

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

FORM 10-K

(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

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

Commission File Number 001-35182



AMPIO PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

26-0179592
(I.R.S. Employer
Identification No.)

9800 Mount Pyramid Court
Suite 400
Englewood, Colorado
(Address of principal executive offices)

80112
(Zip Code)

(720) 437-6500
(Registrant's telephone number, including area code)

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

Title of each class
Common Stock, par value \$0.0001 per share

Trading Symbol
AMPE

Name of each exchange on which registered
NYSE American

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 Exchange Act. Yes No

Indicate by a 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 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 definition 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 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 Exchange Act). Yes No

The aggregate market value of common stock held by non-affiliates of the registrant as of June 30, 2023, the last business day of the registrant's most recently completed second fiscal quarter, was \$3.4 million based on the closing price of \$0.23 (pre-September 2023 reverse stock split) as of that date.

As of March 15, 2024, 1,135,358 shares of the registrant's common stock, par value \$0.0001 per share were outstanding.

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This Annual Report on Form 10-K (“Annual Report”) refers to trademarks, such as Ampio and Ampion®, which are protected under applicable intellectual property laws and are our property. This Form 10-K also contains trademarks, service marks, copyrights and trade names of other companies which are the property of their respective owners. Solely for convenience, our trademarks and tradenames referred to in this Form 10-K may appear without the ® or ™ symbols, but such references are not intended to indicate in any way that we will not assert, to the fullest extent under applicable law, our rights to such trademarks and tradenames.

Unless otherwise indicated or unless the context otherwise requires, references in this Form 10-K to the “Company,” “Ampio,” “we,” “us,” or “our” relate to Ampio Pharmaceuticals, Inc.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K, or Annual Report, includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We may also make forward-looking statements in other reports filed with the Securities and Exchange Commission (“SEC”), in materials delivered to stockholders and in press releases. In addition, the Company’s representatives may from time to time make oral forward-looking statements.

All statements other than statements of historical facts contained in this Annual Report, including statements regarding our anticipated future clinical developments, future financial position, and plans and objectives of management for future operations, are forward-looking statements. Words such as “may”, “will”, “should”, “forecast”, “could”, “expect”, “suggest”, “believe”, “estimate”, “continue”, “anticipate”, “intend”, “ongoing”, “opportunity”, “potential”, “predicts”, “seek”, “plan,” or similar words, or the negatives of such terms or other variations on such terms or comparable terminology, typically identify forward-looking statements. Such forward-looking statements include, but are not limited to, statements relating to the following:

- projected cash balances or cash used in operations or the effect of any actions we may take to reduce expenses and preserve cash;
- our Board’s assessment of internal and external options in light of the failure of recently completed non-clinical pre-IND enabling studies with OA-201 to demonstrate efficacy versus saline control to reduce pain and preserve cartilage;
- the outcomes of our immediate actions to preserve our cash in order to be able to adequately fund an orderly wind down of the Company’s operations and to maximize the Company’s cash position; and
- the expense, time and/or outcome of any existing and/or future legal proceeding(s), including the settlement in principle of certain legal proceedings that was announced on January 11, 2024.

We undertake no obligation to update or revise publicly any forward-looking statements to reflect events or circumstances after the date of such statements for any reason, except as otherwise required by law.

Forward-looking statements are based on certain assumptions and expectations of future events and trends that are subject to risks and uncertainties. Actual future results and trends may differ materially from historical results or those reflected in any such forward-looking statements depending on a variety of factors. Important information as to these factors can be found in this Annual Report, including, among others, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” under the headings of “Overview,” “Liquidity and Capital Resources” and annually in “Critical Accounting Policies, Estimates and Judgments.” Further, discussion of these factors is incorporated by reference from Part I, Item 1A, “Risk Factors,” of this Annual Report, and should be considered an integral part of Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

AMPIO PHARMACEUTICALS, INC.

PART I

Item 1. Business.

Overview

Ampio Pharmaceuticals, Inc. (“Ampio” or “the Company”) is a pre-revenue stage biopharmaceutical company that until February 2024 was focused on the development of a potential treatment for osteoarthritis of the knee (“OAK”) as part of its OA-201 development program (“OA-201 program” or “OA-201”). The OA-201 program sought to advance Ampio’s unique and proprietary small molecule formulation that was Ampio’s only product development opportunity. In late 2023, we initiated non-clinical studies to determine whether OA-201 would support an Investigational New Drug (“IND”) submission. Previous smaller studies had demonstrated that OA-201 showed efficacy versus saline control to reduce pain and preserve cartilage in non-clinical models of osteoarthritis of the knee. However, as we announced in February 2024, the pain reduction benefit was not observed in the data from the recent set of non-clinical studies which utilized a larger population of animal subjects.

Because the data from the larger non-clinical pain reduction trial of OA-201 did not support the same pain reduction benefit as was demonstrated in the earlier, smaller, proof-of-concept trials, Ampio determined to cease substantially all preclinical and clinical development activities relating to OA-201. Following the February 2024 announcement, the Company’s management and the Board of Directors began an assessment of both internal and external options. Additionally, the Company took immediate action in February and March 2024 to preserve its cash in order to be able to adequately fund any option identified by the Board of Directors. These actions included termination of employees directly involved in the OA-201 program and corporate support, termination of third-party consultants, and termination of agreements with third parties relating to OA-201 development activities.

Because we do not believe that the data from the preclinical studies would support future capital raises necessary to further develop OA-201, we terminated our At the Market Offering Agreement (the “ATM Agreement”) with H.C. Wainwright effective March 6, 2024. We also filed a post-effective amendment to deregister the remaining securities available under the registration statement relating to the offerings under the ATM Agreement, which was declared effective by the SEC on March 4, 2024.

Throughout the months of February and March 2024, the Board of Directors sought to identify and evaluate potential options available to the Company. Based on these evaluations, the Board determined to take steps designed to ensure sufficient cash to adequately fund an orderly wind down of the Company’s operations and to maximize the Company’s cash position. Consistent with this goal, on March 25, 2024, the Board of Directors determined to pursue voluntary delisting of Ampio’s common stock from the NYSE American. After delisting, the Company expects to suspend the Company’s reporting obligations under Sections 13 and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and deregister its common stock under Section 12(b) of the Exchange Act.

While the Board of Directors remains open to strategic options, given our prior efforts to develop similar strategic options, the Board of Directors believes that more likely options include the liquidation and wind up of the Company through a dissolution pursuant to a plan of liquidation and dissolution that would be subject to Board and stockholder approval or bankruptcy (should our net assets decline to levels that would require such action).

In addition, we are continuing to pursue resolution of the pending legal proceedings described in this Annual Report on Form 10-K under Part I, Item 3 “Legal Proceedings.”

The financial statements as of and for the year ended December 31, 2023 do not include any adjustments to reflect the future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that will likely result when the Company is unable to continue as a going concern.

Reverse Stock Split

On November 9, 2022, the Company effected a 15-to-1 reverse stock split. On September 12, 2023, the Company effected a 20-to-1 reverse stock split. The Company has retroactively applied the reverse stock splits to share and per share amounts in the condensed financial statements as of December 31, 2023 and December 31, 2022. Additionally,

pursuant to their terms, a proportionate adjustment was made to the per share exercise price and number of shares issuable under all the Company's outstanding options under the 2010/2019 Stock and Incentive Plans, the number of shares of restricted stock outstanding under the 2019 Stock and Incentive Plan, and common stock warrants, with any fractional shares rounded up to the next whole share. The number of shares authorized for issuance pursuant to the Company's 2023 Stock and Incentive Plan (the "2023 Plan") was not impacted by the 20-to-1 reverse stock split (see *Note 9* for additional information). The Company also retroactively applied such adjustments in the notes to the condensed financial statements as of December 31, 2023 and December 31, 2022. The reverse stock split did not reduce the number of authorized shares of common stock and preferred stock and did not alter the par value.

Intellectual Property Summary

As of December 31, 2023, Ampio had two pending US provisional patent applications relating to and protecting the OA-201 program. A third US provisional patent application covering the OA-201 program was filed in the beginning of the first quarter of 2024.

Our intellectual property strategy has been to file patent applications in the United States and abroad to strengthen our intellectual property rights, expand our portfolio, and protect the OA-201 program in strategic global markets. Given the non-clinical study data described above, we do not expect to continue pursuing future patents and/or supporting provisional patent applications relating to the OA-201 program.

Human Capital Resources

As of December 31, 2023, we had six employees, all of which were employed in the United States. In 2022, Ampio implemented a human capital resources strategy to align with the needs of the OA-201 program and the Company's capital resources. As part of our strategy, we determined to outsource and contract with independent third-party organizations, advisors and consultants to provide specific services. Our agreements with third parties involved in the OA-201 program were terminated following the analysis of the data from the non-clinical studies in February 2024. Following the employee terminations described above, Ampio has three employees as of March 15, 2024. On March 25, 2024, the Board of Directors determined to terminate the employment of Daniel G. Stokely, the Company's Chief Financial Officer, as of March 31, 2024, in order to preserve cash to adequately fund an orderly wind down of the Company's operations and to maximize the Company's cash position. Michael A. Martino, the Company's Chief Executive Officer, will assume the role of Chief Financial Officer following Mr. Stokely's departure.

Available Information

We currently file annual reports, quarterly reports, proxy statements and other documents with the SEC under the Exchange Act. The SEC maintains a website that contains reports, proxy and information statements, and other information regarding issuers, including Ampio, that file electronically with the SEC. These filings are available through the SEC's website at <https://www.sec.gov>.

Ampio also makes available free of charge through its website, <http://www.ampiopharma.com>, its annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to the Exchange Act as soon as reasonably practicable after the Company electronically files such material with, or furnishes it to, the SEC. Information found on our website is not incorporated by reference into this Annual Report.

Item 1A. Risk Factors.

You should carefully consider the following risk factors and all other information contained herein as well as the information included in this Annual Report and other reports and filings made with the SEC in evaluating our business and prospects.

Risks and uncertainties, in addition to those we describe below, that are not presently known to us or that we currently believe are immaterial may also impair our business operations. If any of the following risks occur, our business and financial results could be harmed, and the price of our common stock could decline. You should also refer to the other information contained in this Annual Report, including our Consolidated Financial Statements and the related Notes.

These risk factors are current through the date of this Annual Report on Form 10-K.

Risks Related to Our Business

Our OA-201 program was our only product development opportunity and with the recent data from non-clinical studies, we have ceased further development activity relating to OA-201.

We do not have any products that are approved for commercial sale and may never be able to develop marketable products. We have generated no revenue from sales of any products or services. The OA-201 program was our only development program, and the small molecule formulation was our only potential product in development. Because the data from the recently completed non-clinical pain reduction trial of OA-201 did not support a pain reduction benefit, Ampio determined to cease substantially all non-clinical and clinical development activities relating to OA-201 in February 2024. Our activities currently consist of taking steps to preserve cash to adequately fund an orderly wind down of the Company's operations and to maximize the Company's cash position and the pursuit of the resolution of currently pending legal proceedings.

Our available alternatives are limited and there is no assurance that any alternative will result in any distribution to or cash return to our stockholders.

Throughout the months of February and March 2024, the Board of Directors sought to identify and evaluate potential options available to the Company. Based on these evaluations, the Board determined to take steps designed to ensure sufficient cash to adequately fund an orderly wind down of the Company's operations and to maximize the Company's cash position. Consistent with this goal, on March 25, 2024, the Board of Directors determined to pursue voluntary delisting of Ampio's common stock from the NYSE American. After delisting, the Company expects to suspend its reporting obligations under the Exchange Act and deregister its common stock under Section 12(b) of the Exchange Act.

Given our prior efforts to develop strategic options, the Board of Directors believes that more likely options include the liquidation and wind up of the Company through a plan of liquidation and dissolution that would be subject to Board of Director and stockholder approval or bankruptcy (should our net assets decline to levels that would require such action). If we wind up our business and dissolve, there is no assurance that our capital resources will be sufficient to discharge all of our liabilities and fund a distribution to our stockholders. We cannot predict the timing of or the amount of distributions, if any, to our stockholders in a dissolution that may be approved by the Board due to uncertainties as to the ultimate amount of our liabilities, the operating costs and amounts to be reserved for claims, obligations and provisions during the liquidation and winding-up process, and the related timing to complete this process, as well as the time and expense associated with our currently pending legal proceedings and any future legal proceedings in which we may become involved. Examples of uncertainties that could reduce our current cash resources and therefore reduce the amount that may become available to our stockholders in a dissolution if approved by the Board include: costs relating to the current and future legal defense costs in excess of coverage afforded by the existing insurance policies, satisfaction or settlement of lawsuits or other claims threatened against us or our directors or officers in excess of the coverage afforded by the existing insurance policies; amounts necessary to resolve claims of any creditors or other third parties; and delays in the liquidation and dissolution or other winding up process, including relating to seeking stockholder approval of dissolution if approved by the Board.

We plan to initiate steps to exit from certain reporting requirements under the Exchange Act, which will substantially reduce publicly available information about us.

Our common stock is currently registered under the Exchange Act, which requires that we, and our officers and directors with respect to Section 16 of the Exchange Act, comply with certain public reporting and proxy statement requirements thereunder. Compliance with these requirements is costly and time-consuming. We plan to initiate steps to exit from such reporting requirements in order to curtail expenses. Until we exit from these reporting requirements, we will continue to incur expenses that will reduce the amount available for pursuit of our options and the amount available for payment of our liabilities, reserves or potential distribution to stockholders. If our reporting obligations cease, publicly available information about us will be substantially reduced.

There is substantial doubt about our ability to continue as a going concern.

In 2023, we experienced net losses of \$8.6 million, had no revenue other than interest income, and used \$8.6 million in cash to fund our operations. Due to the current level of liquidity at December 31, 2023 and the projected shortfall to cover operating expenses requiring cash for a period of 12 months from the report date of the annual report, management has expressed substantial doubt as to our ability to continue as a going concern.

As of December 31, 2023, our source of liquidity consisted of \$4.1 million of cash and cash equivalents and \$0.9 million of an insurance recovery receivable. As of February 29, 2024, we had \$3.4 million in cash and cash equivalents and \$0.5 million of an insurance recovery receivable. While we continued to implement cost reductions in 2023 and additional cost reductions in February and March 2024, we have finite cash resources available to fund our now limited operations. Our activities currently consist of taking steps to preserve cash to adequately fund an orderly wind down of the Company's operations and to maximize the Company's cash position and pursuit of the resolution of currently pending legal proceedings.

Currently, pending legal proceedings and any future legal proceedings may adversely affect our cash position and limit our pursuit of strategic options.

We are currently involved in and may in the future be involved in legal proceedings. Please see "***The settlement in principle of certain legal actions is subject to a number of conditions and risks***" for a summary of risks relating to the settlement in principle of certain of the pending legal proceedings. The settlements in principle do not affect the ongoing investigation by the SEC. We intend to continue to cooperate fully with the SEC.

Regardless of whether any claims against us are valid or whether we are liable, any future litigation claims, or regulatory proceedings likely will be expensive and time consuming to defend against, require us to advance substantial amounts to director and officer defendants and other indemnifiable defendants for the defense of their claims, and result in the diversion of management attention and reduce our current cash resources.

We currently expect the amount to be paid in both settlements, including related defense costs, will be covered by, and within the policy limits of our D&O insurance policy. However, if defense costs or the amounts associated with the settlements of the pending actions and stockholder demands exceed Ampio's current expectation, its insurance coverage may not be adequate to cover the amounts incurred by the Company, including as a result of its indemnification obligations to its current and former officers and directors and other parties. Additionally, insurance may not be available at all or in sufficient amounts to cover any liabilities with respect to the pending SEC investigation that is not resolved through the settlements in principle of the civil litigations.

In addition, insurance may not be available at all or in sufficient amounts to cover any liabilities with respect to any future claims against us. We may be required to expend significant amounts to satisfy our self-insured retention in order to obtain coverage of any future claims against us, our directors and officers and other indemnifiable parties. The costs relating to the defense, satisfaction and/or settlement of lawsuits or other claims threatened against us, our directors and officers or other indemnifiable parties and amounts necessary to resolve claims of any creditors or other third parties will reduce our current cash resources and therefore reduce the amount that may become available to our stockholders in a dissolution if approved by the Board and the Company's shareholders.

If we are liable in any legal proceeding, such proceeding could result in injunctions or other equitable relief, settlements, penalties, fines, or damages that could materially adversely affect our cash position. Given our limited cash resources, if

we are exposed to significant liabilities resulting from our current or future legal proceedings that are not covered by insurance or if our cash resources are otherwise insufficient to satisfy all claims and liabilities, we may seek bankruptcy protection.

The settlement in principle of certain legal actions is subject to a number of conditions and risks.

On January 11, 2024, we announced that settlements in principle had been reached in the pending securities fraud class action, Case Number 22-cv-2105-WJM-MEH (the “Securities Class Action”), and the pending consolidated derivative actions in the United States District Court for the District of Colorado, Case Number 22-cv-2803-KLM (the “Consolidated Derivative Actions”).

The settlements are subject to various conditions, including confirmatory discovery in the Securities Class Action, negotiation and execution of the full settlement agreements and obtaining court approval in each action. On January 9, 2024, Ampio along with the other parties to each case filed status reports in both the Securities Class Action and the Consolidated Derivative Actions, advising the respective courts of the status of the settlements in principle. The settlement of the Consolidated Derivative Actions is supported by the plaintiff in the pending Colorado state court derivative action, Case Number 2023CV30287, as well as two stockholders who previously submitted pre-litigation demand letters to the Company’s Board of Directors. If finally approved by the relevant courts, the settlements will result in the dismissal with prejudice of all of the pending actions and the withdrawal of the two stockholder pre-litigation demands.

The settlements in principle of the pending actions and stockholder demands are subject to a number of conditions, including confirmatory discovery for the Securities Class Action, the execution and delivery of definitive settlement agreements reflecting the terms of the settlements in principle, obtaining preliminary court approval of the settlements, providing notice to stockholders of the proposed settlements, and obtaining final, non-appealable approvals by the respective courts. The timing of completion of the settlement agreements and filing motions to seek court approvals are uncertain. However, we will be endeavoring to finalize and execute the settlement agreements and have motions for preliminary approval submitted to the relevant courts by mid-May 2024. Additionally, the timing of any final decision by any of the respective courts is subject to the discretion of such court and any potential appeal. Ampio currently expects the amount to be paid in both settlements, including related defense costs, will be covered by, and within the limits of, its D&O insurance policies. If defense costs or the amounts associated with the settlements of the pending actions and stockholder demands exceed Ampio’s current expectation, its insurance coverage may not be adequate to cover the amounts incurred by the Company including as a result of its indemnification obligations to its current and former officers and directors.

Accordingly, there can be no assurance that the settlements in principle of the pending actions and stockholder demands will be finalized or approved by the respective courts, or that the settlements will be completed as currently proposed, or at any particular time. Additionally, the settlements in principle do not affect the ongoing investigation by the SEC. We intend to continue to cooperate fully with the SEC.

Our provisional patent applications and proprietary rights in OA-201 may be of limited value.

As part of the OA-201 program, we own a number of United States provisional patent applications covering our proprietary small molecule pharmaceutical formulations, as well as their therapeutic uses and manufacturing processes. Given that we have ceased efforts to continue to develop OA-201, our provisional patent applications and rights in OA-201 may be of limited value. Even if these provisional patent applications and rights have some value, we may not be able to adequately protect our rights due to our limited cash resources.

Risks Related to Our Common Stock

The price of our stock has been extremely volatile and may continue to be volatile and fluctuate substantially, which could result in substantial losses for purchasers of our common stock.

The price of our common stock has been extremely volatile. We expect that volatility to continue as a result of our delisting from the NYSE American and Exchange Act deregistration. In addition to delisting, deregistration and the other factors described in this section, the following factors may also have a significant impact on the market price of our common stock:

- uncertainties relating to our wind down of the Company’s operations, including the potential for dissolution of the Company, bankruptcy or strategic transaction;
- announcements regarding our estimates of the timing or amount of distributions to our stockholders, if any;
- developments in any legal proceeding in which we are or may become involved;
- any announcements concerning our retention or loss of key employees;
- sales of stock by our stockholders;
- economic and other external factors beyond our control; and
- public confidence in the securities markets and regulation by or of the securities market.

A significant drop in the price of our stock could expose us to the risk of securities class action lawsuits, which could result in substantial costs and divert management’s attention and resources, which could adversely affect our business.

With the Board approval to delist our stock, we expect a negative impact on the price of our stock and the ability to sell our common stock in the public market.

Currently, our common stock is listed on the NYSE American. Because of our current non-compliance with the NYSE American listing requirements relating to minimum stockholders’ equity and likely other continuing listing standards and, in addition, the expense associated with continuing the listing on the NYSE American, the Board of Directors determined to pursue voluntary delisting of Ampio’s common stock from the NYSE American as part of its cash conservation plan.

Following delisting of our common stock from NYSE American, the Company anticipates that the common stock would be quoted on the Pink Open Market operated by OTC Markets Group Inc. (the “OTC”) under the same symbol (“AMPE”).

If our common stock trades on the OTC market, an investor would find it more difficult to dispose of, or to obtain accurate quotations for the price of, our common stock for various reasons, including:

- a limited availability for market quotations for our common stock;
- reduced liquidity with respect to our common stock or potentially no liquidity with respect to our common stock;
- a determination that our common stock is a “penny stock,” which will require brokers trading in our common stock to adhere to more stringent rules and possibly result in reduced trading;
- activity in the secondary trading market for our common stock; and
- limited amount of news and other information.

Additionally, delisting from the NYSE American will likely affect the ability or willingness of certain counterparties to engage in certain transactions with us, such as a reverse merger or recapitalization.

Item 1B. Unresolved Staff Comments.

None.

Item 1C. Cybersecurity.

In July 2023, the SEC adopted rules requiring registrants to disclose material cybersecurity incidents they experience and to disclose on an annual basis material information regarding their cybersecurity risk management, strategy, and governance.

Given our current environment and structure of the Company, we outsourced a majority of our information technology functions in 2023, including but not limited to hosting and security access and cybersecurity generally, to third-party service providers. We relied primarily on third parties to assess, identify and manage material risks from cybersecurity threats. Our agreements with these third parties obligated these parties to provide us with various notifications and reports that help our management oversee and identify material risks from cybersecurity threats associated with our use of these third-party service providers.

Cybersecurity threats are just one of the many risks that we face. While we have not experienced a cyber-security incident, there is no assurance that we will not be impacted in the future. In 2023, risks from cybersecurity threats did not materially affect and were not reasonably likely to materially affect Ampio except to the extent that our management of risks from cybersecurity threats was reflected in our overall operations strategy in 2023. Like many of the specialized or highly technical functions within our company, we believe we obtained a greater depth of support and relevant expertise from third-party IT and cybersecurity resources at an overall lower cost profile than hiring our own employees.

Under the charter of our Audit Committee, the Audit Committee oversees management's development and implementation of policies with respect to risk assessment and risk management, which includes risks associated with cybersecurity threats. In 2023, the Audit Committee also discussed with management the Company's significant financial risk exposures and the actions management had taken to limit, monitor, control or mitigate such exposures. Our executive officers are responsible for managing risks from cybersecurity threats, which was primarily performed in 2023 by overseeing third parties involved in the management and monitoring of IT systems. Our executive officers also received reporting and information from third parties in 2023. Our management regularly reported to the Audit Committee on these risks. The Audit Committee also received reports from our legal counsel and internal auditors on cybersecurity matters. Currently, the Audit Committee also comprises the entire Board so we believe there is direct visibility by the Board to cybersecurity risk management.

Item 2. Properties.

We lease space located in Englewood, Colorado, for monthly minimum lease payments of approximately \$30,000. The lease expires on September 30, 2024. Effective March 1, 2023, we entered into a sublease agreement with the consent of the landlord pursuant to which we sublease this Englewood, Colorado leased space for a term commencing on March 1, 2023 and continuing until the expiration of the lease on September 30, 2024.

Currently, we lease a flexible office space that serves as our principal executive offices. The address of the Company's principal executive offices is 9800 Mount Pyramid Court, Suite 400, Englewood, Colorado 80112.

Item 3. Legal Proceedings.

From time to time, the Company may be a party to litigation arising in the ordinary course of business. As of December 31, 2023, Ampio was involved in the material pending legal proceedings summarized in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2023 and, with respect to the pending securities fraud class action, Case Number 22-cv-2105-WJM-MEH, updated as follows:

On November 17, 2023, the parties (other than deceased defendant Macaluso) filed a Joint Stipulated Unopposed Motion to Extend Deadlines advising the Court that the parties had agreed to engage in a mediation to be conducted by January 5, 2024, and requesting that the Court vacate the time for all defendants to answer, move or otherwise respond to the Amended Complaint. The motion further requested that the parties be permitted to file a status report advising the Court within five (5) days of the mediation either being successful or being declared at impasse. On November 20, 2023, the Court granted the motion. The mediation took place on January 4, 2024.

Settlement in Principle of Certain Legal Proceedings

On January 11, 2024, we announced that a settlement in principle had been reached in the pending securities fraud class action, Case Number 22-cv-2105-WJM-MEH (the "Securities Class Action"), and the pending consolidated derivative

actions in the United States District Court for the District of Colorado, Case Number 22-cv-2803-KLM (the “Consolidated Derivative Actions”).

The settlements are subject to various conditions, including confirmatory discovery in the Securities Class Action, negotiation and execution of the full settlement agreements and obtaining court approval in each action. On January 9, 2024, Ampio along with the other parties to each case filed status reports in both the Securities Class Action and the Consolidated Derivative Actions, advising the respective courts of the status of the settlements in principle. The settlement of the Consolidated Derivative Actions is supported by the plaintiff in the pending Colorado state court derivative action, Case Number 2023CV30287, as well as two stockholders who previously submitted pre-litigation demand letters to the Company’s Board of Directors. Based on the parties’ status report, the Court in the Consolidated Derivative Actions has ordered the parties to file either settlement documents or status reports every 30 days since. The parties to the Consolidated Derivative Actions have filed further status reports with the Court advising that the settlement documentation is still being finalized. The parties to the Consolidated Derivative Actions are still negotiating details of the settlement.

Ampio currently expects the amount to be paid in both settlements, including related defense costs, will be covered by, and within the limits of, its D&O insurance policies. We expect the payment is at least equal to the amount offered in the settlement in principle, which totals approximately \$3.0 million for the Securities Class Action and \$0.5 million for the Consolidated Derivative Actions and will be paid by the insurance carriers directly to the respective parties. The settlements in principle do not constitute any admission of fault, wrongdoing or liability as to the Company or any other defendant. While the timing of completion of the settlement agreements and filing motions to seek court approvals are uncertain, the Company will be endeavoring to finalize and execute the settlement agreements and have motions for preliminary approval submitted to the relevant courts within 120 days from the parties advising the respective courts of the status of the settlement in principle. If finally approved by the relevant courts, the settlements will result in the dismissal with prejudice of all of the pending actions and the withdrawal of the two stockholder pre-litigation demands.

SEC Investigation

The settlements in principle do not affect the ongoing investigation by the Securities and Exchange Commission, which also was previously reported by Ampio in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2023. Ampio intends to continue to cooperate fully with the SEC.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

Our common stock currently trades on the NYSE American under the ticker symbol “AMPE.” As described above, the Board of Directors determined to pursue voluntary delisting of Ampio’s common stock from the NYSE American. After delisting, the Company expects to suspend the Company’s reporting obligations under Sections 13 and 15(d) of the Exchange Act and deregister the Common Stock under Section 12(b) of the Exchange Act.

Holders of Common Stock

As of the first day of Ampio’s fiscal year 2024 (January 1, 2024), Ampio had 96 holders of record of its common stock. As of March 15, 2024, there were 96 holders of record of its common stock.

Equity Compensation Plan Information

Information regarding our equity compensation plans is incorporated by reference from Part III, Item 12 “Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.”

Item 6. [Reserved]

Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and the related notes appearing elsewhere in this report. Some of the information contained in this discussion and analysis, including information with respect to our plans and strategy for our business and related financings, includes forward-looking statements that involve risks and uncertainties. You should read the “Risk Factors” section of this Form 10-K for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Critical Accounting Policies, Estimates and Judgments

Our financial statements were prepared in accordance with U.S. Generally Accepted Accounting Principles (“GAAP”). The preparation of the financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of expenses incurred during the reporting period. On an on-going basis, management evaluates its estimates and judgments. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable and appropriate under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. The methods, estimates, and judgments used by us in applying these critical accounting policies have a significant impact on the results we report in our financial statements. Additional information regarding our critical accounting policies and estimates is contained in *Notes 2, 6, 8 and 10* to the Financial Statements. We consider the following accounting estimates to be those that are most important to the portrayal of our financial condition and that require a higher degree of judgment.

Insurance Recovery Receivable

We reached the retention limit of \$2.5 million under our D&O insurance policy during the second quarter of 2023 related to the SEC investigation and class action and derivative lawsuits, which were initiated during the second half of 2022 and continued through the 2023 period. As such, we estimate the percentage of legal invoices that will be reimbursed by the insurance carrier to determine the proper amount to record for the insurance recovery receivable, which offsets the legal fees incurred. The insurance recovery receivable estimate is based off previous insurance reimbursement. During the 2023 period, the average insurance recovery of legal fees was approximately 98% of legal fees incurred. Although we do not expect our estimates to be materially different from the amounts actually received, our understanding of the insurance carriers review and reimbursement process may vary and may result in the reporting of amounts that are too high or too low for any particular period. To date, there have not been any material adjustments to our prior estimates of the insurance recovery receivable.

Recent Accounting Pronouncements

Information regarding recently issued and relevant accounting standards (adopted and not adopted as of December 31, 2023) is contained in *Note 2* to the Financial Statements.

Results of Operations—Year Ended December 31, 2023 Compared to December 31, 2022

We recognized a net loss for the year ended December 31, 2023 (the “2023 period”) of \$8.6 million compared to the net loss recognized of \$16.3 million for the year ended December 31, 2022 (the “2022 period”). The net loss during the 2023 period was primarily attributable to operating expenses of \$9.6 million; partially offset by interest income and rental income of \$0.3 million and \$0.3 million, respectively, in addition to a non-cash gain from the elimination of an asset retirement obligation (“ARO”) of \$0.3 million. The net loss during the 2022 period was primarily attributable to operating expenses of \$22.3 million, which included a \$1.9 million impairment loss related to long-lived and ROU assets; partially offset by the non-cash derivative gain and interest income of \$5.8 million and \$0.2 million, respectively. Operating expenses decreased \$12.7 million, or 57%, from the 2022 period to the 2023 period primarily due to a (i) \$6.5 million, or 73% decrease in research and development costs, (ii) \$4.4 million, or 38%, decrease in general and

administrative costs, (iii) and no recognition of impairment loss associated with the Company's long-lived and ROU assets, which totaled \$1.9 million during the 2022 period.

Research and Development

Research and development costs decreased by approximately \$6.5 million, or 73%, for the 2023 period compared to the 2022 period. Research and development costs with variances above \$175,000 and 10% are further explained below.

	Years Ended December 31,	
	2023	2022
Professional fees	\$ 816,000	\$ 780,000
Operations/manufacturing	804,000	308,000
Laboratory	380,000	890,000
Salaries and benefits	332,000	2,755,000
Depreciation	123,000	1,031,000
Clinical trial and sponsored research expenses	7,000	2,991,000
Other	2,000	22,000
Share-based compensation	(25,000)	139,000
Total research and development	<u>\$ 2,439,000</u>	<u>\$ 8,916,000</u>

Professional Fees

Professional fees expense increased \$36,000, or 5%, from 2022 to 2023. The increase is attributable primarily to costs we incurred during the 2023 period related to contractor fees for drug development and related advisory services for the OA-201 development program as part of our human capital resources strategy; partially offset by costs incurred related to a contracted Chief Medical Officer services required during the 2022 period, to assist with the final closeout of the Ampion clinical trials.

Operations/Manufacturing

Operations/manufacturing expenses increased \$0.5 million, or 161%, from 2022 to 2023 as a result of the CDMO agreement, which was executed during the third quarter of 2023 and the completion of the OA-201 development milestones through the end of the 2023 period. This increase is partially offset by the shut-down and discontinued use/support of the cleanroom and overall manufacturing facility which completed in the second half 2022.

Laboratory

Laboratory operations/manufacturing expenses decreased \$0.5 million, or 57%, from 2022 to 2023 as a result of the shift to outsourced non-clinical lab work related to the continued development of OA-201, which commenced during the first quarter of 2023. During the 2022 period we conducted laboratory operations to support the AP-017 and AP-019 clinical trials, combined with outsourced services to support the development of AR-300. This decrease is partially offset by the non-clinical trials conducted with research institutions for the OA-201 program during the fourth quarter of 2023, which is included in the Professional Fees line item above. In February and March 2024, we terminated agreements with research institutions relating to the non-clinical studies.

Salaries and benefits

Salaries and benefits expenses decreased \$2.4 million, or 88%, from 2022 to 2023 as a result of the reduction in force ("RIF") which was implemented in third quarter 2022 and completed in early first quarter 2023, which resulted in a 78% reduction of our workforce and the termination of a certain officer.

Depreciation

Depreciation expense decreased by \$0.9 million, or 88%, from 2022 to 2023 as a result of (i) the initial impairment of our long-lived assets in third quarter 2022, with a final adjustment in March 2023, as a result of the sublease of the Ampio's premises and (ii) a sale of all existing personal property to the subtenant in conjunction with the provisions of the sublease agreement.

Clinical trial and sponsored research expenses

The clinical trial and sponsored research expenses decreased by approximately \$3.0 million, or 100%, from 2022 to 2023 primarily due to the close-out efforts relating to the AP-017 and AP-019 studies reflecting costs totaling \$2.3 million during the 2022 period. In addition, we incurred \$0.7 million during the 2022 period related to the final close-out of the AP-013 clinical trial. The Company was not engaged in any clinical trials during the 2023 period.

General and Administrative

General and administrative expenses decreased \$4.4 million, or 38%, for the 2023 period compared to the 2022 period. General and administrative costs with variances above \$175,000 and 10% are further explained below.

	Year Ended December 31,	
	2023	2022
Professional fees	\$ 4,183,000	\$ 6,896,000
Salaries and benefits	1,110,000	1,485,000
Insurance	964,000	1,124,000
Director fees	230,000	312,000
Other	214,000	297,000
Facilities	194,000	538,000
Share-based compensation	184,000	814,000
Total general and administrative	<u>\$ 7,079,000</u>	<u>\$ 11,466,000</u>

Professional fees

Professional fees decreased \$2.7 million, or 39%, from 2022 to 2023 due primarily to the SEC investigation and class action and derivative lawsuits that were initiated in second half of 2022 and continued through the 2023 period. The retention limit of \$2.5 million under the Company's D&O insurance policy was reached during the second quarter of 2023. As such, the legal defense costs for the 2023 period representing covered claims as further defined under the provisions of the D&O policy, were offset by an insurance recovery totaling \$3.3 million. Professional fees in the 2022 period primarily related to investigations conducted by the independent special committee of our Board of Directors. In addition, consulting expenses decreased approximately \$1.1 million, as we discontinued certain contracts associated with analyzing potential strategic alternatives.

Salaries and benefits

Salaries and benefit expense decreased \$0.4 million, or 25%, from 2022 to 2023 as a result of lower weighted average incremental headcount during the 2023 period resulting from the termination of a former officer and the RIF which was initiated in third quarter 2022.

Facilities

Facilities expense decreased \$0.3 million, or 64%, from 2022 to 2023 as a result of the execution of the sublease agreement in March 2023, which resulted in the transfer of all utilities and operating costs of the premises to the subtenant and the full write-off of the ROU asset and future amortization (rent expense).

Share-based Compensation

Share-based compensation expense decreased \$0.6 million, or 77%, from 2022 to 2023 as a result of forfeitures and cancellations of unvested stock options from employee terminations and board resignations in 2022.

Impairment of Long-lived Fixed and ROU Assets

In accordance with ASC Topic 360, Property, Plant and Equipment, the Company assesses all of its long-lived assets for impairment when impairment indicators are identified. Based on the assessment performed on September 30, 2022, the Company recorded a non-cash impairment related to its long-lived assets which was triggered by the Company's

announcement during the third quarter reporting period that it was discontinuing further development of its lead development asset, Ampion. Since the carrying value of the long-lived assets exceeded its undiscounted cash flows, an impairment loss, calculated as the difference between carrying value and fair value, was necessary. Accordingly, the Company recorded a \$1.6 million impairment loss for the year ended December 31, 2022 through a direct reduction to the cost basis of the affected assets in its balance sheet.

In addition, the Company performed an assessment of potential impairment of the ROU asset consistent with the approach applied to other long-lived assets. ROU assets are reviewed for recoverability whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Determination of recoverability is based on an estimate of undiscounted future cash flows resulting from the use of the asset and its eventual disposition. If the carrying amount of an asset exceeds its estimated future undiscounted cash flows, an impairment loss is recorded for the excess of the asset's carrying amount over its fair value. Accordingly, the Company recorded a \$0.3 million impairment loss on the ROU asset for the year ended December 31, 2022.

There were no impairment charges for the year ended December 31, 2023.

Other Income

Other income is summarized as follows:

	Year Ended December 31,	
	2023	2022
Interest income	\$ 348,000	\$ 220,000
Rental income	305,000	—
Gain from elimination of ARO obligation, net	289,000	—
Derivative gain	—	5,761,000
Total other income	\$ 942,000	\$ 5,981,000

Other income

We recognized interest income of \$0.3 million during the 2023 period, which increased \$0.1 million from the 2022 period. The increase is attributable to an increase in interest rates since the third quarter of 2022, partially offset by the decrease in cash and cash equivalents. We also recognized a non-cash gain of \$0.3 million related to the elimination of its ARO and derecognition of the ARO asset in conjunction with the sublease agreement entered into on March 1, 2023. In addition, we also recognized \$0.3 million of rental income associated with the sublease agreement during the 2023 period. There was no derivative gain on the fair value of warrant liability during the 2023 period due to the adoption of ASU 2020-06 which converted the warrant liability to stockholder's equity effective January 1, 2023.

Cash Flows

Cash flows for the respective periods are as follows:

	Year Ended December 31,	
	2023	2022
Net cash used in operating activities	\$ (8,564,000)	\$ (21,128,000)
Net cash used in investing activities	—	—
Net cash used in financing activities	—	(111,000)
Net change in cash and cash equivalents	\$ (8,564,000)	\$ (21,239,000)

Net Cash Used in Operating Activities

During the 2023 period, our operating activities used approximately \$8.6 million in cash and cash equivalents, which is consistent with our reported net loss of \$8.6 million.

During the 2022 period, our operating activities used approximately \$21.1 million in cash and cash equivalents, which was more than our reported net loss of \$16.3 million. The difference of approximately \$4.8 million is attributable to a non-cash adjustment of \$5.8 million related to the warrant derivative gain and a decrease in accounts payable and accrued expenses of \$4.0 million, partially offset by non-cash charges related to impairment loss, depreciation, accretion,

amortization and stock-based compensation totaling \$3.9 million and decreases in prepaid expenses and other of \$1.1 million.

Net Cash Used in Investing Activities

During the 2023 period and the 2022 period, there was no change in cash related to investing activities.

Net Cash Used in (Provided by) Financing Activities

During the 2023 period, we generated gross proceeds of \$0.1 million from the sale of 28,826 shares of common stock from the ATM Agreement, which was offset by offering related costs of \$0.1 million.

During the 2022 period, we settled a tax liability of \$79,000 related to the vesting of restricted stock awards. As a result of the settlement, the Company withheld 9,234 common shares for taxes which represented the fair value of the tax settlement. In addition, the Company paid \$32,000 in offering costs in 2022 related to the registered direct offering, which was finalized in December 2021.

Contractual Obligations and Commitments

Our contractual obligations as of December 31, 2023 primarily consist of employment agreements, CDMO agreement, non-clinical agreements with laboratories, and a non-cancellable operating lease arrangement for our office and manufacturing facility. As of December 31, 2023, the value of our obligation under our non-cancellable operating lease arrangement was \$0.3 million. For a more detailed description of our contractual obligations see *Note 6* to the Financial Statements.

Liquidity and Capital Resources

Since inception, we have not generated operating revenue, profits or operating cash flow. Over this period, we have continued to be focused on research and non-clinical/clinical development, all of which has required raising a substantial amount of capital.

As of December 31, 2023, we had \$4.1 million of cash and cash equivalents and an insurance recovery receivable of \$0.9 million. As of February 29, 2024, we had \$3.4 million in cash and cash equivalents and \$0.5 million of an insurance recovery receivable. While we continued to implement cost reductions in 2023 and additional cost reductions in February and March 2024, we have finite cash resources available to fund our now limited operations. Our activities currently consist of taking steps to preserve cash to adequately fund an orderly wind down of the Company's operations and to maximize the Company's cash position and pursuit of the resolution of currently pending legal proceedings. Consistent with this goal, on March 25, 2024, the Board of Directors determined to pursue voluntary delisting of Ampio's common stock from the NYSE American. After delisting, the Company expects to suspend its reporting obligations under the Exchange Act and deregister its common stock under Section 12(b) of the Exchange Act.

Our lack of operating revenue or cash inflows and our cash resources at December 31, 2023 raise substantial doubt as to our ability to continue as a going concern. The financial statements as of and for the year ended December 31, 2023 do not include any adjustments to reflect the future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that will likely result when the Company is unable to continue as a going concern.

While the Board of Directors remains open to strategic options, given our prior efforts to develop similar strategic options, the Board of Directors believes that more likely options include the liquidation and wind up of the Company through a dissolution pursuant to a plan of liquidation and dissolution that would be subject to Board and stockholder approval or bankruptcy (should our net assets decline to levels that would require such action).

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Not applicable.

Item 8. Financial Statements and Supplementary Data.

The Financial Statements and Supplementary Data required by this item are in Item 15 of Part IV, “Index to Financial Statements” at page F-1 of this annual report on Form 10-K and are incorporated herein by reference.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation, under the supervision and with the participation of our management, including the Chief Executive Officer and the Chief Financial Officer, of the effectiveness of the design and operation of our “disclosure controls and procedures” (as defined in Rule 13a-15(b) of the Exchange Act) as of the end of the period covered by this report. Based upon this evaluation, the CEO and CFO concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

Management’s Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining “internal controls over financial reporting” (as such term is defined in Rule 13a-15(f) under the Exchange Act). Our management assessed the effectiveness of our internal controls over financial reporting as of December 31, 2023. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control-Integrated Framework (2013)*. Our management has concluded that, as of December 31, 2023, our internal controls over financial reporting are effective based on these criteria.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information.

Employment Agreement

On March 25, 2024, the Board of Directors determined to terminate the employment of Daniel G. Stokely, the Company’s Chief Financial Officer, effective March 31, 2024 in order to preserve cash to adequately fund an orderly wind down of the Company’s operations and to maximize the Company’s cash position. Pursuant to his employment agreement, Mr. Stokely will be entitled to severance and COBRA reimbursement, conditioned on, among other things, Mr. Stokely delivering and not revoking a general release of claims against the Company.

Michael A. Martino, the Company’s Chief Executive Officer, will assume the role of Chief Financial Officer following Mr. Stokely’s departure.

Rule 10b5-1 Trading Arrangements

During the quarter ended December 31, 2023, none of our directors or officers adopted or terminated a “Rule 10b5-1 trading arrangement” or a “non-Rule 10b5-1 trading arrangement,” as such terms are defined under Item 408(a) Regulation S-K.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not Applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The following table sets forth the names, ages and positions of our directors and our executive officers as of March 15, 2024.

Name	Age	Title
J. Kevin Buchi	68	Chair of the Board of Directors
David R. Stevens	74	Director
Elizabeth Varki Jobes	57	Director
Michael A. Martino	68	Chief Executive Officer and Director
Daniel G. Stokely	60	Chief Financial Officer

Michael A. Martino has served as a director of the Company since October 2021 and was appointed by the Board of Directors as our CEO on November 22, 2021. Mr. Martino previously served as President, Chief Executive Officer and a director of HemaFlo Therapeutics Inc., a private company focused on the treatment of acute kidney injury, since January 2016. Prior to HemaFlo, Mr. Martino was President and Chief Executive Officer of Ambit Biosciences, a company focused on the development of a drug to treat acute myeloid leukemia, from November 2011 to November 2014. Under his leadership, Ambit initiated a large, multi-national Phase III study; secured \$25 million in private financing; completed a \$90 million initial public offering; and ultimately sold the company to a large, Japanese pharmaceutical company for \$450 million in cash plus future milestone payments. Mr. Martino also previously served as President, Chief Executive Officer and a director of Arzeda, a synthetic biology company, and Sonus Pharmaceuticals, an oncology drug development company. In addition, Mr. Martino currently serves on the board of Caravan Biologix, a private company primarily focused on the development of novel oncology drugs, and was a founding director at Excision BioTherapeutics, Inc. Mr. Martino has a BBA from Roanoke College, where he served as a Trustee from 2016 to 2020, and a MBA from Virginia Tech. Mr. Martino has extensive experience in life sciences and his experience as the chief executive officer and director of other pharmaceutical companies, both public and private, leading drug development from preclinical through Phase 3 clinical trials, transacting mergers, and leading capital raises are the attributes that qualify him to serve as a member of our Board.

David R. Stevens, Ph.D., has served as a member of our Board since June 2011. Dr. Stevens has worked in the U.S. Food and Drug Administration regulated life science industry since 1978. He has also been a consulting research pathologist since December 2006 for Premier Laboratory, LLC. He has been a board member of Cetya, Inc. since December 2013. He has served on the boards of several other public and private life science companies, including Micro-Imaging Solutions, LLC (from 2007 to 2018), Poniard Pharmaceuticals, Inc. (from 2004 to 2013), Aqua Bounty Technologies, Inc. (from 2002 to 2012), Advanced Cosmetic Intervention, Inc. (from 2006 to 2011) and Smart Drug Systems, Inc. (from 1999 to 2006), and was an advisor to Bay City Capital (from 1999 to 2006). Dr. Stevens was previously President and CEO of Deprenyl Animal Health, Inc., a public veterinary pharmaceutical company, from 1990 to 1998, and Vice President, Research and Development, of Agrion Corp., a private biotechnology company, from 1986 to 1988. He began his career in pharmaceutical research and development at the former Upjohn Company, where he contributed to the preclinical evaluation of Xanax and Halcion. Dr. Stevens received B.S. and D.V.M. degrees from Washington State University, and a Ph.D. in comparative pathology from the University of California, Davis. He is a Diplomate of the American College of Veterinary Pathologists. Dr. Stevens' experience in executive management in the pharmaceutical industry and knowledge of the medical device industry are the attributes that qualify him to serve as a member of our Board.

J. Kevin Buchi has served as a member of our Board since October 2021. Mr. Buchi, who previously served as the lead independent director, was elected as Chair of the Board on May 28, 2022. Mr. Buchi is the former President and Chief Executive Officer of Cephalon, Inc., having also served as corporate vice president of global branded products at Teva Pharmaceutical Industries Limited after Teva acquired Cephalon in October 2011. Mr. Buchi also served as President and Chief Executive Officer of TetraLogic Pharmaceuticals and of Biospecifics Technologies. Mr. Buchi joined Cephalon in 1991 and held various leadership positions during his tenure, including Chief Financial Officer and Chief Operating Officer, before becoming Cephalon's Chief Executive Officer in 2010. In addition, Mr. Buchi currently serves as a Director of Amneal Pharmaceuticals, Inc. and Benitec Biopharma Ltd. Mr. Buchi previously served on the boards of

several pharmaceutical companies, including Dicerna Pharmaceuticals, EPIRUS Biopharmaceuticals, Inc., Alexza Pharmaceuticals, Inc., and Forward Pharma A/S. He holds a B.A. in Chemistry from Cornell University and a Master of Management, Accounting, and Finance from the Northwestern University Kellogg School of Management. Mr. Buchi has served on our board since October 2021. Mr. Buchi's extensive experience as a senior executive and board member in the pharmaceutical industry provide him with knowledge of a broad range of unique insights into the industry of our business, and these are the attributes that qualify him to serve as a member of our Board.

Elizabeth Varki Jobs has served as a member of our Board since February 2022. Ms. Jobs has nearly three decades of legal and compliance experience. As a practicing attorney, she has built and guided compliance and legal programs for small and medium-size biopharmaceutical corporations. She currently serves as Global Chief Compliance Officer at Immunocore Ltd, where she leads the development and implementation of a global compliance program. For the prior three years (2020-2023) she was Senior Vice President, Global Chief Compliance officer for Amryt Pharmaceuticals which was formed in 2020 following the acquisition of Aegerion Pharmaceuticals. In December 2023, Amryt was acquired by Chiesi Farmaceutici S.p.A. In January of 2023, Ms. Jobs joined the board of directors of Blue Foundry Bank (the "Bank"), a wholly-owned subsidiary of Blue Foundry Bancorp (NASDAQ: BLFY), where she is also a member of the Bank's Audit Committee. Previously, Ms. Jobs held leadership positions at many biopharmaceutical companies, including: Senior Vice President, Chief Compliance Officer North America for EMD Serono, Inc.; Global Chief Compliance Officer and Legal Counsel for Spark Therapeutics, Inc.; Senior Vice President, Chief Compliance Officer for Auxilium Pharmaceuticals, Inc.; Vice President, Chief Compliance Officer for Adolor Corporation; and Senior Director, Global Compliance for Cephalon, Inc. and Board Member for Eyam Vaccines, Inc. Mrs. Jobs' extensive experience as a senior executive in the pharmaceutical industry, with an extensive focus developing and implementing industry specific regulatory and compliance programs for small to medium-size biopharmaceutical companies, are the attributes that qualify her to serve as a member of our Board.

Daniel G. Stokely has served as our CFO and Secretary since July 2019 and has more than 30 years of experience in finance and accounting. He began his career at Deloitte & Touche and since that time, he has spent the majority of his career in positions of financial leadership within both publicly traded and privately held pharmaceutical companies. Most recently, since 2012, he served as Executive Vice President and CFO of Sentyln Therapeutics Inc., a privately held specialty pharmaceutical company focused on licensing, acquisition, marketing, and distribution of development stage and commercially marketed prescription pain products, which was sold to Cadila Healthcare Ltd. in January 2017. From 2004 to 2012, Mr. Stokely served as Vice President of Finance and Chief Accounting Officer ("CAO") of Victory Pharma, a privately held specialty pharmaceutical company focused on in licensing, internal product development, marketing, and distribution of pain specialty products, which was sold to Shionogi, Inc., a Japanese pharmaceutical company, in 2011. From 2001 to 2004, Mr. Stokely served as the Corporate Controller and CAO for Wireless Facilities, Inc. (currently Kratos Defense & Security Solutions, Inc.), a publicly traded, global provider of communications and security services for the wireless communications industry. From 1994 to 2001, Mr. Stokely served as Corporate Controller of Dura Pharmaceuticals, a publicly traded pharmaceutical company that was sold to Elan Pharmaceuticals in late 2000. He has a B.S. degree in accounting from San Diego State University and is a Certified Public Accountant licensed in California.

Code of Business Conduct and Ethics

We have adopted a Code of Business Conduct and Ethics that is applicable to all our employees, officers, and directors, all of which have read, acknowledged, and agreed to comply with such code. The code is available free of charge on our web site, www.ampiopharma.com, under the "Investors" tab. We intend to disclose future amendments to, or waivers from, certain provisions of our Code of Business Conduct and Ethics, if any, on the above website within four business days following the date of such amendment or waiver.

Committees of the Board

Our Board has an Audit Committee, a Compensation Committee and a Nominating and Governance Committee, each of which has the composition and the responsibilities described below. The Audit Committee, Compensation Committee, and Nominating and Governance Committee operate under separate charters approved by our Board. The charters for each committee are available on our website at www.ampiopharma.com/corporate-governance/. Our Board of Directors may from time to time establish other committees.

Audit Committee. Our Audit Committee, established in accordance with Section 3(a)(58)(A) of the Exchange Act, oversees our corporate accounting and financial reporting process. This committee also assists our Board in monitoring

our financial systems and our legal and regulatory compliance. Our Audit Committee is responsible for, among other things:

- selecting and engaging our independent auditors;
- appointing, compensating and overseeing the work of our independent auditors;
- approving engagements of the independent auditors to render any audit or permissible non-audit services;
- reviewing the qualifications and independence of the independent auditors;
- monitoring the rotation of partners of the independent auditors on our engagement team, as required by law;
- recommending inclusion of the audited financial statements in the Company's Annual Report on Form 10-K and providing the Report of the Audit Committee to be included in the Company's annual proxy statement;
- reviewing our quarterly and annual financial statements and our critical accounting policies and estimates;
- reviewing the adequacy and effectiveness of our internal controls over financial reporting;
- reviewing and discussing with management, the independent auditors and any internal auditors the results of our annual audit, reviews of our quarterly financial statements and our publicly filed reports; and
- reviewing related party transactions.

The members of our Audit Committee are Mr. Buchi (chair), Dr. Stevens and Ms. Jobes. Our Board has determined that each member of the Audit Committee meets the financial literacy requirements of the national securities exchanges and the SEC, and Mr. Buchi qualifies as our Audit Committee financial expert as defined under SEC rules and regulations. Our Board has concluded that the composition of our Audit Committee meets the requirements for independence under the current requirements of the NYSE American and SEC rules and regulations. In 2023, there were four meetings of the Audit Committee.

Compensation Committee. Our Compensation Committee oversees our compensation policies, plans and programs. The Compensation Committee is responsible for, among other things:

- reviewing and approving policies, plans and programs relating to compensation and benefits of our directors and executive officers;
- reviewing and approving compensation, corporate goals, and objectives relevant to compensation for our CEO and for executive officers other than our CEO;
- evaluating the performance of our executive officers while considering established goals and objectives;
- reviewing the executive compensation disclosure that is prepared by the Company for inclusion in the Company's annual proxy statement;
- assessing how the Company's compensation programs encourage the taking of enterprise or other risks that may bear on the Company's overall financial or operational performance;
- administering our equity compensations plans for our employees and directors and consultants; and
- administering our Compensation Recoupment Policy adopted on October 24, 2023.

The members of our Compensation Committee are Dr. Stevens (chair), Mr. Buchi and Ms. Jobs. Each member of our Compensation Committee is a non-employee director, as defined in Rule 16b-3 promulgated under the Exchange Act, and satisfies the independence requirements of the NYSE American. We believe that the composition of our Compensation Committee meets the requirements for independence under the applicable requirements of the NYSE American and SEC rules and regulations.

In 2023, our Compensation Committee met one-time and took action by written consent on a number of occasions. However, from time to time, various members of management and other employees as well as outside advisors or consultants may be invited by the Compensation Committee to make presentations, to provide financial or other background information or advice or to otherwise participate in Compensation Committee meetings. Our CEO may not participate in, or be present during, any deliberations or determinations of the Compensation Committee regarding his compensation or individual performance objectives. Our Compensation Committee has the sole authority to retain compensation consultants to assist in its evaluation of executive and director compensation, including the authority to approve the consultant's reasonable fees and other retention terms. In general, the Compensation Committee has set executive compensation to be in line with peer companies identified by the Compensation Committee and to incentivize the Company's executive officers to achieve the Company's corporate goals.

In fulfilling its responsibilities, the Compensation Committee is permitted under its charter to delegate any or all of its responsibilities to a subcommittee comprised of members of the Compensation Committee or the Board, except that the Compensation Committee may not delegate its responsibilities for any matters that involve compensation of any officer or any matters where it has determined such compensation is intended to be exempt from Section 16(b) under the Exchange Act pursuant to Rule 16b-3 by virtue of being approved by a committee of independent or nonemployee directors.

Nominating and Governance Committee. Our Nominating and Governance Committee oversees and assists our Board in reviewing and recommending corporate governance policies and nominees for election to our Board. The Nominating and Governance Committee is responsible for, among other things:

- evaluating and making recommendations regarding the organization and governance of the Board and its committees;
- assessing the performance of members of the Board and making recommendations regarding committee and chair assignments;
- recommending desired qualifications for Board membership and conducting searches for potential members of the Board;
- developing and periodically reviewing with our Board a succession plan for our CEO; and
- reviewing and making recommendations for our corporate governance guidelines.

The members of our Nominating and Governance Committee are currently Ms. Jobs (chair) and Dr. Stevens. Our Board has determined that each member of our Nominating and Governance Committee satisfies the independence requirements of the NYSE American. In 2023, our Nominating and Governance Committee did not meet but, took action by written consent.

The Nominating and Governance Committee charter provides that the Nominating and Governance Committee will review periodically with the Chairman of the Board the succession plans relating to the Chief Executive Officer and other corporate officer positions. In October 2023, the Company and Mr. Martino, our Chief Executive Officer, entered into an amendment to Mr. Martino employment agreement to change the term of the employment agreement in order to continue the services of Mr. Martino. The term changed from one ending on November 22, 2023 to an indefinite term.

Item 11. Executive Compensation.

As noted in Item 1, on November 9, 2022, the Company effected a 15-to-1 reverse stock split. On September 12, 2023, the Company effected a 20-to-1 reverse stock split. The Company has retroactively applied the reverse stock splits to share and per share amounts in the financial statements as of December 31, 2023 and December 31, 2022. Additionally,

pursuant to their terms, a proportionate adjustment was made to the per share exercise price and number of shares issuable under all the Company’s outstanding options under the 2010/2019 Stock and Incentive Plans, the number of shares of restricted stock outstanding under the 2010/2019 Stock and Incentive Plans, and common stock warrants, with any fractional shares rounded up to the next whole share. The number of shares authorized for issuance pursuant to the 2023 Plan was not impacted by the 20-to-1 reverse stock split (see *Note 10* for additional information). The Company also retroactively applied such adjustments in the notes to the condensed financial statements as of December 31, 2023 and December 31, 2022. The reverse stock split did not reduce the number of authorized shares of common stock and preferred stock and did not alter the par value.

Clawback Policy

In October 2023, the Board of Directors adopted a Compensation Recoupment Policy (the “Policy”) in order to comply with Section 311 of the NYSE American Company Guide and Rule 10D-1 promulgated under the Exchange Act. The Policy will be administered by the Compensation Committee of the Board consisting solely of directors that are “independent” under rules of the NYSE American or, in the absence of such committee, the independent directors serving on the Board of Directors (acting by a majority).

The Policy provides for the mandatory recovery of erroneously awarded incentive-based compensation from current and former executive officers (each, a “Covered Officer”) of the Company in the event of any required accounting restatement of the financial statements of the Company due to the material noncompliance of the Company with any financial reporting requirement under the applicable U.S. federal securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period. Under the Policy, the Company must recoup from the Covered Officer erroneously awarded incentive compensation received within a lookback period of the three completed fiscal years preceding the date on which the Company is required to prepare such accounting restatement, as well as any required transition period resulting from a change in the Company’s fiscal year.

Named Executive Officers

For the fiscal year ended December 31, 2023, our named executive officers were: (i) Michael A. Martino, who has served as our CEO since November 2021 and (ii) Daniel G. Stokely, who has served as our CFO since July 2019. We had no other executive officers serving during the year ended December 31, 2023.

The following table shows, for the fiscal years ended December 31, 2023 and December 31, 2022, compensation awarded to, paid to, or earned by our named executive officers.

Summary Compensation Table

Name and Principal Position (a)	Year (b)	Salary (\$) (c)	Bonus (\$) (d)	Stock Awards (\$)(1) (e)	Option Awards (\$)(1) (f)	All Other Compensation (\$)(2) (i)	Total (\$) (j)
<i>Named Executive Officers</i>							
Michael A. Martino, CEO	2023	550,000	—	—	—	—	550,000
	2022	548,141	—	—	120,000	—	668,141
Daniel G. Stokely, CFO	2023	335,000	—	—	—	3,315	338,315
	2022	335,000	—	—	—	11,725	346,725

(1) The amounts reported under “Stock Awards” and “Option Awards” in the above table reflect the grant date fair value of these awards as determined in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification Topic 718, Compensation – Stock Compensation, rather than amounts paid to or realized by

the named individual. The value of stock awards was computed based on the stock price on the grant date. The value of the option awards was estimated using the Black-Scholes option pricing model. The valuation assumptions used in the valuation of options granted may be found in *Note 10* to our financial statements included in the annual report on Form 10-K for the years ended December 31, 2023 and 2022, respectively.

- (2) The Company provides group term life insurance coverage in an amount equal to one times employees' covered annual earnings up to a maximum of \$50,000 for all full-time employees, including the named executive officers, for a nominal annual premium amount. In addition, the Company has a 401(k) plan that allows participants to contribute a portion of their salary, subject to eligibility requirements and annual IRS limits. The Company provided matching employee contributions covering the 12-month period commencing in April 2022.

Outstanding Equity Awards at Fiscal Year-End

The following table provides a summary of stock options outstanding for each of the named executive officers as of December 31, 2023:

Option Awards					
Name (a)	Number of Securities Underlying Unexercised Options Exercisable (#) (b)	Number of Securities Underlying Unexercised Options Unexercisable (#) (c)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#) (d)	Option Exercise Price (\$) (e)	Option Expiration Date (f)
<i>Named Executive Officers</i>					
Michael A. Martino	367	133 (1)	—	501.00	10/13/2031
Michael A. Martino	2,500	—	—	342.00	11/22/2031
Michael A. Martino	833	—	—	171.00	1/1/2032
Daniel G. Stokely	868	—	—	129.00	8/20/2029
Daniel G. Stokely	65	—	—	176.16	1/2/2030
Daniel G. Stokely	67	—	—	534.00	12/17/2030

- (1) Mr. Martino's unexercisable options become vested at approximately 13 shares monthly on the 13th of each month until October 13, 2024. The option awards remain exercisable until their expiration on the ten-year anniversary of the date of grant subject to earlier forfeiture following termination of employment.

The following table provides a summary of restricted stock awards outstanding for each of the named executive officers as of December 31, 2023.

Name (a)	Stock Awards			
	Number of Shares of Stock that Have Not Vested (#)(1)	Market Value of Shares of Stock that Have Not Vested (\$)(2)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Rights that Have Not Vested	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units, or Rights that Have Not Vested (\$)
<i>Named Executive Officers</i>				
Michael A. Martino	—	—	—	—
Daniel G. Stokely	446	914	—	—

- (1) The restricted stock award shown here was granted in October 2021. The unvested portion reflected in this column will vest equally on January 1st of each year through January 1, 2025.
- (2) The market value reflected in this column is based on a closing share price on December 29, 2023 of \$2.05.

Employment Agreements

On November 22, 2021, the Company entered into a one-year employment agreement (the “Martino Employment Agreement”) with Michael A. Martino, the Company’s CEO. The Martino Employment Agreement provided for an annual salary of \$550,000, and an annual discretionary bonus of up to 50% of Mr. Martino’s base salary, with the exact amount to be determined by the Compensation Committee of the Board based on achievement of individual and Company performance objectives. On August 30, 2022, the Company executed a first amendment to the Martino Employment Agreement, extending the employment term to November 22, 2023, with all other terms and conditions of the Martino Employment Agreement remaining unchanged. On October 1, 2023, the Company executed a second amendment to the Martino Employment Agreement, which changed the term of the agreement from a term ending on November 22, 2023 to an indefinite term, with all other terms and conditions of the Martino Employment Agreement remaining unchanged.

On October 11, 2021, the Company entered into a new three-year employment agreement (the “Stokely Employment Agreement”) with Daniel G. Stokely, the Company’s CFO and principal financial officer. The Stokely Employment Agreement supersedes and replaces the Company’s prior employment agreement with Mr. Stokely entered into on July 9, 2019. The Stokely Employment Agreement provides for an annual base salary of \$335,000 and an annual discretionary bonus of up to 50% of Mr. Stokely’s base salary, with the exact amount to be determined by the Compensation Committee of the Board based on achievement of individual and Company performance objectives.

For 2023, the Compensation Committee did not set performance objectives for either Mr. Martino or Mr. Stokely given the nature of the challenges facing the Company and the Company’s cash position. Accordingly, the Company did not pay a discretionary annual bonus to either Mr. Martino or Mr. Stokely.

Under their respective agreements, the employment of Mr. Martino and Mr. Stokely may also be terminated by the Company immediately upon notice with or without Cause or as a result of the officer’s disability, or by the officer with or without Good Reason. If the Company terminates the employment of Mr. Martino or Mr. Stokely for Cause, if the officer resigns as an employee of the Company other than for Good Reason, or the officer dies, then Ampio is obligated to pay the executive only his accrued compensation and will have no obligation to pay severance or other compensation any kind.

If the officer’s employment is terminated by the Company without Cause or by the Named Executive Officer for Good Reason, the officer would be entitled to a lump sum severance payment equal to 0.5 times his base salary in effect at the date of termination, less applicable withholding. In addition, the vesting and exercisability of all then outstanding options held by the Named Executive Officer would accelerate in full and remain exercisable for a period of three years from the date of termination. The officer would also be entitled to the continued participation (via state or federal insurance

continuation laws such as COBRA, to the extent available) in health and welfare plans provided by the Company at the time of termination for a period of two years from the date of termination or, if earlier, until the officer is eligible for other employer sponsored group health coverage with a subsequent employer.

Any severance payments and/or other separation benefits are conditioned on, among other things, the officer delivering and not revoking a customary general release of claims against the Company and the officer's continued compliance with the proprietary information and inventions agreement with the Company.

See Part I, Item 9B. "Other Information" of this Annual Report for information regarding the termination of the employment of Mr. Stokely effective March 31, 2024.

Additionally, the employment agreements provide that upon the occurrence of a Change in Control, all then-outstanding stock options, restricted stock and other stock-based grants to either Mr. Martino or Mr. Stokely will, irrespective of any provisions of his award agreements, immediately and irrevocably vest and become exercisable and any restrictions thereon will lapse. In either case, if any payment or benefit the officer would receive pursuant to a Change in Control from the Company or otherwise would constitute a "parachute payment" within the meaning of Section 280G of the Code and be subject to the excise tax imposed by Section 4999 of the Code, then such the amount of such payment will be calculated to be (1) the largest portion of the payment that would result in no portion of the payment being subject to the excise tax or (2) the largest portion, up to and including the total, of the payment, whichever amount, after taking into account all applicable taxes and the excise tax, results in the officer receiving, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the payment may be subject to the excise tax.

Potential Payments Upon Termination or Change in Control

The potential payments and benefits to Mr. Martino or Mr. Stokely under his respective employment agreement in connection with termination of the officer's employment by the Company without Cause, by the Named Executive Officer for Good Reason, or in connection with a Change in Control are described above under "Employment Agreements."

For purposes of the employment agreements, "Good Reason" means, without the executive's written consent:

- with respect to all executives:
 - a material reduction of his compensation (except where there is a general reduction also applicable to the other members of the senior executive team); or
 - a material reduction in his overall responsibilities or authority or scope of duties (it being understood that the occurrence of a change in control shall not, by itself, necessarily constitute a reduction in his responsibilities or authority).
- With respect to Mr. Stokely:
 - a material change in the principal geographic location at which the executive must perform his services (it being understood that the relocation of the executive to a facility or a location within forty (40) miles of the State Capitol Building in Denver, Colorado shall not be deemed material).

For purposes of his employment agreement, "Cause" means, with respect to Mr. Martino, in the sole discretion of a majority of the Board:

- Our executive's failure or refusal to substantially perform his duties;
- personal or professional dishonesty that could reasonably be expected to have a materially adverse impact on the financial interests or business reputation of the Company;
- incompetence, willful misconduct, breach of fiduciary duty (including duties involving personal profit);
- breach of the Company's Code of Business Conduct and Ethics and personnel policies or compliance policies;

- material violation of the Sarbanes-Oxley requirements for officers of public companies that in the reasonable opinion of the Board will likely cause substantial financial harm or substantial injury to the reputation of the Company;
- willfully engaging in actions that in the reasonable opinion of the Board will likely cause substantial financial harm or substantial injury to the business reputation of the Company;
- willful violation of any law, rule, or regulation, or final cease-and-desist order (other than routine traffic violations or similar offenses);
- the unauthorized use or disclosure of any trade secret, proprietary, or confidential information of the Company (or any other party as to which our Executive owes an obligation of nondisclosure as a result of his relationship with the Company);
- failure to follow the reasonable and lawful directives of the Board pertaining to his duties with the Company;

For purposes of his employment agreement, “Cause” means, with respect to Mr. Stokely, in the sole discretion of a majority of the Board:

- willful malfeasance or willful misconduct by the executive in connection with his employment;
- the executive's gross negligence in performing any of his duties under the employment agreement;
- the executive's commission, conviction of, or entry of a plea of guilty to, or entry of a plea of *nolo contendere* with respect to, any crime other than a traffic violation but including a felony that results in significant bodily injury or an infraction which is a misdemeanor, but in all events including crimes that involve fraud, theft, or moral turpitude;
- the executive's willful and deliberate violation of a Company policy;
- the executive's unintended but material breach of any written policy applicable to all employees adopted by the Company which, to the extent curable, is not cured to the reasonable satisfaction of the Board within thirty (30) business days after notice thereof;
- the executive's unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party as to which our Executive owes an obligation of nondisclosure as a result of our Executive's relationship with the Company;
- the executive's willful and deliberate breach of her obligations under the employment agreement; or
- any other material breach by the executive of any of his obligations in the employment agreement which, to the extent curable, is not cured to the reasonable satisfaction of the Board within thirty (30) business days after notice thereof.

Additionally, under the 2010/2019 Stock and Incentive Plans, in the case of and subject to the consummation of a Sale Event (i.e. a change in control of the Company), the plan and all outstanding awards granted thereunder will terminate, unless provision is made in connection with the Sale Event in the sole discretion of the parties thereto for the assumption or continuation of awards granted by the successor entity, or the substitution of such awards with new awards of the successor entity or its parent. In the event of such termination, (i) Ampio will have the option (in its sole discretion) to make or provide for a cash payment to the grantees holding options and stock appreciation rights, in exchange for the cancellation thereof, in an amount equal to the difference between (a) the sale price multiplied by the number of shares of stock subject to outstanding options and stock appreciation rights (to the extent then exercisable (after taking into account any acceleration hereunder) at prices not in excess of the sale price) and (b) the aggregate exercise price of all such outstanding options and stock appreciation rights; or (ii) each grantee shall be permitted, within a specified period of time prior to the consummation of the Sale Event as determined by the Compensation Committee, to exercise all outstanding options and stock appreciation rights held by such grantee. The Compensation Committee also has the discretion to accelerate the vesting of all other awards.

Compensation Committee Interlocks and Insider Participation

The members of the Compensation Committee are named in the section titled “Committees of the Board – Compensation Committee.” No member of our Compensation Committee has served as one of our officers or employees at any time. None of our executive officers serves as a member of the compensation committee of any other company that has an executive officer serving as a member of the Board. None of our executive officers serves as a member of the board of directors of any other company that has an executive officer serving as a member of our Compensation Committee during the last fiscal year.

Non-Employee Director Compensation

Our Compensation Committee established the following annual fees for payment to non-employee members of our Board and committees, for the fiscal year ended December 31, 2023:

Name	Cash Compensation
<i>Board Annual Retainer:</i>	
Chairman/lead independent director	\$ 71,000
Each non-employee director	\$ 38,500
<i>Audit Committee Annual Retainer</i>	
Chairman	\$ 20,000
Each non-employee director	\$ 10,000
<i>Compensation Committee Annual Retainer</i>	
Chairman	\$ 12,000
Each non-employee director	\$ 6,000
<i>Nominating and Governance Committee Annual Retainer</i>	
Chairman	\$ 10,000
Each non-employee director	\$ 5,000

In fiscal year 2023, we did not grant equity awards to our non-employee directors for their service.

Director Compensation for 2023

The table below summarizes the compensation paid by us to our directors for the year ended December 31, 2023. Mr. Martino, who served as director and executive officer for 2023, did not receive compensation as a director during 2023.

Name	Fees Earned or Paid in Cash	Option Awards	Stock Awards	All Other Compensation	Total
J. Kevin Buchi (1)	\$ 99,500	\$ —	\$ —	\$ —	\$ 99,500
David Stevens, Ph.D.	\$ 65,500	\$ —	\$ —	\$ —	\$ 65,500
Elizabeth Varki Jobses	\$ 64,500	\$ —	\$ —	\$ —	\$ 64,500

(1) Amount reflects an adjustment totaling \$2,500 related to an under payment of director fees for the year ended December 31, 2022.

For a summary of the option awards held by Mr. Martino as of December 31, 2023, please see “Executive Compensation – Outstanding Equity Awards at Fiscal Year End.” As of December 31, 2023, the outstanding stock option awards held by our other directors are as follows: Mr. Buchi, 750, shares; Dr. Stevens, 1,913 shares; and Ms. Jobses, 500, shares.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The following table sets forth information regarding beneficial ownership of our Common Stock as of March 15, 2024 by:

- each person or group of affiliated persons known by us to be the beneficial owner of more than 5% of our Common Stock;
- each of our named executive officers;
- each of our directors; and
- all current executive officers and directors as a group.

We have determined beneficial ownership in accordance with SEC rules. The information does not necessarily indicate beneficial ownership for any other purpose. Under these rules, the number of shares of Common Stock deemed outstanding includes shares issuable upon exercise of options and warrants held by the respective person or group which may be exercised or converted within 60 days after March 15, 2024.

For purposes of calculating each person’s or group’s percentage ownership, stock options and warrants exercisable within 60 days after March 15, 2024 are included for that person or group but not the stock options or warrants of any other person or group. Ownership is based on 1,135,358 shares of Common Stock outstanding on March 15, 2024.

The Company is not aware of any arrangements that have resulted, or may at a subsequent date result, in a change of control of the Company.

Unless otherwise indicated and subject to any applicable community property laws, to our knowledge, each stockholder named in the following table possesses sole voting and investment power over the shares listed. Unless otherwise noted below, the address of each stockholder listed on the table is c/o Ampio Pharmaceuticals, Inc., 9800 Mount Pyramid Court, Suite 400, Englewood, Colorado 80112.

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned (1)	Percentage of Shares Beneficially Owned
<i>5% Stockholders</i>		
None	—	— %
<i>Directors and Name Executive Officers</i>		
David R. Stevens (2)	7,112	* %
Michael A. Martino (2)(3)	7,608	* %
J. Kevin Buchi (2)	8,023	* %
Elizabeth Varki Jobes (2)	368	* %
Daniel G. Stokely (3)	1,971	* %
Directors and executive officers as a group	25,082	3.0 %

* Represents ownership of 1% or under of the Company’s outstanding common stock.

(1) Includes the following number of shares that could be acquired within 60 days of March 15, 2024 upon the exercise of stock options: David R. Stevens, 1,913 shares; Michael A. Martino, 3,763 shares; J. Kevin Buchi, 680 shares; Elizabeth Varki Jobes, 368 shares; Daniel G. Stokely, 1,000 shares; and all current directors and executive officers as a group 7,724 shares.

(2) Director.

(3) Named Executive Officer.

Securities Authorized for Issuance Under Equity Compensation Plans

Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options (a)	Weighted-Average Exercise Price of Outstanding Options (b)	Number of Securities Remaining Available for Issuance under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (c)
Equity compensation plans approved by security holders	—	\$ —	1,200,000 (1)
Equity compensation plans not approved by security holders	—	—	—
Total	—	\$ —	1,200,000

(1) The securities remaining available for issuance pursuant to the 2023 Plan may be issued in the form of incentive stock options, non-qualified stock options, stock appreciation rights, restricted stock units, restricted stock awards, and unrestricted stock awards.

The Company’s 2019 Stock and Incentive Plan was cancelled concurrently with the adoption of the 2023 Plan; as such there were no remaining securities available for issuance under that plan as of December 31, 2023. On February 28, 2024, we filed a post-effective amendment to deregister the remaining shares available under the Company’s equity compensation plans, which was effective upon filing.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Related Party Transactions

Other than required indemnification and advancement of expenses made to our directors and executive officers relating to the legal proceedings described in Part I, Item 3. Legal Proceedings of this Form 10-K, we have not been a participant in any transaction since January 1, 2023 and are not a participant in any currently proposed transaction in which the amount involved exceeded or will exceed the lesser of \$120,000 or 1% of the average of our total assets at year-end for the last two completed fiscal years, and in which any director, executive officer, or holder of more than 5% of any class of our voting stock, or any member of the immediate family of or entities affiliated with any of them, had or will have a material interest.

Policies and Procedures for Related Party Transactions

We have a policy that our executive officers, directors, nominees for election as directors, beneficial owners of more than 5% of any class of our common stock and any member of the immediate family of any of the foregoing persons, are not permitted to enter into a related party transaction with us without the prior consent of our Audit Committee, subject to the pre-approval exceptions described below. If advance approval is not feasible then the related party transactions will be considered at the Audit Committee’s next quarterly scheduled meeting. In approving or rejecting any such proposal, our Audit Committee is to consider the relevant facts and circumstances available and deemed relevant by our Audit Committee, including, but not limited to, whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related party’s interests in the transaction. Our Board has delegated to the chair of our Audit Committee the authority to pre-approve or ratify any request for us to enter into a transaction with a related party, in which the amount involved is less than \$120,000 and where the chair is not the related party. Our Audit Committee will also review certain types of related party transactions that it has deemed pre-approved even if the aggregate amount involved will not exceed \$120,000 including, employment of executive officers, director compensation, certain transactions with other organizations, transactions where all stockholders receive proportional benefits, transactions involving competitive bids, regulated transactions and certain banking-related services.

Director Independence

Our common stock is listed on the NYSE American. The listing rules of the NYSE American require that a majority of the members of the Board be independent. The rules of the NYSE American require that, subject to specified exceptions, each member of our Audit, Compensation, and Nominating and Governance Committees be independent. Audit Committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Exchange Act. Under the rules of the NYSE American, a director will only qualify as an “independent director” if, in the opinion of that company’s board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

In order to be considered independent for purposes of Rule 10A-3, a member of an audit committee of a listed company may not, other than in his or her capacity as a member of the audit committee, the board of directors or any other board committee: (i) accept, directly or indirectly, any consulting, advisory or other compensatory fee from the listed company or any of its subsidiaries; or (ii) be an affiliated person of the listed company or any of its subsidiaries.

In March 2024, our Board undertook a review of its composition, the composition of its committees and the independence of each director. Based upon information provided by each director concerning his or her background, employment and affiliations, including family relationships, our Board has determined that none of Mr. Buchi, Dr. Stevens or Ms. Jobes, had a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors was “independent” as that term is defined by the NYSE American. Our Board also determined that Mr. Buchi, Dr. Stevens and Ms. Jobes, who comprised our Audit Committee, our Compensation Committee, and our Nominating and Governance Committee during 2023, satisfied the independence standards for those committees established by applicable SEC rules and the NYSE American rules.

Item 14. Principal Accountant Fees and Services.

The Company’s independent registered public accounting firm is Moss Adams LLP, Issuing Office Denver Colorado, PCAOB ID: 659.

The following table presents aggregate fees billed for professional services rendered by our independent registered public accounting firm, Moss Adams LLP for the respective periods indicated:

	For the year ended December 31,	
	2023	2022
Moss Adams LLP		
Audit fees (1)	\$ 306,000	\$ 278,000
Audit-related fees (2)	—	11,000
Tax fees (3)	—	—
All other fees (4)	—	—
Total fees	<u>\$ 306,000</u>	<u>\$ 289,000</u>

- (1) Audit fees includes fees related to the audit of our annual financial statements; the review of our quarterly financial statements; comfort letters, consents, and assistance with and review of documents filed with the SEC; and financial reporting consultation and research work billed as audit fees or necessary to comply with the standards of the Public Company Accounting Oversight Board (United States).
- (2) Audit-related fees would include employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with acquisitions, attest services related to financial reporting that are not required by statute or regulation and consultation concerning financial accounting and reporting standards. The Company did not incur expenses for audit-related services for the year

ended December 31, 2023. The Company incurred \$11,000 for audit-related fees in its exploration of strategic initiatives for the year ended December 31, 2022.

- (3) Tax fees comprise federal and state services related to tax compliance, consulting, and preparation. The Company did not incur expenses for tax services from Moss Adams LLP for the years ended December 31, 2023 or 2022.
- (4) All other fees include fees billed for products and services provided by the principal accountant, other than the services reported in (1) or (3). The Company did not incur other fees from Moss Adams LLP for the years ended December 31, 2023 or 2022.

Policy on Audit Committee Pre-Approval of Services of Independent Registered Public Accounting Firm

Our Audit Committee has responsibility for appointing, setting compensation, and overseeing the work of the independent registered public accounting firm. In recognition of this responsibility, the Audit Committee has established a policy to pre-approve all audit and permissible non-audit services provided by the independent registered public accounting firm. Prior to engagement of the independent registered public accounting firm for the following year's audit, management will submit to the Audit Committee for approval an engagement letter which provides the description and estimated cost of services expected to be rendered during that year for each of following four categories of services:

- (1) Audit services include fees for services that generally only the auditor can reasonably provide, such as statutory audits required domestically and internationally (including statutory audits required by insurance companies for purposes of state law); comfort letters; consents; assistance with and review of documents filed with the SEC; section 404 attestation services; other attest services that generally only the auditor can provide; work done by tax professionals for the audit or quarterly review; and accounting consultations billed as audit services, as well as other accounting and financial reporting consultation and research work necessary to comply with the standards of the PCAOB.
- (2) Audit-related services include, but are not limited to, employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with acquisitions, internal control reviews, attest services related to financial reporting that are not required by statute or regulation and consultation concerning financial accounting and reporting standards.
- (3) Tax services consist principally of assistance with federal and state tax compliance and reporting, as well as certain tax planning consultations.
- (4) Other services are those associated with services not captured in the other categories. We generally do not request such services from our independent auditor.

Prior to the engagement of the independent registered public accounting firm, the Audit Committee pre-approves these services by category of service and estimated cost as further noted in the engagement letter. The fees are budgeted as part of the Company's annual/periodic budgeting and forecasting process, and the Audit Committee requires the independent registered public accounting firm and management to report actual fees versus the budget periodically throughout the year by category of service. During the year, circumstances may arise when it may become necessary to engage the independent registered public accounting firm for additional services not contemplated in the original pre-approval. In those instances, the Audit Committee requires specific pre-approval before engaging the independent registered public accounting firm for such services.

The Audit Committee may delegate pre-approval authority to one or more of its members. The member to whom such authority is delegated must report, for informational purposes only, any pre-approval decisions to the Audit Committee at its next scheduled meeting.

All the services of Moss Adams LLP described above were pre-approved by the Audit Committee in advance of such services being provided.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) Financial Statements

The following documents are filed as part of this Form 10-K, as set forth on the Index to Financial Statements found on page F-1.

- Report of Independent Registered Public Accounting Firm
- Balance Sheets as of December 31, 2023 and 2022
- Statements of Operations for the years ended December 31, 2023 and 2022
- Statements of Stockholders' Equity for the years ended December 31, 2023 and 2022
- Statements of Cash Flows for the years ended December 31, 2023 and 2022
- Notes to Financial Statements

(a)(2) Financial Statement Schedules

Not Applicable.

(a)(3) Exhibits

Exhibit number	Exhibit title
3.1	Certificate of Incorporation of Chay Enterprises, Inc. (Incorporated by reference to Exhibit 3.3 of the Registrant's Form 8-K filed March 30, 2010).
3.2	Certificate of Amendment to Certificate of Incorporation of Ampio Pharmaceuticals, Inc. (f/k/a Chay Enterprises, Inc. (Incorporated by reference to Exhibit 3.4 of the Registrant's Form 8-K filed March 30, 2010).
3.3	Certificate of Amendment to Certificate of Incorporation of the Registrant. (Incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed December 18, 2019).
3.4	Certificate of Amendment to Certificate of Incorporation of the Registrant. (Incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed November 9, 2022).
3.5	Certificate of Designation of the Series D Preferred Stock of Ampio Pharmaceuticals, Inc. filed May 25, 2023 (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on May 26, 2023).
3.6	Certificate of Amendment to Certificate of Incorporation of Ampio Pharmaceuticals, Inc. filed August 30, 2023 (Incorporated by reference to the Registrant's Current Report on Form 8-K filed on August 31, 2023).
3.7	Amended and Restated Bylaws of the Registrant, as currently in effect. (Incorporated by reference to Exhibit 3.1 to the Registrant's Form 10-Q filed November 14, 2018).
3.8	Amendment to the Amended and Restated Bylaws of Ampio Pharmaceuticals, Inc. adopted May 24, 2023 (Incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on May 26, 2023).
4.1	Specimen Common Stock Certificate of the Registrant. (Incorporated by reference to Exhibit 4.1 to the Registrant's Form 10-K for the year ended December 31, 2021).
4.2	Description of Capital Stock of Ampio Pharmaceuticals, Inc. (Incorporated by reference to Exhibit 4.5 to the Registrant's Form 10-K filed on February 21, 2020).
10.1**	2010 Stock Incentive Plan and forms of option agreements. (Incorporated by reference to Exhibit 10.7 from Registrant's Form 8-K/A filed March 17, 2010)
10.2**	Amendment of 2010 Stock and Incentive Plan. (Incorporated by reference to Appendix A to the Registrant's Proxy Statement on Form 14A filed October 21, 2011)
10.3**	2019 Stock Incentive Plan and forms of option agreements. (Incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-K filed on March 3, 2021)
10.4**	Form of restricted stock award agreement under the 2019 Stock Incentive Plan. (Incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-K filed on March 29, 2022)
10.5	Lease Agreement by and between Ampio Pharmaceuticals, Inc. and NCWP – Inverness Business Park, LLC, dated December 13, 2013. (Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed December 19, 2013)
10.6**	Employment Agreement between Ampio Pharmaceuticals, Inc. and Daniel Stokely, dated October 11, 2021. (Incorporated by reference to Exhibit 10.8 to the Registrant's Form 10-K filed on March 29, 2022)

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- 10.7** [Employment Agreement between Ampio Pharmaceuticals, Inc. and Michael Martino, dated November 22, 2021. \(Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K Filed November 29, 2021\).](#)
- 10.8** [Amendment No. 1 to Employment Agreement by and between Ampio Pharmaceuticals, Inc. and Michael A. Martino, dated August 30, 2022. \(Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed on September 1, 2022\).](#)
- 10.9** [Amendment No. 2 to Employment Agreement dated October 1, 2023 by and between Ampio Pharmaceuticals, Inc. and Michael A. Martino \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on October 4, 2023\).](#)
- 10.10** [Stock Option Cancellation and Grant Agreement for Executive between Ampio Pharmaceuticals, Inc. and Daniel Stokely, dated August 20, 2019. \(Incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed August 23, 2019\).](#)
- 10.11** [Form of Indemnification Agreement between Ampio Pharmaceuticals, Inc. and certain directors, executive officers and key employees. \(Incorporated by reference to Exhibit 10.11 to the Registrant's Form 10-K filed on March 29, 2022\).](#)
- 10.12** [Amendment to Cancellation Agreement, dated November 7, 2019, between Ampio Pharmaceuticals Inc. and Daniel Stokely. \(Incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-Q filed November 7, 2019\).](#)
- 10.13 [At the Market Offering Agreement dated September 18, 2023 by and between Ampio Pharmaceuticals, Inc. and H.C. Wainwright & Co., LLC. \(Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K filed September 22, 2023\).](#)
- 14.1 [Ampio Pharmaceuticals, Inc. Code of Business Conduct and Ethics. \(Incorporated by reference to Exhibit 14.1 to the Registrant's Form 8-K filed December 18, 2019.\)](#)
- 31.1* [Certificate of the Chief Executive Officer of Ampio Pharmaceuticals, Inc. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 31.2* [Certificate of the Chief Financial Officer of Ampio Pharmaceuticals, Inc. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 32.1* [Certificate of the Chief Executive Officer and the Chief Financial Officer of Ampio Pharmaceuticals, Inc. pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 97 [Ampio Pharmaceuticals, Inc. Compensation Recoupment Policy adopted October 24, 2023. \(Incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed on October 27, 2023\).](#)
- 101 Inline XBRL (extensible Business Reporting Language). The following materials from Ampio Pharmaceuticals, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2022 formatted in XBRL: (i) the Balance Sheets, (ii) the Statements of Operations, (iii) the Statements of Stockholders' Equity (Deficit), (iv) the Statements of Cash Flows, and (v) the Notes to the Financial Statements.
- 104 Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith.

** This exhibit is a management contract or compensatory plan or arrangement.

Item 16. Form 10-K Summary.

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities and Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AMPIO PHARMACEUTICALS, INC.

Date: March 27, 2024

By: /s/ Michael A. Martino

Michael A. Martino

Chief Executive Officer

(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant in the capacities indicated, on March 27, 2024.

Signature	Title
_____ /s/ Michael A. Martino Michael A. Martino	Chief Executive Officer (Principal Executive Officer) and Director
_____ /s/ Daniel G. Stokely Daniel G. Stokely	Chief Financial Officer (Principal Financial and Accounting Officer)
_____ /s/ David R. Stevens David R. Stevens	Director
_____ /s/ J. Kevin Buchi J. Kevin Buchi	Director
_____ /s/ Elizabeth Varki Jobs Elizabeth Varki Jobs	Director

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AMPIO PHARMACEUTICALS, INC.**

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Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of
Ampio Pharmaceuticals, Inc.

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Ampio Pharmaceuticals, Inc. (the “Company”) as of December 31, 2023 and 2022, the related statements of operations, mezzanine equity and stockholders’ equity, and cash flows for the years then ended, 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 as of December 31, 2023 and 2022, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Going Concern Uncertainty

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, the Company has suffered recurring losses from operations, plans to pursue voluntary de-listing of the Company’s common stock, and is preserving cash to fund an orderly wind down of operations. These factors raise substantial doubt about the Company’s ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

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 to 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.

Critical Audit Matter

Critical audit matters are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. We determined that there are no critical audit matters.

/s/ Moss Adams LLP

Denver, Colorado

March 27, 2024

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

AMPIO PHARMACEUTICALS, INC.**Balance Sheets**

	<u>December 31,</u> <u>2023</u>	<u>December 31,</u> <u>2022</u>
Assets		
Current assets		
Cash and cash equivalents	\$ 4,089,000	\$ 12,653,000
Insurance recovery receivable	920,000	—
Prepaid expenses and other	727,000	676,000
Total current assets	<u>5,736,000</u>	<u>13,329,000</u>
Fixed assets, net	—	184,000
Right-of-use asset, net	—	75,000
Total assets	<u>\$ 5,736,000</u>	<u>\$ 13,588,000</u>
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable and accrued expenses	\$ 2,102,000	\$ 852,000
Lease liability-current portion	274,000	340,000
Total current liabilities	<u>2,376,000</u>	<u>1,192,000</u>
Lease liability-long-term	—	274,000
Warrant derivative liability	—	44,000
Asset retirement obligation	—	289,000
Total liabilities	<u>2,376,000</u>	<u>1,799,000</u>
Commitments and contingencies (Note 6)		
Mezzanine equity		
Preferred Stock, par value \$0.0001; 10,000,000 shares authorized; shares issued and outstanding - none as of December 31, 2023 and December 31, 2022	—	—
Stockholders' equity		
Common Stock, par value \$0.0001; 300,000,000 shares authorized; shares issued and outstanding - 833,430 as of December 31, 2023 and 804,674 as of December 31, 2022	[1] —	—
Additional paid-in capital	245,887,000 [1]	245,728,000
Accumulated deficit	(242,527,000)	(233,939,000)
Total stockholders' equity	<u>3,360,000</u>	<u>11,789,000</u>
Total liabilities and stockholders' equity	<u>\$ 5,736,000</u>	<u>\$ 13,588,000</u>

[1] December 31, 2023 balances have been adjusted and December 31, 2022 balances have been retroactively adjusted to reflect the 20-to-1 reverse stock split effected September 12, 2023.

The accompanying notes are an integral part of these financial statements.

AMPIO PHARMACEUTICALS, INC.**Statements of Operations**

	Year Ended December 31,	
	2023	2022
Operating expenses		
Research and development	\$ 2,439,000	\$ 8,916,000
General and administrative	7,079,000	11,466,000
Long-lived assets impairment	—	1,614,000
Right of use asset impairment	—	322,000
Loss on sale of fixed assets	56,000	—
Total operating expenses	9,574,000	22,318,000
Other income		
Interest income	348,000	220,000
Rental income	305,000	—
Gain from elimination of ARO obligation, net	289,000	—
Derivative gain	—	5,761,000
Total other income	942,000	5,981,000
Net loss	\$ (8,632,000)	\$ (16,337,000)
Net loss per common share: [1]		
Basic	\$ (10.66)	\$ (21.68)
Diluted	\$ (10.66)	\$ (29.32)
Weighted average number of common shares outstanding: [1]		
Basic	810,113	753,615
Diluted	810,113	753,615

[1] Net loss per common share and weighted average number of common shares outstanding for the current period have been adjusted and the prior periods have been retroactively adjusted to reflect the 20-to-1 reverse stock split effected September 12, 2023.

The accompanying notes are an integral part of these financial statements.

AMPIO PHARMACEUTICALS, INC.

Statements of Mezzanine Equity and Stockholders' Equity

	Mezzanine Equity Series D Preferred		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance at December 31, 2021	—	\$ —	808,136	\$ —	\$ 244,886,000	\$ (217,602,000)	\$ 27,284,000
Share-based compensation, net of forfeitures	—	—	—	—	1,462,000	—	1,462,000
Shares held back in settlement of tax obligation for shares issued in connection with restricted stock awards	—	—	(462)	—	(79,000)	—	(79,000)
Offering costs related to the issuance of common stock and warrants in connection with the registered direct offering	—	—	—	—	(32,000)	—	(32,000)
Restricted stock award forfeitures	—	—	(3,000)	—	(509,000)	—	(509,000)
Net loss	—	—	—	—	—	(16,337,000)	(16,337,000)
Balance at December 31, 2022	—	—	804,674	—	245,728,000	(233,939,000)	11,789,000
Reclassification of warrant derivative upon adoption of ASU 2020-06	—	—	—	—	—	44,000	44,000
Share-based compensation, net of forfeitures	—	—	—	—	159,000	—	159,000
Issuance of Series D preferred stock dividend	15,103	—	—	—	—	—	—
Preferred stock redemption	(15,103)	—	—	—	—	—	—
Shares held back in settlement of tax obligation for shares issued in connection with restricted stock awards	—	—	(70)	—	—	—	—
Common stock issued related to the ATM Equity Offering Program	—	—	28,826	—	98,000	—	98,000
Offering costs for the common stock issued related to the ATM Equity Offering Program	—	—	—	—	(98,000)	—	(98,000)
Net loss	—	—	—	—	—	(8,632,000)	(8,632,000)
Balance at December 31, 2023	—	\$ —	833,430	\$ —	\$ 245,887,000	\$ (242,527,000)	\$ 3,360,000

Note that the shares numbers and balances for the current period have been adjusted and prior periods have been retroactively adjusted to reflect the 20-to-1 reverse stock split effected September 12, 2023.

The accompanying notes are an integral part of these financial statements.

AMPIO PHARMACEUTICALS, INC.**Statements of Cash Flows**

	Year Ended December 31,	
	2023	2022
Cash flows used in operating activities		
Net loss	\$ (8,632,000)	\$ (16,337,000)
Adjustments to reconcile net loss to net cash used in operating activities:		
Share-based compensation, net of forfeitures	159,000	1,462,000
Restricted stock award compensation, forfeitures	—	(509,000)
Depreciation and amortization	122,000	1,048,000
Long-lived assets impairment	—	1,614,000
Right-of-use asset impairment	—	322,000
Loss on sale of fixed assets	56,000	—
Net gain from elimination of ARO obligation	(289,000)	7,000
Accretion of asset retirement obligation	5,000	—
Derivative gain	—	(5,761,000)
Changes in operating assets and liabilities:		
Increase in insurance recovery receivable	(920,000)	—
(Increase) decrease in prepaid expenses and other	(51,000)	1,064,000
Increase (decrease) in accounts payable and accrued expenses	1,251,000	(3,959,000)
Decrease in lease liability	(265,000)	(79,000)
Net cash used in operating activities	<u>(8,564,000)</u>	<u>(21,128,000)</u>
Net cash used in investing activities	<u>—</u>	<u>—</u>
Cash flows used in financing activities		
Proceeds from sale of common stock in connection with the "at-the-market" equity offering program	98,000	—
Costs related to sale of common stock in connection with the "at-the-market" equity offering program	(98,000)	—
Costs related to the sale of common stock and warrants in connection with the registered direct offering	—	(32,000)
Funding of tax obligation relative to shares withheld in connection with restricted stock awards	—	(79,000)
Net cash used in financing activities	<u>—</u>	<u>(111,000)</u>
Net change in cash and cash equivalents	(8,564,000)	(21,239,000)
Cash and cash equivalents at beginning of period	12,653,000	33,892,000
Cash and cash equivalents at end of period	<u>\$ 4,089,000</u>	<u>\$ 12,653,000</u>
Non-cash transactions:		
Commercial insurance premium financing agreement	\$ 703,000	\$ 1,159,000
Recognition of asset retirement obligation	\$ —	\$ 282,000

The accompanying notes are an integral part of these financial statements.

AMPIO PHARMACEUTICALS, INC.

Notes to Financial Statements

Note 1 – Basis of Presentation

The accompanying financial statements have been prepared in conformity with U.S. Generally Accepted Accounting Principles (“GAAP”). Ampio Pharmaceuticals, Inc. (“Ampio” or “the Company”) is a pre-revenue stage biopharmaceutical company, located in Englewood, CO, that was focused solely on the development of a potential treatment for Osteoarthritis of the Knee (“OAK”) as part of the OA-201 program. The OA-201 program sought to advance Ampio’s unique and proprietary small molecule formulation that was Ampio’s only product development opportunity.

The Company’s core activities in 2023 relate to research and development and raising capital. The Company has not generated operating revenue to date.

In late 2023, we initiated non-clinical studies to determine whether OA-201 would support an Investigational New Drug (“IND”) submission. Previous smaller studies had demonstrated that OA-201 showed efficacy versus saline control to reduce pain and preserve cartilage in non-clinical models of osteoarthritis of the knee. However, as we announced in February 2024, the pain reduction benefit was not observed in the data from the recent set of non-clinical studies which utilized a larger population of animal subjects. Because the data from the larger non-clinical pain reduction trial of OA-201 did not support the same pain reduction benefit as was demonstrated in the earlier trials, Ampio determined to cease all preclinical and clinical development activities relating to OA-201.

On November 9, 2022, the Company effected a 15-to-1 reverse stock split. On September 12, 2023, the Company effected a 20-to-1 reverse stock split. The Company has applied and retroactively applied, the reverse stock splits to share and per share amounts in the financial statements as of December 31, 2023 and December 31, 2022, respectively. Additionally, pursuant to their terms, a proportionate adjustment was made to the per share exercise price and number of shares issuable under all the Company’s outstanding options under the 2010/2019 Stock and Incentive Plans, the number of shares of restricted stock outstanding under the 2019 Stock and Incentive Plan, and common stock warrants, with any fractional shares rounded up to the next whole share. The number of shares authorized for issuance pursuant to the Company’s 2023 Stock and Incentive Plan (the “2023 Plan”) was not impacted by the 20-to-1 reverse stock split (see *Note 9* for additional information). The Company also applied and retroactively applied such adjustments in the notes to the condensed financial statements as of December 31, 2023 and December 31, 2022, respectively. The reverse stock split did not reduce the number of authorized shares of common stock and preferred stock and did not alter the par value.

Note 2 – Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and expenses, and related disclosures in the financial statements and accompanying notes. The Company bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. Actual results could differ materially from those estimates.

Significant items subject to such estimates and assumptions primarily include the Company’s projected current and long-term liquidity needs and availability and the insurance recovery receivable. The Company develops these estimates using its judgment based upon experience and the facts and circumstances known at the time.

Cash and Cash Equivalents

The Company considers instruments purchased with an original maturity of three months or less to be cash equivalents. The Company’s investment policy is to preserve principal and maintain liquidity. On March 10, 2023, the Federal

Deposit Insurance Corporation (“FDIC”) placed Silicon Valley Bank (“SVB”) into receivership. At that time, the Company held approximately \$1,250,000 in a deposit account at SVB. The balance of the Company’s cash was held in an investment account that was not a deposit account and therefore, these amounts were not impacted by the FDIC’s receivership of SVB or subject to FDIC insurance limits. Following the joint statement by the U.S. Treasury, Federal Reserve and the FDIC on March 12, 2023, the Company regained access to all of its deposit account funds. The Company refined its cash management strategy in order to further mitigate the potential risk of loss associated with deposit accounts balances in excess of the FDIC insured amount.

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 has no off-balance-sheet concentrations of credit risk, such as foreign exchange contracts, option contracts or foreign currency hedging arrangements. The Company consistently maintains its cash and cash equivalent balances in the form of bank demand deposits, United States federal government backed treasury securities and liquid money market fund accounts with financial institutions that management believes are creditworthy. The Company periodically monitors its cash positions with, and the credit quality of, the financial institutions with which it invests. During the year ended December 31, 2023, the Company did not maintain balances in excess of the federally insured limits; however, during the year ended December 31, 2022, the Company maintained balances in excess of federally insured limits.

Insurance Recovery Receivable

During the second quarter of 2023, the Company’s legal expenses associated with the litigation proceedings exceeded the retention limit per the insurance policy and, as such, legal expenses incurred subsequently are covered and reimbursed by the insurance carrier. As of December 31, 2023, the Company estimated an insurance recovery receivable of \$920,000.

Fixed Assets

Effective March 1, 2023, the Company entered into a sublease of its existing facility and in connection with that sublease, entered into a bill of sale with the subtenant for all the Company’s existing fixed assets (see *Note 4*). As such, as of December 31, 2023, the Company has no fixed assets. However, in prior years, fixed assets were stated at cost less accumulated depreciation and amortization. Cost included expenditures for equipment, leasehold improvements, replacements, and renewals and the related cost required to get certain equipment in operating condition. The Company charged routine and ongoing maintenance and repairs to expense as incurred. When assets were sold, retired, or otherwise disposed of, the cost and accumulated depreciation were removed from the accounts and any resulting gain or loss was reflected in operations. The cost of property and equipment was depreciated using the straight-line method over the estimated useful lives of the related assets. Leasehold improvements were amortized over the remaining life of the lease.

Impairment of Long-Lived Assets

The Company performs an evaluation on an annual basis, or sooner if management believes a triggering event has occurred, of the recoverability related to the carrying value of its long-lived assets to determine if facts and circumstances indicate that the carrying value of assets may be impaired and if any adjustment is warranted. As noted above, there were no long-lived or ROU assets to evaluate as of December 31, 2023. However, the Company recorded impairment charges of \$1.6 million and \$0.3 million on its long-lived and ROU assets, respectively, during the year ended December 31, 2022.

Fair Value of Financial Instruments

The Company’s financial instruments include cash and cash equivalents, accounts payable and accrued expenses. The carrying amounts of cash and cash equivalents, accounts payable and accrued expenses are carried at cost, which approximates fair value due to the short maturity of these instruments. In prior years, the Company recorded a warrant

derivative liability associated with former offerings at estimated fair value based on utilization of the Black-Scholes warrant pricing model depending on facts and circumstances. However, the Company early adopted ASU 2020-06, resulting in the reclassification of the warrant derivative liability to stockholders' equity, effective January 1, 2023. See *Note 7 and Note 8* for additional information on the warrant derivative liability.

Share-Based Compensation

The Company accounts for share-based payments by recognizing compensation expense based upon the estimated fair value of the share-based payments on the date of grant. The Company determines the estimated fair value of the share-based payments granted using the fair market value or Black-Scholes option pricing model and recognizes compensation costs ratably over the requisite service period which approximates the vesting period using the graded method. See *Note 10* for additional information on share-based compensation.

Income Taxes

Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. The overall change in deferred tax assets and liabilities for the period measures the deferred tax expense or benefit for the period. The measurement of deferred tax assets may be reduced by a valuation allowance based on judgmental assessment of available evidence if deemed more likely than not that some or all of the deferred tax assets will not be realized. The Company has recorded a valuation allowance against all of its net deferred tax assets, as management has concluded that it is more likely than not that the net deferred tax asset will not be realized through projected future taxable income, based primarily on the Company's ongoing history of operating losses and the lack of taxable income in the foreseeable future. See *Note 11* for additional information on income taxes.

Research and Development

Research and development costs are expensed as incurred in the respective periods.

Liquidity

The Company is a pre-revenue stage biopharmaceutical company that has incurred an accumulated deficit of \$242.5 million as of December 31, 2023.

As of December 31, 2023, the Company had \$4.1 million of cash and cash equivalents and an insurance recovery receivable of \$0.9 million. As of February 29, 2024, the Company had \$3.4 million in cash and cash equivalents and \$0.5 million of an insurance recovery receivable. While the Company continued to implement cost reductions in 2023 and additional cost reductions in February and March 2024, the Company has finite cash resources available to fund its now limited operations. Its activities currently consist of taking steps to preserve cash to adequately fund an orderly wind down of the Company's operations and to maximize the Company's cash position and pursuit of the resolution of currently pending legal proceedings. Consistent with this goal, on March 25, 2024, the Board of Directors determined to pursue voluntary delisting of Ampio's common stock from the NYSE American. After delisting, the Company expects to suspend its reporting obligations under the Exchange Act and deregister its common stock under Section 12(b) of the Exchange Act.

Based on the above, these conditions and events raise substantial doubt about the Company's ability to continue as a going concern. The accompanying financial statements were prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. These financial statements do not include any separate adjustments relating to the recovery of recorded assets or the classification of liabilities; however, such adjustments may be necessary in the future when the Company is unable to continue as a going concern.

Adoption of Recent Accounting Pronouncements

In August 2020, the Financial Accounting Standard Board (the “FASB”) issued ASU 2020-06, “*Debt (Subtopic 470-20); Debt with Conversion and Other Options and Derivatives and Hedging (Subtopic 815-40) Contracts in Entity’s Own Equity*”. The updated guidance is part of the FASB’s simplification initiative, which aims to reduce unnecessary complexity in U.S. GAAP. Consequently, more convertible debt instruments will be reported as single liability instruments with no separate accounting for embedded conversion features. The ASU 2020-06 also removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, which will permit more equity contracts to qualify for the exception. In addition, ASU 2020-06 also simplifies the diluted net income per share calculation in certain areas. The updated guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years, with early adoption permitted for periods beginning after December 15, 2020. The Company adopted ASU 2020-06 effective January 1, 2023. The adoption of ASU 2020-06 did not have a material impact on the Company’s financial statements.

Recent Accounting Pronouncements

This Annual Report on Form 10-K does not discuss recent pronouncements that are not anticipated to have a current and/or future impact on or are unrelated to the Company’s financial condition, results of operations, cash flows or disclosures.

Note 3 – Prepaid Expenses and Other

Prepaid expenses and other balances as of December 31, 2023 and 2022 are as follows:

	<u>December 31, 2023</u>	<u>December 31, 2022</u>
Unamortized commercial insurance premiums	\$ 339,000	\$ 610,000
Non-clinical trials (upfront payments)	215,000	—
Deferred issuance costs	136,000	—
Deposits	34,000	34,000
Other	3,000	32,000
Total prepaid expenses and other	<u>\$ 727,000</u>	<u>\$ 676,000</u>

Note 4 – Fixed Assets

Fixed assets balances, net of accumulated depreciation, as of December 31, 2023 and 2022 are as follows:

	<u>Estimated Useful Lives (in Years)</u>	<u>December 31, 2023</u>	<u>December 31, 2022</u>
Leasehold improvements	10	\$ —	\$ 4,965,000
Manufacturing facility/clean room	3 - 8	—	2,803,000
Lab equipment and office furniture	5 - 8	—	1,661,000
Fixed assets, gross		—	9,429,000
Accumulated depreciation		—	(9,245,000)
Fixed assets, net		<u>\$ —</u>	<u>\$ 184,000</u>

In accordance with ASC Topic 360, Property, Plant and Equipment, the Company assesses all of its long-lived assets for impairment when impairment indicators are identified. During the third quarter of 2022, the Company announced that it was discontinuing further development of its lead pipeline, Ampion. This announcement was identified as an impairment

indicator and, as such, the Company recorded a non-cash impairment as of September 30, 2022 related to its long-lived assets. The Company utilized a market valuation approach for determining the fair value of the ROU asset and a combination of the indirect cost approach and market approach for determining the fair value of the long-lived fixed assets. Based on this analysis, the Company concluded that the carrying value of the assets exceeded its undiscounted cash flows, and, as such, an impairment loss, calculated as the difference between carrying value and fair value, was deemed necessary. Accordingly, the Company recorded a \$1.6 million impairment loss during the third quarter of 2022 as a direct reduction to the cost basis of the affected assets. Due to the impairment in the prior year, there were no fixed assets to evaluate or impair as of December 31, 2023.

Depreciation expense as of December 31, 2023 and 2022 is as follows:

	Year Ended December 31,	
	2023	2022
Depreciation and amortization expense	\$ 122,000	\$ 1,048,000

Note 5 – Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses as of December 31, 2023 and 2022 is as follows:

	December 31, 2023	December 31, 2022
Accounts payable	\$ 750,000	\$ 97,000
Professional fees	706,000	157,000
Manufacturing development	274,000	—
Commercial insurance premium financing	177,000	189,000
Non-clinical and clinical trials	73,000	89,000
Subtenant security deposit	62,000	—
Franchise taxes	22,000	78,000
Property taxes	—	74,000
Accrued severance	—	143,000
Other	38,000	25,000
Accounts payable and accrued expenses	<u>\$ 2,102,000</u>	<u>\$ 852,000</u>

Commercial Insurance Premium Financing

In June 2023, the Company entered into an insurance premium financing agreement for \$0.7 million, with a term of nine months and an annual interest rate of 8.00% and made a down payment of \$171,000. Under the terms and provisions of the agreement, the Company is required to make principal and interest payments totaling \$59,000 per month over the remaining term of the agreement. The outstanding obligation of \$177,000 as of December 31, 2023 was paid in full in March 2024.

Note 6 – Commitments and Contingencies

Employment Agreements

As of December 31, 2023, the Company is a party to an employment agreement with Michael A. Martino, Chief Executive Officer, dated November 22, 2021 and amended August 30, 2022 with an initial base salary of \$550,000. The amendment on August 30, 2022 extended the term to November 22, 2023. On October 1, 2023, the Company and Michael A. Martino entered into a second amendment to the employment agreement, which changed the term ending on

November 22, 2023 to an indefinite term. All other terms and conditions of Mr. Martino's employment agreement remain unchanged.

As of December 31, 2023, the Company is a party to an employment agreement dated October 11, 2021 with Daniel Stokely to serve in the capacity as the Company's Chief Financial Officer with an initial base salary of \$335,000 and an initial term ending in October 2024.

Under these employment agreements, each executive is entitled to a severance payment in the event the Company terminates employee's employment without cause, or employee terminates his employment with good reason.

On March 25, 2024, the Board of Directors determined to terminate the employment of Mr. Stokely effective March 31, 2024 in order to preserve cash to adequately fund an orderly wind down of the Company's operations and to maximize the Company's cash position. Pursuant to his employment agreement, Mr. Stokely will be entitled to severance and COBRA reimbursement, conditioned on, among other things, Mr. Stokely delivering and not revoking a general release of claims against the Company.

Manufacturing Development

In September 2023, the Company entered into a manufacturing development agreement with a contract development and manufacturing organization ("CDMO"), which reflected an initial scope of work for the OA-201 program totaling \$1.6 million. The initial scope of work included analytical method development, formulation development, and GLP animal study supply on the prototype formulations of OA-201. In addition, the CDMO will prepare GMP supply of the formulation and complete a corresponding stability study. In December 2023, the Company executed a change order with the CDMO for an additional \$20,000. In February 2024, the Company terminated the manufacturing development agreement with the CDMO. As of March 15, 2024, the Company has an obligation for accrued and unpaid services and related expenses of \$160,000.

Non-Clinical Trials

In September 2023, the Company entered into a non-clinical trial agreement with a research institute to conduct an animal study totaling \$105,000. In December 2023, the Company executed a change order with the research institute for an additional \$117,000. Payments are based on the completion of milestones, with the first payment due upon execution of the agreement. However, the Company systematically amortizes or accrues expenses when incurred. In February 2024, the Company terminated the non-clinical trial agreement with the research institute. As of March 15, 2024, the Company has an obligation for accrued and unpaid services and related expenses of \$32,000.

In December 2023, the Company entered into four additional non-clinical trial agreements with another research institute to conduct a series of animal studies totaling \$625,000. Payments are based on the completion of milestones, with the first payments due upon execution of the agreements. However, the Company systematically amortizes or accrues expenses when incurred. In February 2024, the Company terminated the non-clinical trial agreements with the research institute. As of March 15, 2024, the Company had no obligation for accrued and unpaid services and related expenses.

Facility Lease

The Company is a party to a Lease Agreement (the "Lease") with Beta Investors Group, LLC (successor by assignment to NCWP – Inverness Business Park, LLC) (the "Landlord") dated December 13, 2013 pursuant to which the Company has leased office and manufacturing space in Suite 200 and Suite 204 in the building located at 373 Inverness Parkway, Englewood, Colorado (the "Premises"). The lease is a 125-month non-cancellable operating lease for office space and a manufacturing facility, set to expire September 2024 with the right to renew for an additional 60 months. The effective date of the Lease was May 1, 2014. The initial base rent of the Lease was \$23,000 per month. The total base rent over the term of the Lease is approximately \$3.3 million, which includes rent abatements and leasehold incentives.

Effective March 1, 2023, the Company entered into a sublease agreement whereby the Company subleased the Premises for a term commencing on March 1, 2023 and continuing until the expiration for the Lease on September 30, 2024. The subtenant will pay to the Company rent and other amounts assessed by the Landlord against the Company under the Lease. The subtenant is also fully responsible for utilities and insurance under the sublease agreement. Under the terms

and conditions of the sublease agreement, the Company was fully released of its obligation under the Lease to dismantle and remove certain components of leasehold improvements at the end of the lease term. Accordingly, the Company derecognized its asset retirement obligation (“ARO”) in the amount of \$294,000 which resulted in the recognition of a non-cash gain totaling \$289,000 gain, net of \$5,000 loss on the derecognition of the ARO asset.

The following table provides a reconciliation of the Company’s remaining undiscounted payments for its facility lease and the carrying amount of the lease liability presented in the balance sheet as of December 31, 2023:

	<u>Facility Lease Payments</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>Thereafter</u>
Remaining Facility Lease Payments	\$ 280,000	\$ 280,000	\$ —	\$ —	\$ —	\$ —	\$ —
Less: Discount Adjustment	(6,000)						
Total lease liability	<u>\$ 274,000</u>						
Lease liability-current portion	<u>\$ 274,000</u>						
Long-term lease liability	<u>\$ —</u>						

The Company recorded lease expense in the respective periods is as follows:

	<u>Year Ended December 31,</u>	
	<u>2023</u>	<u>2022</u>
Lease expense	\$ 113,000	\$ 221,000

Note 7 – Warrants

As disclosed in *Note 2*, the Company adopted ASU 2020-06 effective January 1, 2023 using the modified retrospective method, and accordingly reclassified its investor liability classified warrants to accumulated deficit. The Company’s placement agent warrants were previously classified as equity. The Company had approximately 36,100 equity-classified warrants as of December 31, 2023. The following table summarizes the Company’s warrant activity as of December 31, 2023:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life
Outstanding as of December 31, 2022	53,263	\$ 318.80	3.80
Forfeited, expired and/or cancelled	(17,179)		
Outstanding as of December 31, 2023	<u>36,084</u>	\$ 316.28	2.77

The following table summarizes the Company’s outstanding warrants between placement agent and investor warrant classifications:

Date	Exercise Price	Type	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life
December 2021 registered direct offering	\$ 330.00	Investor	33,334		2.73
		Placement			
June 2019 public offering	\$ 150.00	agent	2,750		0.04
Outstanding as of December 31, 2023			<u>36,084</u>	\$ 316.28	2.77

In August 2023, a total of 512 investor warrants expired. A total of 16,667 of the 2021 Warrants were abandoned in December 2023. Pursuant to a waiver letter dated December 18, 2023, the warrant holders irrevocably abandoned all of their rights, title, and interest to the 2021 Warrants and any common stock underlying the 2021 Warrants for no consideration. There were no issuances or exercises of warrants during the year ended December 31, 2023. Due to the adoption of ASU 2020-06, there was also no warrant derivative liability as of December 31, 2023. The total value for the warrant derivative liability as of December 31, 2022 was approximately \$44,000 (see *Note 8*).

Note 8 – Fair Value Considerations

Authoritative guidance defines fair value as the price that would be received upon the sale of an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the measurement date. The guidance establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources not affiliated with the Company. Unobservable inputs are inputs that reflect the Company’s assumptions of what market participants would use in pricing the asset or liability based on the best information available in the circumstances. The hierarchy is broken down into three levels based on reliability of the inputs as follows:

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- Level 1: Inputs that reflect unadjusted quoted prices in active markets that are accessible to the Company for identical assets or liabilities;
- Level 2: Inputs that include quoted prices for similar assets and liabilities in active or inactive markets or that are observable for the asset or liability either directly or indirectly; and
- Level 3: Unobservable inputs that are supported by little or no market activity.

The Company's financial instruments include cash and cash equivalents, accounts payable and accrued expenses, and warrant derivative liability. Warrants are recorded at estimated fair value utilizing the Black-Scholes warrant pricing model.

The Company's assets and liabilities which are measured at fair value are classified in their entirety based on the lowest level of input that is significant to their fair value measurement. The Company's policy is to recognize transfers in and/or out of the fair value hierarchy as of the date in which the event or change in circumstances caused the transfer. The Company has consistently applied the valuation techniques in all periods presented.

The following table presents the Company's financial assets and liabilities that were accounted for at fair value on a recurring basis as of December 31, 2023 and 2022, by level within the fair value hierarchy:

	Fair Value Measurements Using			
	Level 1	Level 2	Level 3	Total
<u>December 31, 2023</u>				
Liabilities:				
Warrant derivative liability	\$ —	\$ —	\$ —	\$ —
<u>December 31, 2022</u>				
Liabilities:				
Warrant derivative liability	\$ —	\$ —	\$ 44,000	\$ 44,000

Due to the implementation of ASU 2020-06, effective January 1, 2023 the fair value of financial liabilities classified as Level 3 in the fair value hierarchy was reduced by \$44,000. There were no financial liabilities classified as Level 1, 2 or 3 as of December 31, 2023

The warrant derivative liability for the December 31, 2022 period presented was valued using the Black-Scholes valuation methodology as the Company believes that model embodies all the relevant assumptions (including trading volatility, estimated terms and risk-free interest rates) that address the features underlying these instruments.

Note 9 – Common Stock

Authorized Shares

The Company had 300.0 million authorized shares of common stock as of December 31, 2023 and 2022.

The following table summarizes the Company's remaining authorized shares available for future issuance:

	<u>December 31, 2023</u>
Authorized shares	300,000,000
Common stock outstanding	833,430
Options outstanding	12,291
Warrants outstanding	36,084
Reserved for issuance under 2019 Stock and Incentive Plan	—
Reserved for issuance under 2023 Stock and Incentive Plan	1,200,000
Available shares for future issuance	<u>297,918,195</u>

ATM Equity Offering Program

On September 18, 2023, the Company entered into an At The Market Offering Agreement (the "ATM Agreement") with H.C. Wainwright & Co., LLC as Manager (in such capacity, the "Manager"), establishing an at-the-market equity distribution program, pursuant to which the Company, through the Manager, may offer and sell from time to time shares of the Company's common stock, par value \$0.0001 (the "Common Stock"), having an aggregate gross sales price of up to \$1,250,000. The Registration Statement on Form S-3 (File No. 333-274558) (the "Registration Statement") which included a base prospectus and an at-the-market offering prospectus was filed by the Company on September 18, 2023 and became effective on September 27, 2023.

Subject to the terms and conditions of the ATM Agreement, the Manager may sell Common Stock by any method permitted by law deemed to be an "at the market offering" as defined in Rule 415 promulgated under the Securities Act of 1933, as amended. The Manager will use commercially reasonable efforts consistent with its normal trading and sales practices to sell the Common Stock from time to time, based upon instructions from the Company (including any price, time or size limits or other customary parameters or conditions the Company may impose). The Company will pay the Manager a commission of 3.0% of the gross sales proceeds of each sale of shares pursuant to the ATM Agreement. The Company will also reimburse the Manager for the documented fees and costs of its legal counsel reasonably incurred in connection with entering into the transactions contemplated by the ATM Agreement in an amount not to exceed \$50,000 in the aggregate, as well as an additional reimbursement of up to \$2,500 per due diligence update session for the Manager's fees. The Company has provided customary representations, warranties and covenants, and the parties have agreed to customary indemnification rights. The Company has the right to terminate the provisions of the ATM Agreement in its sole discretion at any time upon seven business days' prior written notice. The Manager has the right to terminate the ATM Agreement in its sole discretion at any time. In the case of a termination by either party, specified provisions of the ATM Agreement will survive, including the indemnification provisions.

Under the terms of the ATM Agreement, in no event will the Company issue or sell through the Manager such number or dollar amount of shares of Common Stock that would (i) exceed the number or dollar amount of shares of Common Stock registered and available on the Registration Statement, (ii) exceed the number of authorized but unissued shares of Common Stock, or (iii) exceed the number or dollar amount of Common Stock for which the Company has filed a prospectus supplement to the Registration Statement. As of December 31, 2023, the Company sold 28,826 shares of common stock under the ATM Agreement, generating gross proceeds of \$0.1 million, which was offset by placement agent commissions and issuance costs of \$0.1 million.

On February 26, 2024, the Company terminated the ATM Agreement with the Manager effective as of March 6, 2024. On February 28, 2024, the Company filed a post-effective amendment to deregister the remaining securities available under the Registration Statement relating to the offerings under the ATM Agreement, which was declared effective by the SEC on March 4, 2024.

Note 10 – Mezzanine Equity and Stockholders’ Equity**Preferred Stock**

On May 24, 2023, the Board declared a dividend of one one-thousandth of a share (1/1000th) of Series D Preferred Stock, par value \$0.0001 per share (“*Series D Preferred Stock*”), for each outstanding share of common stock of the Company, par value \$0.0001 per shares (the “*Common Stock*”) to stockholders of record at 5:00 p.m. Eastern Time on June 8, 2023 (the “*Record Date*”) that resulted in 15,103 Series D Preferred shares being issued. In accordance with the terms of the Series D Preferred Stock, all shares of Series D Preferred Stock that were not present in person or by proxy at the 2023 Annual Meeting of Stockholders held on July 27, 2023 as of immediately prior to the opening of the polls at such meeting were automatically redeemed. The remaining outstanding shares of Series D Preferred Stock were redeemed automatically upon the approval by Ampio’s stockholders of the reverse stock split proposal at the 2023 Annual Meeting of Stockholders. Accordingly, as of July 27, 2023, all outstanding shares of Series D Preferred Stock were redeemed and returned to the status of authorized but unissued shares of preferred stock.

Each share of Series D Preferred Stock was redeemed in consideration for the right to receive an amount equal to \$0.01 in cash for each ten whole shares of Series D Preferred Stock that are beneficially owned by the beneficial owner. From July 27, 2023 to the date hereof, there have been no Redemption Payment Requests.

The shares of Series D Preferred Stock were classified within the mezzanine equity in the Company’s condensed consolidated balance sheet as of June 30, 2023. The shares of Series D Preferred Stock were measured at redemption value which was considered immaterial to the Company’s financial statements at the time of issuance. As of December 31, 2023, all shares of Series D Preferred Stock have been cancelled and returned to the status of authorized but unissued shares of preferred stock.

Options

In July 2023, the Company’s Board of Directors and stockholders approved the adoption of the 2023 Plan, under which shares were reserved for future issuance of equity related awards as further defined under the 2023 Plan. The 2023 Plan permits grants of equity awards to employees, directors and consultants. The stockholders approved a total of 1.2 million shares to be reserved for issuances under the 2023 Plan and the full amount of the reserve remains available for future issuances as of December 31, 2023. Pursuant to the terms of the 2023 Plan, the number of shares authorized for issuance pursuant to the 2023 Plan were not impacted by the 20-to-1 reverse stock split. The Company has no authority to grant new awards from the 2010 Stock and Incentive Plan or the 2019 Stock and Incentive Plan (collectively, the “*Prior Plans*”). However, approval of the 2023 Plan does not affect awards outstanding under the *Prior Plans*, which will continue in accordance with their terms.

The following table summarizes the Company’s stock option activity at December 31, 2023:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life	Aggregate Intrinsic Value
Outstanding as of December 31, 2022	14,873	\$ 299.40	6.41	\$ —
Granted	—			
Exercised	—			
Forfeited, expired and/or cancelled	(2,582)	\$ 352.49		
Outstanding as of December 31, 2023	<u>12,291</u>	\$ 288.12	6.81	\$ —
Exercisable as of December 31, 2023	<u>11,652</u>	\$ 288.14	6.74	\$ —

Outstanding options that were issued in accordance with the 2010 Plan and 2019 Plan are summarized in the table below:

Outstanding Options by Plan	December 31, 2023
2010 Plan	4,508
2019 Plan	7,783
Outstanding as of December 31, 2023	<u>12,291</u>

Stock options outstanding at December 31, 2023 are summarized in the table below:

Range of Exercise Prices	Number of Options Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Lives
Up to \$150.00	2,040	\$ 132.37	6.80
\$150.01 - \$300.00	5,935	\$ 206.45	6.30
\$300.01 - \$450.00	2,620	\$ 346.95	7.86
\$450.01 and above	1,696	\$ 670.16	6.98
Total	<u>12,291</u>	\$ 288.12	6.81

Restricted Stock Awards

The restricted stock awards activity for the period ending December 31, 2023 is summarized in the table below:

	Awards	Weighted Average Grant-Date Fair Value	Aggregate Intrinsic Value
Nonvested as of December 31, 2022	670	\$ 492.00	
Vested	(223)	\$ 492.00	\$ —
Forfeited	—		
Nonvested as of December 31, 2023	<u>447</u>	\$ 492.00	

The unvested restricted stock awards at December 31, 2023 will vest equally on January 1, 2024 and 2025, respectively.

Share-based Compensation

The Company computes the fair value for all options granted or modified using the Black-Scholes option pricing model. To calculate the fair value of the options, certain assumptions are made regarding components of the model, including the fair value of the underlying common stock, risk-free interest rate, volatility, expected dividend yield and expected option life. Changes to the assumptions could cause significant adjustments to the valuation. The Company calculates its volatility assumption using the actual changes in the market value of its stock. Forfeitures are recognized as they occur. The Company's historical option exercises do not provide a reasonable basis to estimate an expected term due to the lack of sufficient data. Therefore, the Company estimates the expected term by using the simplified method. The simplified method calculates the expected term as the average of the vesting term plus the contractual life of the options. The risk-

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free interest rate is based on the U.S. Treasury yield in effect at the time of the grant for treasury securities of similar maturity.

The Company did not grant or modify options during the period ending December 31, 2023, as such, there are no assumptions to compute the fair value of options. The Company computed the fair value of options granted and modified during the period ended December 31, 2022 using the following assumptions:

	<u>Year Ended December 31,</u> <u>2022</u>
Expected volatility	116.83% - 119.43 %
Risk free interest rate	1.26% - 1.94 %
Expected term (years)	5.45 - 6.51

The Company also computes the fair value for all restricted stock awards based on the closing stock price on the grant date and recognizes share-based compensation ratably over the requisite service period which approximates the vesting period. The Company recognized \$83,000 of share-based compensation related to restricted stock awards as of December 31, 2023. The Company recognized \$0.5 million of share-based compensation relating to restricted stock awards which was fully offset by \$0.5 million due to forfeitures as of December 31, 2022.

Share-based compensation expense related to the fair value of stock options and restricted stock awards is included in the statements of operations as research and development expenses and general and administrative expenses as set forth in the table below. The Company determined the fair value as of the date of grant for options using the Black-Scholes option pricing model and expenses the fair value ratably over the vesting period. The following table summarizes stock-based compensation for the years ended December 31, 2023 and December 31, 2022:

	<u>Year Ended December 31,</u>	
	<u>2023</u>	<u>2022</u>
Research and development expenses		
Share-based compensation, net of forfeitures	\$ (25,000)	\$ 139,000
General and administrative expenses		
Share-based compensation, net of forfeitures	184,000	814,000
Total share-based compensation, net of forfeitures	<u>\$ 159,000</u>	<u>\$ 953,000</u>
Unrecognized share-based compensation expense related to stock options as of December 31, 2023	\$ 28,000	
Weighted average remaining years to vest for stock options	1.00	
Unrecognized share-based compensation expense related to restricted stock awards as of December 31, 2023	\$ 34,000	
Weighted average remaining years to vest for restricted stock awards	1.01	

Note 11 – Income Taxes

Income tax expense (benefit) resulting from applying statutory rates in jurisdictions in which the Company is taxed (Federal and State of Colorado) differs from the income tax provision (benefit) in the Company’s financial statements. The following table reflects the reconciliation for the respective periods:

	Year Ended December 31,	
	2023	2022
Benefit at federal statutory rate	(21.0)%	(21.0)%
State, net of federal income tax impact	(3.4)%	(4.0)%
Stock-based compensation	0.8 %	4.0 %
Registered offering loss (gain)/warrant expense	0.0 %	(7.2)%
Change in state deferred tax rate	0.0 %	1.5 %
Expiration of tax attribute carryforwards	0.3 %	0.6 %
Other	0.0 %	0.0 %
Change in valuation allowance	23.3 %	26.1 %
Effective tax rate	<u>0.0 %</u>	<u>0.0 %</u>

Deferred income taxes arise from temporary differences in the recognition of certain items for income tax and financial reporting purposes. The approximate tax effects of significant temporary differences which comprise the deferred tax assets and liabilities are as follows for the respective periods:

	Year Ended December 31,	
	2023	2022
Long-term deferred income tax assets (liabilities):		
Accrued liabilities	\$ —	\$ 3,000
ROU asset	—	(18,000)
Lease liability	67,000	150,000
Net operating loss carryforward	51,902,000	50,196,000
Share-based compensation	424,000	459,000
Unrealized loss on trading security	768,000	768,000
Property and equipment	—	606,000
Warrants	65,000	65,000
Capitalized development costs	3,177,000	2,093,000
Asset retirement obligation	—	68,000
Other	1,000	1,000
Less: Valuation allowance	(56,404,000)	(54,391,000)
Total long-term deferred income tax assets (liabilities)	<u>\$ —</u>	<u>\$ —</u>

As of December 31, 2023, Ampio has approximately \$212.0 million in net operating loss (“NOL”) carryforwards that, subject to limitation, may be available in future tax years to offset taxable income. These net operating loss carryforwards expire from 2024 through 2037. Approximately \$81.5 million of the NOL carryforward carries forward indefinitely. Under the provisions of the Internal Revenue Code, substantial changes in the Company’s ownership may result in limitations on the amount of NOL carryforwards that can be utilized in future years.

The Company has provided a full valuation allowance against its deferred tax assets as it has determined that it is not more likely than not that recognition of such deferred tax assets will be utilized in the foreseeable future. The amount of income taxes and related income tax positions taken are subject to audits by federal and state tax authorities. The Company has adopted accounting guidance for uncertain tax positions which provides that in order to recognize an uncertain tax benefit, the taxpayer must be more likely than not of sustaining the position, and the measurement of the benefit is calculated as the largest amount that is more than 50% likely to be realized upon recognition of the benefit. The Company believes that it has no material uncertain tax positions and has fully reserved against its future tax benefit

with a valuation allowance and does not expect significant changes in the amount of unrecognized tax benefits to occur within the next twelve months. The Company's policy is to record a liability for the difference between benefits that are both recognized and measured pursuant to GAAP and tax positions taken or expected to be taken on the tax return. Then, to the extent that the assessment of such tax positions changes, the change in estimate is recorded in the period in which the determination is made. The Company reports tax-related interest and penalties as a component of income tax expense. During the periods reported, management of the Company has concluded that no significant tax position requires recognition. The Company files income tax returns in the United States federal and various state jurisdictions. The Company is no longer subject to income tax examinations for federal income taxes before 2020 or for Colorado before 2019. Net operating loss carryforwards are subject to examination in the year they are utilized regardless of whether the tax year in which they are generated has been closed by statute. The amount subject to disallowance is limited to the NOL utilized. Accordingly, the Company may be subject to examination for prior NOL's generated as such NOL's are utilized.

Note 12 – Earnings Per Share

Basic earnings per share is computed by dividing net loss available to common stockholders by the weighted-average number of shares of common stock outstanding during each period. Diluted earnings per share is based on the treasury stock method and computed by dividing net loss available to common stockholders by the diluted weighted-average shares of common stock outstanding during each period. The Company's potentially dilutive shares include stock options, warrants for the shares of common stock and restricted stock awards. The potentially dilutive shares are considered to be common stock equivalents and are only included in the calculation of diluted net loss per share when the effect is dilutive. The investor warrants are treated as equity in the calculation of diluted earnings per share in both the computation of the numerator and denominator, if dilutive. The following table sets forth the calculations of basic and diluted earnings per share for the year ended December 31, 2023 and 2022:

	Year Ended December 31,	
	2023	2022
Net loss	\$ (8,632,000)	\$ (16,337,000)
Less: decrease in fair value of investor warrants	—	(5,761,000)
Net loss available to common stockholders	<u>\$ (8,632,000)</u>	<u>\$ (22,098,000)</u>
Basic weighted-average common shares outstanding	810,113	753,615
Add: dilutive effect of equity instruments	—	—
Diluted weighted-average shares outstanding	<u>810,113</u>	<u>753,615</u>
Earnings per share – basic	<u>\$ (10.66)</u>	<u>\$ (21.68)</u>
Earnings per share – diluted	<u>\$ (10.66)</u>	<u>\$ (29.32)</u>

The potentially dilutive shares of common stock equivalents that have been excluded from the calculation of net loss per share because of the anti-dilutive effect as of December 31, 2023 and 2022 are as follows:

	Year Ended December 31,	
	2023	2022
Warrants to purchase shares of common stock	36,084	53,257
Outstanding stock options	12,291	14,873
Restricted stock awards	447	670
Total potentially dilutive shares of common stock	<u>48,822</u>	<u>68,800</u>

Note 13 – Litigation

From time to time, the Company may be a party to litigation arising in the ordinary course of business. In addition, as of December 31, 2023, Ampio was involved in the following material pending legal proceedings:

Kain v. Ampio Pharmaceuticals, Inc., et al., 22-cv-2105

On August 17, 2022, a putative Ampio shareholder filed a securities fraud class action against the Company, its current CEO Michael A. Martino and two former executives, Michael Macaluso and Holli Cherevka, in the United States District Court for the District of Colorado, captioned *Kain v. Ampio Pharmaceuticals, Inc., et al., 22-cv-2105*. The Complaint alleged that Ampio and the individual defendants made various false and misleading statements regarding the efficacy, clinical trials and FDA communications relating to Ampio's then-lead product, Ampion, and its treatment of severe osteoarthritis of the knee in violation of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 10b-5 promulgated thereunder. The Complaint also asserted control person liability against the individual defendants under Section 20 of the Exchange Act.

The Complaint relied largely on Ampio's announcement on May 16, 2022, that it had formed a special Board committee to investigate the statistical analysis of Ampio's AP-013 clinical trial and the unauthorized provision of Ampion to various individuals who were not participating in clinical trials, and Ampio's further announcement on August 3, 2022, that the investigation had revealed that various employees were aware that the AP-013 trial did not demonstrate efficacy for Ampion's primary endpoints and did not fully and timely report the results of the trial and the timing of unblinding data from the trial. Based on the Company's reports, the Complaint asserted that various statements made by the Company during the Class Period were false and misleading because they: (i) inflated Ampio's ability to successfully obtain FDA approval for Ampion; (ii) inflated the results of the AP-013 clinical trial and failed to disclose the timing of unblinding the data from the study; and (iii) overstated the Company's business, operations and prospects.

The Complaint sought an unspecified amount of compensatory damages as well as attorneys' fees and costs. On October 17, 2022, six putative shareholders filed motions seeking to be named lead plaintiff. On November 7, 2022, two of the movants filed oppositions to each other's motions; the remaining movants either withdrew their motions or filed non-oppositions to another putative shareholder's motion.

On August 9, 2023, the Court ruled on the competing motions for appointment of lead plaintiff, and appointed Tao Wang and SynWorld Technologies Corporation as lead plaintiffs and approved the firm of Faruqi & Faruqi, LLP as lead counsel. The August 9, 2023, order also lifted the stay that had been in place and ordered the parties to jointly contact the magistrate judge to schedule a status conference or such other proceeding as the magistrate judge deemed appropriate to move the litigation forward.

Pursuant to the Court's order, on August 10, 2023, lead plaintiffs and defendants advised the magistrate judge that lead plaintiffs intended to file an amended complaint in the action and that the parties intended to submit a joint proposed scheduling order by August 18, 2023. On August 14, 2023, the Court entered a minute order setting a scheduling conference for August 30, 2023. On August 15, 2023, the parties filed a joint motion with a schedule for lead plaintiffs to file the amended complaint and a deadline for defendants to answer or file motions to dismiss, along with a briefing schedule for any potential motions to dismiss. On August 16, 2023, the Court entered an order granting in part and denying in part the parties' joint motion. The order vacated the August 30, 2023 scheduling conference and any related deadlines and set lead plaintiffs' deadline to file an amended complaint as October 16, 2023. It provided that defendants file answers or motions within sixty days of service of the amended complaint. It set a briefing schedule for any potential motions to dismiss. The order further provided that if defendants answer the amended complaint or any motion to dismiss does not fully resolve the case, the parties are required to contact the magistrate judge within 5 business days thereafter to schedule a scheduling conference.

On September 19, 2023, defendant Michael Macaluso's counsel filed a motion to withdraw due to Mr. Macaluso's death and the lack of a personal representative to represent Mr. Macaluso's interest. On September 20, 2023, the Court denied the motion without prejudice to refile and ordered Mr. Macaluso's counsel to file a Statement Noting the Death pursuant to Rule 25 of the Federal Rules of Civil Procedure and further noting that, if the claims are not extinguished

against Mr. Macaluso by his death, any party may file a motion to substitute within 90 days of the filing of the Statement Noting the Death or Mr. Macaluso will be dismissed from the case. On September 20, 2023, Mr. Macaluso's counsel filed a Suggestion of Death as directed by the Court and renewed his motion to withdraw adding additional information about his efforts to communicate with Mr. Macaluso's family and the status of any probate proceedings. On September 27, 2023, the Court granted counsel's renewed motion to withdraw.

On October 16, 2023, lead plaintiffs filed an Amended Complaint, asserting the same claims against the Company and adding several additional defendants (namely the Company's current CFO, Dan Stokely, and former directors David Bar-Or, Philip Coelho and Richard Giles), in addition to the previously named individual defendants Michael Martino, Michael Macaluso and Holli Cherevka. Pursuant to the Court's order, Defendants had until December 15, 2023 to file answers or motions to dismiss in response to the Amended Complaint.

On November 17, 2023, the parties (other than deceased defendant Macaluso) filed a Joint Stipulated Unopposed Motion to Extend Deadlines advising the Court that the parties had agreed to engage in a mediation to be conducted by January 5, 2024, and requesting that the Court vacate the time for all defendants to answer, move or otherwise respond to the Amended Complaint. The motion further requested that the parties be permitted to file a status report advising the Court within five (5) days of the mediation either being successful or being declared at impasse. On November 20, 2023, the Court granted the motion. The mediation took place on January 4, 2024.

As reported above, at the mediation, the parties reached a settlement in principle, subject to lead plaintiffs completing confirmatory discovery, to the negotiation and execution of final settlement papers, and to the Court approving the settlement. On January 9, 2024, the parties filed a status report with the Court advising it that they had reached agreement in principle and intended to file a motion for court approval within one hundred twenty (120) days. On January 12, 2024, the Court entered a minute order vacating all deadlines and providing, among other things, "The Parties shall submit to the Court a stipulation and agreement of settlement and a motion for preliminary approval of the settlement (including a plan of allocation and procedures for class notice) pursuant to Fed. R. Civ. P. 23(e) on or before May 13, 2024." The parties are currently engaged in confirmatory discovery and are endeavoring to finalize and file the required settlement documents with the Court by May 14, 2024.

Maresca v. Martino, et al., 22-cv-2646-KLM

On October 7, 2022, putative Ampio shareholder Robert Maresca filed a Verified Shareholder Derivative Complaint in the United States District Court for the District of Colorado, captioned *Maresca v. Martino, et al., 22-cv-2646-KLM*. The derivative complaint, brought on behalf of the Company, asserts claims against a number of current and former executives and directors of the Company, namely Michael A. Martino, Michael Macaluso, Holli Cherevka, David Bar-Or, David Stevens, J. Kevin Buchi, Philip H. Coelho and Richard B. Giles.

Based largely on the same allegations as the *Kain* securities fraud class action complaint (including Ampio's reports in May and August, 2022, regarding its internal investigation and findings), the Complaint asserts that the individual defendants caused the Company to make false or misleading statements in its SEC filings by "hyp[ing Ampio's] ability to successfully file a BLA for Ampion;" "exaggerat[ing] results of the AP-013 study;" "misstat[ing] the true timing of unblinding of data from the AP-013 study;" and "fail[ing] to maintain internal controls." The Complaint also asserts that the defendants failed to exercise due care and comply with the Company's policies and procedures designed to ensure Board and Audit Committee oversight of the business operations and that ethical business practices were maintained. It also contends that two of the defendants (Cherevka and Coelho) sold Company stock while in possession of material non-public information at artificially inflated prices in violation of the Company's insider trading restrictions. The Complaint asserts that the individuals should not have received compensation while violating their duties to the Company. The Complaint also alleges that the defendants caused the Company to repurchase its own stock at artificially inflated prices, causing damage to the Company itself.

The Complaint asserts six causes of action on behalf of the Company and against the individual defendants: (1) violations of Section 14(a) of the Exchange Act based on purportedly false and misleading statements in the Company's proxy statements; (2) violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; (3) control person liability under Section 20(a) of the Exchange Act; (4) breach of fiduciary duty; (5) unjust enrichment; and

(6) waste of corporate assets. The Complaint seeks an unspecified amount of compensatory and restitution damages to be paid to Ampio, together with pre- and post-judgment interest, as well as injunctive relief imposing certain corporate governance reforms and attorneys' fees and costs.

On November 2, 2022, the Company and plaintiff (together with plaintiff in a second derivative action -- the *Marquis* action, discussed below) filed a joint motion to consolidate the two derivative actions and appoint the lawyers representing the two plaintiffs as co-lead counsel. That same day, the Company and plaintiff filed a stipulation providing the Company additional time to answer, move or otherwise respond to the Complaint.

On January 10, 2023, after the Company received additional extensions of time to respond, the Court granted consolidation of the *Maresca* and *Marquis* actions but denied appointment of co-lead counsel for plaintiffs without prejudice. On January 11, 2023, Plaintiffs renewed their motion for appointment of co-lead counsel. On January 12, 2023, the Court granted the renewed motion and appointed co-lead counsel for plaintiffs.

On January 17, 2023, the parties filed a joint stipulated motion seeking a temporary stay of the consolidated derivative actions, subject to various conditions, until the earlier of: (1) the dismissal of the *Kain* action; (2) a defendant filing an answer in the *Kain* action; or (3) another derivative action being filed that is not stayed for the same duration. On January 25, 2023, the Court granted the motion for temporary stay but ordered the parties to provide periodic status reports.

As reported above, on January 4, 2024, the parties to the Consolidated Derivative Actions participated in a mediation at which they reached agreement in principle. The settlement is subject to various conditions, including the negotiation and execution of the full settlement agreements and obtaining court approval. On January 9, 2024, the parties filed a status report in the Consolidated Derivative Actions, advising the Court of the status of the settlement in principle and that the parties intended to file settlement documents within thirty days. Since then, the parties have filed several further status reports updating the Court on the parties' continued negotiations and efforts to finalize the settlement documents.

Marquis v. Martino, et al., 22-cv-2803-KLM

On October 25, 2022, putative shareholder Samantha Marquis filed a derivative complaint in the United States District Court for the District of Colorado, captioned *Marquis v. Martino, et al., 22-cv-2803-KLM*. The Complaint, filed on behalf of Ampio, asserts that various current and former officers and directors of Ampio – namely, Michael Martino, Michael Macaluso, Holli Cherevka, David Bar-Or, David Stevens, Kevin Buchi, Philip Coelho, and Richard Giles, breached their fiduciary duties as directors and/or officers and violated Section 14(a) of the Exchange Act by causing the Company to file false and misleading proxy statements. The Complaint focuses on the Company's alleged failure to timely report that the results of the AP-013 trial for Ampion were unfavorable, failing to show efficacy on the co-primary endpoints of pain and function, and the Company's alleged failure to disclose the results of and timing of unblinding the study data. The Complaint asserts that the individual defendants breached their fiduciary duties by making or causing the Company to make materially false and misleading statements regarding Ampio's business, operations and prospects and by failing to maintain adequate internal controls. Based on these allegations, the Complaint asserts two causes of action on behalf of the Company: (1) violations of Section 14(a) of the Exchange Act against all defendants other than Cherevka; and (2) breach of fiduciary duty against all defendants. Based on these claims, the Complaint seeks judgment in favor of the Company and against the individual defendants in an unspecified amount of compensatory and restitution damages, together with pre- and post-judgment interest and costs of the action including reasonable attorneys' and experts' fees as well as a mandatory injunction requiring Ampio and the defendants to reform and improve the corporate governance and internal controls of the Company.

On November 2, 2022, the Company and plaintiff (together with plaintiff in the previously filed *Maresca* action, discussed above) filed a joint motion to consolidate the two derivative actions and appoint the lawyers representing the two plaintiffs as co-lead counsel.

On January 10, 2023, the Court granted consolidation of the *Maresca* and *Marquis* actions but denied appointment of co-lead counsel for plaintiffs without prejudice. On January 11, 2023, Plaintiffs renewed their motion for appointment of

co-lead counsel. On January 12, 2023, the Court granted the renewed motion and appointed co-lead counsel for plaintiffs.

On January 17, 2023, the parties filed a joint stipulated motion seeking a temporary stay of the consolidated derivative actions, subject to various conditions, until the earlier of: (1) the dismissal of the *Kain* action; (2) a defendant filing an answer in the *Kain* action; or (3) another derivative action being filed that is not stayed for the same duration. On January 25, 2023, the Court granted the motion for temporary stay but ordered the parties to provide periodic status reports, which they did throughout 2023.

As reported above, on January 4, 2024, the parties to the Consolidated Derivative Actions participated in a mediation at which they reached agreement in principle. The settlement is subject to various conditions, including the negotiation and execution of the full settlement agreements and obtaining court approval. On January 9, 2024, the parties filed a status report in the Consolidated Derivative Actions, advising the Court of the status of the settlement in principle and that the parties intended to file settlement documents within thirty days. Since then, the parties have filed several further status reports updating the Court on the parties' continued negotiations and efforts to finalize the settlement documents.

McCann v. Martino, et al., 2023cv30287

On January 27, 2023, putative shareholder John McCann filed a derivative complaint in the District Court, City & County of Denver, State of Colorado, captioned *McCann v. Martino, et al.*, 2023cv30287. The Complaint, filed on behalf of Ampio, asserts that various current and former officers and directors of Ampio – namely, Michael Martino, J. Kevin Buchi, David Stevens, Elizabeth Jobes, Holli Cherevka, David Bar-Or, Philip H. Coelho, and Richard B. Giles, breached their fiduciary duties as directors and/or officers by allowing the Company to issue false and misleading statements. The Complaint focuses on the Company's alleged failure to timely report that the results of the AP-013 trial for Ampio were unfavorable, failing to show efficacy on the co-primary endpoints of pain and function, and the Company's alleged failure to disclose the results of and timing of unblinding the study data. The Complaint asserts that the individual defendants breached their fiduciary duties by allowing the Company to make materially false and misleading statements regarding Ampio's business, operations and prospects and by failing to maintain adequate internal controls. Based on these allegations, the Complaint asserts five causes of action on behalf of the Company: (1) breach of fiduciary duty against the current directors; (2) gross mismanagement against the current directors; (3) waste of corporate assets against the current directors; (4) unjust enrichment against all defendants; and (5) breach of fiduciary duty by insider trading against defendants Cherevka and Coelho. Based on these claims, the Complaint seeks judgment in favor of the Company and against the individual defendants in an unspecified amount of compensatory damages, costs of the action including reasonable attorneys' and experts' fees as well as a mandatory injunction requiring Ampio to reform and improve the corporate governance and internal procedures of the Company.

Defendant Cherevka was served and by order dated February 9, 2023, obtained an extension of time to respond to the Complaint through March 31, 2023. On March 2, 2023, the parties filed a joint stipulated motion seeking a temporary stay of the action, subject to various conditions, until the earlier of: (1) the dismissal of the *Kain* action; (2) a defendant filing an answer in the *Kain* action; or (3) another derivative action being filed that is not stayed for the same duration. On March 3, 2023, the Court granted the motion for temporary stay.

As reported above, on January 4, 2024, the parties to the McCann derivative action participated in the mediation at which the parties to the Consolidated Derivative Actions reached agreement in principle. The settlement of the Consolidated Derivative Action is subject to various conditions, including the negotiation and execution of the full settlement agreements and obtaining court approval. The plaintiffs in the McCann action have indicated their assent to the settlement of the Consolidated Derivative Actions and would seek dismissal of the McCann action if and when the Court finally approves the settlement of the Consolidated Derivative Actions.

In accordance with ASC 450, *Contingencies*, the Company has not recorded an accrual for a contingent liability associated with these legal proceedings based on its understanding that payment is currently expected to be at least equal to the amount offered in the settlement in principle, which totals approximately \$3.0 million for the Securities Class Action and \$0.5 million for the Consolidated Derivative Actions, is expected to be within the D&O insurance policy limits, and will be paid by the insurance carriers directly to the respective parties with no control by the Company,

relieving the Company of any liability. It is reasonably possible that the estimated amount of the loss will change in the near term as the formal settlement(s) are finalized and approved by the court(s); however, the Company expects that payment would continue to be paid directly by the insurance carrier to the parties involved in the Shareholder Class Action and Consolidated Derivative Actions.

SEC Investigation

On October 12, 2022, the Securities and Exchange Commission, or SEC, entered an order directing private investigation and designating officers to take testimony to determine whether we or any other entities or persons have engaged in, or are about to engage in, any violations of the securities laws. The SEC has since issued subpoenas to the Company and numerous current and former officers, directors, employees and consultants of the Company. We intend to cooperate fully with the SEC.

Note 14 – Employee Benefit Plan

The Company has a 401(k) plan that allows participants to contribute a portion of their salary, subject to eligibility requirements and annual IRS limits. The Company provided \$5,000 and \$67,000 matching employee contributions during the year ended December 31, 2023 and December 31, 2022, respectively.

Note 15 – Subsequent Event

ATM Agreement

As of February 25, 2024, the Company received gross proceeds of \$0.7 million from the sale of 301,928 shares of common stock from the ATM Agreement, which was offset by offering related costs of \$99,000.

In January 2024, the Company filed a prospectus supplement (the “Prospectus Supplement”) to the base prospectus included in the Registration Statement on Form S-3, which became effective under the Securities Act of 1933, as amended, on September 27, 2023, in connection with the ATM Agreement. Pursuant to the Prospectus Supplement, from time to time, the Company may offer and sell shares of its common stock having an aggregate gross sales price of up to \$1,315,900.

On February 26, 2024, the Company terminated the ATM Agreement with the Manager effective as of March 6, 2024. On February 28, 2024, the Company filed a post-effective amendment to deregister the remaining securities available under the Registration Statement relating to the offerings under the ATM Agreement, which was declared effective by the SEC on March 4, 2024.

Litigation Update

On January 11, 2024, the Company announced that a settlement in principle had been reached in the pending securities fraud class action, Case Number 22-cv-2105-WJM-MEH (the “Securities Class Action”), and the pending consolidated derivative actions in the United States District Court for the District of Colorado, Case Number 22-cv-2803-KLM (the “Consolidated Derivative Actions”).

The settlements are subject to various conditions, including confirmatory discovery in the Securities Class Action, negotiation and execution of the full settlement agreements and obtaining court approval in each action. On January 9, 2024, Ampio along with the other parties to each case filed status reports in both the Securities Class Action and the Consolidated Derivative Actions, advising the respective courts of the status of the settlements in principle. The settlement of the Consolidated Derivative Actions is supported by the plaintiff in the pending Colorado state court derivative action, Case Number 2023CV30287, as well as two stockholders who previously submitted pre-litigation demand letters to the Company’s Board of Directors.

Ampio currently expects the amount to be paid in both settlements, including related defense costs, will be covered by, and within the limits of, its D&O insurance policy. The settlements in principle do not constitute any admission of fault, wrongdoing or liability as to the Company or any other defendant. While the timing of completion of the settlement

agreements and filing motions to seek court approvals are uncertain, the Company will be endeavoring to finalize and execute the settlement agreements and have motions for preliminary approval submitted to the relevant courts by May 2024. If finally approved by the relevant courts, the settlements will result in the dismissal with prejudice of all of the pending civil actions and the withdrawal of the two stockholder pre-litigation demands.

CERTIFICATION

I, Michael A. Martino, certify that:

1. I have reviewed this Annual Report on Form 10-K of Ampio Pharmaceuticals, Inc. for the year ended December 31, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Michael A. Martino

Michael A. Martino
Chief Executive Officer

Date: March 27, 2024

CERTIFICATION

I, Daniel G. Stokely, certify that:

1. I have reviewed this Annual Report on Form 10-K of Ampio Pharmaceuticals, Inc. for the year ended December 31, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Daniel G. Stokely

Daniel G. Stokely
Chief Financial Officer

Date: March 27, 2024

CERTIFICATIONS
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 of Ampio Pharmaceuticals, Inc. (the "Company") on Form 10-K for the year ended December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company, certifies to his knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Section 906), that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the period covered by the Report.

/s/ Michael A. Martino

Michael A. Martino
Chief Executive Officer

/s/ Daniel G. Stokely

Daniel G. Stokely
Chief Financial Officer

Date: March 27, 2024
