

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

Form 10-Q

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

For the quarterly period ended June 30, 2022

OR

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

For the transition period from to

Commission file number 000-15327

CytRx Corporation

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

58-1642740
(I.R.S. Employer
Identification No.)

11726 San Vicente Blvd., Suite 650
Los Angeles, CA
(Address of principal executive offices)

90049
(Zip Code)

(310) 826-5648
(Registrant's telephone number, including area code)

N/A
(Former name, former address and former fiscal year, if changed since last report)

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

Table with 3 columns: Title of each class, Trading Symbol(s), Name of each exchange on which registered. All cells contain 'None'.

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

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

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 [ ] Accelerated filer [ ] Non-accelerated filer [X] Smaller reporting company [X]
Emerging growth company [ ]

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

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

Number of shares of CytRx Corporation common stock, \$0.001 par value, outstanding as of August 11, 2022: 45,037,391 shares.

CYTRX CORPORATION

FORM 10-Q

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### ***Forward Looking Statements***

All statements in this Quarterly Report, including statements in this section, other than statements of historical fact are forward-looking statements, including statements of our current views with respect to the recent developments regarding our business strategy, business plan and research and development activities, our future financial results, and other future events. These statements include forward-looking statements both with respect to us, specifically, and the biotechnology industry, in general. In some cases, forward-looking statements can be identified by the use of terminology such as “may,” “will,” “expects,” “plans,” “anticipates,” “estimates,” “potential” or “could” or the negative thereof or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements contained herein are reasonable, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct, and actual results could differ materially from those projected or assumed in the forward-looking statements.

All forward-looking statements involve inherent risks and uncertainties, and there are or will be important factors that could cause actual results to differ materially from those indicated in these statements. We believe that these factors include, but are not limited to, the factors discussed in this section and under the caption “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2021, which should be reviewed carefully. If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may vary materially from what we anticipate. Please consider our forward-looking statements in light of those risks as you read this Quarterly Report. We undertake no obligation to publicly update or review any forward-looking statement, whether as a result of new information, future developments or otherwise.

### ***Note Regarding Company References***

References throughout this Quarterly Report on Form 10-Q, the “Company”, “CytRx”, “we”, “us”, and “our”, except where the context requires otherwise, refer to CytRx Corporation and its subsidiary.

PART I — FINANCIAL INFORMATION

Item 1. — Consolidated Financial Statements

CYTRX CORPORATION  
CONDENSED CONSOLIDATED BALANCE SHEETS

	<u>June 30, 2022</u>	<u>December 31, 2021</u>
	(Unaudited)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 4,111,845	\$ 6,769,603
Insurance claim receivable	100,000	200,000
Prepaid expenses and other current assets	479,054	1,310,382
Total current assets	<u>4,690,899</u>	<u>8,279,985</u>
Equipment and furnishings, net	26,061	32,784
Other assets	7,703	16,836
Operating lease right-of-use assets	306,871	397,172
Total assets	<u>\$ 5,031,534</u>	<u>\$ 8,726,777</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 1,210,369	\$ 1,470,652
Accrued expenses and other current liabilities	1,214,563	2,064,506
Current portion of operating lease liabilities	132,940	198,819
Total current liabilities	<u>2,557,872</u>	<u>3,733,977</u>
Operating lease liabilities, net of current portion	<u>189,390</u>	<u>216,381</u>
Preferred Stock, Series C 10% Convertible, \$1,000 par value, 2,752 and 8,240 shares issued and outstanding at June 30, 2022 and December 31, 2021, respectively	<u>1,343,684</u>	<u>4,022,700</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred Stock, \$0.01 par value, 833,333 shares authorized, including 50,000 shares of Series B Junior Participating Preferred Stock; no shares issued and outstanding	—	—
Common stock, \$0.001 par value, 62,393,940 shares authorized; 45,037,391 and 38,780,038 shares issued and outstanding at June 30, 2022 and December 31, 2021, respectively	45,037	38,780
Additional paid-in capital	487,469,516	484,790,650
Accumulated deficit	<u>(486,573,965)</u>	<u>(484,075,711)</u>
Total stockholders' equity	<u>940,588</u>	<u>753,719</u>
Total liabilities and stockholders' equity	<u>\$ 5,031,534</u>	<u>\$ 8,726,777</u>

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

**CYTRX CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Revenue:				
Licensing revenue	\$ —	\$ —	\$ —	\$ —
Expenses:				
General and administrative	<u>1,148,037</u>	<u>1,181,211</u>	<u>2,442,754</u>	<u>2,461,059</u>
Loss from operations	(1,148,037)	(1,181,211)	(2,442,754)	(2,461,059)
Other income (loss):				
Interest income	1,002	4,146	1,855	8,982
Forgiveness of accounts payable	353,565	—	353,565	—
Other income (loss), net	<u>(306)</u>	<u>1,269</u>	<u>(2,353)</u>	<u>(3,022)</u>
Net loss	<u>\$ (793,776)</u>	<u>\$ (1,175,796)</u>	<u>\$ (2,089,687)</u>	<u>\$ (2,455,099)</u>
Dividends paid on preferred shares	<u>(202,567)</u>	—	<u>(408,567)</u>	—
Net loss attributable to common stockholders	<u>\$ (996,343)</u>	<u>\$ (1,175,796)</u>	<u>\$ (2,498,254)</u>	<u>\$ (2,455,099)</u>
Total basic and diluted loss per share	<u>\$ (0.02)</u>	<u>\$ (0.03)</u>	<u>\$ (0.06)</u>	<u>\$ (0.07)</u>
Basic and diluted weighted-average shares outstanding	<u>44,320,100</u>	<u>36,549,269</u>	<u>41,679,126</u>	<u>36,515,038</u>

The accompanying notes are an integral part of these condensed consolidated financial statements

**CYTRX CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited)

	<b>Six Months Ended June 30,</b>	
	<b>2022</b>	<b>2021</b>
<b>Cash flows from operating activities:</b>		
Net loss from operations	\$ (2,089,687)	\$ (2,455,099)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>		
Depreciation and amortization	7,490	6,587
Stock-based compensation expense	6,104	—
<b>Changes in assets and liabilities:</b>		
Insurance claim receivable	100,000	325,105
Prepaid expenses and other current assets	831,328	768,352
Other assets	9,133	—
Amortization of right-of-use asset	90,301	90,833
Accounts payable	(260,285)	(439,056)
Decrease in lease liabilities	(92,870)	(89,211)
Accrued expenses and other current liabilities	(849,939)	145,950
Net cash used in operating activities	<u>(2,248,425)</u>	<u>(1,646,539)</u>
<b>Cash flows from investing activities:</b>		
Purchase of fixed assets	(766)	—
Net cash used in investing activities	<u>(766)</u>	<u>—</u>
<b>Cash flows from financing activities:</b>		
Preferred stock dividend	(408,567)	—
Proceeds from exercise of stock options	—	78,000
Net cash provided by (used in) financing activities	<u>(408,567)</u>	<u>78,000</u>
Net decrease in cash and cash equivalents	(2,657,758)	(1,568,539)
Cash and cash equivalents at beginning of period	6,769,603	10,003,375
Cash and cash equivalents at end of period	<u>\$ 4,111,845</u>	<u>\$ 8,434,836</u>
<b>Supplemental disclosure of Cash Flow Information:</b>		
Conversion of Series C Preferred Stock to Common Stock	<u>\$ 2,679,019</u>	<u>\$ —</u>

The accompanying notes are an integral part of these condensed consolidated financial statements

**CYTRX CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(Unaudited)

**For the Six Month Period Ended June 30, 2022**

	<b>Series B Preferred Shares Issued</b>	<b>Common Shares Issued</b>	<b>Common Stock Amount</b>	<b>Additional Paid-in Capital</b>	<b>Accumulated Deficit</b>	<b>Total</b>
Balance at January 1, 2022	—	38,780,038	\$ 38,780	\$484,790,650	\$(484,075,711)	\$ 753,719
Exercise of stock options	—	21,404	21	(21)	—	—
Conversion of preferred shares	—	4,681,819	4,682	2,006,609	—	2,011,351
Preferred dividend	—	—	—	—	(206,000)	(206,000)
Issuance of restricted stock for compensation	—	—	—	3,299	—	3,299
Net loss	—	—	—	—	(1,295,911)	(1,295,911)
Balance at March 31, 2022	—	43,483,261	\$ 43,483	\$486,800,597	\$(485,577,622)	\$ 1,266,458
Conversion of preferred shares	—	1,554,130	1,554	666,114	—	667,668
Issuance of restricted stock for compensation	—	—	—	2,805	—	2,805
Preferred dividend	—	—	—	—	(202,567)	(202,567)
Net loss	—	—	—	—	(793,776)	(793,776)
Balance at June 30, 2022	—	45,037,391	\$ 45,037	\$487,469,516	\$(486,573,965)	\$ 940,588

**For the Six Month Period Ended June 30, 2021**

	<b>Series B Preferred Shares Issued</b>	<b>Common Shares Issued</b>	<b>Common Stock Amount</b>	<b>Additional Paid-in Capital</b>	<b>Accumulated Deficit</b>	<b>Total</b>
Balance at January 1, 2021	—	36,480,038	\$ 36,480	\$479,561,860	\$ (470,727,380)	\$ 8,870,960
Net loss	—	—	—	—	(1,279,303)	(1,279,303)
Balance at March 31, 2021	—	36,480,038	\$ 36,480	\$479,561,860	\$ (472,006,683)	\$ 7,591,657
Exercise of stock options	—	300,000	300	77,700	—	78,000
Net loss	—	—	—	—	(1,175,796)	(1,175,796)
Balance at June 30, 2021	—	36,780,038	\$ 36,780	\$479,639,560	\$ (473,182,479)	\$ 6,493,861

**CYTRX CORPORATION**  
**NOTES TO CONDENSED FINANCIAL STATEMENTS**  
**For the Six-Months Period Ended June 30, 2022 and 2021**  
**(Unaudited)**

**1. Basis of Presentation and Significant Accounting Policies**

***Basis of Presentation and Principles of Consolidation***

The accompanying condensed consolidated financial statements at June 30, 2022 and for the three-month and six-month periods ended June 30, 2022 and 2021, respectively, are unaudited, but include all adjustments, consisting of normal recurring entries, that management believes to be necessary for a fair presentation of the periods presented. Interim results are not necessarily indicative of results for a full year. Balance sheet amounts as of December 31, 2021 have been derived from our audited financial statements as of that date.

The consolidated financial statements included herein have been prepared by us pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations. The consolidated financial statements should be read in conjunction with our audited financial statements contained in its Annual Report on Form 10-K for the year ended December 31, 2021 (the “2021 Annual Report”).

***Going Concern***

The Company’s condensed consolidated financial statements have been presented on the basis that it will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. During the six months ended June 30, 2022, the Company incurred a net loss of \$2,089,687, utilized cash in operations of \$2,248,425, and had an accumulated deficit of \$486,573,965 as of June 30, 2022. In addition, the Company has no recurring revenue. As a result, management has concluded that there is substantial doubt about the Company’s ability to continue as a going concern. The Company’s consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. The Company’s independent registered public accounting firm, in its report on the Company’s consolidated financial statements for the year ended December 31, 2021, has also expressed substantial doubt about the Company’s ability to continue as a going concern.

At June 30, 2022, we had cash and cash equivalents and short-term investments of approximately \$4.1 million. We believe we have sufficient cash to fund operations through March 2023. The continuation of the Company as a going concern is dependent upon its ability to obtain necessary debt or equity financing to continue operations until it begins generating positive cash flow. No assurance can be given that any future financing will be available or, if available, that it will be on terms that are satisfactory to the Company. Even if the Company is able to obtain additional financing, it may contain undue restrictions on our operations, in the case of debt financing or cause substantial dilution for our stockholders, in case of equity financing.

***Use of Estimates***

Preparation of the Company’s consolidated financial statements in conformance with U.S. GAAP requires the Company’s management to make estimates and assumptions that impact the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingent assets and liabilities in the Company’s consolidated financial statements and accompanying notes. The significant estimates in the Company’s consolidated financial statements relate to the valuation of equity awards, recoverability of deferred tax assets, and estimated useful lives of fixed assets. The Company bases estimates and assumptions on historical experience, when available, and on various factors that it believes to be reasonable under the circumstances. The Company evaluates its estimates and assumptions on an ongoing basis, and its actual results may differ from estimates made under different assumptions or conditions.

***Stock Compensation***

The Company accounts for share-based awards to employees and nonemployees directors and consultants in accordance with the provisions of ASC 718, *Compensation—Stock Compensation*, and under the recently issued guidance following FASB’s pronouncement, ASU 2018-07, *Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*. Under ASC 718, and applicable updates adopted, share-based awards are valued at fair value on the date of grant and that fair value is recognized over the requisite service, or vesting, period. The Company values its equity awards using the Black-Scholes option pricing model, and accounts for forfeitures when they occur.



### ***Foreign Currency Remeasurement***

The U.S. dollar has been determined to be the functional currency for the net assets of our German operations. The transactions are recorded in the local currencies and are remeasured at each reporting date using the historical rates for nonmonetary assets and liabilities and current exchange rates for monetary assets and liabilities at the balance sheet date. Exchange gains and losses from the remeasurement of monetary assets and liabilities are recognized in other income (loss). The Company recognized a loss of approximately \$(10,900) and \$(16,200), respectively, for the three-month and six-month periods ended June 30, 2022 and a gain (loss) of approximately \$3,500 and \$(9,500), respectively, for the three and six-month periods ended June 30, 2021, respectively.

### **Basic and Diluted Net Loss Per Common Share**

Basic and diluted net loss per common share is computed based on the weighted-average number of common shares outstanding for the period. Diluted net income (loss) per share is computed by dividing the net income (loss) applicable to common stockholders by the weighted average number of common shares outstanding plus the number of additional common shares that would have been outstanding if all dilutive potential common shares had been issued using the treasury stock method. Potential common shares are excluded from the computation when their effect is antidilutive. Common share equivalents that could potentially dilute net loss per share in the future, and which were excluded from the computation of diluted loss per share, were as follows:

	<b>As of June 30,</b>	
	<b>2022</b>	<b>2021</b>
Options to acquire common stock	1,847,611	2,862,700
Warrants to acquire common stock	4,167	4,167
Series C Convertible preferred stock	3,127,688	—
Investment option	11,363,637	—
	<b>16,343,103</b>	<b>2,866,867</b>

### **Fair Value Measurements**

Assets and liabilities recorded at fair value on the balance sheets are categorized based upon the level of judgment associated with the inputs used to measure the fair value. Level inputs are as follows:

Level 1 – quoted prices in active markets for identical assets or liabilities.

Level 2 – other significant observable inputs for the assets or liabilities through corroboration with market data at the measurement date.

Level 3 – significant unobservable inputs that reflect management’s best estimate of what market participants would use to price the assets or liabilities at the measurement date.

We consider carrying amounts of accounts receivable, accounts payable and accrued expenses to approximate fair value due to the short-term nature of these financial instruments. Our non-financial assets are measured at fair value when there is an indicator of impairment and recorded at fair value only when an impairment charge is recognized.

### ***Recently Issued Accounting Pronouncements***

In June 2016, the FASB issued ASU No. 2016-13, Credit Losses - Measurement of Credit Losses on Financial Instruments (“ASC 326”). The standard significantly changes how entities will measure credit losses for most financial assets, including accounts and notes receivables. The standard will replace today’s “incurred loss” approach with an “expected loss” model, under which companies will recognize allowances based on expected rather than incurred losses. Entities will apply the standard’s provisions as a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is effective. The standard is effective for interim and annual reporting periods beginning after December 15, 2022. The adoption of ASU 2016-13 is not expected to have a material impact on the Company’s financial position, results of operations, and cash flows.

In May 2021, the FASB issued ASU 2021-04, Earnings Per Share (Topic 260), Debt — Modifications and Extinguishments (Subtopic 470-50), Compensation — Stock Compensation (Topic 718), and Derivatives and Hedging — Contracts in Entity’s Own Equity (Subtopic 815-40): Issuer’s Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options (“ASU 2021-04”). ASU 2021-04 provides guidance as to how an issuer should account for a modification of the terms or conditions or an exchange of a freestanding equity-classified written call option (i.e., a warrant) that remains classified after modification or exchange as an exchange of the original instrument for a new instrument. An issuer should measure the effect of a modification or exchange as the difference between the fair value of the modified or exchanged warrant and the fair value of that warrant immediately before modification or exchange and then apply a recognition model that comprises four categories of transactions and the corresponding accounting treatment for each category (equity issuance, debt origination, debt modification, and modifications unrelated to equity issuance and debt origination or modification). ASU 2021-04 is effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. An entity should apply the guidance provided in ASU 2021-04 prospectively to modifications or exchanges occurring on or after the effective date. Early adoption is permitted, including adoption in an interim period. If an entity elects to early adopt ASU 2021-04 in an interim period, the guidance should be applied as of the beginning of the fiscal year that includes that interim period. The adoption of ASU 2021-04 did not have any impact on the Company’s consolidated financial statement presentation or disclosures.

Other recent authoritative guidance issued by the FASB (including technical corrections to the ASC), the American Institute of Certified Public Accountants, and the Securities and Exchange Commission (“SEC”) did not, or are not expected to, have a material impact on the Company’s consolidated financial statements and related disclosures.

## **2. Financing Under Security Purchase Agreement**

On July 13, 2021, the Company entered into a Securities Purchase Agreement (the “Purchase Agreement”) with a single institutional investor (the “Investor”) for aggregate gross proceeds of \$10 million and net proceeds of approximately \$9.2 million. The transaction closed on July 16, 2021. Under the Purchase Agreement, the Company sold and issued (i) 2 million shares of its common stock at a purchase price of \$0.88 per share for total gross proceeds of approximately \$1.76 million in a registered direct offering (the “Registered Direct Offering”) and (ii) 8,240 shares of Series C 10.00% Convertible Preferred Stock (the “Preferred Stock”) at a purchase price of \$1,000 per share, for aggregate gross proceeds of approximately \$8.24 million, in a concurrent private placement (the “Private Placement” and, together with the Registered Direct Offering, the “July 2021 Offerings”). The shares of the Preferred Stock are convertible, upon shareholder approval as described below, into an aggregate of up to 9,363,637 shares of common stock at a conversion price of \$0.88 per share. Holders of the Preferred Stock shall be entitled to receive, and the Company shall pay, cumulative dividends at the rate per share (as a percentage of the stated value per share) of 10.00% per annum, payable quarterly on January 1, April 1, July 1 and October 1, beginning on the first such date after the date of issuance. The terms of the Preferred Stock include beneficial ownership limitations that preclude conversion that would result in the Investor owning in excess of 9.99% of the Company’s outstanding shares of common stock. CytRx also issued to the Investor an unregistered preferred investment option (the “Preferred Investment Option”) that allows for the purchase of up to 11,363,637 shares of common stock for additional gross proceeds of approximately \$10 million if the Preferred Investment Option is exercised in full. The exercise price for the Preferred Investment Option is \$0.88 per share. The Preferred Investment Option has a term equal to five and one-half years commencing upon the Company increasing its authorized common stock following shareholder approval.

The Company accounted for these transactions as a single transaction for accounting purposes and allocated total proceeds to the respective instruments based upon the relative fair value of each instrument. The Company determined that the relative fair value of (i) the 2,000,000 shares of the common stock issued was \$859,218, (ii) the relative fair value of the 8,240 shares of Preferred Stock was \$4,022,700, and (iii) the relative fair value of the Preferred Investment Option was \$4,293,872 based upon a Black Scholes valuation model. As such, the Company recorded as Additional Paid in Capital the fair value of the common stock and Preferred Investment Option of \$5,153,090, and the fair value of the Series C Preferred Stock was \$4,022,700 which was reflected as mezzanine equity due to certain clauses of the Securities Purchase Agreement.

On October 1, 2021, the Company paid a quarterly 10% dividend to the Investor in the amount of \$171,668; on January 1, 2022, the Company paid a quarterly dividend of \$206,000 and on April 1, 2022, the Company paid a quarterly dividend of \$202,567.

On March 15, 2022, at a special meeting of its stockholders which was originally opened and subsequently adjourned on September 23, 2021, the Company’s stockholders, by an affirmative vote of the majority of the Company’s outstanding shares of capital stock, approved the amendment to the Company’s Restated Certificate of Incorporation to effect an increase in the number of shares of authorized common stock, par value \$0.001 per share, from 41,666,666 shares to 62,393,940 shares, and to make a corresponding change to the number of authorized shares of capital stock in order to comply with the Company’s contractual obligations under the Purchase Agreement.

On March 28, 2022, the Investor converted 4,120 shares of the Series C Preferred Stock in accordance with the initial terms of the agreement and received 4,681,819 common shares. On May 15, 2022, the Investor converted a further 1,368 shares of the Series C Preferred Stock and received 1,554,130 common shares.

#### *Terms of Series C Preferred Stock*

Under the Certificate of the Designations, Powers, Preferences and Rights of Series C 10.00% Convertible Preferred Stock (the “Certificate of Designations”), each share of Series C Preferred Stock will be convertible, subject to the Beneficial Ownership Limitation (as defined below), at either the holder’s option or at the Company’s option (a “Company Initiated Conversion”) at any time following stockholder approval having been obtained to amend our restated certificate of incorporation to increase the number of authorized shares of common stock above 41,666,666 (the “Stockholder Approval”), into common stock at a conversion rate equal to the quotient of (i) the Series C Stated Value of \$1,000 (the “Series C Stated Value”) plus, in the case of a Company Initiated Conversion, all accrued and accumulated and unpaid dividends on such share of Series C Preferred Stock, divided by (ii) the initial conversion price of \$0.88, subject to specified adjustments for stock splits, stock dividends, reclassifications or other similar events as set forth in the Certificate of Designations.

The Certificate of Designations contains limitations that prevent the holder thereof from acquiring shares of common stock upon conversion that would result in the number of shares of common stock beneficially owned by such holder and its affiliates exceeding 9.99% of the total number of shares of common stock outstanding immediately after giving effect to the conversion (the “Beneficial Ownership Limitation”), except that upon notice from the holder to the Company, the holder may increase or decrease the amount of ownership of outstanding shares of common stock after converting the holder’s shares of Series C Preferred Stock, provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of outstanding shares of the common stock outstanding immediately after giving effect to the issuance of shares of common stock upon conversion of the shares of Series C Preferred Stock held by the holder and provided that any increase in the Beneficial Ownership Limitation shall not be effective until 61 days following notice to the Company.

Each holder of shares of Preferred Stock is entitled to receive dividends, commencing from the date of issuance of the Preferred Stock. Such dividends may be paid only when, as and if declared by the Board of Directors of the Company (the “Board”), out of assets legally available therefore, quarterly in arrears on the first day of January, April, July and October in each year, commencing on the date of issuance, at the dividend rate of 10.00% per year. Such dividends are cumulative and continue to accrue on a daily basis whether or not declared and whether or not we have assets legally available therefore.

Under the Certificate of Designations, each share of Series C Preferred Stock carries a liquidation preference equal to the Series C Stated Value plus accrued and unpaid and accumulated dividends thereon. Such liquidation preference is payable upon certain change in control transactions and accordingly, this instrument is classified as mezzanine (temporary equity).

The holders of the Series C Preferred Stock may vote their shares of Preferred Stock on an as-converted basis, subject to the Beneficial Ownership Limitation (which Beneficial Ownership Limitation shall be calculated on a basis which includes the number of shares of common stock which are issuable upon conversion of the unconverted Series C Stated Value beneficially owned by a holder or any of its affiliates or attribution parties on all matters submitted to the holders of common stock for approval). The Company may not take the following actions without the prior consent of the holders of at least a majority of the Preferred Stock then outstanding: (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend the Certificate of Designations, (b) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation (as defined in the Certificate of Designations) senior to, or otherwise *pari passu* with, the Preferred Stock, (c) amend its Certificate of Incorporation or other charter documents in any manner that adversely affects any rights of the holders of the Preferred Stock, (d) increase the number of authorized shares of Preferred Stock, or (e) enter into any agreement with respect to any of the foregoing.

#### *Terms of Preferred Investment Option*

The Preferred Investment Option to purchase up to 11,363,637 shares of common stock is exercisable at a price of \$0.88 per share. The Preferred Investment Option has a term of five and one-half years from the Authorized Share Increase Date. The holders of the Preferred Investment Option may exercise the Preferred Investment Option on a cashless basis, solely to the extent there is no effective registration statement registering, or the prospectus in such registration statement is not available for the resale of the shares of common stock issuable at the time of exercise. The Company is prohibited from effecting an exercise of any Preferred Investment Option to the extent that such exercise would result in the number of shares of common stock beneficially owned by such holder and its affiliates exceeding 9.99% of the total number of shares of common stock outstanding immediately after giving effect to the exercise of the Preferred Investment Options by the holder (the “PIO Beneficial Ownership Limitation”), except that upon notice from the holder to the Company, the holder may increase or decrease the amount of ownership of outstanding shares of Common Stock after exercising the holder’s Preferred Investment Option, provided that the PIO Beneficial Ownership Limitation in no event exceeds 9.99% of the number of outstanding shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of common stock upon exercise of the Preferred Investment Option held by the holder and provided that any increase in the PIO Beneficial Ownership Limitation shall not be effective until 61 days following notice to the Company. The Preferred Investment Option provides for a Black-Scholes payout upon certain fundamental change transactions relating to the Company, as specified therein. If the fundamental change transaction is within the control of the Company, the payout will be in cash. Otherwise, the payout will be in the same form of consideration received by the common stockholders as a result of this transaction.

### *Registration Rights Agreement*

In connection with the July 2021 Offerings, the Company entered into a registration rights agreement, dated as of July 13, 2021 (the “Registration Rights Agreement”), with the investor named therein, pursuant to which the Company will undertake to file, within five calendar days of the date of the filing of the proxy statement seeking the Stockholder Approval, a resale registration statement to register the shares of common stock issuable upon: (i) the conversion of the Preferred Stock sold in the Private Placement and (ii) the exercise of the Preferred Investment Option (the “Registrable Securities”); and to cause such registration statement to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than 75 days following the pricing date of this offering, or no later than 105 days following such date in the event of a “full review” by the SEC, and shall use its reasonable best efforts to keep such registration statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such registration statement have been sold or are otherwise able to be sold pursuant to Rule 144. The Registration Rights Agreement provides for liquidated damages to the extent that the Company does not file or maintain a registration statement in accordance with the terms thereof. The registration rights agreement entered into between us and the Investor on July 13, 2021, contains a triggering event which would require us to pay to any holder of the Preferred Stock an amount in cash, as partial liquidated damages and not as a penalty, on a monthly basis equal to the product of 2.0% multiplied by the aggregate subscription amount paid by such holder for shares of Preferred Stock pursuant to the Purchase Agreement; provided, however, that such partial liquidated damages shall not exceed 24% of the aggregate subscription amounts paid by such holders pursuant to the Purchase Agreement, or \$1,977,600. If we fail to pay any partial liquidated damages within seven days after the date payable, we will be required to pay interest on any such amounts at a rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law.

During the year ended December 31, 2021, the Company did not have enough shares of authorized common stock to issue the shares of common stock issuable upon the exercise or conversion of the Registrable Securities, as applicable. For the year ended December 31, 2021, the Company attempted, but was unsuccessful, to obtain its stockholders’ approval for the increase in its shares of authorized common stock at a special meeting that was originally opened and subsequently adjourned on September 23, 2021, and accordingly, the Company was unable to meet its registration rights obligation as of December 31, 2021. As such, the Company recognized an aggregate of approximately \$1.1 million in liquidated damages during the year ended December 31, 2021, of which includes a provision of \$615,123 as an accrual for estimated damages until stockholders’ approval is achieved and the registration statement registering the shares of common stock issuable upon the exercise or conversion, as applicable, of the Registrable Securities is filed. On March 15, 2022, the Company received its stockholders’ approval to increase its authorized shares and filed a certificate of amendment to its Certificate of Incorporation to increase the number of authorized shares from 41,666,666 shares to 63,227,273 shares on the same date. The Company filed its registration statement registering the shares underlying the Registrable Securities on March 23, 2022 and has provided for liquidated damages through that date. The registration statement was declared effective on March 28, 2022.

### **3. Series D Preferred Stock**

On May 19, 2022, the Board declared a dividend of one one-thousandth of a share of Series D Preferred Stock, par value \$0.01 per share (“Series D Preferred Stock”), for each outstanding share of Company’s Common Stock to stockholders of record at 5:00 p.m. Eastern Time on May 20, 2022. The Certificate of Designation of Series D Preferred Stock (the “Series D Certificate of Designation”) provides that all shares of Series D Preferred Stock that are not present in person or by proxy at any meeting of stockholders held to vote on the Reverse Stock Split (as defined in the Series D Certificate of Designation) and the Adjournment Proposal (as defined in the Series D Certificate of Designation) as of immediately prior to the opening of the polls at such meeting (the “Initial Redemption Time”) will automatically be redeemed in whole, but not in part, by the Company at the Initial Redemption Time without further action on the part of the Company or the holder of shares of Series D Preferred Stock (the “Initial Redemption”). Any outstanding shares of Series D Preferred Stock that have not been redeemed pursuant to an Initial Redemption will be redeemed in whole, but not in part, (i) if such redemption is ordered by the Board in its sole discretion, automatically and effective on such time and date specified by the Board in its sole discretion or (ii) automatically upon the approval by the Company’s stockholders of the Reverse Stock Split at any meeting of the stockholders held for the purpose of voting on such proposal (the “Subsequent Redemption”).

On July 27, 2022, at the Company's 2022 Annual Meeting of Stockholders, the Company's stockholders approved a proposal to authorize the Board, in its discretion but prior to July 26, 2023, to amend the Company's Restated Certificate of Incorporation to effect a reverse stock split of all of the outstanding shares of the Company's Common Stock, at a ratio in the range of 1-for-2 to 1-for-100, with such ratio to be determined by the Board, and all outstanding shares of Series D Preferred Stock were automatically redeemed. As a result, no shares of Series D Preferred Stock remain outstanding.

#### 4. Leases

We lease office space and office copiers related primarily to the administrative activities. The Company accounts for leases under ASC 842, *Leases*, which requires an entity to recognize a right-of-use asset and a lease liability for virtually all leases.

In January 2020, the Company signed a new four-year lease which covers approximately 2,771 square feet of office and storage space. This lease is effective March 1, 2020 and extends through February 29, 2024, with a right to extend the term for an additional five-year period, subject to the terms and conditions set forth in the lease agreement. The monthly rent is \$13,855, subject to annual increases of 3.5 percent. In February 2020, the Company renewed its additional storage space lease, which requires us to make monthly payments of \$1,370, subject to a 2.5 percent annual increase. The Company recorded a right of use asset and lease liability obligation of \$715,310 upon inception of these leases. The Company also reclassified a previously existing right-of-use asset of \$66,271 from other assets to right-of-use asset.

As of June 30, 2022, the balance of right-of-use assets was approximately \$307,000, and the balance of total lease liabilities was approximately \$322,000.

Future minimum lease payments under non-cancelable operating leases under ASC 842 as of June 30, 2022 are as follows:

	<b>Operating Lease Payments</b>
July 2022 – June 2023	\$ 197,600
July 2023 – June 2024	134,690
<b>Total future minimum lease payments</b>	<b>332,290</b>
Less: present value adjustment	9,960
Operating lease liabilities at June 30, 2022	322,330
Less: current portion of operating lease liabilities	132,940
Operating lease liabilities, net of current portion	<b>\$ 189,390</b>

The components of rent expense and supplemental cash flow information related to leases for the period are as follows:

	<b>Period Ended June 30, 2022</b>
<b><u>Lease Cost</u></b>	
Operating lease cost (included in General and administrative expenses in the Company's condensed Consolidated Statements of Operations)	\$ 99,462
<b><u>Other information</u></b>	
Cash paid for amounts included in the measurement of lease liabilities for the period ended June 30, 2022	\$ 91,894
Weighted average remaining lease term – operating leases (in years)	1.7
Average discount rate	3.6%

## 5. Stock Based Compensation

The Company has a 2008 Stock Incentive Plan (“2008 Plan”) under which 5 million shares of common stock are reserved for issuance. As of June 30, 2022, there were approximately 1.8 million shares subject to outstanding stock options and approximately 0.8 million shares outstanding related to restricted stock grants issued from the 2008 Plan. This plan expired on November 20, 2018 and thus no further shares are available for future grant under this plan.

In November 2019, the Company adopted a 2019 Stock Incentive Plan (“2019 Plan”) under which 5.4 million shares of common stock are reserved for issuance. As of June 30, 2022, there were 0.5 million shares subject to outstanding stock options. This plan expires on November 14, 2029.

There were no options granted in either of the periods ended June 30, 2022 and June 30, 2021.

During the six months ended June 30, 2022, 50,000 options were exercised on a cashless basis in exchange for 21,404 shares of common stock.

Presented below is our stock option activity:

	Six Months Ended June 30, 2022			
	Number of Options (Employees)	Number of Options (Non-Employees)	Total Number of Options	Weighted-Average Exercise Price
Outstanding at January 1, 2022	2,462,830	365,000	2,827,830	\$ 8.09
Exercised	(50,000)	—	(50,000)	\$ 0.26
Forfeited or expired	(930,219)	—	(930,219)	\$ 10.65
Outstanding at June 30, 2022	1,482,611	365,000	1,847,611	\$ 7.02
Exercisable at June 30, 2022	1,482,611	365,000	1,847,611	\$ 7.02

The following table summarizes significant ranges of outstanding stock options under our plans at June 30, 2022:

Range of Exercise Prices	Number of Options	Weighted- Average Remaining Contractual Life (years)	Weighted- Average Exercise Price	Number of Options Exercisable	Weighted- Average Remaining Contractual Life (years)	Weighted- Average Exercise Price
\$0.26 - \$1.00	500,000	7.46	\$ 0.26	500,000	7.46	\$ 0.26
\$1.01 - \$3.00	634,006	5.21	\$ 1.96	634,006	5.21	\$ 1.96
\$3.01 - \$15.00	454,166	2.77	\$ 11.92	454,166	2.77	\$ 11.92
\$15.01 - \$42.42	259,439	1.75	\$ 23.82	254,439	1.75	\$ 23.82
	1,847,611	5.28	\$ 3.32	1,847,611	5.28	\$ 3.32

The Company recorded no stock compensation costs in either periods ended June 30, 2022 or June 30, 2021 as all options had previously vested. At June 30, 2022, there was no unrecognized compensation expense related to unvested stock options.

The aggregate intrinsic value of the outstanding options and options vested as of June 30, 2022 was \$0.

At June 30, 2022 and June 30, 2021, the Company had 4,167 warrants outstanding at a weighted average exercise price of \$10.44. At June 30, 2022, the 4,167 warrants outstanding had no intrinsic value.

### Restricted Stock

On December 15, 2021, the Company granted to Jennifer Simpson, who serves on our Board of Directors, 25,000 shares of restricted common stock, pursuant to the 2019 Plan. This restricted stock vests on the first anniversary of the date of the grant. The fair value of the restricted stock is based on the market price of the Company’s shares on the grant date. The fair value of the restricted stock on the grant date was \$11,200 and recognized stock compensation expense was \$6,104 during the six months ended June 30, 2022. As of June 30, 2022, there is approximately \$5,148 of unamortized stock compensation that will be amortized through December 2022.

## 6. Stockholder Protection Rights Plan

On December 13, 2019, the Board of Directors of the Company, authorized and declared a dividend of one right (a “Right”) for each of the Company’s issued and outstanding shares of common stock, par value \$0.001 per share . The dividend was paid to the stockholders of record at the close of business on December 23, 2019. Each Right entitled the registered holder, subject to the terms of the Original Rights Agreement (as defined below), to purchase from the Company one one-thousandth of a share of the Company’s Series B Junior Participating Preferred Stock, par value \$0.01 per share (the “Preferred Stock”), at a price of \$5.00 (the “Purchase Price”), subject to certain adjustments. The description and terms of the Rights were set forth in the Rights Agreement, dated as of December 13, 2019 (the “Original Rights Agreement”), by and between the Company and American Stock Transfer & Trust Company, LLC, as Rights Agent (the “Rights Agent”).

On November 12, 2020, the Board approved an amendment and restatement of the Original Rights Agreement (as amended and restated, the “Amended and Restated Rights Agreement”) to effect certain changes to the Original Rights Agreement, including (i) reducing the duration to a term of three years, subject to certain earlier expiration as described in more detail below, and (ii) lowering the beneficial ownership threshold at which a person or group of persons becomes an Acquiring Person (as defined below) to 4.95% or more of the Company’s outstanding shares of Common Stock, subject to certain exceptions. The Amended and Restated Rights Agreement is designed to discourage (i) any person or group of persons from acquiring beneficial ownership of more than 4.95% of the Company’s shares of Common Stock and (ii) any existing stockholder currently beneficially holding 4.95% or more of the Company’s shares of Common Stock from acquiring additional shares of the Company’s Common Stock.

The purpose of the Amended and Restated Rights Agreement is to protect value by preserving the Company’s ability to utilize its net operating losses and certain other tax attributes (collectively, the “Tax Benefits”) to offset potential future income tax obligations. The Company’s ability to use its Tax Benefits would be substantially limited if it experiences an “ownership change,” as such term is defined in Section 382 of the Internal Revenue Code of 1986, as amended (the “Tax Code”). A corporation generally will experience an ownership change if the percentage of the corporation’s stock owned by its “5-percent shareholders,” as defined in Section 382 of the Tax Code, increases by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. The Amended and Restated Rights Agreement is intended to reduce the likelihood the Company would experience an ownership change under Section 382 of the Tax Code.

The Rights will not be exercisable until the earlier to occur of (i) the close of business on the tenth business day after a public announcement or filing that a person or group of affiliated or associated persons has become an “Acquiring Person,” which is defined as a person or group of affiliated or associated persons that, at any time after the date of the Amended and Restated Rights Agreement, has acquired, or obtained the right to acquire, beneficial ownership of 4.95% or more of the Company’s outstanding shares of Common Stock, subject to certain exceptions or (ii) the close of business on the tenth business day after the commencement of, or announcement of an intention to commence, a tender offer or exchange offer the consummation of which would result in any person becoming an Acquiring Person (the earlier of such dates being called the “Distribution Date”) (provided, however, that if such tender or exchange offer is terminated prior to the occurrence of the Distribution Date, then no Distribution Date shall occur as a result of such tender or exchange offer).

The Rights, which are not exercisable until the Distribution Date, will expire at or prior to the earliest of (i) the close of business on November 16, 2023; (ii) the time at which the Rights are redeemed pursuant to the Amended and Restated Rights Agreement; (iii) the time at which the Rights are exchanged pursuant to the Amended and Restated Rights Agreement; (iv) the time at which the Rights are terminated upon the occurrence of certain mergers or other transactions approved in advance by the Board; and (v) the close of business on the date set by the Board following a determination by the Board that (x) the Amended and Restated Rights Agreement is no longer necessary or desirable for the preservation of the Tax Benefits or (y) no Tax Benefits are available to be carried forward or are otherwise available (the earliest of (i), (ii), (iii), (iv) and (v) is referred to as the “Expiration Date”).

Each share of Preferred Stock will be entitled, when, as and if declared, to a preferential per share quarterly dividend payment equal to the greater of (i) \$1.00 per share or (ii) an amount equal to 1,000 times the dividend declared per share of Common Stock. Each share of Preferred Stock will entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Company. In the event of any merger, consolidation or other transaction in which shares of Common Stock are converted or exchanged, each share of Preferred Stock will be entitled to receive 1,000 times the amount received per one share of Common Stock.

The Purchase Price payable, and the number of shares of Preferred Stock or other securities or property issuable, upon exercise of the Rights are each subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of the Preferred Stock, (ii) upon the grant to holders of the Preferred Stock of certain rights or warrants to subscribe for or purchase Preferred Stock or convertible securities at less than the then-current market price of the Preferred Stock or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness or assets (excluding regular periodic cash dividends or dividends payable in Preferred Stock) or of subscription rights or warrants (other than those referred to above). The number of outstanding Rights and the number of one one-thousandths of a share of Preferred Stock issuable upon exercise of each Right are also subject to adjustment in the event of a stock split, reverse stock split, stock dividends and other similar transactions involving the Common Stock.

In the event that any person or group of affiliated or associated persons becomes an Acquiring Person, each holder of a Right, other than the Rights beneficially owned by the Acquiring Person, affiliates and associates of the Acquiring Person and certain transferees thereof (which will thereupon become null and void), will thereafter have the right to receive upon exercise of a Right that number of shares of Common Stock having a market value of two times the Purchase Price.

In the event that, after a person or a group of affiliated or associated persons has become an Acquiring Person, the Company is acquired in a merger or other business combination transaction, or 50% or more of the Company's assets or earning power are sold, proper provision will be made so that each holder of a Right will thereafter have the right to receive, upon the exercise thereof at the then-current purchase price of the Right, that number of shares of common stock of the acquiring company having a market value at the time of that transaction equal to two times the Purchase Price.

With certain exceptions, no adjustment in the Purchase Price will be required unless such adjustment would require an increase or decrease of at least one percent (1%) in the Purchase Price. No fractional shares of Preferred Stock will be issued (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depositary receipts) and, in lieu thereof, an adjustment in cash will be made based on the market price of the Preferred Stock on the trading day immediately prior to the date of exercise.

At any time after any person or group of affiliated or associated persons becomes an Acquiring Person and prior to the acquisition of beneficial ownership by such Acquiring Person of 50% or more of the outstanding shares of Common Stock, the Board, at its option, may exchange each Right (other than Rights owned by such person or group of affiliated or associated persons which will have become void), in whole or in part, at an exchange ratio of one share of Common Stock per outstanding Right (subject to adjustment).

In connection with any exercise or exchange of the Rights, no holder of a Right will be entitled to receive shares of Common Stock if receipt of such shares would result in such holder, together with such holder's affiliates and associates, beneficially owning more than 4.95% of the then-outstanding Common Stock (such shares, the "Excess Shares") and the Board determines that such holder's receipt of Excess Shares would jeopardize or endanger the value or availability of the Tax Benefits or the Board otherwise determines that such holder's receipt of Excess Shares is not in the best interests of the Company. In lieu of such Excess Shares, such holder will only be entitled to receive cash or a note or other evidence of indebtedness with a principal amount equal to the then-current market price of the Common Stock multiplied by the number of Excess Shares that would otherwise have been issuable.

At any time before the Distribution Date, the Board may redeem the Rights in whole, but not in part, at a price of \$0.001 per Right (subject to certain adjustments) (the "Redemption Price"). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish.

Immediately upon the action of the Board electing to redeem or exchange the Rights, the Company shall make a public announcement thereof, and upon such election, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

Until a Right is exercised or exchanged, the holder thereof, as such, will have no rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends.

The Board may amend or supplement the Amended and Restated Rights Agreement without the approval of any holders of Rights, including, without limitation, in order to (a) cure any ambiguity, (b) correct inconsistent provisions, (c) alter time period provisions, including the Expiration Date, or (d) make additional changes to the Amended and Restated Rights Agreement that the Board deems necessary or desirable. However, from and after the date any person or group of affiliated or associated persons becomes an Acquiring Person, the Amended and Restated Rights Agreement may not be supplemented or amended in any manner that would adversely affect the interests of the holders of Rights.



## 7. Commitments and Contingencies

### *Commitments*

#### Aldoxorubicin

We have an agreement with Vergell Medical (formerly with KTB Tumorforschungs GmbH) (“Vergell”) for the exclusive license of patent rights held by Vergell for the worldwide development and commercialization of aldoxorubicin. Under the agreement, we must make payments to Vergell in the aggregate of \$7.5 million upon meeting clinical and regulatory milestones up to and including the product’s second final marketing approval. We also have agreed to pay:

- commercially reasonable royalties based on a percentage of net sales (as defined in the agreement);
- a percentage of non-royalty sub-licensing income (as defined in the agreement); and
- milestones of \$1 million for each additional final marketing approval that we obtain.

In the event that we must pay a third party in order to exercise our rights to the intellectual property under the agreement, we are entitled to deduct a percentage of those payments from the royalties due Vergell, up to an agreed upon cap.

#### Arimoclomol

The agreement relating to our worldwide rights to arimoclomol provides for our payment of up to an aggregate of \$3.65 million upon receipt of milestone payments from Orphazyme A/S. On May 31, 2022, Orphazyme announced that it had completed the sale of substantially all of its assets and business activities for cash consideration of \$12.8 million and assumption of liabilities estimated to equal approximately \$5.2 million to KemPharm (the “KemPharm Transaction”). KemPharm is a specialty biopharmaceutical company focused on the discovery and development of novel treatments for rare central nervous system (“CNS”) diseases. As part of the KemPharm Transaction, all of Orphazyme’s obligations to CytRx under the 2011 Arimoclomol Agreement, including with regard to milestone payments and royalties on sales, were assumed by KemPharm.

#### Innovive

Under the merger agreement by which we acquired Innovive, we agreed to pay the former Innovive stockholders a total of up to approximately \$18.3 million of future earnout merger consideration, subject to our achievement of specified net sales under the Innovive license agreements. The earnout merger consideration, if any, will be payable in shares of our common stock, subject to specified conditions, or, at our election, in cash or by a combination of shares of our common stock and cash. Our common stock will be valued for purposes of any future earnout merger consideration based upon the trading price of our common stock at the time the earnout merger consideration is paid.

As of June 30, 2022 and December 31, 2021, no amounts were due under the above agreements.

### *Contingencies*

We apply the disclosure provisions of ASC 460, *Guarantees* (“ASC 460”) to its agreements that contain guarantees or indemnities by the Company. We provide (i) indemnifications of varying scope and size to certain investors and other parties for certain losses suffered or incurred by the indemnified party in connection with various types of third-party claims; and (ii) indemnifications of varying scope and size to officers and directors against third party claims arising from the services they provide to the Company.

The Company evaluates developments in legal proceedings and other matters on a quarterly basis. The Company records accruals for loss contingencies to the extent that the Company concludes that it is probable that a liability has been incurred and the amount of the related loss can be reasonably estimated.

In December 2019, a novel strain of coronavirus, COVID-19, was first identified in China and has surfaced in several regions across the world. In March 2020, the disease was declared a pandemic by the World Health Organization. As the situation with Covid-19 continues to evolve, the companies which are working to further develop and commercialize our products, ImmunityBio and Orphazyme, could be materially and adversely affected by the risks, or the public perception of the risks, related to this pandemic. Among other things, the active and planned clinical trials by ImmunityBio and Orphazyme and their regulatory approvals, if any, may be delayed or interrupted, which could delay or adversely affect the Company’s potential receipt of milestone and royalty payments within the disclosed time periods and increase expected costs. As of the date of this filing, senior management and administrative staff are working primarily remotely and will return to their offices at a yet to be determined date.

## 8. Subsequent Events

As discussed on Note 3, on July 27, 2022, both the Initial Redemption and the Subsequent Redemption occurred. As a result, no shares of Series D Preferred Stock remain outstanding.

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

#### *Overview*

CytRx Corporation (“CytRx”) is a biopharmaceutical research and development company specializing in oncology. The Company’s focus is on the discovery, research and clinical development of novel anti-cancer drug candidates that employ novel technologies that target chemotherapeutic drugs to solid tumors and reduce off-target toxicities. During 2017, CytRx’s discovery laboratory in Freiburg, Germany, synthesized and tested over 75 rationally designed drug conjugates with highly potent anti-cancer payloads, culminating in the creation of two distinct classes of compounds. Four lead candidates (LADR-7 through LADR-10) were selected based on *in vitro* and animal studies in several different cancer models, stability, and manufacturing feasibility. In addition, a novel companion diagnostic, ACDx™, was developed to identify patients with cancer who are most likely to benefit from treatment with these drug candidates.

On June 1, 2018, CytRx launched Centurion BioPharma Corporation (“Centurion”), a wholly-owned subsidiary, and transferred into Centurion all of its assets, liabilities and personnel associated with the laboratory operations in Freiburg, Germany. In connection with said transfer, the Company and Centurion entered into a Management Services Agreement whereby the Company agreed to render advisory, consulting, financial and administrative services to Centurion, for which Centurion shall reimburse the Company for the cost of such services plus a 5% service charge. On December 21, 2018, CytRx announced that Centurion had concluded the pre-clinical phase of development for its four LADR drug candidates, and of its albumin companion diagnostic (ACDx™). As a result of completing this work, operations taking place at the pre-clinical laboratory in Freiburg, Germany were no longer needed and the lab was closed at the end of January 2019.

On March 9, 2022, Centurion merged with and into CytRx, with CytRx absorbing all of Centurion’s assets and continuing after the merger as the surviving entity (the “Merger”). The Merger was implemented through an agreement and plan of merger pursuant to Section 253 of the General Corporation Law of the State of Delaware and did not require approval from either our or Centurion’s stockholders. The Certificate of Ownership merging Centurion into CytRx was filed with the Secretary of State of Delaware on March 9, 2022.

#### *The LADR Technology Offers the Opportunity for Multiple Pipeline Drugs*

Our LADR™ (Linker Activated Drug Release) technology platform consists of an organic backbone that is attached to a chemotoxic agent. The purpose of the LADR backbone is to first target and deliver the chemotoxic agent to the tumor environment, and then to release the chemotoxic agent within the tumor. By delivering, concentrating, and releasing the chemotoxic agent within the tumor, one expects to reduce the off-target side-effects of the chemotherapeutic, which in turn allows for several-fold higher dosing of the chemotherapeutic to the patient. Being small organic molecules, we expect LADR-based drugs to offer the benefits of targeting the tumor without the complexity, side effects, and expense inherent in macromolecules such as antibodies and nanoparticles.

Our LADR-based drugs use circulating albumin as the binding target and as the trojan horse to deliver the LADR drugs to the tumor. Albumin is the most abundant protein in plasma and accumulates inside tumors due to the aberrant vascular structure that exists within them. Tumors use albumin as a nutritional source and for transport of signaling and other molecules that are important to the maintenance and growth of the tumor, which makes albumin an excellent target for drugs that are intended for solid tumors.

Our LADR development efforts are focused on two classes of ultra-high potency albumin-binding drugs. These LADR-based drugs, LADR7, 8, 9, and 10, combine the proprietary LADR™ backbone with novel derivatives of the auristatin and maytansinoid drug classes. Auristatin and maytansinoid are highly potent toxins, and require targeting to the tumor for safe administration to humans, as is the case for the FDA-approved drugs Adcetris (auristatin antibody-drug-conjugate by Seagen) and Kadcyca (maytansine antibody-drug-conjugate by Genentech). We believe that LADR-based drugs offer the benefits of tumor targeting without the disadvantages of antibodies and other macromolecules, which include expense, complexity, and negative side effects. Additionally, albumin is a very well-characterized drug target, which the Company believes will reduce clinical and regulatory risks.

Our postulated mechanism of action for the LADR-based drugs is as follows:

- after administration, the linker portion of the drug conjugate forms a rapid and specific covalent bond to the cysteine-34 position of circulating albumin;
- circulating albumin preferentially accumulates in tumors due to a mechanism called “Enhanced Permeability and Retention”, which results in lower exposure to the drug in noncancerous tissues of the heart, liver, and other organs;
- once localized at the tumor, the acid-sensitive linker of the LADR backbone is cleaved due to the lower pH within the tumor and within the tumor microenvironment; and
- free active drug is then released within the tumor, causing tumor cell death.

The first-generation LADR-based drug is called Aldoxorubicin. Aldoxorubicin is the well-known drug doxorubicin attached to the LADR backbone. Aldoxorubicin has been administered to over 600 human subjects in human clinical trials and has proven the concept of LADR in that several-fold more doxorubicin can be safely administered to patients when the doxorubicin is attached to LADR than when administered as native doxorubicin. Aldoxorubicin has been licensed to ImmunityBio, and is currently in a Phase II registrational intent trial for pancreatic cancer. Aldoxorubicin is expected to enter a Phase I/II trial for glioblastoma in 2022 or 2023.

The IND-enabling work that remains prior to applying to the FDA for first-in-human studies for LADR7-10 is limited due to the extensive experimentation already completed. For example, in the case of LADR7, a manufacturing run under Good Laboratory Practices (GLP) must be completed and some toxicology studies completed using the GLP material must be completed in animals. Toxicology studies with LADR7 have already been completed with non-GLP manufactured drug. Management estimates that these final IND-enabling activities for LADR7 would take approximately 12 months to complete, once funded and initiated, and that Investigational New Drug approval and first-in-human dosing would be achieved within approximately 6-9 months after IND.

Our novel companion diagnostic, ACDx™ (albumin companion diagnostic) was developed to identify patients with cancer who are most likely to benefit from treatment with the four LADR lead assets. The Company has not yet determined whether the use of a companion diagnostic will be necessary or helpful, and plans to continue to investigate this question in parallel to the pre-clinical and clinical development of LADRs 7-10.

The LADR backbone and drugs that employ LADR are protected by domestic and international patents, and additional patents are pending.

#### ***Partnering of Aldoxorubicin***

On July 27, 2017, the Company entered into an exclusive worldwide license with ImmunityBio, Inc. (formerly known as NantCell, Inc. (“ImmunityBio”)), granting to ImmunityBio the exclusive rights to develop, manufacture and commercialize aldoxorubicin in all indications. As a result, we are no longer working on development of aldoxorubicin (ImmunityBio merged with NantKwest, Inc. in March 2021). As part of the license agreement, ImmunityBio made a strategic investment of \$13 million in CytRx common stock at \$6.60 per share (adjusted to reflect our 2017 reverse stock split), a premium of 92% to the market price on that date. The Company also issued ImmunityBio a warrant to purchase up to 500,000 shares of common stock at \$6.60, which expired on January 26, 2019. The Company is entitled to receive up to an aggregate of \$343 million in potential milestone payments, contingent upon achievement of certain regulatory approvals and commercial milestones. The Company is also entitled to receive ascending double-digit royalties for net sales for soft tissue sarcomas and mid to high single digit royalties for other indications. There can be no assurance that ImmunityBio will achieve such milestones, approvals or sales with respect to aldoxorubicin.

ImmunityBio is conducting an open-label, randomized, Phase 2 study of a combination of immunotherapy, aldoxorubicin, and standard-of-care chemotherapy versus standard-of-care chemotherapy alone for the treatment of locally advanced or metastatic pancreatic cancer in patients who have had 1 or 2 lines of treatment (Cohorts A and B) or 3 or greater lines of treatment (Cohort C). In June 2022, Immunity Bio presented data at the American Society of Clinical Oncology meeting showing that patients receiving combination immunotherapy with aldoxorubicin plus standard-of-care chemotherapy experienced overall survival of 5.8 months, compared to 3 months for historical control patients that had received only the standard-of-care chemotherapy (n=78, 95% confidence interval 4 to 6.9 months). An additional 25 patients in the experimental group remain in the study. Thus far, there have been no treatment-related deaths, and serious adverse events have been uncommon (6%). Immunity Bio plans to meet with the FDA in 2022 to discuss the path for approval of this combination therapy for pancreatic cancer.

Aldoxorubicin has received Orphan Drug Designation (ODD) by the U.S. Food and Drug Administration (“FDA”) for the treatment of soft tissue sarcoma (“STS”). ODD provides several benefits including seven years of market exclusivity after approval, certain R&D related tax credits, and protocol assistance by the FDA. European regulators granted aldoxorubicin Orphan designation for STS which confers ten years of market exclusivity among other benefits.

ImmunityBio also lists ongoing clinical studies in head and neck cancer and has submitted a protocol with the FDA for glioblastoma; it is currently reviewing its options in STS.

### ***Transfer of Rights to Molecular Chaperone Assets***

In 2011, CytRx sold the rights to arimoclomol and iroxanadine, based on molecular chaperone regulation technology, to Orphazyme A/S (“Orphazyme”, formerly Orphazyme ApS) in exchange for a one-time, upfront payment and the right to receive up to a total of \$120 million in milestone payments upon the achievement of certain pre-specified regulatory and business milestones, as well as royalty payments based on a specified percentage of any net sales of products derived from arimoclomol (the “2011 Arimoclomol Agreement”). Orphazyme transferred its rights and obligations under the 2011 Arimoclomol Agreement to KemPharm Denmark A/S (“KemPharm”), a wholly owned subsidiary of KemPharm Inc., in May 2022.

In May 2021, Orphazyme announced that the pivotal phase 3 clinical trial for arimoclomol in Amyotrophic Lateral Sclerosis did not meet its primary and secondary endpoints, reducing the maximum amount that CytRx currently has the right to receive under the 2011 Arimoclomol Agreement to approximately \$100 million. Orphazyme also tested arimoclomol in Niemann-Pick disease Type C (“NPC”) and Gaucher disease, and following a Phase II/III trial submitted to the FDA a New Drug Application for the treatment of NPC with arimoclomol. On June 18, 2021, Orphazyme announced it had received a complete response letter (the “Complete Response Letter”) from the FDA indicating the need for additional data. In late October 2021, Orphazyme announced it held a Type A meeting with the FDA, at which the FDA recommended that Orphazyme submit additional data, information and analyses to address certain topics in the Complete Response Letter and engage in further interactions with the FDA to identify a pathway to resubmission. The FDA concurred with Orphazyme’s proposal to remove the cognition domain from the NPC Clinical Severity Scale (“NPCCSS”) endpoint, with the result that the primary endpoint is permitted to be recalculated using the 4- domain NPCCSS, subject to the submission of additional requested information which Orphazyme had publicly indicated that it intended to provide. To bolster the confirmatory evidence already submitted, the FDA affirmed that it would require additional in vivo or pharmacodynamic (PD)/pharmacokinetic (PK) data. Orphazyme planned to request a Type C Meeting with the FDA in the second quarter of 2022. Subject to discussions with the regulatory body, Orphazyme had publicly indicated that it planned to resubmit the NDA for arimoclomol in the second half of 2022.

Orphazyme had also submitted a Marketing Authorization Application (“MAA”) with the European Medicines Agency (the “EMA”). In February 2022, Orphazyme announced that although they had received positive feedback from the Committee for Medicinal Products for Human Use (“CHMP”) of the EMA, they were notified by the CHMP of a negative trend vote on the MAA for arimoclomol for NPC following an oral explanation. In March 2022 Orphazyme removed its application with the EMA. Orphazyme has publicly indicated that it will assess its strategic options and provide an update to the market at the applicable time.

On May 31, 2022, Orphazyme announced that it had completed the sale of substantially all of its assets and business activities for cash consideration of \$12.8 million and assumption of liabilities estimated to equal approximately \$5.2 million to KemPharm (the “KemPharm Transaction”). KemPharm is a specialty biopharmaceutical company focused on the discovery and development of novel treatments for rare central nervous system (“CNS”) diseases. As part of the KemPharm Transaction, all of Orphazyme’s obligations to CytRx under the 2011 Arimoclomol Agreement, including with regard to milestone payments and royalties on sales, were assumed by KemPharm. KemPharm is expected to continue the early access programs with arimoclomol, and to continue to pursue the potential approval of arimoclomol as a treatment option for NPC. KemPharm indicated it plans on resubmitting the NDA for arimoclomol in the first quarter of 2023.

## Recent Developments

### *Series D Preferred Stock*

On May 19, 2022, the Board declared a dividend of one one-thousandth of a share of Series D Preferred Stock, par value \$0.01 per share, for each outstanding share of Company's Common Stock to stockholders of record at 5:00 p.m. Eastern Time on May 20, 2022. The Certificate of Designation of Series D Preferred Stock provides that all shares of Series D Preferred Stock that are not present in person or by proxy at any meeting of stockholders held to vote on the Reverse Stock Split (as defined in the Series D Certificate of Designation) and the Adjournment Proposal (as defined in the Series D Certificate of Designation) as of immediately prior to the opening of the polls at such meeting (Initial Redemption Time) will automatically be redeemed in whole, but not in part, by the Company at the Initial Redemption Time without further action on the part of the Company or the holder of shares of Series D Preferred Stock (Initial Redemption). Any outstanding shares of Series D Preferred Stock that have not been redeemed pursuant to an Initial Redemption will be redeemed in whole, but not in part, (i) if such redemption is ordered by the Board in its sole discretion, automatically and effective on such time and date specified by the Board in its sole discretion or (ii) automatically upon the approval by the Corporation's stockholders of the Reverse Stock Split at any meeting of the stockholders held for the purpose of voting on such proposal (Subsequent Redemption). On July 27, 2022, at the Company's 2022 Annual Meeting of Stockholders, the Company's stockholders approved the Reverse Stock Split and the Adjournment Proposal, and all outstanding shares of Series D Preferred Stock were automatically redeemed. As a result, no shares of Series D Preferred Stock remain outstanding.

On July 27, 2022, at the Company's 2022 Annual Meeting of Stockholders, the Company's stockholders approved a proposal to authorize the Board, in its discretion but prior to July 26, 2023, to amend the Company's Restated Certificate of Incorporation to effect a reverse stock split of all of the outstanding shares of the Company's Common Stock, at a ratio in the range of 1-for-2 to 1-for-100, with such ratio to be determined by the Board, and all outstanding shares of Series D Preferred Stock were automatically redeemed. As a result, no shares of Series D Preferred Stock remain outstanding.

### *Critical Accounting Policies and Estimates*

Management's discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. On an ongoing basis, management evaluates its estimates, including those related to revenue recognition, impairment of long-lived assets, including finite-lived intangible assets, research and development expenses and clinical trial expenses and stock-based compensation expense.

We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from these estimates under different assumptions or conditions.

Our significant accounting policies are summarized in Note 2 to our financial statements contained in the 2021 Annual Report.

We believe the following critical accounting policies affect our more significant judgments and estimates used in the preparation of our financial statements.

#### *Stock-Based Compensation*

The Company accounts for share-based awards to employees and nonemployees directors and consultants in accordance with the provisions of ASC 718, *Compensation—Stock Compensation*, and under the recently issued guidance following FASB's pronouncement, ASU 2018-07, *Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*. Under ASC 718, and applicable updates adopted, share-based awards are valued at fair value on the date of grant and that fair value is recognized over the requisite service, or vesting, period. The Company values its equity awards using the Black-Scholes option pricing model, and accounts for forfeitures when they occur.

### ***Inflation Risk***

The Company does not believe that inflation has had a material effect on its operations to date, other than the impact of inflation on the general economy. However, there is a risk that the Company's operating costs could become subject to inflationary pressures in the future, which would have the effect of increasing the Company's operating costs, and which would put additional stress on the Company's working capital resources.

### ***Liquidity and Capital Resources***

#### ***Going Concern***

The Company's condensed consolidated financial statements have been presented on the basis that it will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. During the six months ended June 30, 2022, the Company incurred a net loss of \$2,089,687, utilized cash in operations of \$2,248,429, and had an accumulated deficit of \$486,573,965 as of June 30, 2022. In addition, the Company has no recurring revenue. As a result, management has concluded that there is substantial doubt about the Company's ability to continue as a going concern. The Company's consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. The Company's independent registered public accounting firm, in its report on the Company's consolidated financial statements for the year ended December 31, 2021, has also expressed substantial doubt about the Company's ability to continue as a going concern.

At June 30, 2022, we had cash and cash equivalents and short-term investments of approximately \$4.1 million. The continuation of the Company as a going concern is dependent upon its ability to obtain necessary debt or equity financing to continue operations until it begins generating positive cash flow. No assurance can be given that any future financing will be available or, if available, that it will be on terms that are satisfactory to the Company. Even if the Company is able to obtain additional financing, it may contain undue restrictions on our operations, in the case of debt financing or cause substantial dilution for our stockholders, in case or equity financing.

Net cash used in operating activities for the six months ended June 30, 2022 was \$2.2 million, which was primarily the result of a net loss from operations of \$2.1 million, and \$0.1 million in net cash outflows associated with changes in assets and liabilities. The net cash outflows associated with changes in assets and liabilities were primarily due to decreases of \$0.9 million of prepaid expenses and other current assets, \$0.1 million of insurance claim receivable and \$0.1 million of amortization of right-of-use asset, offset by reductions of \$0.3 million of accounts payable, \$0.8 million in accrued liabilities and \$0.1 million of decrease in lease liabilities.

Net cash used in operating activities for the six months ended June 30, 2021 was \$1.6 million, which was primarily the result of a net loss from operations of \$2.5 million, offset by \$0.8 million in net cash inflows associated with changes in assets and liabilities. The net cash inflows associated with changes in assets and liabilities were primarily due to increases of \$0.8 million of prepaid expenses and other current assets, \$0.3 million of insurance claim receivable, \$0.1 million of accrued expenses and other current liabilities and \$0.1 million of amortization of right-of-use asset, offset by reductions of \$0.4 million of accounts payable and \$0.9 million of decrease in lease liabilities.

We purchased minimal fixed assets in the six-month period ended June 30, 2022 and a minimal amount of fixed assets in the six-month period ended June 30, 2021, and do not expect any significant capital spending during the next 12 months.

We paid dividends on the preferred shares of \$0.4 million in the six-month period ended June 30, 2022. Net cash provided by financing activities for the six months ended June 30, 2021 was \$0.1 million, resulting from the exercise of stock options.

We continue to evaluate potential future sources of capital, as we do not currently have commitments from any third parties to provide us with additional capital and we may not be able to obtain future financing on favorable terms, or at all. The results of our technology licensing efforts and the actual proceeds of any fund-raising activities will determine our ongoing ability to operate as a going concern. Our ability to obtain future financings through joint ventures, product licensing arrangements, royalty sales, equity financings, grants or otherwise is subject to market conditions and our ability to identify parties that are willing and able to enter into such arrangements on terms that are satisfactory to us. Depending upon the outcome of our fundraising efforts, the accompanying financial information may not necessarily be indicative of our future financial condition. Failure to obtain adequate financing would adversely affect our ability to operate as a going concern.

We do not have any off-balance sheet arrangements.

*There can be no assurance that we will be able to generate revenues from our product candidates and become profitable. Even if we become profitable, we may not be able to sustain that profitability.*

### **Results of Operations**

We recorded a net loss of approximately \$0.8 million and \$2.1 million for the three-month and six-month periods ended June 30, 2022, respectively, as compared to a net loss of approximately \$1.2 million and \$2.5 million for the three-month and six-month periods ended June 30, 2021, respectively.

We recognized no licensing revenue in the six-month periods ended June 30, 2022 and 2021. All future licensing fees under our current licensing agreements are dependent upon successful development milestones being achieved by the licensor.

### **General and Administrative Expenses**

	<b>Three-Month Period Ended June 30,</b>		<b>Six-Month Period Ended June 30,</b>	
	<b>2022</b>	<b>2021</b>	<b>2022</b>	<b>2021</b>
	<b>(In thousands)</b>		<b>(In thousands)</b>	
General and administrative expenses	\$ 1,141	\$ 1,178	\$ 2,430	\$ 2,454
Amortization of stock awards	3	—	6	—
Depreciation and amortization	4	3	7	7
	<u>\$ 1,148</u>	<u>\$ 1,181</u>	<u>\$ 2,443</u>	<u>\$ 2,461</u>

General and administrative expenses include all administrative salaries and general corporate expenses, including legal expenses. Our general and administrative expenses, excluding stock expense, non-cash expenses and depreciation and amortization, were \$1.1 million and \$2.45 million for the three and six-month periods ended June 30, 2022, respectively, and \$1.2 million and \$2.5 million, respectively, for the same periods in 2021. Our general and administrative expenses in the comparative periods excluding amortization of stock awards, non-cash expenses and depreciation and amortization, decreased marginally.

### **Depreciation and Amortization**

Depreciation expense reflects the depreciation of our equipment and furnishings.

### **Forgiveness of Accounts Payable**

During the three-month period ended June 30, 2022, one of the Company's vendors issued a credit note of \$353,565 related to past general and administrative services.

### **Interest Income**

Interest income was approximately \$1,000 and \$2,000 for the three-month and six-month periods ended June 30, 2022, respectively, as compared to \$4,000 and \$9,000, respectively, for the same periods in 2021.

### **Item 3. — Quantitative and Qualitative Disclosures About Market Risk**

Our exposure to market risk is limited primarily to interest income sensitivity, which is affected by changes in the general level of U.S. interest rates, particularly because a significant portion of our investments are in short-term debt securities issued by the U.S. government and institutional money market funds. The primary objective of our investment activities is to preserve principal. Due to the nature of our short-term investments, we believe that we are not subject to any material market risk exposure. We do not have any speculative or hedging derivative financial instruments or foreign currency instruments. If interest rates had varied by 10% in the three-month period ended June 30, 2022, it would not have had a material effect on our results of operations or cash flows for that period.

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

##### ***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, performed an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Securities Exchange Act Rule 13a-15(c)) as of the end of the quarterly period covered by this Quarterly Report. Based on that evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC.

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all errors and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

##### ***Changes in Controls over Financial Reporting***

There was no change in our internal control over financial reporting that occurred during the quarter ended June 30, 2022 that materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. We continually seek to assure that all of our controls and procedures are adequate and effective. Any failure to implement and maintain improvements in the controls over our financial reporting could cause us to fail to meet our reporting obligations under the SEC's rules and regulations. Any failure to improve our internal controls to address the weaknesses we have identified could also cause investors to lose confidence in our reported financial information, which could have a negative impact on the trading price of our common stock.

### **PART II — OTHER INFORMATION**

#### **Item 1. — Legal Proceedings**

None.

#### **Item 1A. — Risk Factors**

You should carefully consider and evaluate the information in this Quarterly Report and the risk factors set forth under the caption “Item 1A. Risk Factors” in our 2021 Annual Report, which was filed with the SEC on March 23, 2022. The risk factors associated with our business have not materially changed compared to the risk factors disclosed in the 2021 Annual Report.

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

None.

#### **Item 3. — Defaults Upon Senior Securities**

None.

#### **Item 4. — Mine Safety Disclosure**

Not applicable.

#### **Item 5. — Other Information**

None.

#### **Item 6. — Exhibits**

The exhibits listed in the accompanying Index to Exhibits are filed as part of this Quarterly Report and incorporated herein by reference.



**SIGNATURES**

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

**CytRx Corporation**

Date: August 11, 2022

By: /s/ JOHN Y. CALOZ  
John Y. Caloz  
Chief Financial Officer

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## INDEX TO EXHIBITS

<b>Exhibit Number</b>	<b>Description</b>
3.1	<a href="#">Certificate of Correction to the Certificate of Amendment of Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.3 to the Company's Form 8-K filed with the SEC on May 19, 2022).</a>
3.2	<a href="#">Certificate of Designation of Series D Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Form 8-A filed with the SEC on May 19, 2022).</a>
3.3	<a href="#">Amended and Restated By-Laws of CytRx Corporation, effective November 12, 2020 and Amendment No. 1 to the Amended and Restated Bylaws of dated May 19, 2022.</a>
31.1	<a href="#">Certification of Chief Executive Officer pursuant to Rule 13A-14(a) or 15D-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2	<a href="#">Certification of Chief Financial Officer pursuant to Rule 13A-14(a) or 15D-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</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
101.SCH	Inline XBRL Schema Document
101.CAL	Inline XBRL Calculation Linkbase Document
101.DEF	Inline XBRL Definition Linkbase Document
101.LAB	Inline XBRL Label Linkbase Document
101.PRE	Inline XBRL Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL)

**Exhibit 3.3**

**AMENDED AND RESTATED BY-LAWS**

**OF**

**CYTRX CORPORATION  
(a Delaware Corporation)**

**REFLECTING AMENDMENTS  
THROUGH NOVEMBER 12, 2020**

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**ARTICLE I  
CAPITAL STOCK**

1. **CERTIFICATED OR UNCERTIFICATED SHARES OF STOCK.** Shares of stock in CytRx Corporation (the "Corporation") shall be represented by certificates, or shall be uncertificated, as determined by the Board of Directors of the Corporation (the "Board") in its discretion. Every holder of stock in the Corporation, if any, represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Corporation by the Chairman or Vice-Chairman of the Board, if any, or by the President or a Vice-President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation certifying the number of shares owned by such holder in the Corporation (and, if the stock of the Corporation shall be divided into classes or series, the class and series of such shares). If such a certificate is countersigned by a transfer agent other than the Corporation or its employee or by a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon such a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue.

Whenever the Corporation shall be authorized to issue more than one class of stock or more than one series of any class of stock, and whenever the Corporation shall issue any shares of its stock as partly paid stock, the certificates, if any, representing shares of any such class or series or of any such partly paid stock shall set forth thereon any statements prescribed by the General Corporation Law of the State of Delaware (the "General Corporation Law"). Any restrictions on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificates or in the uncertificated share registration records of the Corporation.

The Corporation may issue a new certificate of stock, or, if such stock is no longer certificated, a registration of stock, in place of any certificate theretofore issued by it alleged to have been lost, stolen, or destroyed, and the Board may require the owner of any lost, stolen, or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate or the issuance of any such new certificate or uncertificated shares.

2. **FRACTIONAL SHARE INTERESTS.** The Corporation may, but shall not be required to, issue fractions of a share. In lieu thereof it shall either pay in cash the fair value of fractions of a share, as determined by the Board, to those entitled thereto or issue scrip or fractional warrants in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip or fractional warrants shall not entitle the holder to any rights of a stockholder except as therein provided. Such scrip or fractional warrants may be issued subject to the condition that the same shall become void if not exchanged for certificated or uncertificated shares representing full shares of stock, as the case may be, before a specified date, or subject to the condition that the shares of stock for which such scrip or fractional warrants are exchangeable may be sold by the Corporation and the proceeds thereof distributed to the holders of such scrip or fractional warrants, or subject to any other conditions which the Board may determine.

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3. STOCK TRANSFERS. Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, transfers or registration of transfers of shares of stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his or her attorney or legal representative thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation or with a transfer agent or a registrar, if any, and on surrender of the certificate or certificates for such shares of stock properly endorsed, or, if such shares are uncertificated, by notification to the Corporation or its stock transfer agent of the transfer of such shares, accompanied by written authorization properly executed, and the payment of all taxes due thereon.

## **ARTICLE II STOCKHOLDERS**

1. RECORD DATE FOR STOCKHOLDERS. For the purpose of determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment or postponement thereof, or to express consent to or dissent from any corporate action in writing without a meeting, or for the purpose of determining stockholders entitled to receive payment of any dividend or other distribution or the allotment of any rights, or to exercise any rights in respect of any change, conversion, or exchange of stock, or for the purpose of any other lawful action, the Board may fix, in advance, a date as the record date for any such determination of stockholders. Such date shall not be more than sixty days nor fewer than ten days before the date of such meeting, nor more than sixty days prior to any other action. If no record date is fixed, the record date for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto. When a determination of stockholders of record entitled to notice of or to vote at any meeting of stockholders has been made as provided in this paragraph, such determination shall apply to any adjournment or postponement thereof; provided, however, that the Board may fix a new record date for the adjourned or postponed meeting.

2. MEANING OF CERTAIN TERMS. As used herein in respect of the right to notice of a meeting of stockholders or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term "share" or "shares" or "share of stock" or "shares of stock" or "stockholder" or "stockholders" refers to an outstanding share or shares of stock and to a holder or holders of record of outstanding shares of stock when the Corporation is authorized to issue only one class of shares of stock, and said reference is also intended to include any outstanding share or shares of stock and any holder or holders of record of outstanding shares of stock of any class upon which or upon whom the Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation") confers such rights where there are two or more classes or series of shares of stock or upon which or upon whom the General Corporation Law confers such rights notwithstanding that the Certificate of Incorporation may provide for more than one class or series of shares of stock, one or more of which are limited or denied such rights thereunder; provided, however, that no such right shall vest in the event of an increase or decrease in the authorized number of shares of stock of any class or series which is otherwise denied voting rights under the provisions of the Certificate of Incorporation.

### 3. STOCKHOLDERS MEETINGS.

TIME. The annual meeting of the stockholders of the Corporation for the election of directors and for the transaction of such other business as properly may come before such meeting shall be held on the date and at the time fixed, from time to time, by the Board, provided, that the first annual meeting shall be held on a date within thirteen months after the organization of the Corporation, and each successive annual meeting shall be held on a date within thirteen months after the date of the preceding annual meeting unless the Board determines in good faith to extend the date of such successive annual meeting. A special meeting of the stockholders shall be held on the date and at the time fixed by the Board pursuant to a resolution of the Board adopted by a majority of the Board. Any previously scheduled annual or special meeting of stockholders may be postponed by action of the Board taken prior to the time previously scheduled for such annual or special meeting of stockholders. The annual or special meeting may be postponed by the Corporation to such time and place as is specified in the notice of postponement of such meeting.

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PLACE. Annual meetings and special meetings shall be held at such place, if any, within or without the State of Delaware, including by means of remote communications, as the Board from time to time may fix. Whenever the Board shall fail to fix such place, the meeting shall be held at the registered office of the Corporation in the State of Delaware.

REMOTE COMMUNICATIONS. The Board, acting in its sole discretion, may establish guidelines and procedures in accordance with applicable provisions of the General Corporation Law and any other applicable law for the participation by stockholders and proxyholders in a meeting of stockholders by means of remote communications, and may determine that any meeting of stockholders will not be held at any place but will be held solely by means of remote communications. Stockholders and proxyholders complying with such procedures and guidelines and otherwise entitled to vote at a meeting of stockholders, shall be deemed present in person and entitled to vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communications.

CALL. Annual meetings and special meetings may be called only by the Board or by any officer instructed by the directors to call the meeting.

NOTICE OR WAIVER OF NOTICE. Written notice of all meetings shall be given, stating (i) the place, if any, date, and time of the meeting, (ii) the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting and (iii) stating the place within the city or other municipality or community at which the list of stockholders of the Corporation may be examined pursuant to and in accordance with the terms set forth in the following paragraph. The notice of an annual meeting shall state that the meeting is called for the election of directors and for the transaction of other business which may properly come before the meeting, and shall (if any, other action which could be taken at a special meeting is to be taken at such annual meeting) state the additional purpose or purposes. The notice of a special meeting shall in all instances state the purpose or purposes for which the meeting is called. If any action is proposed to be taken which would, if taken, entitle stockholders to receive payment for their shares of stock, the notice shall include a statement of that purpose and to that effect. Except as otherwise provided by the General Corporation Law, a copy of the notice of any meeting shall be given, personally, by mail, or by electronic means where permissible, not fewer than ten days nor more than sixty days before the date of the meeting, unless the lapse of the prescribed period of time shall have been waived, and shall be directed to each stockholder at his or her record address or at such other address which he or she may have furnished by request in writing to the Secretary of the Corporation. Notice by mail shall be deemed to be given when deposited, with postage thereon prepaid, in the United States mail. If a meeting is adjourned or postponed to another time, and such adjournment or postponement is thirty days or fewer, and/or to another place, it shall not be necessary to give notice of the adjourned or postponed meeting unless the Board, after adjournment or postponement, fixes a new record date for the adjourned or postponed meeting. Notice need not be given to any stockholder who submits a written waiver of notice by him or her before or after the time stated therein. Attendance of a person at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders need be specified in any written waiver of notice.

STOCKHOLDER LIST. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this Section shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held in person, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communications, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided within the notice of the meeting. The stock registration records of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section or the books of the Corporation, or to vote at any meeting of stockholders.

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**CONDUCT OF MEETING.** Meetings of the stockholders shall be presided over by one of the following officers in the order of seniority and if present and acting - the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, the President, a Vice-President, or, if none of the foregoing is in office and present and acting, by a chairman to be chosen by resolution of the Board. The Secretary of the Corporation, or in his or her absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, then the chairman of the meeting shall appoint a secretary of the meeting. The Board may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board prior to the meeting, the chairman of the meeting shall have the right and authority to prescribe such rules and regulations and procedures and to do all such acts as, in his or her discretion, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) convening the meeting and recessing or adjourning the meeting (whether or not a quorum is present); (ii) determining and announcing the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote; (iii) the establishment of an agenda or order of business for the meeting; (iv) rules and procedures for maintaining order at the meeting and the safety of those present; (v) limitations on attendance at or participation in the meeting to stockholders of record entitled to vote at the meeting, their duly authorized and constituted proxies, or such other persons as the chairman of the meeting shall determine; (vi) establishing rules and procedures with respect to the recess and adjournment of the meeting; (vii) restrictions on entry to the meeting after the time fixed for the commencement thereof; (viii) restrictions on the use of any audio or video recording devices at the meeting; and (ix) limitations on the time allotted to questions or comments by participants.

The chairman of the meeting shall have the power to recess any such meeting at any time and for any reason, without notice other than announcement at the meeting. In addition to making any other determinations that may be appropriate to the conduct of the meeting, the chairman of the meeting shall, if the facts warrant, determine that a matter of business was not properly brought before the meeting and if such chairman should so determine, such chairman shall so declare to the meeting and any such matter or business determined not to be brought before the meeting shall not be transacted or considered.

**PROXY REPRESENTATION.** Every stockholder may authorize another person or persons to act for him or her by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the stockholder or by his or her attorney-in-fact. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

**INSPECTORS.** The Board, in advance of any meeting, may, but need not, appoint one or more inspectors of election, and may designate one or more alternate inspectors, of the vote, as the case may be, to act at the meeting or any adjournment or postponement thereof. If an inspector or inspectors are not appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by him, her or them and execute a certificate of any fact found by him, her or them.

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QUORUM. The holders of a majority of the outstanding shares or stock shall constitute a quorum at a meeting of stockholders for the transaction of any business, but if at any meeting there shall be less than a quorum present, the chairman of the meeting may, to the extent permitted by law, adjourn the meeting from time to time until a quorum shall be present or represented.

VOTING. Each share of common stock shall entitle the holder thereof to one vote. The voting rights of holders of Preferred Stock shall be as set forth in Preferred Stock Designations adopted by the Board in accordance with Article Fourth of the Certificate of Incorporation. In the election of directors, directors shall be elected by a plurality of the votes cast by holders of each class of stock entitled to elect directors or a class of directors. Any other action shall be authorized by an affirmative majority of the shares present in person or represented by proxy and entitled to vote, unless the question is one upon which by express provision of the Certificate of Incorporation or the General Corporation Law a different vote is required, in which case such express provision shall govern and control the decision of such question. In the election of directors, voting need not be by ballot. Voting by ballot shall not be required for any other corporate action except as otherwise provided by the General Corporation Law.

4. STOCKHOLDER ACTION WITHOUT MEETINGS. Whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, the meeting and vote of stockholders may be dispensed with if all of the stockholders who would have been entitled to vote upon the action if such meeting were held shall consent in writing to such corporate action being taken.

5. STOCKHOLDER PROPOSALS. Except as provided in Article III, Section 2 of these By-laws with respect to stockholder nominations of director candidates, any stockholder entitled to vote in the election of directors may propose any action or actions for consideration by the stockholders at any meeting of stockholders only if written notice of such stockholder's intent to propose such action or actions for consideration by the stockholders has been given, either by personal delivery or by registered or certified mail, to the Secretary of the Corporation, not fewer than 120 days nor more than 150 days before the anniversary of the mailing date of the previous year's proxy statement. The deadline for nominations shall apply regardless of any postponement or adjournment of any such meeting and regardless of whether the Corporation is subject to the Securities and Exchange Act of 1934, as amended (the "Exchange Act").

(a) Each such notice shall set forth as to the stockholder giving notice and any Stockholder Associated Person (as defined below):

(1) the name and address, as they appear on the Corporation's books and records of (i) the stockholder who intends to make the proposal, (ii) any other stockholders known by the proposing stockholder to be supporting such proposal and (iii) any Stockholder Associated Person;

(2) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such action or actions for consideration by the stockholders;

(3) the class or series and number of shares of stock of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such Stockholder Associated Person, the date or dates such shares were acquired and the investment intent at the time such shares were acquired;

(4) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or any such Stockholder Associated Person or any such nominee with respect to the Corporation's securities (a "Derivative Instrument");

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(5) to the extent not disclosed pursuant to clause (4) above, the principal amount of any indebtedness of the Corporation or any of its subsidiaries beneficially owned by such stockholder or by any such Stockholder Associated Person, together with the title of the instrument under which such indebtedness was issued and a description of any Derivative Instrument entered into by or on behalf of such stockholder or such Stockholder Associated Person relating to the value or payment of any indebtedness of the Corporation or any such subsidiary;

(6) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or Stockholder Associated Person has a right to vote any shares of stock of the Corporation;

(7) any short interest directly or indirectly held by such stockholder or Stockholder Associated Person in any security issued by the Corporation;

(8) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder or Stockholder Associated Person that are separated or separable from the underlying shares of the Corporation;

(9) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or Stockholder Associated Person is a general partner, or directly or indirectly, owns an interest in a general partner;

(10) any performance-related fees (other than an asset-based fee) that such stockholder or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's or any Stockholder Associated Person's immediate family sharing the same household;

(11) a representation as to whether the stockholder or the Stockholder Associated Person, if any, intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding stock required to approve or adopt the proposal and/or (y) otherwise to solicit proxies from stockholders in support of such proposal or any such nomination made under Article III, Section 2 hereof;

(12) a description of any agreement, arrangement or understanding with respect to the proposal and/or the voting of shares of any class or series of stock of the Corporation between or among the stockholders giving the notice and any such Stockholder Associated Person, if any, on whose behalf the proposal is made, any of their respective affiliates or associates and/or any others acting in concert with any of the foregoing; and

(13) such information regarding each action or person as would be required to be included in a proxy statement filed with the Securities and Exchange Commission pursuant to the proxy rules of the Exchange Act.

For purposes of these By-laws, "Stockholder Associated Person" of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depository) and (iii) any person controlling, controlled by or under common control with such stockholder or a Stockholder Associated Person as defined in the foregoing clauses (i) and (ii).

(b) Each such notice shall also set forth a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these By-laws or some other document of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and any such Stockholder Associated Person, if any, on whose behalf the proposal is made.

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A stockholder providing notice of business proposed to be brought before a meeting shall update and supplement such notice from time to time to the extent necessary so that the information provided or required to be provided in such notice shall be true and correct as of the record date for determining stockholders entitled to notice of the meeting and as of the date that is 15 days prior to the meeting or any adjournment or postponement thereof provided that if the record date for determining the stockholders entitled to vote at the meeting is fewer than 15 days prior to the meeting or any adjournment or postponement thereof, the information shall be supplemented and updated as of such later date. Any such update and supplement shall be delivered in writing to the Secretary of the Corporation at the principal executive offices of the Corporation not later than five days after the record date for determining stockholders entitled to notice of the meeting (in the case of any update or supplement required to be made as of the record date for determining stockholders entitled to notice of the meeting), not later than ten days prior to the date for the meeting or any adjournment or postponement thereof (in the case of any update or supplement required to be made as of 15 days prior to the meeting or any adjournment or postponement thereof) and not later than five days after the record date for determining the stockholders entitled to vote at the meeting, but no later than the day prior to the meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of a date fewer than 15 days prior the date of the meeting or any adjournment or postponement thereof).

In addition to the information required in the stockholder's notice pursuant to this Section, the stockholder shall, at the request of the Corporation, promptly, but in any event within five business days after such request, provide to the Corporation such other information relating to such stockholder's notice as the Corporation may reasonably request.

The chairman of the meeting may refuse to consider any stockholder proposal not made in compliance with the foregoing procedure, in addition to any other basis for such refusal afforded by the Exchange Act or otherwise.

### **ARTICLE III DIRECTORS**

1. FUNCTIONS AND DEFINITION. The business of the Corporation shall be managed by the Board. The use of the phrase "Whole Board" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

#### 2. QUALIFICATIONS AND NUMBER.

(a) Qualifications and Number. Each director of the Corporation shall be a natural person of full age. A director of the Corporation need not be a citizen of the United States, a resident of the State of Delaware or a stockholder of the Corporation. The total number of directors which shall constitute the Whole Board shall be as fixed by resolution of the Board.

(b) Nomination of Candidates. Nominations of candidates for election to the Board at a meeting of the stockholders may be made only by or at the direction of a majority of the Board or by any stockholder entitled to vote in such election who (i) was a stockholder of record of the Corporation at the time of giving the notice provided for in this Article III, Section 2, at the record date for the determination of stockholders entitled to vote at the meeting and at the time the polls are opened at the meeting to receive formal nominations and (ii) timely complies with all requirements of this Article III, Section 2. A nomination may be made by a stockholder only if written notice of the nomination has been given to the Secretary of the Corporation, either by personal delivery or registered or certified mail, not fewer than 120 days nor more than 150 days before the anniversary of the mailing date of the previous year's proxy statement. The deadline for nominations shall apply regardless of any postponement or adjournment of any such meeting and regardless of whether the Company is subject to the Exchange Act. Each such notice shall set forth as to the stockholder giving notice and any Stockholder Associated Person the information required under Article II, Section 5(a).

(1) Each notice shall also set forth as to each nominee:

- (i) the name, address and principal occupation or employment of the person or persons to be nominated;
  - (ii) the number of shares of any class of the Corporation's stock beneficially owned by each such person;
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(iii) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder;

(iv) such other information regarding each nominee proposed by the stockholder as would be required to be disclosed pursuant to Regulation 13D and Regulation 14A under the Exchange Act or included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission if the nominee had been nominated by the Board, regardless of whether such person is subject to the provisions of any such rules or regulations;

(v) a representation signed by the nominee that he or she meets the qualifications specified in Section 2(a); and

(vi) to the extent not already provided by this Article III, Section 2(b), the information required pursuant to Article II, Section 5(a) with respect to each nominee.

(2) For a proposed nominee to be eligible to be a nominee for election as a director of the Corporation, the stockholder nominating such proposed nominee must deliver (in accordance with the method, means and time periods prescribed for delivery of notice under this Section and applicable law) to the Secretary of the Corporation at the principal executive offices of the Corporation (i) a written questionnaire with respect to the background and qualifications of such proposed nominee and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire the proposed nominee or the nominating stockholder shall request in writing from the Secretary of the Corporation with at least 10 days' prior notice); *provided, however*, that in addition to the information required in the stockholder's notice pursuant to this subparagraph (2) of paragraph (b), the stockholder shall, at the request of the Corporation, promptly, but in any event within five (5) business days after such request, submit all completed and signed questionnaires required of the Corporation's directors and provide to the Corporation such other information relating to such person as the Corporation may reasonably request; and (ii) a written representation and agreement (in the form provided by the Secretary of the Corporation upon written request with at least 10 days' prior notice) that such proposed nominee (A) is not and will not become a party to (I) any agreement, arrangement or understanding (whether written or oral) with, and has not given and will not give any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote in such capacity on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (II) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding (whether written or oral) with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation, (C) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable law and all applicable rules of the U.S. exchange upon which the common stock of the Corporation is listed and all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and other guidelines of the Corporation (including a requirement to preserve and maintain the confidentiality of the Corporation's material non-public information), (D) consents to being named in the Corporation's proxy statement and form of proxy as a nominee of the Corporation and to serving a full term if elected as a director of the Corporation, and (E) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

Only persons nominated in accordance with the procedures set forth in this Section 2(b) shall be eligible for election as directors at a meeting of stockholders called for the purpose of electing directors. Accordingly, the chairman of the meeting shall determine whether any nomination by a stockholder has been made in compliance with the foregoing procedure, and if such chairman should so determine that a matter of business was not properly brought before the meeting, such chairman shall so declare at the start of the meeting pursuant to Article II, Section 3 of these By-laws. Any stockholder nomination for a director to be elected by the holders of a class or series of stock of the Corporation must be made by a stockholder of the same class or series.

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A stockholder providing notice of a proposed nomination for election to the Board shall update and supplement such notice from time to time to the extent necessary so that the information provided or required to be provided in such notice shall be true and correct as of the record date for determining stockholders entitled to notice of the meeting and as of the date that is 15 days prior to the meeting or any adjournment or postponement thereof provided that if the record date for determining the stockholders entitled to vote at the meeting is fewer than 15 days prior to the meeting or any adjournment or postponement thereof, the information shall be supplemented and updated as of such later date. Any such update and supplement shall be delivered in writing to the Secretary of the Corporation at the principal executive offices of the Corporation not later than five days after the record date for determining stockholders entitled to notice of the meeting (in the case of any update or supplement required to be made as of the record date for determining stockholders entitled to notice of the meeting), not later than ten days prior to the date for the meeting or any adjournment or postponement thereof (in the case of any update or supplement required to be made as of 15 days prior to the meeting or any adjournment or postponement thereof) and not later than five days after the record date for determining the stockholders entitled to vote at the meeting, but no later than the day prior to the meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of a date fewer than 15 days prior the date of the meeting or any adjournment or postponement thereof).

The Corporation may require the stockholder providing notice of a proposed nomination for election to the Board to furnish such other information as it may reasonably require relating to such stockholder's notice, including information to determine the eligibility of its proposed nominee to serve as a director of the Corporation and to determine the independence of such director under the Exchange Act and rules and regulations thereunder, applicable stock exchange rules and any publicly disclosed standards used by the Board in determining and disclosing the independence of the Corporation's directors.

3. CLASSES, ELECTION, TERM OF OFFICE AND VACANCIES. The directors shall be divided into three classes, designated as Classes I, II and III, with each class consisting as nearly as possible of one-third (1/3) of the total number of directors. The directors elected at the 1997 annual meeting of stockholders shall be placed in such classes and shall serve such terms as were described in the proxy statement delivered to the Corporation's stockholders in connection with such meeting. At the 1998 annual meeting of stockholders and at each subsequent annual meeting of stockholders, directors elected to succeed those whose terms are expiring shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders. The directors shall be elected at annual meetings of the stockholders, and each director elected shall hold office until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. In the interim between annual meetings of stockholders or special meetings of stockholders called for the election of directors and/or for the removal of one or more directors and for the filling of any vacancy in that connection, any vacancy in the Board resulting from a newly created directorship or from the death, resignation or removal of a director may be filled by the vote of a majority of the directors then in office, although less than a quorum, or by the sole remaining director. A director selected to fill such vacancy shall serve until the end of the term of the position filled or until his or her successor is elected and qualified or his or her earlier death, resignation or removal.

#### 4. MEETINGS.

TIME. Meetings shall be held at such time as the Board shall fix, except that the first meeting of a newly elected Board shall be held as soon after its election as the directors may conveniently assemble.

PLACE. Meetings shall be held at such place, if any, within or without the State of Delaware as shall be fixed by the Board.

CALL. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, the President, or a majority of the directors in office.

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NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the directors thereat. The notice of any meeting need not specify the purpose of the meeting. Any requirements of furnishing a notice shall be waived by any director who submits a signed waiver of such notice in writing or by electronic transmission before or after the time stated therein. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

QUORUM AND ACTION. A majority of the Whole Board shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided, that such majority shall constitute at least one-third of the Whole Board. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the General Corporation Law, the act of the Board shall be the act by vote of a majority of the directors present at a meeting, a quorum being present. The quorum and voting provisions herein stated shall not be construed as conflicting with any provisions of the General Corporation Law and these By-laws which govern a meeting of directors held to fill vacancies and newly created directorships in the Board.

CHAIRMAN OF THE MEETING. The Chairman of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairman of the Board, if any and if present and acting, or the President, if present and acting, or any other director chosen by the Board, shall preside.

5. REMOVAL OF DIRECTORS. Any or all of the directors may be removed from the Board only for cause, by action of the stockholders.

6. COMMITTEES. The Board may, by resolution passed by a majority of the Whole Board, designate one or more committees, each committee to consist of two or more of the directors of the Corporation. Any director may belong to any number of committees of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise the powers of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. In the absence or disqualification of any member of any such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

7. ACTION IN WRITING. Any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

#### **ARTICLE IV OFFICERS**

The Board shall elect a Chief Executive Officer, President, a Secretary, and a Treasurer, and may elect a Chairman of the Board, a Vice-chairman thereof, and one or more Vice-Presidents, Assistant Secretaries, and Assistant Treasurers, and may elect or appoint such other officers and agents as are desired. The President may but need not be a director. Any number of offices may be held by the same person.

Officers shall have the powers and duties defined in the resolutions appointing them, or to the extent not set forth therein, officers shall have such powers and duties as are customarily held by persons holding such offices; provided, that the Secretary of the Corporation shall record or cause to be recorded all proceedings of the meetings or of the written actions of the stockholders and of the directors, and any committee thereof, in a book to be kept for that purpose. Unless otherwise provided in these By-laws, in the absence or disability of any officer of the Corporation, the Board or the Chief Executive Officer may, during such period, delegate such officer's powers and duties to any other officer or to any director and the person to whom such powers and duties are delegated shall, for the time being, hold such office.

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Each officer of the Corporation appointed by the Board shall hold office for such terms as may be determined by the Board, or until his or her respective successor is chosen and qualified or until his or her earlier resignation or removal. The Board may remove any officer for cause or without cause.

**ARTICLE V  
CORPORATE SEAL**

The corporate seal shall be in such form as the Board shall prescribe.

**ARTICLE VI  
INDEMNIFICATION**

1. MANDATORY INDEMNIFICATION. The Corporation shall indemnify, to the fullest extent permissible under Delaware law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action or suit by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

2. MANDATORY ADVANCEMENT OF EXPENSES. Expenses reasonably and actually incurred by a director, officer, employee, or agent in the course of defending any suit under Section 1 of this Article VI shall be paid by the Corporation in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amounts if it is ultimately determined that he or she is not entitled to be indemnified by the corporation. The Corporation shall pay these expenses as they are incurred by the person who may be entitled to indemnification.

3. CONTINUATION OF RIGHT TO INDEMNIFICATION. The indemnification and advancement of expenses expressly provided by these By-laws shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators.

4. INTENT OF BY-LAW. The intent of this Article VI is to provide the broadest possible rights to indemnification to the directors, officers, employees and agents of the Corporation permissible under the law of Delaware and not to affect any other right to indemnification that may exist.

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**ARTICLE VII  
FISCAL YEAR**

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board.

**ARTICLE VIII  
CONTROL OVER BY-LAWS**

The power to amend, alter and repeal these By-laws and to adopt new By-laws, except a By-law classifying directors for election for staggered terms, shall be vested in the Board as well as in the stockholders.<sup>1</sup>

**ARTICLE IX  
MISCELLANEOUS PROVISIONS**

1. FORUM FOR ADJUDICATION OF DISPUTES. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the General Corporation Law, the Certificate of Incorporation or these By-laws or (iv) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section.

Any consent to the selection of an alternative forum to the Court of Chancery under this By-law shall be approved by the Board; provided that, when the action asserts a claim for breach of fiduciary duty by any director, such consent shall also be approved by a committee of the Board made up of one or more directors who are not named as defendants in the action, or, if all directors are named as defendants in the action, then directors who are deemed independent under the stock exchange rules applicable to the Corporation shall form the committee.

For purposes of this By-law, and subject to the Corporation's right to consent to an alternative forum as provided above, to the extent the Court of Chancery of the State of Delaware does not have jurisdiction over such claims, then any such claim shall also be solely and exclusively brought in a state or federal court located in the State of Delaware, to the extent such court has subject matter jurisdiction over the action.

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**Exhibit 31.1****CERTIFICATIONS**

I, Stephen Snowdy, Chief Executive Officer of CytRx Corporation, certify that:

1. I have reviewed this quarterly report on Form 10-Q of CytRx Corporation;
  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: August 11, 2022
- By: /s/ STEPHEN SNOWDY  
Stephen Snowdy  
Chief Executive Officer
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## Exhibit 31.2

## CERTIFICATIONS

I, John Y. Caloz, Chief Financial Officer of CytRx Corporation, certify that:

1. I have reviewed this quarterly report on Form 10-Q of CytRx Corporation;
  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: August 11, 2022
- By: /s/ JOHN Y. CALOZ  
John Y. Caloz  
Chief Financial Officer
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**Exhibit 32.1****Certification of Chief Executive Officer**

Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned Chief Executive Officer of CytRx Corporation (the "Company") does hereby certify that to his knowledge:

(i) the accompanying Quarterly Report on Form 10-Q of the Company for the period ended June 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of and for the periods covered in the Report.

Date: August 11, 2022

By: /s/ STEPHEN SNOWDY

Stephen Snowdy  
Chief Executive Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 (Section 906), or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to CytRx Corporation and will be retained by CytRx Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished to the Securities and Exchange Commission as an Exhibit to the Form 10-Q and shall not be considered filed as part of the Form 10-Q.

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**Exhibit 32.2****Certification of Chief Financial Officer**

Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned Chief Financial Officer of CytRx Corporation (the "Company") does hereby certify that to his knowledge:

(i) the accompanying Quarterly Report on Form 10-Q of the Company for the period ended June 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of and for the periods covered in the Report.

Date: August 11, 2022

By: /s/ JOHN Y. CALOZ

John Y. Caloz  
Chief Financial Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 (Section 906), or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to CytRx Corporation and will be retained by CytRx Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished to the Securities and Exchange Commission as an Exhibit to the Form 10-Q and shall not be considered filed as part of the Form 10-Q.

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