

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended September 30, 2023

OR

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

Commission File Number 001-36075

**EVOKE PHARMA, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**420 Stevens Avenue, Suite 230, Solana Beach, CA**  
(Address of principal executive offices)

**20-8447886**  
(IRS Employer  
Identification No.)

**92075**  
(Zip Code)

Registrant's telephone number, including area code: (858) 345-1494

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

<u>Title of each class</u>	<u>Trading symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.0001 per share	EVOK	The Nasdaq Capital Market

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

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

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

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

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

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

As of November 3, 2023, the registrant had 3,343,070 shares of common stock outstanding.

TABLE OF CONTENTS

<u>PART I. FINANCIAL INFORMATION</u>	1
<u>Item 1. Financial Statements</u>	1
<u>Condensed Balance Sheets as of September 30, 2023 (Unaudited) and December 31, 2022</u>	1
<u>Condensed Statements of Operations for the three and nine months ended September 30, 2023 and 2022 (Unaudited)</u>	2
<u>Condensed Statements of Stockholders' Equity (Deficit) for the three and nine months ended September 30, 2023 and 2022 (Unaudited)</u>	3
<u>Condensed Statements of Cash Flows for the nine months ended September 30, 2023 and 2022 (Unaudited)</u>	4
<u>Notes to Condensed Financial Statements (Unaudited)</u>	5
<u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	13
<u>Item 3. Quantitative and Qualitative Disclosures about Market Risk</u>	21
<u>Item 4. Controls and Procedures</u>	21
<u>PART II. OTHER INFORMATION</u>	21
<u>Item 1. Legal Proceedings</u>	21
<u>Item 1A. Risk Factors</u>	21
<u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	23
<u>Item 3. Defaults Upon Senior Securities</u>	23
<u>Item 4. Mine Safety Disclosures</u>	23
<u>Item 5. Other Information</u>	23
<u>Item 6. Exhibits</u>	24
<u>SIGNATURES</u>	25

**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements****Evoke Pharma, Inc.**  
**Condensed Balance Sheets**

	<b>September 30, 2023</b>	<b>December 31, 2022</b>
	<b>(unaudited)</b>	
<b>Assets</b>		
Current Assets:		
Cash and cash equivalents	\$ 5,964,826	\$ 9,843,699
Accounts receivable, net	1,233,904	624,832
Prepaid expenses	37,855	952,954
Inventory, net	504,925	289,378
Other current assets	98,094	11,551
Total current assets	7,839,604	11,722,414
Operating lease right-of-use asset	13,370	129,074
Total assets	<u>\$ 7,852,974</u>	<u>\$ 11,851,488</u>
<b>Liabilities and stockholders' equity (deficit)</b>		
Current Liabilities:		
Accounts payable and accrued expenses	\$ 1,397,442	\$ 934,312
Accrued compensation	829,669	591,158
Operating lease liability	13,370	129,074
Total current liabilities	2,240,481	1,654,544
Long-term Liabilities:		
Note payable	5,000,000	5,000,000
Accrued interest payable	1,486,268	1,112,295
Total long-term liabilities	6,486,268	6,112,295
Total liabilities	8,726,749	7,766,839
<b>Commitments and contingencies (Note 3)</b>		
Stockholders' equity (deficit):		
Preferred stock, \$0.0001 par value; authorized shares — 5,000,000 at September 30, 2023 and December 31, 2022; none issued and outstanding at both September 30, 2023 and December 31, 2022	-	-
Common stock, \$0.0001 par value; authorized shares — 50,000,000 at September 30, 2023 and December 31, 2022; issued and outstanding shares — 3,343,070 at September 30, 2023 and December 31, 2022, respectively	334	334
Additional paid-in capital	120,577,928	119,731,458
Accumulated deficit	(121,452,037)	(115,647,143)
Total stockholders' equity (deficit)	(873,775)	4,084,649
Total liabilities and stockholders' equity (deficit)	<u>\$ 7,852,974</u>	<u>\$ 11,851,488</u>

*See accompanying notes to these unaudited condensed financial statements.*

**Evoke Pharma, Inc.**  
**Condensed Statements of Operations**  
(Unaudited)

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2023</b>	<b>2022</b>	<b>2023</b>	<b>2022</b>
Net product sales	\$ 1,562,860	\$ 832,100	\$ 3,504,636	\$ 1,712,275
Operating expenses:				
Cost of goods sold	34,908	89,775	142,855	180,310
Research and development	-	40,388	159,347	273,582
Selling, general and administrative	3,131,389	2,614,488	8,745,407	7,334,738
Total operating expenses	3,166,297	2,744,651	9,047,609	7,788,630
Loss from operations	(1,603,437)	(1,912,551)	(5,542,973)	(6,076,355)
Other income (expense):				
Interest income	35,558	24,714	112,052	29,419
Interest expense	(126,028)	(126,027)	(373,973)	(373,973)
Total other (expense)	(90,470)	(101,313)	(261,921)	(344,554)
Net loss	\$ (1,693,907)	\$ (2,013,864)	\$ (5,804,894)	\$ (6,420,909)
Net loss per share of common stock, basic and diluted	\$ (0.51)	\$ (0.60)	\$ (1.74)	\$ (2.09)
Weighted-average shares used to compute basic and diluted net loss per share	3,343,070	3,343,070	3,343,070	3,077,145

*See accompanying notes to these unaudited condensed financial statements.*

**Evoke Pharma, Inc.**  
**Condensed Statements of Stockholders' Equity (Deficit)**  
**(Unaudited)**

	<b>Common Stock</b>		<b>Additional</b>	<b>Accumulated</b>	<b>Total</b>
	<b>Shares</b>	<b>Amount</b>	<b>Paid-In</b>	<b>Deficit</b>	<b>Stockholders'</b>
			<b>Capital</b>		<b>Equity (deficit)</b>
Balance at January 1, 2023	3,343,070	\$ 334	\$ 119,731,458	\$ (115,647,143)	\$ 4,084,649
Stock-based compensation expense	—	—	284,572	—	284,572
Net loss	—	—	—	(2,243,070)	(2,243,070)
Balance at March 31, 2023	3,343,070	334	120,016,030	(117,890,213)	2,126,151
Stock-based compensation expense	—	—	280,140	—	280,140
Net loss	—	—	—	(1,867,917)	(1,867,917)
Balance at June 30, 2023	3,343,070	334	120,296,170	(119,758,130)	538,374
Stock-based compensation expense	—	—	281,758	—	281,758
Net loss	—	—	—	(1,693,907)	(1,693,907)
Balance at September 30, 2023	<u>3,343,070</u>	<u>\$ 334</u>	<u>\$ 120,577,928</u>	<u>\$ (121,452,037)</u>	<u>\$ (873,775)</u>

	<b>Common Stock</b>		<b>Additional</b>	<b>Accumulated</b>	<b>Total</b>
	<b>Shares</b>	<b>Amount</b>	<b>Paid-In</b>	<b>Deficit</b>	<b>Stockholders'</b>
			<b>Capital</b>		<b>Equity</b>
Balance at January 1, 2022	2,721,373	\$ 272	\$ 110,977,835	\$ (107,423,013)	\$ 3,555,094
Stock-based compensation expense	—	—	381,061	—	381,061
Issuance of common stock, from ATM offering, net of costs of \$3,548	21,783	2	171,519	—	171,521
Net loss	—	—	—	(2,173,665)	(2,173,665)
Balance at March 31, 2022	2,743,156	274	111,530,415	(109,596,678)	1,934,011
Stock-based compensation expense	—	—	366,924	—	366,924
Issuance of common stock, from ATM offering, net of costs of \$145,445	599,914	60	7,123,395	—	7,123,455
Net loss	—	—	—	(2,233,380)	(2,233,380)
Balance at June 30, 2022	3,343,070	334	119,020,734	(111,830,058)	7,191,010
Stock-based compensation expense	—	—	355,752	—	355,752
Net loss	—	—	—	(2,013,864)	(2,013,864)
Balance at September 30, 2022	<u>3,343,070</u>	<u>\$ 334</u>	<u>\$ 119,376,486</u>	<u>\$ (113,843,922)</u>	<u>\$ 5,532,898</u>

*See accompanying notes to these unaudited condensed financial statements.*

**Evoke Pharma, Inc.**  
**Condensed Statements of Cash Flows**  
(Unaudited)

	<b>Nine Months Ended September 30,</b>	
	<b>2023</b>	<b>2022</b>
<b>Operating activities</b>		
Net loss	\$ (5,804,894)	\$ (6,420,909)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	846,470	1,103,737
Non-cash lease expense	115,704	12,428
Change in operating assets and liabilities:		
Accounts receivable, net	(609,072)	(379,777)
Prepaid expenses, inventory and other assets	613,009	888,976
Accounts payable and other accrued expenses	463,130	146,662
Accrued compensation	238,511	197,676
Accrued interest expense	373,973	373,973
Operating lease liabilities	(115,704)	(12,428)
Net cash used in operating activities	(3,878,873)	(4,089,662)
<b>Financing activities</b>		
Proceeds from issuance of common stock from ATM	—	7,443,969
Payment of common stock offering costs from ATM	—	(148,993)
Net cash provided by financing activities	—	7,294,976
Net (decrease)/increase in cash and cash equivalents	(3,878,873)	3,205,314
Cash and cash equivalents at beginning of period	9,843,699	9,144,710
Cash and cash equivalents at end of period	\$ 5,964,826	\$ 12,350,024
<b>Supplemental disclosure of non-cash investing and financing activities</b>		
Operating lease right-of-use assets obtained in exchange for operating lease liabilities	\$ —	\$ 153,671

*See accompanying notes to these unaudited condensed financial statements.*

**Evoke Pharma, Inc.**  
**Notes to Condensed Financial Statements**  
**(Unaudited)**

**1. Organization and Basis of Presentation**

Evoke Pharma, Inc. (the “Company”) was incorporated under the laws of the state of Delaware in January 2007. The Company is a specialty pharmaceutical company focused primarily on the development and commercialization of drugs to treat gastroenterological disorders and disease.

Since its inception, the Company has devoted its efforts to developing its sole product, Gimoti® (metoclopramide) nasal spray, the first and only nasally-administered product indicated for the relief of symptoms in adults with acute and recurrent diabetic gastroparesis. On June 19, 2020, the Company received approval from the U.S. Food and Drug Administration (“FDA”) for its 505(b)(2) New Drug Application (“NDA”) for Gimoti. The Company launched U.S. commercial sales of Gimoti in October 2020 through its commercial partner Eversana Life Science Services, LLC (“Eversana”).

The Company’s activities are subject to the significant risks and uncertainties associated with any specialty pharmaceutical company that has launched its first commercial product, including market acceptance of the product and the potential need to obtain additional funding for its operations.

**Going Concern**

The financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The Company has incurred recurring losses and negative cash flows from operations since inception and expects to continue to incur net losses for the foreseeable future until such time, if ever, that it can generate significant revenues from the sale of Gimoti. As of September 30, 2023, the Company had approximately \$6.0 million in cash and cash equivalents. The Company anticipates that it will continue to incur losses from operations due to commercialization activities, including manufacturing Gimoti, conducting the post-marketing commitment single-dose pharmacokinetics (“PK”) clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti, and for other general and administrative costs to support the Company’s operations. As a result, the Company believes that there is substantial doubt about its ability to continue as a going concern for one year after the date these financial statements are issued. The financial statements do not include any adjustments that may result from the outcome of this uncertainty.

The Company’s net losses may fluctuate significantly from quarter to quarter and year to year. The Company anticipates that it will be required to raise additional funds through debt, equity or other forms of financing, such as potential collaboration arrangements, to fund future operations and continue as a going concern.

There can be no assurance that additional financing will be available when needed or on acceptable terms. If the Company is not able to secure adequate additional funding, the Company may be forced to make reductions in spending, extend payment terms with suppliers, and/or suspend or curtail commercialization activities. Any of these actions could materially harm the Company’s business, results of operations, financial condition and future prospects. There can be no assurance that the Company will be able to successfully commercialize Gimoti. Because the Company’s business is entirely dependent on the success of Gimoti, if the Company is unable to secure additional financing, successfully commercialize Gimoti or identify and execute on strategic alternatives for Gimoti, the Company will be required to curtail all of its activities and may be required to liquidate, dissolve or otherwise wind down its operations.

**Reverse Stock Split**

On April 27, 2022, the Company’s stockholders granted the board of directors the authority to effect a reverse stock split of the Company’s outstanding common stock. On May 23, 2022 the Company effected a 1-for-12 reverse stock split of the shares of the Company’s common stock (the “Reverse Stock Split”). The par value and the authorized shares of the common stock were not adjusted as a result of the Reverse Stock Split. All of the Company’s issued and outstanding common stock, warrants to purchase common stock, and options to purchase common stock have been retroactively adjusted to reflect the Reverse Stock Split for all periods presented.

**Nasdaq Compliance**

On May 24, 2023, the Company received a written notice from the Listing Qualifications Department of The Nasdaq Stock Market LLC (“Nasdaq”), indicating that, based on the Company’s stockholders’ equity of \$2.1 million as of March 31, 2023, as reported in the Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, the Company was not in compliance with the minimum stockholders’ equity requirement for continued listing on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(b)(1) (the “Minimum Stockholders’ Equity Requirement”), which requires listed companies to maintain stockholders’ equity of at least \$2.5

million. As required by Nasdaq, the Company submitted its plan to regain compliance with the Minimum Stockholders' Equity Requirement on July 7, 2023.

On July 19, 2023, Nasdaq granted the Company an extension until November 20, 2023 to regain compliance. Under the terms of the extension, the Company must provide to the Nasdaq staff a publicly available report that evidences such compliance and otherwise comply with conditions included in the extension notice. If the Company fails to evidence compliance upon filing the Company's Annual Report on Form 10-K for the year ended December 31, 2023 with the Securities and Exchange Commission and Nasdaq, the Company may be subject to delisting from the Nasdaq Capital Market. In the event the Company does not satisfy the terms of the extension, the Nasdaq staff will provide written notification to the Company that its securities will be delisted. At that time, the Company may appeal the Nasdaq staff's determination to a Hearings Panel.

## **2. Summary of Significant Accounting Policies**

The accompanying condensed balance sheet as of December 31, 2022, which has been derived from audited financial statements, and the unaudited interim condensed financial statements, have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") and follow the requirements of the U.S. Securities and Exchange Commission ("SEC") for interim reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP can be condensed or omitted. In management's opinion, the unaudited interim financial statements have been prepared on the same basis as the audited financial statements and include all adjustments, which include only normal recurring adjustments, necessary for the fair statement of the Company's financial position and its results of operations and its cash flows for the periods presented. These statements do not include all disclosures required by GAAP and should be read in conjunction with the Company's financial statements and accompanying notes for the year ended December 31, 2022, which are contained in the Company's Annual Report on Form 10-K filed with the SEC on March 21, 2023. The results for interim periods are not necessarily indicative of the results expected for the full fiscal year or any other interim period.

### **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 and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ materially from those estimates.

### **Contract Research Organizations and Consultants**

The Company relies on contract research organizations ("CROs") and consultants to assist with ongoing regulatory activities. If the CROs and consultants are unable to continue their support, this could adversely affect the Company's operations.

In addition, the Company relies on third-party manufacturers for the production of Gimoti. If the third-party manufacturers are unable to continue manufacturing Gimoti, or if the Company loses one of its sole source suppliers used in its manufacturing processes, the Company may not be able to meet any development needs or commercial supply demand for Gimoti, and the development and/or commercialization of Gimoti could be materially and adversely affected.

The Company also relies on a dedicated third-party sales team to sell Gimoti. If such third-party organization is unable to continue serving as a dedicated sales team, the commercialization of Gimoti could be materially and adversely affected.

### **Cash and Cash Equivalents**

The Company deposits its cash with reputable financial institutions that are insured by the Federal Deposit Insurance Corporation ("FDIC"). This cash is held in checking, cash sweep, and money market accounts. At times, deposits held may exceed the amount of insurance provided by the FDIC. The Company maintains an insured cash sweep account in which cash from its main operating checking account is invested overnight in highly liquid, short-term investments. The Company considers all highly liquid investments with a maturity date of 90 days or less at the date of purchase to be cash equivalents. The Company has not experienced any losses in its cash and cash equivalents and management believes the Company is not exposed to significant credit risk with respect to such accounts.

### **Accounts Receivable**

Accounts receivable are recorded net of allowance for doubtful accounts. The allowance for doubtful accounts was zero at September 30, 2023 and December 31, 2022 and no bad debt expense was recorded for the three and nine months ended September 30, 2023 and 2022.

### **Inventory**

The Company does not own or operate manufacturing facilities for the production of Gimoti, nor does it plan to develop its own manufacturing operations in the foreseeable future. The Company depends on third-party contract manufacturers for all of its required raw materials, drug substance and finished product for its commercial manufacturing. The Company has agreements with Cosma S.p.A. to supply metoclopramide for the manufacture of Gimoti, and with Thermo Fisher Scientific Inc., through its subsidiary Patheon



UK Limited, for the manufacturing of Gimoti. The Company currently utilizes third-party consultants, which it engages on an as-needed, hourly basis, to manage the manufacturing contractors.

The Company's inventory consisted of approximately \$361,000 and \$239,000 of raw materials at September 30, 2023 and December 31, 2022, and approximately \$144,000 and \$50,000 of finished goods inventory at September 30, 2023 and December 31, 2022, respectively. Inventories are stated at the lower of cost (first-in first-out basis) or net realizable value. The Company's raw materials inventory is held at its third-party suppliers and its work-in-process and finished goods inventory is held at its manufacturer and at Eversana. The Company records such inventory as consigned inventory.

### **Revenue Recognition**

The Company's ability to generate revenue and become profitable depends on its ability to successfully commercialize Gimoti, which was launched in the United States in October 2020 through the Company's commercial partner Eversana. If the Company or Eversana fail to successfully grow and maintain sales of Gimoti, the Company may never generate significant revenues and its results of operations and financial position will be adversely affected.

In accordance with Accounting Standards Codification ("ASC") 606, *Revenue from Contracts with Customers*, the Company recognizes revenue when a customer obtains control of promised goods in an amount that reflects the consideration the Company expects to receive in exchange for the goods provided. Customer control is determined upon the customer's physical receipt of the product. To determine revenue recognition for arrangements within the scope of ASC 606, the Company performs the following five steps: identify the contracts with the customer; identify the performance obligations in the contract; determine the transaction price; allocate the transaction price to the performance obligations in the contract; and recognize revenue when (or as) it satisfies a performance obligation. At contract inception, the Company assesses the goods promised within each contract and determines those that are performance obligations and assesses whether each promised good is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when the customer obtains control of the product.

Product revenues are recorded net of sales-related adjustments, wherever applicable, including patient support programs, rebates, and other sales related discounts. The Company uses judgement to estimate variable consideration. The Company is subject to rebates under Medicaid and Medicare programs. The rebates for these programs are determined based on statutory provisions. The Company estimates Medicaid and Medicare rebates based on the expected number of claims and related cost associated with the customer transaction. Medicaid and Medicare rebates of \$13,000 were recorded as a reduction to Accounts Receivable as of December 31, 2022, and \$44,000 were recorded as accounts payable and accrued expenses on the balance sheet as of September 30, 2023.

Product sales are recorded at the transaction price, which may include variable considerations for co-payment assistance to commercially insured patients meeting certain eligibility requirements, as well as to uninsured patients. Co-payment assistance is recorded as an offset to gross revenue at the time revenue from the product sale is recognized based on expected and actual program participation. Co-pay liabilities are estimated using prescribing data available from customers. Actual amounts of consideration ultimately received may materially differ from the Company's estimates. If actual results in the future vary from estimates, the Company will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known. Liabilities for co-pay assistance of approximately \$82,000 and \$66,000 at September 30, 2023 and December 31, 2022, respectively, are classified as accounts payable and accrued expenses in the balance sheets.

### **Stock-Based Compensation**

Stock-based compensation expense for stock option grants and employee stock purchases under the Company's Employee Stock Purchase Plan (the "ESPP") is recorded at the estimated fair value of the award as of the grant date and is recognized as expense on a straight-line basis over the employee's requisite service period, except awards with a performance condition. Awards with a performance condition commence vesting when the satisfaction of the performance condition is probable. The estimation of stock option and ESPP fair value requires management to make estimates and judgments about, among other things, employee exercise behavior, forfeiture rates and volatility of the Company's common stock. The judgments directly affect the amount of compensation expense that will be recognized.

The Company grants stock options to purchase common stock to employees and members of the board of directors with exercise prices equal to the Company's closing market price on the date the stock options are granted. The risk-free interest rate assumption was based on the yield of an applicable rate for U.S. Treasury instruments with maturities similar to those of the expected term of the award being valued. The weighted average expected term of options and employee stock purchases was calculated using the simplified method as prescribed by accounting guidance for stock-based compensation. Expected volatility was calculated based upon the Company's historical volatility. The assumed dividend yield was based on the Company never paying cash dividends and having no expectation of paying cash dividends in the foreseeable future. The Company accounts for forfeitures as the forfeitures occur.

## Research and Development Expenses

Research and development costs are expensed as incurred and primarily include compensation and related benefits, stock-based compensation expense, and costs paid to third-party contractors for product development activities and drug product materials. The Company will expense the clinical, regulatory and manufacturing costs related to the post-marketing commitment to conduct a single dose PK clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti, as well as other costs that may occur for any additional clinical trials the Company may pursue to expand the indication of Gimoti.

## Net Loss Per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of common stock outstanding for the period, without consideration for common stock equivalents. Diluted net loss per share is calculated by dividing the net loss by the weighted-average number of common stock and common stock equivalents outstanding for the period determined using the treasury-stock method. Dilutive common stock equivalents are comprised of stock options to purchase common stock under the Company's equity incentive plan.

The following table sets forth the outstanding potentially dilutive securities that have been excluded from the calculation of diluted net loss per share because to do so would be anti-dilutive for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Common stock options	639,601	491,851	639,601	491,851
Total excluded securities	639,601	491,851	639,601	491,851

## Recent Accounting Pronouncements

In June 2016, the Financial Accounting Standards Board, ("FASB") issued ASU 2016-13, *Financial Instruments – Credit Losses: Measurement of Credit Losses on Financial Instruments*, which amends the impairment model by requiring entities to use a forward-looking approach based on expected losses to estimate credit losses on certain types of financial instruments, including trade receivables and available-for-sale debt securities. This update is effective for annual periods beginning after December 15, 2022, and interim periods within those periods, and early adoption is permitted. The Company's adoption of this accounting standard on January 1, 2023 did not have a material impact on the Company's financial statements and related disclosures.

## 3. Commitments and Contingencies

### Leases

The Company's operating lease for office space in Solana Beach, California had an expiration date of October 31, 2023, subject to the landlord's option to cancel upon 30 days written notice. In October 2023, the Company entered into a 12-month lease agreement for an office space located on a different floor of the same building, effective November 1, 2023. Future minimum lease payments under the new lease are approximately \$76,000 over the lease term.

As of September 30, 2023, the Company has future minimum lease payments under its existing facility lease of \$13,371 payable in 2023. The remaining lease term is 0.08 years and the discount rate used was 10% as of September 30, 2023.

Short-term and operating lease expense are recognized on a straight-line basis over the lease term as general and administrative expense within the accompanying condensed financial statements. The following table summarizes lease expense for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Operating lease expense	\$ 39,164	\$ 37,281	\$ 114,767	\$ 111,843
Cash paid for operating lease	\$ 40,112	\$ 37,281	\$ 120,335	\$ 111,843

## Legal Proceedings

On February 25, 2022, the Company received a letter notifying us that Teva submitted to the U.S. Food and Drug Administration, or FDA, an abbreviated new drug application, or ANDA, for a generic version of Gimoti (metoclopramide hydrochloride) nasal spray eq. 15 mg base/spray that contains Paragraph IV certifications with respect to two of our patents covering Gimoti, U.S. Patent Nos. 8,334,281, expiration date May 16, 2030; and 11,020,361, expiration date December 22, 2029. These patents are listed in FDA's list of Approved Drug Products with Therapeutic Equivalence Evaluations, commonly referred to as the Orange Book, for Gimoti. The certifications allege these patents are invalid or will not be infringed by the manufacture, use or sale of Teva's metoclopramide hydrochloride nasal spray eq. 15 mg base/spray. In April 2022, the Company initiated litigation in the United States District Court for the District of New Jersey (Civil Action No. 1:22-cv-02019), alleging that Teva infringes the patents covering Gimoti. After the Company initiated litigation, Teva converted to a Paragraph III certification, which prevents the FDA from approving Teva's ANDA until after the latest expiring patent expires in 2030. Consequently, the litigation against Teva was dismissed in January 2023.

#### **4. Technology Acquisition Agreement**

In June 2007, the Company acquired all worldwide rights, data, patents and other related assets associated with Gimoti from Questcor Pharmaceuticals, Inc. ("Questcor") pursuant to an asset purchase agreement. The Company paid Questcor \$650,000 in the form of an upfront payment and \$500,000 in May 2014 as a milestone payment based upon the initiation of the first patient dosing in the Company's Phase 3 clinical trial for Gimoti. In August 2014, Mallinckrodt, plc ("Mallinckrodt") acquired Questcor. As a result of that acquisition, Questcor transferred its rights included in the asset purchase agreement with the Company to Mallinckrodt. In March 2018, the Company and Mallinckrodt amended the asset purchase agreement to defer development and approval milestone payments, such that, rather than paying two milestone payments based on FDA acceptance for review of the NDA and final product marketing approval, the Company would be required to make a single \$5 million payment on the one-year anniversary after the Company receives FDA approval to market Gimoti. At the time of the Gimoti NDA approval, the Company recorded the \$5 million payable owed to Mallinckrodt, along with a \$5 million research and development expense. The \$5 million milestone payment was paid in July 2021. The Company was also required to pay Mallinckrodt a low single digit royalty percentage on net sales of Gimoti. The Company's obligation to pay such royalties and milestones terminated due to the expiration of the last patent right covering Gimoti transferred under the asset purchase agreement.

#### **5. Stockholders' Equity**

##### **At the Market Equity Offering Program**

In December 2020, the Company filed a new shelf registration statement with the SEC on Form S-3, or the replacement shelf registration statement. The replacement shelf registration statement replaced the registration statement on Form S-3 the Company originally filed with the SEC in November 2017, which registration statement expired in December 2020. The replacement shelf registration was declared effective by the SEC on January 6, 2021. In December 2020, the Company also entered into a new At Market Issuance Sales Agreement (the "ATM Sales Agreement"), with FBR and H.C. Wainwright & Co. (together with FBR, the "Sales Agents"), pursuant to which the Company may sell from time to time, at its option, up to an aggregate of \$30 million worth of shares of the Company's common stock through the Sales Agents. The ATM Sales Agreement provides, among other things, that sales under the ATM Sales Agreement will be made pursuant to the registration statement, including the base prospectus filed as part of such registration statement. During the nine months ended September 30, 2022, the Company sold 621,697 shares of common stock at a weighted-average price per share of \$11.97 pursuant to the ATM Sales Agreement and received proceeds of approximately \$7.3 million, net of commissions and fees. No shares were sold pursuant to the ATM Sales Agreement in the three and nine months ended September 30, 2023.

Future sales under the ATM Sales Agreement will depend on a variety of factors including, but not limited to, market conditions, the trading price of the Company's common stock and the Company's capital needs. There can be no assurance that the Sales Agents will be successful in consummating future sales based on prevailing market conditions or in the quantities or at the prices that the Company deems appropriate.

In addition, the Company will not be able to make future sales of common stock pursuant to the ATM Sales Agreement unless certain conditions are met, which include the accuracy of representations and warranties made to the Sales Agents under the ATM Sales Agreement. Furthermore, each of the Sales Agents is permitted to terminate the ATM Sales Agreement with respect to itself in its sole discretion upon ten days' notice, or at any time in certain circumstances, including the occurrence of an event that would be reasonably likely to have a material adverse effect on the Company's assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations. The Company has no obligation to sell the shares available for sale pursuant to the ATM Sales Agreement.

##### **Warrants**

The Company has issued warrants to purchase common stock to banks that have previously loaned funds to the Company, as well as to representatives of the underwriters of the Company's public offerings and certain of their affiliates.

During the nine months ended September 30, 2022, warrants to purchase 139,972 shares of common stock expired. At September 30, 2023, and December 31, 2022, there were no warrants outstanding.

### Stock-Based Compensation

Stock-based compensation expense includes charges related to stock option grants. The Company measures stock-based compensation expense based on the grant date fair value of any awards granted to its employees. Such expense is recognized over the period of time that employees provide service and earn rights to the awards.

During the nine months ended September 30, 2023 and 2022, the Company granted stock options to purchase 153,750 and 78,247 shares of the Company's common stock, respectively. The estimated fair value of each stock option award granted was determined on the date of grant using the Black-Scholes option-pricing valuation model with the following assumptions for option grants during the nine months ended September 30, 2023 and 2022:

Common Stock Options	Nine Months Ended September 30,	
	2023	2022
Risk free interest rate	1.34%- 3.39%	1.67% - 3.55%
Expected term	5.5 - 6.0 years	5.5 - 6.02 years
Expected volatility of common stock	99.34%- 103.64%	97.04% - 113.23%
Expected dividend yield	0.00%	0.00%

The Company recognized stock-based compensation expense to employees and directors in its research and development and its selling, general and administrative functions during the three and nine months ended September 30, 2023 and 2022 as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Research and development	\$ -	\$ 1,897	\$ 2,841	\$ 7,505
Selling, general and administrative	281,758	353,855	843,629	1,096,232
Total stock-based compensation expense	\$ 281,758	\$ 355,752	\$ 846,470	\$ 1,103,737

As of September 30, 2023, there was approximately \$1.3 million of unrecognized compensation costs related to outstanding employee and board of director options, which are expected to be recognized over a weighted-average period of 0.83 years.

### 6. Commercial Services and Loan Agreements with Eversana

On January 21, 2020, the Company entered into a commercial services agreement (as amended, the "Eversana Agreement") with Eversana for the commercialization of Gimoti. Pursuant to the Eversana Agreement, Eversana commercializes and distributes Gimoti in the United States. Eversana also manages the marketing of Gimoti to targeted health care providers, as well as the sales and distribution of Gimoti in the United States.

Under the terms of the Eversana Agreement, the Company maintains ownership of the Gimoti NDA, as well as legal, regulatory, and manufacturing responsibilities for Gimoti. Eversana will utilize its internal sales organization, along with other commercial functions, for market access, marketing, distribution and other related patient support services. The Company will record sales for Gimoti and retain more than 80% of net product profits once both parties' costs are reimbursed. For the three months ended September 30, 2023 and 2022, approximately \$1.3 million and \$672,000 of Eversana profit sharing costs were included as selling, general and administrative costs, respectively. For the nine months ended September 30, 2023 and 2022, approximately \$3.0 million and \$1.4 million of Eversana profit sharing costs were included as selling, general and administrative costs, respectively. As of September 30, 2023, unreimbursed commercialization costs to Eversana were approximately \$60.4 million. Such costs will generally be payable only as net product profits are recognized. Eversana will receive reimbursement of its commercialization costs pursuant to an agreed upon budget and a percentage of product profits in the mid-to-high teens. Net product profits are the net sales (as defined in the Eversana Agreement) of Gimoti, less (i) reimbursed commercialization costs, (ii) manufacturing and administrative costs set at a fixed percentage of net sales, and (iii) third party royalties.

During the term of the Eversana Agreement, Eversana agreed to not market, promote, or sell a competing product in the United States. On February 1, 2022, the Eversana Agreement was amended to extend the term from June 19, 2025 (five years from the date the Food & Drug Administration approved the Gimoti new drug application) to December 31, 2026, unless terminated earlier pursuant to its terms. This amendment also increased the percentage of net product profit retained by the Company and increased the proportion of costs that are reimbursed to Eversana to the extent Eversana has accumulated unreimbursed costs.

Upon expiration or termination of the agreement, the Company will retain all profits from product sales and assume all corresponding commercialization responsibilities. Within 30 days after each of the first three annual anniversaries of commercial launch, either party may terminate the agreement if net sales of Gimoti do not meet certain annual thresholds.

In addition, either party may terminate the agreement-

- for the material breach of the other party, subject to a 60-day cure period;
- in the event an insolvency, petition of the other party is pending for more than 60 days;
- upon 30 days written notice to the other party if:
  - o Gimoti is subject to a safety recall;
  - o the other party is in breach of certain regulatory compliance representations under the agreement;
  - o if the Company discontinues the development or production of Gimoti;
  - o if the net profit is negative for any two consecutive calendar quarters beginning with the first full calendar quarter 24 months following commercial launch (the "Net Profit Quarterly Termination Right");
  - o if the cumulative net product profits fail to reach certain thresholds in the first three years following launch;
  - o if there is a change in applicable laws that makes operation of the services as contemplated under the agreement illegal or commercially impractical; or
  - o upon a change of control of the Company's ownership.

As of September 30, 2023, either party has the right to exercise the Net Profit Quarterly Termination Right, which it may do for a 60-day period following the end of the quarter. Each party will continue to have the option to exercise this termination right for the 60-day period following the end of future quarters so long as the net profit under the agreement remains negative for consecutive quarters.

In the event that the Company initiates such termination, the Company shall pay to Eversana a one-time payment equal to all of Eversana's unreimbursed cost plus a portion of Eversana's commercialization costs incurred in the 12 months prior to termination. Such payment amount would be reduced by the amount of previously reimbursed commercialization costs and profit split paid for the related prior twelve-month period and any revenue which occurred prior to the termination yet to be collected.

If Eversana terminates the agreement due to an uncured material breach by the Company, or if the Company terminates the Eversana Agreement in certain circumstances, including pursuant to the Net Profit Quarterly Termination Right, the Company has agreed to reimburse Eversana for its unreimbursed commercialization costs for the prior twelve-month period and certain other costs. In addition, Eversana may terminate the Eversana Agreement if the Company withdraws Gimoti from the market for more than 90 days.

On November 3, 2022, the Company and Eversana entered into Amendment No. 2 (the "Amendment") to the Eversana Agreement. The Amendment provides that the preexisting rights of both parties to terminate the commercial services agreement within 30 days of the first three annual anniversaries of commercial launch, if net sales of Gimoti did not meet certain annual thresholds, would be modified solely for 2022 such that either party can terminate by written notice to the other party by November 30, 2022. Neither party terminated the Agreement under this Amendment.

In connection with the Eversana Agreement, the Company and Eversana entered into the Eversana Credit Facility, pursuant to which Eversana has agreed to provide a revolving Credit Facility of up to \$5 million to the Company upon FDA approval of the Gimoti NDA under certain customary conditions. The Eversana Credit Facility terminates on December 31, 2026, unless terminated earlier pursuant to its terms. The Eversana Credit Facility is secured by all of the Company's personal property other than the Company's intellectual property. Under the terms of the Eversana Credit Facility, the Company cannot grant an interest in the Company's intellectual property to any other person. Each loan under the Eversana Credit Facility will bear interest at an annual rate equal to 10.0%, with such interest due at the end of the loan term. In 2020 the Company borrowed \$5 million under the Eversana Credit Facility.

The Company may prepay any amounts borrowed under the Eversana Credit Facility at any time without penalty or premium. The maturity date of all amounts, including interest, borrowed under the Eversana Credit Facility will be 90 days after the expiration or earlier termination of the Eversana Agreement. The Eversana Credit Facility also includes events of default, the occurrence and continuation of which provide Eversana with the right to exercise remedies against the Company and the collateral securing the loans under the Eversana Credit Facility, including the Company's cash. These events of default include, among other things, the Company's failure to pay any amounts due under the Eversana Credit Facility, an uncured material breach of the representations, warranties and other obligations under the Eversana Credit Facility, the occurrence of insolvency events and the occurrence of a change in control.



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

*The following discussion and analysis should be read in conjunction with our financial statements and accompanying notes included in this Quarterly Report on Form 10-Q and the financial statements and accompanying notes thereto for the fiscal year ended December 31, 2022 and the related Management’s Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Annual Report on Form 10-K filed with the Securities and Exchange Commission, or SEC, on March 21, 2023. Past operating results are not necessarily indicative of results that may occur in future periods.*

### Forward-Looking Statements

This Quarterly Report on Form 10-Q contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. All statements other than statements of historical facts contained in this Quarterly Report on Form 10-Q, including statements regarding our future results of operations and financial position, business strategy, commercial activities to be conducted by Eversana Life Science Services, LLC, or Eversana, the pricing and reimbursement for Gimoti, future regulatory developments, research and development costs, the timing and likelihood of commercial success, the potential to develop future product candidates, plans and objectives of management for future operations, future results of current and anticipated products, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statement. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other similar expressions. Although we believe the expectations reflected in these forward-looking statements are reasonable, such statements are inherently subject to risk and we can give no assurances that our expectations will prove to be correct. Given these risks, uncertainties and other factors, you should not place undue reliance on these forward-looking statements, which speak only as of the date of this Quarterly Report on Form 10-Q. You should read this Quarterly Report on Form 10-Q completely. As a result of many factors, including without limitation those set forth under “Risk Factors” under Item 1A of Part II below, and elsewhere in this Quarterly Report on Form 10-Q, our actual results may differ materially from those anticipated in these forward-looking statements. Except as required by applicable law, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this report or to reflect actual outcomes. For all forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

We use our registered trademark, EVOKE PHARMA, and other trademarks, including GIMOTI, in this Quarterly Report on Form 10-Q. This Quarterly Report on Form 10-Q also includes trademarks, tradenames and service marks that are the property of other organizations. Solely for convenience, trademarks and tradenames referred to in this Quarterly Report on Form 10-Q appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trademarks and tradenames.

Unless the context requires otherwise, references in this Quarterly Report on Form 10-Q to “Evoke,” “we,” “us” and “our” refer to Evoke Pharma, Inc.

### Overview

We are a specialty pharmaceutical company focused primarily on the development and commercialization of drugs to treat gastrointestinal, or GI, disorders and diseases. Since our inception, we have devoted our efforts to developing our sole product, Gimoti (metoclopramide) nasal spray, the first and only nasally-administered product indicated for the relief of symptoms in adults with acute and recurrent diabetic gastroparesis. In June 2020, we received approval from the U.S. Food and Drug Administration, or FDA, for our 505(b)(2) New Drug Application, or NDA, for Gimoti. We launched commercial sales of Gimoti in the United States in October 2020 through our commercial partner Eversana.

Diabetic gastroparesis is a GI disorder affecting millions of patients worldwide, in which food in an individual’s stomach takes too long to empty resulting in a variety of serious GI symptoms and systemic metabolic complications. The gastric delay caused by gastroparesis can compromise absorption of orally administered medications.

In January 2020, we entered into a commercial services agreement with Eversana, or the Eversana Agreement, for the commercialization of Gimoti. Pursuant to the Eversana Agreement, Eversana commercializes and distributes Gimoti in the United States. Eversana also manages the marketing of Gimoti to targeted health care providers, as well as the sales and distribution of Gimoti in the United States.

In 2020, we borrowed \$5 million from Eversana pursuant to a revolving credit facility, or the Eversana Credit Facility, which expires on December 31, 2026, unless terminated earlier pursuant to its terms. The maturity date of all amounts, including interest, borrowed under the Eversana Credit Facility will be 90 days after the expiration or earlier termination of the Eversana Agreement. The Eversana Agreement terminates on December 31, 2026, unless terminated earlier pursuant to its terms. Among other reasons, either party has the right to terminate the Eversana Agreement upon 30 days prior written notice if the net profit under the agreement is negative for any

two consecutive calendar quarters, or the Net Profit Quarterly Termination Right. As of September 30, 2023, either party has the right to exercise the Net Profit Quarterly Termination Right, which it may do for a 60-day period following the end of the quarter. Each party will continue to have the option to exercise this termination right for the 60-day period following the end of future quarters so long as the net profit under the agreement remains negative for consecutive quarters. As of September 30, 2023, Eversana had approximately \$60.4 million in unreimbursed commercialization costs. If Eversana terminates the Eversana Agreement pursuant to the Net Profit Quarterly Termination Right, none of the unreimbursed commercialization costs incurred by Eversana will become due from the Company.

We have primarily funded our operations through the sale of our convertible preferred stock prior to our initial public offering in September 2013, borrowings from loans and the sale of shares of our common stock on the Nasdaq Capital Market. We launched commercial sales of Gimoti in late October 2020 with Eversana and, to date, have generated modest sales.

We have incurred losses in each year since our inception. These operating losses resulted from expenses incurred in connection with advancing Gimoti through development activities, pre-commercial and commercialization activities, and other general and administrative costs associated with our operations. We expect to continue to incur operating losses until revenues from sales of Gimoti exceed our expenses, if ever. We may never become profitable, or if we do, we may not be able to sustain profitability on a recurring basis.

As of September 30, 2023, we had cash and cash equivalents of approximately \$6.0 million. Current cash on hand is intended to fund commercialization activities for Gimoti, including manufacturing Gimoti, conducting the post-marketing commitment single dose pharmacokinetics, or PK, clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti and any additional development activities should we seek additional indications, protecting our intellectual property portfolio and for other general and administrative costs to support our operations. Our operations have consumed substantial amounts of cash since inception. We believe, based on our current operating plan, that our existing cash and cash equivalents as of September 30, 2023, as well as cash flows from future net sales of Gimoti, will be sufficient to fund our operations into at least the first quarter of 2024. This period could be shortened if there are any significant increases in planned spending other than anticipated. We anticipate that we will be required to raise additional funds in order to continue as a going concern. Because our business is entirely dependent on the success of Gimoti, if we are unable to secure additional financing or identify and execute on other development or strategic alternatives for Gimoti or our company, we will be required to curtail all of our activities and may be required to liquidate, dissolve or otherwise wind down our operations. Any of these events could result in a complete loss of your investment in our securities.

### **Technology Acquisition Agreement**

In June 2007, we acquired all worldwide rights, data, patents and other related assets associated with Gimoti from Questcor Pharmaceuticals, Inc., or Questcor, pursuant to an asset purchase agreement. We paid Questcor \$650,000 in the form of an upfront payment and \$500,000 in May 2014 as a milestone payment based upon the initiation of the first patient dosing in our Phase 3 clinical trial for Gimoti. In August 2014, Mallinckrodt, plc, or Mallinckrodt, acquired Questcor. As a result of that acquisition, Questcor transferred its rights included in the asset purchase agreement with us to Mallinckrodt. In March 2018, we and Mallinckrodt amended the asset purchase agreement to defer development and approval milestone payments, such that rather than paying two milestone payments based on FDA acceptance for review of the NDA and final product marketing approval, we would be required to make a single \$5 million payment on the one-year anniversary after we receive FDA approval to market Gimoti. At the time of the Gimoti NDA approval by FDA, we recorded the \$5 million payable owed to Mallinckrodt with a due date of June 19, 2021, along with a \$5 million research and development expense. The \$5 million milestone payment was paid in July 2021. We were required to pay to Mallinckrodt a low single digit royalty percentage on net sales of Gimoti. Our obligation to pay such royalties and milestones terminated due to the expiration of the last patent right covering Gimoti transferred under the asset purchase agreement.

### **Financial Operations Overview**

#### ***Revenue Recognition***

Our ability to generate revenue and become profitable depends on our ability to successfully commercialize Gimoti, which we launched in the United States through prescription in October 2020 through our commercial partner Eversana. If we or Eversana fail to successfully grow sales of Gimoti, we may never generate significant revenues and our results of operations and financial position will be adversely affected.

In accordance with Accounting Standards Codification, or ASC, 606, *Revenue from Contracts with Customers*, we recognize revenue when a customer obtains control of promised goods in an amount that reflects the consideration we expect to receive in exchange for the goods provided. Customer control is determined upon the customer's physical receipt of the product. To determine revenue recognition for arrangements within the scope of ASC 606, we perform the following five steps: identify the contracts with the customer; identify the performance obligations in the contract; determine the transaction price; allocate the transaction price to the performance obligations in the contract; and recognize revenue when (or as) it satisfies a performance obligation. At contract inception, we assess the goods promised within each contract and determine those that are performance obligations and assess whether each



promised good is distinct. We then recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when the customer obtains control of the product.

Product revenues are recorded net of sales-related adjustments, wherever applicable, including patient support programs, rebates, and other sales related discounts. The Company uses judgement to estimate variable consideration. The Company is subject to rebates under Medicaid and Medicare programs. The rebates for these programs are determined based on statutory provisions. The Company estimates Medicaid and Medicare rebates based on the expected number of claims and related cost associated with the customer transaction.

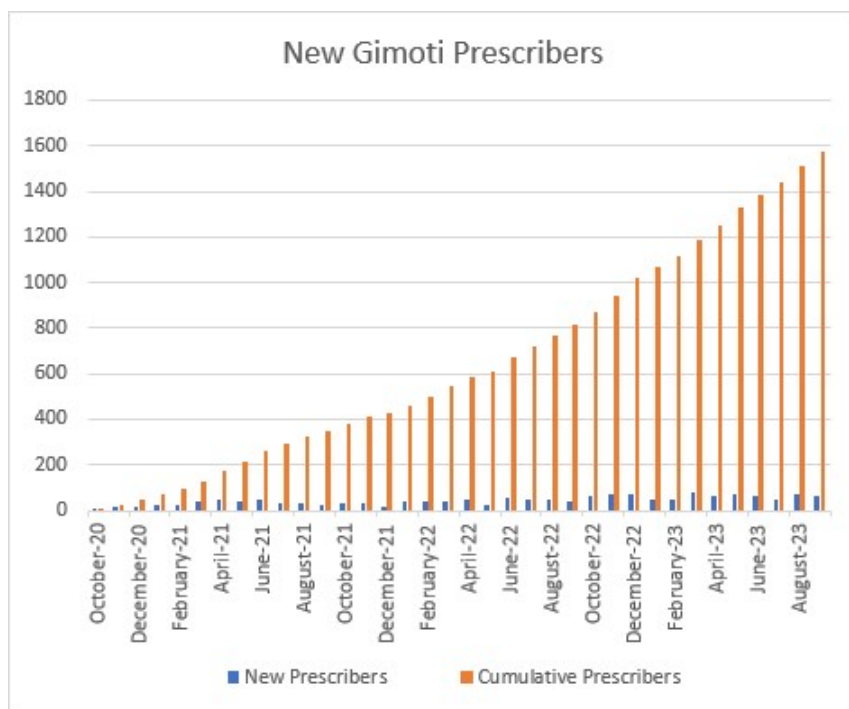
The Company also makes estimates about co-payment assistance to commercially insured patients meeting certain eligibility requirements, as well as to uninsured patients. Co-payment assistance is recorded as an offset to gross revenue at the time revenue from the product sale is recognized based on expected and actual program participation.

Co-pay liabilities are estimated using prescribing data available from customers. Actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from estimates, we will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known. Liabilities for Medicare and Medicaid rebates, as well as co-pay assistance, are classified as accounts payable and accrued expenses in the balance sheets.

### Sales of Gimoti Metrics

Gimoti prescription revenues continue to increase on several metrics. Net product sales for the three months ended September 30, 2023 were approximately \$1.6 million compared to net product sales of approximately \$832,000 during the three months ended September 30, 2022, an increase of approximately 88%. The Company works with specialty pharma partners, vitaCare and ASPN Pharmacies, who provide a technology and services platform that helps physicians electronically prescribe Gimoti and helps patients navigate key access and adherence barriers. The hub helps patients understand coverage and identify available savings opportunities, and facilitates communications between providers and payors, and also offers a seamless path for filling a prescription. The Company will fully transition from vitaCare to ASPN Pharmacies in November 2023.

There were approximately 1,339 new inbound prescriptions into the vitaCare reimbursement center during the three months ended September 30, 2023, a 5% increase compared to the prior quarter. Patients that have an opportunity to refill the product (that is, patients who have completed their current supply and have additional refills on their prescription) received a refill approximately 78% of the time since the launch of Gimoti through September 30, 2023. We believe some patients choose not to refill their prescriptions due to remission of symptoms. Cumulatively, total prescribers increased 13% during the three months ended September 30, 2023.



Evoke's specialty pharma partner accesses the Medicare and Medicaid systems to facilitate product reimbursement submission for patients seeking treatment. For the three months ended September 30, 2023, these government programs made up approximately 35% of the filled prescriptions for Gimoti. From the commercial launch of Gimoti through September 30, 2023, the majority of patients have been between the ages of 31-65 years old. The vast majority of patients are female and were being treated by a gastroenterologist.

In May 2023, a Health Care Utilization, or HRU, retrospective study report compared the frequency of physician office, outpatient facility, emergency department, and inpatient hospital visits for patients with diabetic gastroparesis treated with nasal metoclopramide ("NMCP") versus oral metoclopramide ("OMCP"). The study showed that patients taking Gimoti compared to oral metoclopramide had statistically significant fewer Office Visits, Inpatient Hospitalizations, and Emergency Room Visits related to nausea/vomiting or diabetic gastroparesis HRU events. An additional analysis of HRU data showed patients taking Gimoti saved over \$15,000 in six months as they had fewer emergency room and hospital admissions compared to patients taking oral metoclopramide.

### ***Research and Development Expenses***

We expense all research and development expenses as they are incurred. Research and development expenses primarily include:

- clinical and regulatory-related costs;
- expenses incurred under agreements with contract research organizations, or CROs;
- manufacturing and stability testing costs and related supplies and materials used in clinical trials; and
- employee-related expenses, including salaries, benefits, travel and stock-based compensation expense.

All of our research and development expenses to date have been incurred in connection with the development of Gimoti. Since FDA approval of Gimoti in June 2020, research and development costs have decreased and shifted to commercialization and selling costs. In 2021, we initiated planning, and are in discussion with FDA related to the design, for an FDA post-marketing commitment single dose PK clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti to accommodate patients that may require further dosage adjustments. We are unable to estimate with any certainty the costs we will incur related to this trial, or the regulatory review of such lower dose of Gimoti, though such costs may be significant and will substantially increase research and development expenses once this trial is initiated. We may also incur additional costs to the extent we pursue additional clinical trials to expand the indication of Gimoti. Clinical development timelines, the probability of success and development costs can differ materially from expectations.

The costs of clinical trials may vary significantly over the life of a project owing to, but not limited to, the following:

- per subject trial costs;
- the number of sites included in the trials;
- the length of time required to enroll eligible subjects;
- the number of subjects that participate in the trials;
- the number of doses that subjects receive;
- the cost of comparative agents used in trials;
- the drop-out or discontinuation rates of subjects;
- potential additional safety monitoring or other studies requested by regulatory agencies; and
- the duration of patient follow-up.

### ***Selling, General and Administrative Expenses***

Selling, general and administrative expenses consist primarily of salaries and related benefits, including stock-based compensation. Other selling, general and administrative expenses include professional fees for accounting, tax, patent costs, legal services, insurance, facility costs and costs associated with being a publicly-traded company, including fees associated with investor relations and directors and officers liability insurance premiums. We expect that selling, general and administrative expenses will increase in the future as we continue to progress with the commercialization of Gimoti and we reimburse Eversana from the net profits attained from the sales of Gimoti.

## Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which we have prepared in accordance with generally accepted accounting principles in the United States, or GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported expenses during the reporting periods. We evaluate these estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors that we believe are reasonable 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. Our actual results may differ materially from these estimates under different assumptions or conditions.

There have been no new or significant changes to our critical accounting policies and estimates discussed in Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on March 21, 2023.

## Results of Operations

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

The following table summarizes the results of our operations for the three months ended September 30, 2023 and 2022:

	Three Months Ended September 30,		Increase/ (Decrease)
	2023	2022	
Net product sales	\$ 1,562,860	\$ 832,100	\$ 730,760
Research and development expenses	\$ -	\$ 40,388	\$ (40,388)
Selling, general and administrative expenses	\$ 3,131,389	\$ 2,614,488	\$ 516,901

*Net Product Sales.* Net product sales for the three months ended September 30, 2023 compared to the three months ended September 30, 2022 increased by approximately \$731,000. The increase in sales was primarily driven by increased educational and promotional activities of the Eversana sales force and prescription management through vitaCare during the three months ended September 30, 2023.

*Research and Development Expenses.* Research and development expenses for the three months ended September 30, 2023 compared to the three months ended September 30, 2022 decreased by approximately \$40,000. During 2023 and 2022, we incurred fewer expenses for ongoing stability testing of batches of Gimoti manufactured prior to receipt of FDA approval of the Gimoti NDA in June 2020.

Costs incurred during the three months ended September 30, 2022 included approximately \$34,000 related to stability testing and \$6,000 for wages, taxes and employee insurance, including approximately \$2,000 of stock-based compensation expense.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses for the three months ended September 30, 2023 compared to the three months ended September 30, 2022 increased by approximately \$517,000. Costs incurred during the three months ended September 30, 2023 primarily included approximately \$1.0 million for wages, taxes and employee insurance, including approximately \$282,000 of stock-based compensation expense, approximately \$1.5 million for marketing and Eversana profit sharing, and approximately \$570,000 for legal, accounting, directors and officers liability insurance and other costs associated with being a public company. Costs incurred during the three months ended September 30, 2022 primarily included approximately \$1.0 million for wages, taxes and employee insurance, including approximately \$354,000 of stock-based compensation expense, approximately \$904,000 for marketing, royalties and Eversana profit sharing, and approximately \$602,000 for legal, accounting, directors and officers liability insurance and other costs associated with being a public company.

### Comparison of nine months Ended September 30, 2023 and 2022

The following table summarizes the results of our operations for the nine months ended September 30, 2023 and 2022:

	Nine Months Ended September 30,		Increase/ (Decrease)
	2023	2022	
Net product sales	\$ 3,504,636	\$ 1,712,275	\$ 1,792,361
Research and development expenses	\$ 159,347	\$ 273,582	\$ (114,235)
Selling, general and administrative expenses	\$ 8,745,407	\$ 7,334,738	\$ 1,410,669

*Net Product Sales.* Net product sales for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022 increased by approximately \$1.8 million. The increase in sales was primarily driven by increased educational and promotional activities of the Eversana sales force during the nine months ended September 30, 2023.

*Research and Development Expenses.* Research and development expenses for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022 decreased by approximately \$114,000. During 2023 and 2022, we incurred expenses for ongoing stability testing of batches of Gimoti manufactured prior to receipt of FDA approval of the Gimoti NDA in June 2020, as well as preparing for a post-marketing commitment to conduct a single dose PK clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti, including the manufacture of clinical trial material.

Costs incurred during the nine months ended September 30, 2023 included approximately \$147,000 for stability testing and \$12,000 for wages, taxes and employee insurance, including approximately \$3,000 of stock-based compensation expense. Cost incurred during the nine months ended September 30, 2022, included approximately \$248,000 for stability testing and \$25,000 for wages, taxes and employee insurance, including approximately \$8,000 of stock-based compensation expense.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022 increased by approximately \$1.4 million. Costs incurred during the nine months ended September 30, 2023 primarily included approximately \$3.0 million for wages, taxes and employee insurance, including approximately \$844,000 of stock-based compensation expense, approximately \$1.9 million for legal, accounting, directors and officers liability insurance and other costs associated with being a public company, approximately \$3.4 million for marketing and Eversana profit sharing, and approximately \$140,000 for facility-related expenses. Costs incurred during the nine months ended September 30, 2022 primarily included approximately \$3.1 million for wages, taxes and employee insurance, including approximately \$1.1 million of stock-based compensation expense, approximately \$1.9 million for legal, accounting, directors and officers liability insurance and other costs associated with being a public company, approximately \$2.1 million for marketing, royalties and Eversana profit sharing, and approximately \$138,000 for facility-related expenses.

### **Liquidity and Capital Resources**

In November 2017, we filed a shelf registration statement with the SEC on Form S-3. The shelf registration statement included a prospectus for the at-the-market offering to sell up to an aggregate of \$16.0 million of shares of our common stock through B. Riley FBR, Inc., or FBR, as a sales agent, or FBR Sales Agreement. Effective January 6, 2021, we terminated the FBR Sales Agreement. As a result, there were no shares sold under the FBR Sales Agreement during 2021.

In December 2020, we filed a new shelf registration statement with the SEC on Form S-3, or the replacement shelf registration statement. The replacement shelf registration statement replaced the registration statement on Form S-3 we originally filed with the SEC in November 2017, which registration statement expired in December 2020. The replacement shelf registration was declared effective by the SEC on January 6, 2021. In December 2020, we also entered into the ATM Sales Agreement with FBR and H.C. Wainwright & Co., LLC, or the Sales Agents, pursuant to which we may sell from time to time, at our option, up to an aggregate of \$30 million worth of shares of our common stock through the Sales Agents. The ATM Sales Agreement provides, among other things, that sales under the ATM Sales Agreement will be made pursuant to the registration statement, including the base prospectus filed as part of such registration statement. During the nine months ended September 30, 2022, we sold 621,697 shares of common stock at a weighted-average price per share of \$11.97 pursuant to the ATM Sales Agreement and received proceeds of approximately \$7.3 million, net of commissions and fees. No shares were sold under the ATM Sales Agreement in the nine months ended September 30, 2023.

Under current SEC regulations, if at the time we file our Annual Report on Form 10-K our public float is less than \$75 million, and for so long as our public float remains less than \$75 million, the amount we can raise through primary public offerings of securities in any twelve-month period using shelf registration statements is limited to an aggregate of one-third of our public float, which is referred to as the baby shelf rules.

At the time we filed our Annual Report on Form 10-K on March 21, 2023, our public float was less than \$75 million. As a result of our public float being below \$75 million, we will be limited by the baby shelf rules until such time as our public float exceeds \$75 million, which means we only have the capacity to sell shares up to one-third of our public float under shelf registration statements in any twelve-month period. If our public float decreases, the amount of securities we may sell under our Form S-3 shelf registration statement will also decrease. We will remain constrained by the baby shelf rules under our Form S-3 shelf registration statement until such time as our public float exceeds \$75 million, at which time the number of securities we may sell under a Form S-3 registration statement will no longer be limited by the baby shelf rules. SEC regulations permit us to use the highest closing sales price of our common stock (or

the average of the last bid and last ask prices of our common stock) on any day within 60 days of sales under the shelf registration statement.

Future sales under the ATM Sales Agreement will depend on a variety of factors including, but not limited to, market conditions, the trading price of our common stock and our capital needs. There can be no assurance that the Sales Agents will be successful in consummating future sales based on prevailing market conditions or in the quantities or at the prices that we deem appropriate.

In addition, we will not be able to make future sales of common stock pursuant to the ATM Sales Agreement unless certain conditions are met, which include the accuracy of representations and warranties made to the Sales Agents under the ATM Sales Agreement. Furthermore, each of the Sales Agents is permitted to terminate the ATM Sales Agreement with respect to itself in its sole discretion upon ten days' notice, or at any time in certain circumstances, including the occurrence of an event that would be reasonably likely to have a material adverse effect on our assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations. We have no obligation to sell the shares available for sale pursuant to the ATM Sales Agreement.

In connection with the Eversana Agreement, we entered into the Eversana Credit Facility, pursuant to which Eversana agreed to provide a revolving credit facility of up to \$5 million to us upon FDA approval of the Gimoti NDA, as well as certain other customary conditions. The Eversana Credit Facility terminates on December 31, 2026, unless terminated earlier pursuant to its terms. The Eversana Credit Facility is secured by all of our personal property other than our intellectual property. Under the terms of the Eversana Credit Facility, we cannot grant an interest in our intellectual property to any other person. Each loan under the Eversana Credit Facility will bear interest at an annual rate equal to 10.0%, with such interest due at the end of the loan term. In 2020 we borrowed \$5 million from the Eversana Credit Facility, and the outstanding balance, including principal and interest, was \$6.5 million as of September 30, 2023.

Management concluded that there is substantial doubt about our ability to continue as a going concern. This doubt about our ability to continue as a going concern for at least twelve months from the date of issuance of the financial statements could materially limit our ability to raise additional funds through the issuance of new debt or equity securities or otherwise. Future reports by our independent registered accounting firm on our financial statements may also include an explanatory paragraph with respect to our ability to continue as a going concern. We have incurred significant losses since our inception and have never been profitable, and it is possible we will never achieve profitability. We believe, based on our current operating plan, that our cash and cash equivalents as of September 30, 2023 of approximately \$6.0 million, as well as future cash flows from net sales of Gimoti, will be sufficient to fund our operations into at least the first quarter of 2024. This estimate of cash runway could be shortened if there are any significant increases in planned spending on commercialization activities, including for marketing and manufacturing of Gimoti, and our selling, general and administrative costs to support operations, including as a result of any termination of the Eversana Agreement. As of September 30, 2023, Eversana and Evoke each has the right to terminate the Eversana Agreement based on net profit under the agreement being negative for two consecutive calendar quarters, or the Net Profit Quarterly Termination Right, which right either party may exercise for a 60-day period following the end of the quarter. Eversana and Evoke will continue to have the option to exercise this termination right for the 60-day period following the end of future quarters so long as the net profit under the agreement remains negative for consecutive quarters. If the Net Profit Quarterly Termination Right is exercised, the outstanding principal and interest under the Eversana Credit Facility would be due within 90 days after the effective date of such termination. This would materially and adversely affect our near-term liquidity needs and cash runway.

We anticipate we will be required to raise additional funds in order to continue as a going concern. Because our business is entirely dependent on the success of Gimoti, if we are unable to secure additional financing or identify and execute on other development or strategic alternatives for Gimoti or our company, we will be required to curtail all of our activities and may be required to liquidate, dissolve or otherwise wind down our operations. Any of these events could result in a complete loss of your investment in our securities.

There is no assurance that other financing will be available when needed to allow us to continue as a going concern. The perception that we may not be able to continue as a going concern may cause others to choose not to deal with us due to concerns about our ability to meet our contractual obligations.

On April 27, 2022, our stockholders granted the board of directors the authority to effect a reverse stock split of our outstanding common stock. On May 23, 2022, we effected a 1-for-12 reverse stock split of the shares of our common stock, or the Reverse Stock Split. The par value and the authorized shares of the common stock were not adjusted as a result of the Reverse Stock Split. All of our issued and outstanding common stock, warrants to purchase common stock, and options to purchase common stock have been adjusted to reflect the Reverse Stock Split.

On May 24, 2023, we received a written notice from Nasdaq indicating that, based on our stockholders' equity of \$2.1 million as of March 31, 2023, as reported in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, we were not in compliance with the Minimum Stockholders' Equity Requirement. As required by Nasdaq, we submitted our plan to regain compliance with the

Minimum Stockholders' Equity Requirement on July 7, 2023. On July 19, 2023, Nasdaq granted us an extension until November 20, 2023 to regain compliance. Under the terms of the extension, we must provide to the Nasdaq staff a publicly available report that evidences such compliance and otherwise comply with conditions included in the extension notice. If we fail to evidence compliance upon filing our Annual Report on Form 10-K for the year ended December 31, 2023 with the Securities and Exchange Commission and Nasdaq, we may be subject to delisting from the Nasdaq Capital Market. In the event we do not satisfy the terms of the extension, the Nasdaq staff will provide written notification to us that our securities will be delisted. At that time, we may appeal the Nasdaq staff's determination to a Hearings Panel. There can no assurances that we will regain compliance with the Minimum Stockholders' Equity Requirement or the other Nasdaq continued listing requirements.

We expect to continue to incur expenses as we:

- continue the commercial activities for Gimoti;
- manufacture Gimoti;
- conduct the post-marketing commitment single dose PK clinical trial of Gimoti and any additional development activities should we seek additional indications;
- maintain, expand and protect our intellectual property portfolio; and
- continue to fund the accounting, legal, insurance and other costs associated with being a public company.

The following table summarizes our cash flows for the nine months ended September 30, 2023 and 2022:

	<b>Nine Months Ended September 30,</b>		<b>Increase/ (Decrease)</b>
	<b>2023</b>	<b>2022</b>	
Net cash used in operating activities	\$ (3,878,873)	\$ (4,089,662)	\$ 210,789
Net cash provided by financing activities	\$ -	\$ 7,294,976	\$ (7,294,976)
Net increase (decrease) in cash and cash equivalents	<u>\$ (3,878,873)</u>	<u>\$ 3,205,314</u>	<u>\$ (7,084,187)</u>

*Operating Activities.* The primary use of our cash has been to fund our clinical research, prepare our NDA, manufacture Gimoti, prepare for and begin commercial sales of Gimoti, and other general operations. The cash used in operating activities during the nine months ended September 30, 2023 and 2022 was primarily related to commercialization activities for Gimoti and other general operational activities. We expect that cash used in operating activities will increase during the remainder of 2023 due to commercialization activities, including manufacturing of Gimoti, and the planned post-marketing commitment to conduct a single dose PK clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti.

*Financing Activities.* During the nine months ended September 30, 2023, there were no proceeds from financing activities. During the nine months ended September 30, 2022, we received net proceeds of approximately \$7.3 million from the sale of 621,697 shares of common stock pursuant to the ATM Sales Agreement.

The amount and timing of our future funding requirements will depend on many factors, including but not limited to:

- the costs of commercialization activities, including costs associated with commercial manufacturing;
- the commercial success of Gimoti, including competition with well-established products approved earlier by FDA, including oral and intravenous forms of metoclopramide, the same active ingredient in the nasal spray for Gimoti;
- our ability to manufacture sufficient quantities of Gimoti to meet demand, including whether our contract manufacturers, suppliers, and/or consultants are able to meet appropriate timelines;
- the progress and costs of the post-marketing commitment to conduct a single dose PK clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti and the costs of any additional clinical trials we may pursue to expand the indication of Gimoti;
- our ability to obtain, maintain and enforce our patents and other intellectual property rights, and the costs incurred to do so;

- the terms and timing of any collaborative, licensing, co-promotion or other arrangements that we may establish; and
- costs associated with any other product candidates that we may develop, in-license or acquire.

#### **Off-Balance Sheet Arrangements**

Through September 30, 2023, we have not entered into and did not have any relationships with unconsolidated entities or financial collaborations, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purpose.

#### **Contractual Obligations and Commitments**

There were no material changes outside the ordinary course of our business during the nine months ended September 30, 2023 to the information regarding our contractual obligations that was disclosed in Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on March 21, 2023.

#### **Item 3. Quantitative and Qualitative Disclosure about Market Risk**

As a smaller reporting company, we are not required to provide the information required by this Item.

#### **Item 4. Controls and Procedures**

##### **Conclusions Regarding the Effectiveness of Disclosure Controls and Procedures**

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

As required by SEC Rule 13a-15(b), as of September 30, 2023, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Business Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as of the end of the period covered by this report. Based on the foregoing, our Chief Executive Officer and Chief Business Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of September 30, 2023.

##### **Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting identified in management's evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the quarter ended September 30, 2023 that materially affect, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

On February 25, 2022, the Company received a letter notifying us that Teva submitted to FDA an ANDA for a generic version of Gimoti (metoclopramide hydrochloride) nasal spray eq. 15 mg base/spray that contains Paragraph IV certifications with respect to two of our patents covering Gimoti, U.S. Patent Nos. 8,334,281, expiration date May 16, 2030; and 11,020,361, expiration date December 22, 2029. These patents are listed in FDA's list of Approved Drug Products with Therapeutic Equivalence Evaluations, commonly referred to as the Orange Book, for Gimoti. The certifications allege these patents are invalid or will not be infringed by the manufacture, use or sale of Teva's metoclopramide hydrochloride nasal spray eq. 15 mg base/spray. In April 2022, we initiated litigation in the United States District Court for the District of New Jersey (Civil Action No. 1:22-cv-02019), alleging that Teva infringes the patents covering Gimoti. After we initiated litigation, Teva converted to a Paragraph III certification, which prevents FDA from approving Teva's ANDA until after the latest expiring patent expires in 2030. Consequently, the litigation against Teva was dismissed in January 2023.

### **Item 1A. Risk Factors**

There have been no material changes to the risk factors included in “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on March 21, 2023, other than the following:

***We will require substantial additional funding and may be unable to raise capital when needed, which would force us to liquidate, dissolve or otherwise wind down our operations.***

Our operations have consumed substantial amounts of cash since inception. We believe, based on our current operating plan, that our cash and cash equivalents as of September 30, 2023 of approximately \$6.0 million, as well as future cash flows from net sales of Gimoti, will be sufficient to fund our operations into at least the first quarter of 2024. This estimate of cash runway could be shortened if there are any significant increases in planned spending on commercialization activities, including for marketing and manufacturing of Gimoti, and our selling, general and administrative costs to support operations, including as a result of any termination of the Eversana Agreement. As of September 30, 2023, Evoke and Eversana each have the right to exercise the Net Profit Quarterly Termination Right and terminate the Eversana Agreement, which right either party may exercise for a 60-day period following the end of the quarter. Evoke and Eversana will continue to have the option to exercise this termination right for the 60-day period following the end of future quarters so long as the net profit under the agreement remains negative for consecutive quarters. If the Net Profit Quarterly Termination Right is exercised, the outstanding principal and interest under the Eversana Credit Facility would be due within 90 days after the effective date of such termination. This would materially and adversely affect our near-term liquidity needs and cash runway. We anticipate that we will be required to raise additional funds through debt, equity or other forms of financing, such as potential collaboration arrangements, to fund future operations and continue as a going concern. There can be no assurance that we will be able to raise additional funds on acceptable terms, or at all. Because our business is entirely dependent on the success of Gimoti, if we are unable to secure additional financing, successfully commercialize Gimoti or identify and execute on other commercialization or strategic alternatives for Gimoti or our company, we will be required to curtail all of our activities and may be required to liquidate, dissolve or otherwise wind down our operations. Any of these events could result in a complete loss of your investment in our securities.

Our estimates of the amount of cash necessary to fund our activities may prove to be wrong and we could spend our available financial resources much faster than we currently expect. Our future funding requirements will depend on many factors, including, but not limited to:

- the commercial success of Gimoti;
- the repayment of the outstanding principal and interest under the Eversana Credit Facility, approximately \$6.5 million as of September 30, 2023, to be payable if we or Eversana exercise the Net Profit Quarterly Termination Right, or upon other certain termination events;
- the repayment of unreimbursed commercialization costs to Eversana, approximately \$60.4 million as of September 30, 2023, to be payable only as net product profits are recognized, or upon certain termination events;
- the costs of commercialization activities, including costs associated with commercial manufacturing and distribution;
- competition with well-established products approved earlier by FDA, including oral and intravenous forms of metoclopramide, the same active ingredient in the nasal spray for Gimoti;
- our ability to manufacture sufficient quantities of Gimoti to meet demand, including whether our contract manufacturers, suppliers, and/or consultants are able to meet appropriate timelines;
- the progress and costs of the post-marketing commitment PK clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti and the costs of any additional clinical trials we may pursue to expand the indication of Gimoti;
- our ability to obtain, maintain and enforce our patents and other intellectual property rights and the costs incurred in doing so;
- claims by third parties that Gimoti and any other product candidates infringe their proprietary rights, which may result in liability for damages or prevent or delay our developmental and commercialization efforts;
- the terms and timing of any collaborative, licensing, co-promotion or other arrangements that we may establish;
- costs associated with any other product candidates that we may develop, in-license or acquire; and
- health epidemic and outbreaks or other natural or manmade disasters which could significantly disrupt our operations or the operations of third parties on whom we rely.



Additional funding may not be available to us on acceptable terms or at all. In addition, the terms of any financing may adversely affect the holdings or the rights of our stockholders. If adequate funds are not available to us, we may not be able to make scheduled debt payments on a timely basis, or at all, and may be required to delay, limit, reduce or cease our operations.

Furthermore, the issuance of additional shares or other securities by us, or the possibility of such issuance, may cause the market price of our shares to decline and dilute the holdings of our existing stockholders. If we raise additional funds by incurring debt, the terms of the debt may involve significant cash payment obligations, as well as covenants and specific financial ratios that may restrict our ability to operate our business. We cannot provide any assurance that our existing capital resources will be sufficient to enable us to identify or execute a viable plan for continued clinical development of Gimoti or to otherwise survive as a going concern.

***If we fail to meet all applicable Nasdaq Capital Market requirements and Nasdaq determines to delist our common stock, the delisting could adversely affect the market liquidity of our common stock and the market price of our common stock could decrease.***

Our common stock is listed on the Nasdaq Capital Market. In order to maintain our listing, we must meet minimum financial and other requirements, including requirements for a minimum amount of capital, a minimum closing bid price per share of \$1.00 and continued business operations so that we are not characterized as a “public shell company.”

On May 24, 2023, we received a written notice from Nasdaq indicating that, based on our stockholders’ equity of \$2.1 million as of March 31, 2023, as reported in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, we were not in compliance with the minimum stockholders’ equity requirement for continued listing on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(b)(1), or the Minimum Stockholders’ Equity Requirement. As required by Nasdaq, we submitted our plan to regain compliance with the Minimum Stockholders’ Equity Requirement on July 7, 2023. On July 19, 2023, Nasdaq granted us an extension until November 20, 2023 to regain compliance. Under the terms of the extension, we must provide to the Nasdaq staff a publicly available report that evidences such compliance and otherwise comply with conditions included in the extension notice. If we fail to evidence compliance upon filing our Annual Report on Form 10-K for the year ended December 31, 2023 with the Securities and Exchange Commission and Nasdaq, we may be subject to delisting from the Nasdaq Capital Market. In the event we do not satisfy the terms of the extension, the Nasdaq staff will provide written notification to us that our securities will be delisted. At that time, we may appeal the Nasdaq staff’s determination to a Hearings Panel. There can no assurances that we will regain compliance with the Minimum Stockholders’ Equity Requirement or the other Nasdaq continued listing requirements.

In the event that our common stock is delisted from the Nasdaq Capital Market and is not eligible for quotation or listing on another market or exchange, trading of our common stock could be conducted only in the over-the-counter market or on an electronic bulletin board established for unlisted securities such as the Pink Sheets or the OTC Bulletin Board. In such event, it could become more difficult to dispose of, or obtain accurate price quotations for, our common stock, and there would likely also be a reduction in our coverage by securities analysts and the news media, which could cause the price of our common stock to decline further. Also, it may be difficult for us to raise additional capital if we are not listed on a major exchange.

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

None.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

**Item 6. Exhibits****Index to Exhibits**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
3.1 (1)	<a href="#">Amended and Restated Certificate of Incorporation of the Company</a>
3.1 (2)	<a href="#">Certificate of Amendment of Amended and Restated Certificate of the Incorporation of the Company</a>
3.2 (1)	<a href="#">Amended and Restated Bylaws of the Company</a>
4.1 (3)	<a href="#">Form of the Company's Common Stock Certificate</a>
10.1	<a href="#">Sixth Amendment to Standard Office Lease dated October 9, 2023, between the Company and SB Corporate Center III-IV, LLC.</a>
31.1*	<a href="#">Certification of Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934</a>
31.2*	<a href="#">Certification of Chief Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934</a>
32.1*	<a href="#">Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
32.2*	<a href="#">Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the inline XBRL document
101.SCH	Inline XBRL Taxonomy Extension Schema
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

- 
- (1) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on September 30, 2013.
  - (2) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on May 20, 2022.
  - (3) Incorporated by reference to the Company's Amendment No. 3 to Registration Statement on Form S-1 filed with the SEC on August 16, 2013.

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

SIGNATURES

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

**Evoke Pharma, Inc.**

Date: November 9, 2023

By: /s/ David A. Gonyer

David A. Gonyer  
Chief Executive Officer  
(Principal Executive Officer)

Date: November 9, 2023

By: /s/ Matthew J. D'Onofrio

Matthew J. D'Onofrio  
President, Chief Operating Officer, Treasurer and Secretary  
(Principal Financial and Accounting Officer)

**SIXTH AMENDMENT TO LEASE**

This Sixth Amendment to Lease (this "Amendment") is made, for reference purposes only, October 9, 2023 \_\_\_\_\_, by and between SB CORPORATE CENTRE III-IV, LLC, a Delaware limited liability company ("Landlord"), and EVOKE PHARMA, INC., a Delaware corporation ("Tenant"), with reference to the following facts:

**RECITALS**

- A. Landlord and Tenant are parties to that certain Office Lease Agreement dated as of December 19, 2016, as amended by that certain First Amendment to Lease dated as of September 27, 2018, as further amended by that certain Second Amendment to Lease dated as of December 6, 2019, as further amended by that certain Third Amendment to Lease dated as of December 15, 2020, as further amended by that certain Fourth Amendment to Lease dated as of February 3, 2022, as further amended by that certain Fifth Amendment to Lease dated as of August 24, 2022 (collectively, as amended, the "Lease") for that certain premises located at 420 Stevens Avenue, Suite 370, Solana Beach, California 92075, consisting of approximately 3,146 Rentable Square Feet of commercial office space (the "Existing Premises").
- B. The parties desire to amend the Lease as set forth in this Amendment.
- C. All capitalized terms used in this Amendment, unless specifically defined herein, shall have the same meaning as the capitalized terms used in the Lease.

**NOW, THEREFORE**, for valuable consideration, the receipt and adequacy of which are expressly acknowledged, Landlord and Tenant agree as follows:

**AGREEMENT****1. Premises.**

a. Effective upon November 1, 2023 (the "New Premises Effective Date"), Tenant shall relocate to that certain premises located at 420 Stevens Avenue, Suite 230, Solana Beach, California 92075, consisting of approximately 1,451 Rentable Square Feet of commercial office space as set forth on the floor plan attached hereto as Exhibit "A" (the "New Premises").

b. For the purposes of this Amendment and to re-define the term "Premises" as used herein and in the Lease, as of the New Premises Effective Date, "Premises" shall mean the New Premises.

c. One week before the New Premises Effective Date, Landlord shall, at its sole cost and expense and using Building standard materials, will have the carpets steam cleaned and have the walls patched and painted as needed to a professional standard (touched up or otherwise) in the New Premises and relocate Tenant's suite identification signage from the Existing Premises to the New Premises (collectively, "Landlord's Work").

d. Tenant shall accept the New Premises in its existing "as is" condition, and other than Landlord's Work set forth in 1.c., above, Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the New Premises. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the New Premises or with respect to the suitability of the New Premises for the conduct of Tenant's business for the Permitted Use.

**2. Surrender of Existing Premises.** Tenant hereby agrees to surrender the Existing Premises to Landlord in a "broom clean" condition pursuant to the provisions set forth in Section 23.1 of the Lease on or before the fifth (5<sup>th</sup>) business day following the New Premises Effective Date (the "Surrender Date"). Except as otherwise set forth herein, Tenant shall continue to pay and remain liable for Basic Monthly Rent and Additional Rent charges due and owing with respect to the Existing Premises through the date immediately preceding the New Premises Effective

Date at the rate established by the Lease prior to this Amendment. Tenant shall be considered a "hold over" subject to the "holdover" provisions of Section 23.2 of the Lease if Tenant has not vacated the Existing Premises on or prior to the Surrender Date and in such condition required herein and in the Lease.

**3. Extension Term.** The term of the Lease for the Premises is set to expire on October 31, 2023. By virtue of this Amendment, Landlord and Tenant hereby agree that the term of the Lease for the New Premises shall be extended to and including October 31, 2024 (the "Expiration Date"), subject to the terms and conditions contained herein and the Lease. For the purposes of this Amendment, the period of time between and including the New Premises Effective Date and the Expiration Date shall be referred to herein as, the "Extension Term". Furthermore, any and all previously granted and unexercised options to extend the term of the Lease shall be null and void and of no further force or effect.

**4. Rent.** Tenant shall pay Basic Monthly Rent to Landlord for the Existing Premises in advance on or before the first day of every calendar month, without any set-off or deduction, pursuant to the current rate as set forth in the Lease. However, as of the Extended Term Effective Date, Tenant's Basic Monthly Rent for the New Premises shall be \$6,311.85 during the Extension Term.

**5. Operating Expenses, Tax Expenses and Insurance Expenses.** Upon the New Premises Effective Date, for the purpose of calculating Tenant's Share of Operating Expenses, Tax Expenses and Insurance Expenses for the New Premises, Tenant's Share for the New Premises shall be 2.20%. For the avoidance of any doubt, the Base Year shall remain Expense Year 2023.

**6. Security Deposit.** Landlord is currently holding a Security Deposit for the Existing Premises in the amount of \$11,551.14 (the "Existing Security Deposit"). Landlord and Tenant agree that (i) a portion of the Existing Security Deposit, in the amount of \$5,239.29 shall be applied against the Basic Monthly Rent due for November 2023, (ii) Tenant shall be liable for the timely payment of the remainder of the Basic Monthly Rent due for November 2023 in the amount of \$1,072.56, and (iii) upon the New Premises Effective Date, the term "Security Deposit" as used herein and the Lease shall mean the remaining balance of the Existing Security Deposit in the amount of \$6,311.85 shall continue to be held by Landlord and shall remain subject to the terms and conditions of the Security Deposit set forth in the Lease.

**7. Certified Access Specialist.** Tenant acknowledges and agrees that it has reviewed the CASp Inspection Disclosure and Acknowledgment attached to this Amendment as Exhibit "B", and California Civil Code Section 1938, attached thereto and incorporated herein, at least 48 hours prior to the execution of this Amendment.

**8. Tenant Certification.** By execution of this Amendment, Tenant hereby certifies that as of the date hereof, neither Tenant nor Landlord is in default of the performance of its obligations pursuant to the Lease, and Tenant has no claim, defense, or offset with respect to the Lease.

**9. Real Estate Brokers.** Tenant represents and warrants to Landlord that it has not authorized or employed, or acted by implication to authorize or employ, with any real estate broker or sales person to act for it in connection with this Amendment or dealt with any real estate broker or sales person in connection with this Amendment other than RE:Align, Inc. Tenant also agrees to indemnify, defend and hold harmless Landlord from and against any and all claims by any real estate broker or salesman whom the Tenant authorized or employed, or acted by implication to authorize or employ, to act for Tenant in connection with this Amendment, or with any broker or sales person with whom Tenant dealt in connection with this Amendment other than RE:Align, Inc.

**10. Confirmation.** Except, as and to the extent modified by this Amendment, all provisions of the Lease shall remain in full force and effect. In the event of a conflict between the terms of the Lease and the terms of this Amendment, the terms in this Amendment shall control.

**11. Counterparts.** This Amendment may be executed in any number of counterparts, including counterparts transmitted by facsimile or electronic mail, each of which shall be deemed an original for all purposes, and all counterparts shall constitute one and the same instrument.

**12. Electronic Signatures.** Landlord and Tenant consent to the use of electronic signatures on this Amendment and all documents relating to the Lease and this Amendment, and any amendments to any of the foregoing (collectively, the "Lease Documents"). Landlord and Tenant agree that any electronic signatures appearing on the Lease Documents are the same as handwritten signatures for the purposes of validity, enforceability and admissibility, and that any electronically signed Lease Document shall, for all purposes of the Lease Documents and applicable law, be deemed to be "written" or "in writing", to have been executed, and to constitute an original written record when printed, and shall be fully admissible in any legal proceeding. For purposes hereof, "electronic signature" shall have the meaning set forth in the Uniform Electronic Transactions Act, as the same may be amended from time to time.

**IN WITNESS WHEREOF,** Landlord and Tenant agree to the foregoing as evidenced by affixing their signatures below.

LANDLORD:

SB CORPORATE CENTRE III-IV,  
LLC, a Delaware limited liability  
company

By: American Assets Trust  
Management, LLC, a Delaware  
limited liability company, as  
Agent

By: /s/ Adam Wyl  
Adam Wyl  
President and COO

By: /s/ Steven M. Center  
Steven M. Center  
S.V.P. of Office Properties

Dated: October 9, 2023

TENANT:

EVOKE PHARMA, INC.,  
a Delaware corporation

By: /s/ David A. Gonyer

Name: David A. Gonyer  
Title: CEO

Dated: October 9, 2023

**EXHIBIT "A"**

**NEW PREMISES**

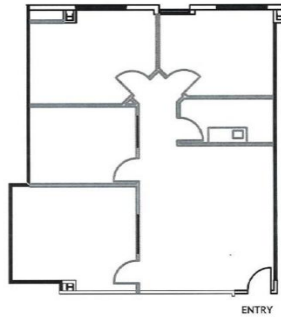
**SOLANA  
CROSSING**

**420 STEVENS AVENUE  
SUITE 230**



Total: 1,451 RSF

As-Built



**EXHIBIT "B"**

**CASp INSPECTION DISCLOSURE AND ACKNOWLEDGMENT**

This CASp Inspection Disclosure and Acknowledgment ("Disclosure and Acknowledgment") is provided in connection with the proposed Sixth Amendment to Lease ("Amendment") between SB CORPORATE CENTRE III-IV, LLC, a Delaware limited liability company ("Landlord"), and EVOKE PHARMA, INC., a Delaware corporation ("Tenant"), for the property at 420 Stevens Avenue, Suite 230, Solana Beach, California 92075 (the "Premises"), as required by California Civil Code Section 1938, regarding Certified Access Specialist ("CASp") inspections. A copy of California Civil Code Section 1938 is attached hereto.

1. The Premises  have  have not been inspected by a CASp inspector.
2. If the Premises have been inspected by a CASp inspector: A. Compliance Certification.
  - The Premises have been determined to meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.
  - The Premises have not been determined to meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. B. Available CASp Reports.  
The following CASp inspection certificates and reports have been issued for the Premises:
    - CASp inspection report dated \_\_\_\_\_ issued by \_\_\_\_\_.
    - CASp inspection report dated \_\_\_\_\_ issued by \_\_\_\_\_.
3. Tenant Rescission Rights.

(1) If Tenant receives a copy of the CASp inspection report more than 48 hours before signing the Amendment, Tenant has no right to rescind the Amendment based upon information contained in the report.

(2) If Tenant does not receive a copy of the CASp inspection report at least 48 hours before signing the Amendment, Tenant has 72 hours after signing the Amendment to rescind.

(3) If Tenant does not receive a copy of the CASp inspection report before signing the Amendment, Landlord must provide a copy of the inspection report within 7 days after the Amendment is signed. Tenant will have up to 3 days thereafter to rescind the Amendment based on information in the report.

(4) Tenant agrees not to disclose information in the CASp inspection report(s) or the disability access inspection certificate except as necessary for Tenant to complete repairs to correct accessibility violations.

(5) A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

***[Signature page to follow]***



LANDLORD:

SB CORPORATE CENTRE III-IV, LLC, a Delaware limited liability company

By: American Assets Trust Management, LLC, a Delaware limited liability company, as Agent

By: /s/ Adam Wyll  
Adam Wyll  
President and COO

By: /s/ Steven M. Center  
Steven M. Center  
S.V.P. of Office Properties

Dated: October 9, 2023

TENANT:

EVOKE PHARMA, INC.,  
a Delaware corporation

By: /s/ David A. Gonyer

Name: David A. Gonyer

Title: CEO

Dated: October 9, 2023

## Civil Code §1938

(a) A commercial property owner or lessor shall state on every lease form or rental agreement executed on or after January 1, 2017, whether or not the subject premises have undergone inspection by a Certified Access Specialist (CASp).

(b) If the subject premises have undergone inspection by a CASp and, to the best of the commercial property owner's or lessor's knowledge, there have been no modifications or alterations completed or commenced between the date of the inspection and the date of the lease or rental agreement which have impacted the subject premises' compliance with construction-related accessibility standards, the commercial property owner or lessor shall provide, prior to execution of the lease or rental agreement, a copy of any report prepared by the CASp with an agreement from the prospective lessee or tenant that information in the report shall remain confidential, except as necessary for the tenant to complete repairs and corrections of violations of construction-related accessibility standards that the lessee or tenant agrees to make.

(c) Making any repairs or modifications necessary to correct violations of construction-related accessibility standards that are noted in a CASp report is presumed to be the responsibility of the commercial property owner or lessor, unless otherwise mutually agreed upon by the commercial property owner or lessor and the lessee or tenant. The prospective lessee or tenant shall have the opportunity to review any CASp report prior to execution of the lease or rental agreement. If the report is not provided to the prospective lessee or tenant at least 48 hours prior to execution of the lease or rental agreement, the prospective lessee or tenant shall have the right to rescind the lease or rental agreement, based upon the information contained in the report, for 72 hours after execution of the agreement.

(d) If the subject premises have been issued an inspection report by a CASp, as described in paragraph (1) of subdivision (a) of Section 55.53, indicating that it meets applicable standards, as defined in paragraph (4) of subdivision (a) of Section 55.52, the commercial property owner or lessor shall provide a copy of the current disability access inspection certificate and any inspection report to the lessee or tenant not already provided pursuant to subdivision (b) within seven days of the date of the execution of the lease form or rental agreement.

(e) If the subject premises have not been issued a disability access inspection certificate, as described in subdivision (e) of Section 55.53, the commercial property owner or lessor shall state the following on the lease form or rental agreement:

(a) "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

---

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

I, David A. Gonyer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Evoke Pharma, Inc.;

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

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

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

Date: November 9, 2023

/s/ David A. Gonyer

David A. Gonyer

Chief Executive Officer

(Principal Executive Officer)

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

I, Matthew J. D'Onofrio, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Evoke Pharma, Inc.;

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

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

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

Date: November 9, 2023

/s/ Matthew J. D'Onofrio

---

Matthew J. D'Onofrio  
President, Chief Operating Officer,  
Treasurer and Secretary  
(Principal Financial Officer)

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

In connection with the quarterly report of Evoke Pharma, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David A. Gonyer, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

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

Date: November 9, 2023

/s/ David A. Gonyer

David A. Gonyer

Chief Executive Officer

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

---

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

In connection with the quarterly report of Evoke Pharma, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Matthew J. D'Onofrio, President, Chief Operating Officer, Treasurer and Secretary of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

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

Date: November 9, 2023

/s/ Matthew J. D'Onofrio

Matthew J. D'Onofrio  
President, Chief Operating Officer,  
Treasurer and Secretary

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

---

