henderson

Molly Henderson

Chief Financial and Business Officer
(Principal Financial and Accounting Officer)

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K/A of Phathom Pharmaceuticals, Inc. (the "Company") for the year ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Terrie Curran, as Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, 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: June 14, 2024

/s/ Terrie Curran

Terrie Curran

Chief Executive Officer and President

(Principal Executive Officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.

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 Annual Report on Form 10-K/A of Phathom Pharmaceuticals, Inc. (the "Company") for the year ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Molly Henderson, as Chief Financial and Business Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, 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: June 14, 2024

/s/ Molly Henderson

Molly Henderson

Chief Financial and Business Officer

(Principal Financial and Accounting Officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.

PHATHOM PHARMACEUTICALS, INC. POLICY FOR RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION

Phathom Pharmaceuticals, Inc. (the “*Company*”) has adopted this Policy for Recovery of Erroneously Awarded Compensation (the “*Policy*”), effective as of October 2, 2023 (the “*Effective Date*”). Capitalized terms used in this Policy but not otherwise defined herein are defined in Section 11.

1. Persons Subject to Policy

This Policy shall apply to current and former Executive Officers of the Company.

2. Compensation Subject to Policy

This Policy shall apply to Incentive-Based Compensation received on or after the Effective Date. For purposes of this Policy, the date on which Incentive-Based Compensation is “received” shall be determined under the Applicable Rules, which generally provide that Incentive-Based Compensation is “received” in the Company’s fiscal period during which the relevant Financial Reporting Measure is attained or satisfied, without regard to whether the grant, vesting or payment of the Incentive-Based Compensation occurs after the end of that period.

3. Recovery of Compensation

If the Company is required to prepare a Restatement, the Company shall recover, reasonably promptly, the portion of any Incentive-Based Compensation that is Erroneously Awarded Compensation, unless the Committee has determined that recovery would be Impracticable. Recovery shall be required in accordance with the preceding sentence regardless of whether the applicable Executive Officer engaged in misconduct or otherwise caused or contributed to the requirement for the Restatement and regardless of whether or when restated financial statements are filed by the Company. For clarity, the recovery of Erroneously Awarded Compensation under this Policy will not give rise to any person’s right to voluntarily terminate employment for “good reason,” or due to a “constructive termination” (or any similar term of like effect) under any plan, program or policy of or agreement with the Company or any of its affiliates.

4. Manner of Recovery; Limitation on Duplicative Recovery

The Committee shall, in its sole discretion, determine the manner of recovery of any Erroneously Awarded Compensation, which may include, without limitation, reduction or cancellation by the Company or an affiliate of the Company of Incentive-Based Compensation or Erroneously Awarded Compensation, reimbursement or repayment by any person subject to this Policy of the Erroneously Awarded Compensation, and, to the extent permitted by law, an offset of the Erroneously Awarded Compensation against other compensation payable by the Company or an affiliate of the Company to such person. Notwithstanding the foregoing, unless otherwise prohibited by the Applicable Rules, to the extent this Policy provides for recovery of Erroneously Awarded Compensation already recovered by the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 or Other Recovery Arrangements, the amount of Erroneously Awarded Compensation already recovered by the Company from the recipient of such Erroneously Awarded Compensation may be credited against the amount of Erroneously Awarded Compensation required to be recovered pursuant to this Policy from such person.

5. Administration

This Policy shall be administered, interpreted and construed by the Committee, which is authorized to make all determinations necessary, appropriate or advisable for such purpose. The Board of Directors of the Company (the “**Board**”) may re-vest in itself the authority to administer, interpret and construe this Policy in accordance with applicable law, and in such event references herein to the “Committee” shall be deemed to be references to the Board. Subject to any permitted review by the applicable national securities exchange or association pursuant to the Applicable Rules, all determinations and decisions made by the Committee pursuant to the provisions of this Policy shall be final, conclusive and binding on all persons, including the Company and its affiliates, equityholders and employees. The Committee may delegate administrative duties with respect to this Policy to one or more directors or employees of the Company, as permitted under applicable law, including any Applicable Rules.

6. Interpretation

This Policy will be interpreted and applied in a manner that is consistent with the requirements of the Applicable Rules, and to the extent this Policy is inconsistent with such Applicable Rules, it shall be deemed amended to the minimum extent necessary to ensure compliance therewith.

7. No Indemnification; No Liability

The Company shall not indemnify or insure any person against the loss of any Erroneously Awarded Compensation pursuant to this Policy, nor shall the Company directly or indirectly pay or reimburse any person for any premiums for third-party insurance policies that such person may elect to purchase to fund such person’s potential obligations under this Policy. None of the Company, an affiliate of the Company or any member of the Committee or the Board shall have any liability to any person as a result of actions taken under this Policy.

8. Application; Enforceability

Except as otherwise determined by the Committee or the Board, the adoption of this Policy does not limit, and is intended to apply in addition to, any other clawback, recoupment, forfeiture or similar policies or provisions of the Company or its affiliates, including any such policies or provisions of such effect contained in any employment agreement, bonus plan, incentive plan, equity-based plan or award agreement thereunder or similar plan, program or agreement of the Company or an affiliate or required under applicable law (the “**Other Recovery Arrangements**”). The remedy specified in this Policy shall not be exclusive and shall be in addition to every other right or remedy at law or in equity that may be available to the Company or an affiliate of the Company.

9. Severability

The provisions in this Policy are intended to be applied to the fullest extent of the law; provided, however, to the extent that any provision of this Policy is found to be unenforceable or invalid under any applicable law, such provision will be applied to the maximum extent permitted and shall automatically be deemed amended in a manner consistent with its objectives to the extent necessary to conform to any limitations required under applicable law.

10. Amendment and Termination

The Board or the Committee may amend, modify or terminate this Policy in whole or in part at any time and from time to time in its sole discretion. This Policy will terminate automatically when the Company does not have a class of securities listed on a national securities exchange or association.

11. Definitions

“*Applicable Rules*” means Section 10D of the Exchange Act, Rule 10D-1 promulgated thereunder, the listing rules of the national securities exchange or association on which the Company’s securities are listed, and any applicable rules, standards or other guidance adopted by the Securities and Exchange Commission or any national securities exchange or association on which the Company’s securities are listed.

“*Committee*” means the committee of the Board responsible for executive compensation decisions comprised solely of independent directors (as determined under the Applicable Rules), or in the absence of such a committee, a majority of the independent directors serving on the Board.

“*Erroneously Awarded Compensation*” means the amount of Incentive-Based Compensation received by a current or former Executive Officer that exceeds the amount of Incentive-Based Compensation that would have been received by such current or former Executive Officer based on a restated Financial Reporting Measure, as determined on a pre-tax basis in accordance with the Applicable Rules.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Executive Officer*” means each person who serves as an executive officer of the Company, as defined in Rule 10D-1(d) under the Exchange Act.

“*Financial Reporting Measure*” means any measure determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, and any measures derived wholly or in part from such measures, including GAAP, IFRS and non- GAAP/IFRS financial measures, as well as stock or share price and total equityholder return.

“*GAAP*” means United States generally accepted accounting principles.

“*IFRS*” means international financial reporting standards as adopted by the International Accounting Standards Board.

“*Impracticable*” means (a) the direct costs paid to third parties to assist in enforcing recovery would exceed the Erroneously Awarded Compensation; provided that the Company (i) has made reasonable attempts to recover the Erroneously Awarded Compensation, (ii) documented such attempt(s), and (iii) provided such documentation to the relevant listing exchange or association, (b) to the extent permitted by the Applicable Rules, the recovery would violate the Company’s home country laws pursuant to an opinion of home country counsel; provided that the Company has (i) obtained an opinion of home country counsel, acceptable to the relevant listing exchange or association, that recovery would result in such violation, and (ii) provided such opinion to the relevant listing exchange or association, or (c) recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees

of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and the regulations thereunder.

“Incentive-Based Compensation” means, with respect to a Restatement, any compensation that is granted, earned, or vested based wholly or in part upon the attainment of one or more Financial Reporting Measures and received by a person: (a) after beginning service as an Executive Officer; (b) who served as an Executive Officer at any time during the performance period for that compensation; (c) while the issuer has a class of its securities listed on a national securities exchange or association; and (d) during the applicable Three-Year Period.

“Restatement” means an accounting restatement to correct the Company’s material noncompliance with any financial reporting requirement under securities laws, including restatements that correct an error in previously issued financial statements (a) that is material to the previously issued financial statements or (b) that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

“Three-Year Period” means, with respect to a Restatement, the three completed fiscal years immediately preceding the date that the Board, a committee of the Board, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare such Restatement, or, if earlier, the date on which a court, regulator or other legally authorized body directs the Company to prepare such Restatement. The “Three-Year Period” also includes any transition period (that results from a change in the Company’s fiscal year) within or immediately following the three completed fiscal years identified in the preceding sentence. However, a transition period between the last day of the Company’s previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months shall be deemed a completed fiscal year.

