

BIODELIVERY SCIENCES INTERNATIONAL INC

Form 10-Q

August 10, 2015

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**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 10-Q**

**(Mark One)**

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

**For the quarterly period ended June 30, 2015**

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

**For the transition period from \_\_\_\_\_ to \_\_\_\_\_**

**Commission file number 001-31361**

**BioDelivery Sciences International, Inc.**

**(Exact name of registrant as specified in its charter)**

<b>Delaware</b> <b>(State or other jurisdiction of</b>	<b>35-2089858</b> <b>(I.R.S. Employer</b>
<b>incorporation or organization)</b>	<b>Identification No.)</b>
<b>4131 ParkLake Ave., Suite 225</b>	
<b>Raleigh, NC</b> <b>(Address of principal executive offices)</b>	<b>27612</b> <b>(Zip Code)</b>
<b>Registrant's telephone number (including area code): 919-582-9050</b>	

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer or a smaller reporting company. See definition of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer <input type="checkbox"/>	Accelerated filer <input checked="" type="checkbox"/>
Non-accelerated filer <input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="checkbox"/>

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

As of August 7, 2015, there were 52,476,926 shares of company Common Stock issued and 52,461,435 shares of company Common Stock outstanding.

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**BioDelivery Sciences International, Inc. and Subsidiaries**

**Quarterly Report on Form 10-Q**

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	<b>June 30, 2015</b>	<b>December 31, 2014</b>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 67,655	\$ 70,472
Accounts receivable, net	1,526	3,141
Inventory	1,533	1,828
Prepaid expenses and other current assets	2,749	2,882
Total current assets	73,463	78,323
Property and equipment, net	4,305	3,890
Goodwill	2,715	2,715
Other intangible assets, net	3,741	4,226
Other assets	684	157
Total assets	\$ 84,908	\$ 89,311
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 12,263	\$ 14,429
Notes payable, current maturities	1,000	8,000
Deferred revenue, current	7,247	6,772
Total current liabilities	20,510	29,201
Notes payable, less current maturities, net	28,653	4,173
Deferred revenue, long-term		841
Other long-term liabilities	825	700
Total liabilities	49,988	34,915
<b>Commitments and contingencies (Notes 6 and 10)</b>		
Stockholders' equity:		
Preferred Stock, \$.001 par value; 5,000,000 shares authorized; 2,093,155 and 2,139,000 shares of Series A Non-Voting Convertible Preferred Stock outstanding at June 30, 2015 and December 31, 2014, respectively	2	2
Common Stock, \$.001 par value; 75,000,000 shares authorized; 52,436,926 and	53	52

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51,603,070 shares issued; 52,421,435 and 51,587,579 shares outstanding at June 30, 2015 and December 31, 2014, respectively

Additional paid-in capital	267,847	259,920
Treasury stock, at cost, 15,491 shares	(47)	(47)
Accumulated deficit	(232,935)	(205,531)
Total stockholders' equity	34,920	54,396
Total liabilities and stockholders' equity	\$ 84,908	\$ 89,311

See notes to condensed consolidated financial statements

**Table of Contents****BIODELIVERY SCIENCES INTERNATIONAL, INC. AND SUBSIDIARIES****CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS****(U.S. DOLLARS, IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)****(Unaudited)**

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2015</b>	<b>2014</b>	<b>2015</b>	<b>2014</b>
Revenues:				
Product sales	\$ 833	\$	\$ 1,510	\$
Product royalty revenues	469	892	663	1,846
Research and development reimbursements	80	2,318	855	10,770
Contract revenues	351	10,675	11,759	21,959
Total Revenues:	1,733	13,885	14,787	34,575
Cost of sales	2,621	687	3,745	1,413
Expenses:				
Research and development	4,506	7,983	11,054	22,606
General and administrative	13,287	7,256	26,468	11,884
Total Expenses:	17,793	15,239	37,522	34,490
Loss from operations	(18,681)	(2,041)	(26,480)	(1,328)
Interest expense, net	(527)	(519)	(947)	(1,074)
Derivative loss		(4,120)		(8,946)
Other (expense) income, net	(3)	9	23	32
Net loss	\$ (19,211)	\$ (6,671)	\$ (27,404)	\$ (11,316)
Basic and diluted loss per share:	\$ (0.37)	\$ (0.14)	\$ (0.53)	\$ (0.24)
Weighted average common stock shares outstanding:	52,401,747	48,521,351	52,156,657	46,290,712

See notes to condensed consolidated financial statements

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**BIODELIVERY SCIENCES INTERNATIONAL, INC. AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**

**(U.S. DOLLARS, IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)**

**(Unaudited)**

	Preferred Stock		Common Stock		Additional	Treasury	Accumulated	Total
	Series A				Paid-In	Stock	Deficit	Stockholders
	Shares	Amount	Shares	Amount	Capital			Equity
<b>Balances, January 1, 2015</b>	2,139,000	\$ 2	51,603,070	\$ 52	\$ 259,920	\$ (47)	\$ (205,531)	\$ 54,396
Stock-based compensation					7,658			7,658
Restricted stock awards			712,677	1	(1)			
Exercise of stock options			75,050		303			303
Exercise of warrants			284		1			1
Short swing profit return					6			6
Conversion of preferred shares to common shares	(45,845)		45,845					
Equity financing costs					(40)			(40)
Net loss							(27,404)	(27,404)
<b>Balances, June 30, 2015</b>	2,093,155	\$ 2	52,436,926	\$ 53	\$ 267,847	\$ (47)	\$ (232,935)	\$ 34,920

See notes to condensed consolidated financial statements

**Table of Contents****BIODELIVERY SCIENCES INTERNATIONAL, INC. AND SUBSIDIARIES****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS****(U.S. DOLLARS, IN THOUSANDS)****(Unaudited)**

	<b>Six months ended</b>	
	<b>June 30,</b>	
	<b>2015</b>	<b>2014</b>
Operating activities:		
Net loss	\$ (27,404)	\$ (11,316)
Depreciation	167	25
Accretion of debt discount	278	321
Amortization of intangible assets	485	485
Derivative loss		8,946
Stock-based compensation expense	7,658	2,479
Changes in assets and liabilities:		
Accounts receivable	1,614	(9,846)
Inventories	295	(795)
Prepaid expenses and other assets	133	30
Accounts payable and accrued expenses	(2,210)	(602)
Deferred revenue	(366)	1,535
Net cash flows from operating activities	(19,350)	(8,738)
Investing activities:		
Purchase of equipment	(583)	(1,020)
Net cash flows from investing activities	(583)	(1,020)
Financing activities:		
Proceeds from sales of securities		62,037
Equity financing costs	(40)	
Proceeds from exercise of stock options	303	2,833
Proceeds from exercise of common stock warrants	1	3,994
Payment on note payable	(3,335)	(4,000)
Proceeds from notes payable	20,667	
Payment of deferred financing fees	(486)	
Return of short swing profits	6	82
Net cash flows from financing activities	17,116	64,946
Net change in cash and cash equivalents	(2,817)	55,188



Cash and cash equivalents at beginning of year	70,472	23,176
<b>Cash and cash equivalents at end of year</b>	<b>\$ 67,655</b>	<b>\$ 78,364</b>
Cash paid for interest	\$ 491	\$ 824

See notes to condensed consolidated financial statements

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**BIODELIVERY SCIENCES INTERNATIONAL, INC. AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(U.S. DOLLARS, IN THOUSANDS)**

**(Unaudited)**

**1. Organization, basis of presentation and summary of significant policies:**

*Overview*

BioDelivery Sciences International Inc., together with its subsidiaries (collectively, the Company or BDSI ) is a specialty pharmaceutical company that is leveraging its novel and proprietary patented drug delivery technologies to develop and commercialize, either on its own or in partnerships with third parties, new applications of proven therapeutics. The Company is focusing on developing products to meet unmet patient needs in the areas of pain management and addiction.

The accompanying unaudited condensed consolidated financial statements include all adjustments (consisting of normal and recurring adjustments) necessary for a fair presentation of these financial statements. The condensed consolidated balance sheet at December 31, 2014 has been derived from the Company's audited consolidated financial statements included in its annual report on Form 10-K for the year ended December 31, 2014. Certain footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States ( GAAP ) have been condensed or omitted pursuant to the Securities and Exchange Commission ( SEC ) rules and regulations. It is suggested that these condensed consolidated financial statements be read in conjunction with the consolidated financial statements and notes thereto included in the Company's annual report on Form 10-K for the year ended December 31, 2014. The Company has reclassified certain amounts within expenses in the Statements of Operations for the three and six month periods ended June 30, 2014 to conform to the current year presentation. These reclassifications had no effect on the measurement of total expenses, loss from operations, or net loss. We also made certain reclassifications in a footnote table for the year ending December 31, 2014 to conform to the current period presentation.

Operating results for the three and six month period ended June 30, 2015 are not necessarily indicative of results for the full year or any other future periods.

As used herein, the Company's common stock, par value \$.001 per share, is referred to as the Common Stock .

*Use of estimates in financial statements*

The preparation of the accompanying condensed consolidated financial statements requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the condensed consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates and assumptions.

*Inventory*

Inventories are stated at the lower of cost or market value with costs determined on the first-in, first-out method. Inventory consists of raw materials, work in process and finished goods. Raw materials include active pharmaceutical ingredient for a product to be manufactured, work in process includes the bulk inventory of laminate prior to being packaged for sale, and finished goods include pharmaceutical products ready for commercial sale.

On a quarterly basis, the Company analyzes its inventory levels and records allowances for inventory that has become obsolete, inventory that has a cost basis in excess of the expected net realizable value and inventory that is in excess of expected demand based upon projected product sales. There were no allowances recorded at June 30, 2015.

#### *Deferred revenue*

Consistent with the Company's revenue recognition policy, deferred revenue represents cash received in advance for licensing fees, consulting, research and development services, related supply agreements and product sales. Such payments are reflected as deferred revenue until recognized under the Company's revenue recognition policy. Deferred revenue is classified as current if management believes the Company will be able to recognize the deferred amount as revenue within twelve months of the balance sheet date.

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**BIODELIVERY SCIENCES INTERNATIONAL, INC. AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(U.S. DOLLARS, IN THOUSANDS)**

**(Unaudited)**

**1. Organization, basis of presentation and summary of significant policies (continued):**

*Revenue recognition*

*Product Sales-* Currently, the Company generates revenue from sales of one product, BUNAVAIL®, which is indicated for the maintenance treatment of opioid dependence and which the Company is self-commercializing. The Company recognizes revenue from its product sales upon transfer of title, which occurs when product is received by its customers. The Company sells its product primarily to large national wholesalers, which have the right to return the products they purchase. The Company is required to reasonably estimate the amount of future returns at the time of revenue recognition. The Company recognizes product sales net of estimated allowances for rebates, price adjustments, chargebacks, prompt payment and other discounts. When the Company cannot reasonably estimate the amount of future product returns, it defers revenues until the risk of product return has been substantially eliminated.

As of June 30, 2015 and December 31, 2014, the Company had \$1.2 million and \$0.8 million of deferred revenue related to sales of BUNAVAIL® to wholesalers for which future returns could not be reasonably estimated at the time of sale. Deferred revenue is recognized when the product is sold to the end user, based upon prescriptions filled. To estimate product sold to end users, the Company relies on third-party information, including prescription data and information obtained from significant distributors with respect to their inventory levels and sales to customers. Deferred revenue is recorded net of estimated allowances for rebates, price adjustments, chargebacks, prompt payment and other discounts. Estimated allowances are included in accounts payable and accrued liabilities in the accompanying balance sheets as of June 30, 2015 and December 31, 2014 (Note 4).

*Product Returns-* Consistent with industry practice, the Company offers contractual return rights that allow its customers to return the products within an 18-month period that begins six months prior to and ends twelve months subsequent to expiration of the products. The Company does not currently believe it has sufficient experience with BUNAVAIL® to estimate its returns at time of ex-factory sales. When the Company cannot reasonably estimate the amount of future product returns, it records revenues when the risk of product return has been substantially eliminated which is at the time the product is sold to the end user.

*Rebates-* The liability for government program rebates is calculated based on historical and current rebate redemption and utilization rates contractually submitted by each program's administrator.

*Price Adjustments and Chargebacks-* The Company's estimates of price adjustments and chargebacks are based on its estimated mix of sales to various third-party payers, which are entitled either contractually or statutorily to discounts from the Company's listed prices of its products. In the event that the sales mix to third-party payers is different from the Company's estimates, the Company may be required to pay higher or lower total price adjustments and/or chargebacks than it had estimated and such differences may be significant.

The Company, from time to time, offers certain promotional product-related incentives to its customers. These programs include certain product incentives to pharmacy customers and other sales stocking allowances. The Company has voucher programs for BUNAVAIL® whereby the Company offers a point-of-sale subsidy to retail consumers. The Company estimates its liabilities for these voucher programs based on the historical redemption rates for similar completed programs used by other pharmaceutical companies as reported to the Company by a third-party claims processing organization and actual redemption rates for the Company's completed programs. The Company accounts for the costs of these special promotional programs as price adjustments, which are a reduction of gross revenue.

*Prompt Payment Discounts-* The Company typically offers its wholesale customers a prompt payment discount of 2% as an incentive to remit payments within the first 30 to 37 days after the invoice date depending on the customer and the products purchased.

*Deferred Cost of Sales*

The Company defers its cost of sales in connection with BUNAVAIL® sales at time of ex-factory sales. These costs are recognized when the product is sold to the end user. The Company had \$1.1 million and \$0.7 million of deferred costs of sales at June 30, 2015 and December 31, 2014, respectively, which are included in prepaid expenses and other current assets in the accompanying condensed consolidated balance sheets.

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**BIODELIVERY SCIENCES INTERNATIONAL, INC. AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(U.S. DOLLARS, IN THOUSANDS)**

**(Unaudited)**

**1. Organization, basis of presentation and summary of significant policies (continued):**

*Cost of Sales*

The cost of sales attributable to the production of BUNAVAIL® includes raw materials, production costs at our two contract manufacturing sites, quality testing directly related to the product, and depreciation on equipment that we have purchased to produce BUNAVAIL®. It also includes any batches not meeting specifications and raw material yield loss. Yield losses and batches not meeting specifications are expensed as incurred. Cost of sales is recognized as actual product is sold through to the end user. During the three and six months ended June 30, 2015, the Company wrote down \$0.2 million and \$0.4 million, respectively, of inventory to lower of cost or market, which is recorded as cost of sales in the accompanying condensed consolidated statement of operations. No such adjustments were made during 2014.

The cost of sales attributable to the production of ONSOLIS® and BREAKYL includes all costs related to creating the product at the Company's contract manufacturing locations in the U.S. and Germany. The Company's contract manufacturers bill the Company for the final product, which includes materials, direct labor costs, and certain overhead costs as outlined in applicable supply agreements. Cost of sales also includes royalty expenses that the Company owes to third parties.

*Recent accounting pronouncements*

In May 2014, the Financial Accounting Standards Board ( FASB ) issued Accounting Standards Update 2014-09, Revenue from Contracts with Customers, which supersedes the revenue recognition requirements of Accounting Standards Codification ( ASC ) Topic 605, Revenue Recognition and most industry-specific guidance on revenue recognition throughout the ASC. The new standard is principles-based and provides a five step model to determine when and how revenue is recognized. The core principle of the new standard is that revenue should be recognized when a company transfers promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. The new standard also requires disclosure of qualitative and quantitative information surrounding the amount, nature, timing and uncertainty of revenues and cash flows arising from contracts with customers. In July 2015, the FASB agreed to defer the effective date of the standard from January 1, 2017, to January 1, 2018, with an option that permits companies to adopt the standard as early as the original effective date. Early application prior to the original effective date is not permitted. The standard permits the use of either the retrospective or cumulative effect transition method. The Company is evaluating the effect that ASU 2014-09 will have on its consolidated financial statements and related disclosures. The Company has not yet selected a transition method nor has it determined the effect of the standard on its ongoing financial reporting.

**2. Liquidity and management's plans:**

At June 30, 2015, the Company had cash and cash equivalents of approximately \$67.7 million. The Company used \$19.4 million of cash from operations during the six months ended June 30, 2015 and had stockholders' equity of \$34.9 million, versus \$54.4 million at December 31, 2014. The Company expects that it has sufficient cash to manage the business into mid 2016, although this assumes that the Company does not accelerate the development of other opportunities available to the Company or otherwise face unexpected events, costs or contingencies, any of which could affect the Company's cash requirements. This expectation does not account for the potential receipt by the Company of up to a \$50 million milestone payment from Endo Pharmaceutical, its commercial partner for BELBUCA, should that product be approved by the U.S. Food and Drug Administration (FDA). See note 6.

Additional capital will likely be required to support the Company's ongoing commercialization activities for BUNAVAIL®, the reformulation project for and anticipated commercial relaunch of ONSOLIS®, the development of Clonidine Topical Gel and Buprenorphine Depot Injection or other products which may be acquired or licensed by the Company, and general working capital requirements. Based on product development timelines and agreements with the Company's development partners, the ability to scale up or reduce personnel and associated costs are factors considered throughout the product development life cycle. Available resources may be consumed more rapidly than currently anticipated, potentially resulting in the need for additional funding. Readers are cautioned that additional funding, capital or loans (including, without limitation, milestone or other payments from commercialization agreements) may be unavailable on favorable terms, if at all.

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The following table represents the components of inventory as of:

	<b>June 30, 2015</b>	<b>December 31, 2014</b>
Raw materials & supplies	\$ 424	\$ 544
Work-in-process	497	523
Finished goods	612	761
Total inventories	\$ 1,533	\$ 1,828

**4. Accounts payable and accrued liabilities:**

The following table represents the components of accounts payable and accrued liabilities as of:

	<b>June 30, 2015</b>	<b>December 31, 2014</b>
Accounts payable	\$ 7,670	\$ 9,072
Accrued price adjustments	1,685	1,094
Accrued rebates	332	231
Accrued chargebacks	34	14
Accrued compensation and benefits	1,053	945
Accrued royalties	445	770
Accrued other	1,044	2,303
Total accounts payable and accrued expenses	\$ 12,263	\$ 14,429

**5. Property and Equipment:**

Property and equipment, summarized by major category, consist of the following as of:



	<b>June 30, 2015</b>	<b>December 31, 2014</b>
Idle equipment	\$ 4,971	\$ 4,432
Machinery & equipment	570	680
Computer equipment & software	373	344
Office furniture & equipment	190	110
Leasehold improvements	53	9
 Total	 6,157	 5,575
 Less accumulated depreciation	 (1,852)	 (1,685)
 Total property, plant & equipment, net	 \$ 4,305	 \$ 3,890

Depreciation expense for the six month periods ended June 30, 2015 and June 30, 2014, was approximately \$0.2 million and \$0.02 million, respectively. Depreciation expense for the three month periods ended June 30, 2015 and June 30, 2014, was approximately \$0.1 million and \$0.01 million, respectively.

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**BIODELIVERY SCIENCES INTERNATIONAL, INC. AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(U.S. DOLLARS, IN THOUSANDS)**

**(Unaudited)**

**6. License and Development Agreements:**

The Company periodically enters into license and development agreements to develop and commercialize its products. The arrangements typically are multi-deliverable arrangements that are funded through upfront payments, milestone payments, royalties and other forms of payment to the Company. The Company's most significant license and development agreements are as follows:

***Meda License, Development and Supply Agreements***

In August 2006 and September 2007, the Company entered into certain agreements with Meda AB ( "Meda"), a Swedish company to develop and commercialize the Company's ONSOLIS® product, a drug treatment for breakthrough cancer pain delivered utilizing the Company's BEM® technology. The agreements relate to the United States, Mexico and Canada ( "Meda U.S. Agreements") and to certain countries in Europe ( "Meda EU Agreements"). They carry license terms that commenced on the date of first commercial sale in each respective territory and end on the earlier of the entrance of a generic product to the market or upon expiration of the patents, which begin to expire in 2020.

On March 12, 2012, the Company announced the postponement of the U.S. re-launch of ONSOLIS® following the initiation of the class-wide Risk Evaluation and Mitigation Strategy ( "REMS") until the product formulation could be modified to address two appearance-related issues. Such appearance-related issues involved the formation of microscopic crystals and a fading of the color in the mucoadhesive layer, raised by the FDA during an inspection of the Company's North American manufacturing partner for ONSOLIS®, Aveva Drug Delivery Systems, Inc. ( "Aveva"). While the appearance issues do not affect the product's underlying integrity, safety or performance, the FDA believes that the fading of the color in particular may potentially confuse patients, necessitating a modification of the product and its specification before it can be manufactured and distributed. The source of microcrystal formation and the potential for fading of the color in the mucoadhesive layer of ONSOLIS® was found to be specific to a buffer used in its formulation. The Company modified the formulation and as of the date of this report has more than 12 months of stability data on the reformulated product that shows no signs of microcrystal formation or color changes.

The Company determined that, upon inception of both the U.S. and EU Meda arrangements, all deliverables were considered one combined unit of accounting. As such, all cash payments from Meda that were related to these deliverables were initially recorded as deferred revenue. Upon commencement of the license term (date of first commercial sale in each territory), the license and certain deliverables associated with research and development services were delivered to Meda. The first commercial sale in the U.S. occurred in October 2009. As a result, \$59.7 million of the aggregate milestones and services revenue was recognized as revenue in fiscal year 2009. On January 27, 2015, the Company announced that it had entered into an assignment and revenue sharing agreement with Meda to return to the Company the marketing authorization for ONSOLIS® for the U.S. and the right to seek marketing authorizations for ONSOLIS® in Canada and Mexico. Following return of the US marketing authorization from Meda, the Company submitted a prior approval supplement for the new formulation to the FDA in March 2015 that provided responses to earlier questions and requests. The FDA's review of the application may take up to 6

months; therefore, it is possible to have a decision before the end of 2015. In connection with the return of the U.S. marketing authorization by Meda to the Company in January 2015, the remaining U.S. related deferred revenue of \$1.0 million was recorded as contract revenue during the six months ended June 30, 2015.

***Endo License and Development Agreement***

In January 2012, the Company entered into a License and Development Agreement with Endo Health Solutions, Inc. ( Endo ) pursuant to which the Company granted Endo an exclusive commercial world-wide license to develop, manufacture, market and sell the Company's BELBUCA product and to complete U.S. development of such product candidate for purposes of seeking FDA approval (the Endo Agreement ). BELBUCA is for the management of pain severe enough to require daily, around-the-clock, long-term opioid treatment and for which alternative treatment options are inadequate.

Pursuant to the Endo Agreement, Endo has obtained all rights necessary to complete the clinical and commercial development of BELBUCA and to sell the product worldwide. Although Endo has obtained all such necessary rights, the Company has agreed under the Endo Agreement to be responsible for the completion of certain clinical trials regarding BELBUCA (and providing clinical trial materials for such trials) necessary to submit a New Drug Application ( NDA ) to the FDA in order to obtain approval of BELBUCA in the U.S.). The Company is responsible for development activities through the filing of the NDA in the U.S., while Endo is responsible for the development following the NDA submission as well as the manufacturing, distribution, marketing and

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**BIODELIVERY SCIENCES INTERNATIONAL, INC. AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(U.S. DOLLARS, IN THOUSANDS)**

**(Unaudited)**

**6. License and Development Agreements (continued):**

***Endo License and Development Agreement (continued)***

sales of BELBUCA on a worldwide basis. In addition, Endo is responsible for all filings required in order to obtain regulatory approval of BELBUCA .

Pursuant to the Endo Agreement, the Company has received (or is expected to receive upon satisfaction of applicable conditions) the following payments (some portion(s) of which will be utilized by the Company to support its development obligations under the Endo Agreement with respect to BELBUCA ):

\$30 million non-refundable upfront license fee (earned in January 2012);

\$15 million for enhancement of intellectual property rights (earned in May 2012);

\$20 million for full enrollment in two clinical trials (\$10 million earned in January 2014 and \$10 million earned in June 2014);

\$10 million upon FDA acceptance of filing NDA (earned in February 2015);

\$50 million upon regulatory approval;

up to an aggregate of \$55 million based on the achievement of four separate post-approval sales thresholds; and

sales-based royalties in a particular percentage range on U.S. sales of BELBUCA , and royalties in a lesser range on sales outside the United States, subject to certain restrictions and adjustments.

The Company has assessed its arrangement with Endo and the Company's deliverables thereunder at inception to determine: (i) the separate units of accounting for revenue recognition purposes, (ii) which payments should be allocated to which of those units of accounting and (iii) the appropriate revenue recognition pattern or trigger for each of those payments. The assessment requires subjective analysis and requires management to make judgments, estimates and assumptions about whether deliverables within multiple-element arrangements are separable and, if so, to determine the amount of arrangement consideration to be allocated to each unit of accounting.

At the inception of the Endo arrangement, the Company determined that the Endo Agreement was a multi-deliverable arrangement with three deliverables: (1) the license rights related to BELBUCA, (2) services related to obtaining enhanced intellectual property rights through the issuance of a particular patent and (3) clinical development services. The Company concluded that the license delivered to Endo at the inception of the Endo Agreement has stand-alone value. It was also determined that there was a fourth deliverable, the provision of clinical trial material (CTM). The amounts involved are, however, immaterial and delivered in essentially the same time frame as the clinical development services. Accordingly, the Company did not separately account for the CTM deliverable, but considers it part of the clinical development services deliverable.

The initial non-refundable \$30 million license fee was allocated to each of the three deliverables based upon their relative selling prices using best estimates. The analysis of the best estimate of the selling price of the deliverables was based on the income approach, the Company's negotiations with Endo and other factors, and was further based on management's estimates and assumptions which included consideration of how a market participant would use the license, estimated market opportunity and market share, the Company's estimates of what contract research organizations would charge for clinical development services, the costs of clinical trial materials and other factors. Also considered were entity specific assumptions regarding the results of clinical trials, the likelihood of FDA approval of the subject product and the likelihood of commercialization based in part on the Company's prior agreements with the BEMA® technology.

Based on this analysis, \$15.6 million of the up-front license fee was allocated to the license (which was estimated to have a value significantly in excess of \$30 million), and \$14.4 million to clinical development services (which is inclusive of the cost of CTM). Although the intellectual property component was considered a separate deliverable, no distinct amount of the up-front payment was assigned to this deliverable because the Company determined the deliverable to be perfunctory. The amount allocated to the license was recognized as revenue in fiscal year 2012. The portion of the upfront license fee allocated to the clinical development services deliverable of \$14.4 million is being recognized as those services are performed. The Company estimated that such clinical development services will extend into the first half of 2015. Such services were completed by March 2015 and resulted in the recognition of the remaining deferred revenue balance of \$0.4 million during the six months ended June, 30, 2015 in the

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**(U.S. DOLLARS, IN THOUSANDS)**

**(Unaudited)**

**6. License and Development Agreements (continued):**

***Endo License and Development Agreement (continued)***

accompanying condensed statements of operations. There was no deferred revenue recognized during the three months ended June 30, 2015.

During the three and six months ended June 30, 2014, \$0.6 million and \$1.8 million, respectively was recognized as contract revenue in the accompanying condensed consolidated statements of operations.

The term of the Endo Agreement shall last, on a country-by-country basis, until the later of: (i) 10 years from the date of the first commercial sale of BELBUCA in a particular country or (ii) the date on which the last valid claim of the Company's patents covering BELBUCA in a particular country has expired or been invalidated. The Endo Agreement shall be subject to termination by Endo, at any time, upon a specific timeframe of prior written notice to the Company and under certain other conditions by either party as specified in the Endo Agreement.

The remaining milestone payments are expected to be recognized as revenue as they are achieved, except that one milestone is contingently refundable for a period of time. Revenue related to such contingently refundable milestone is expected to be recognized as refund provisions, as defined in the agreement, expire. Sale threshold payments and sales-based royalties will be recognized as they accrue under the terms of the Endo Agreement.

The Company is reimbursed by Endo for certain contractor costs when these costs go beyond set thresholds as outlined in the Endo Agreement. Endo reimburses the Company for this spending at cost and the Company receives no mark-up or profit. The gross amount of these reimbursed research and development costs are reported as research and development reimbursement revenue in the accompanying consolidated statements of operations. The Company acts as a principal, has discretion to choose suppliers, bears credit risk and may perform part of the services required in the transactions. Therefore, these reimbursements are treated as revenue to the Company. The actual expenses creating the reimbursements are reflected as research and development expense.

Beginning in March 2014, total reimbursable contractor costs exceeded a set threshold, at which point all such expenses are to be borne at a rate of 50% by Endo and 50% by the Company. Endo has continued to reimburse the Company for 100% of such costs, with 50% thereof to be taken as a credit against potential future milestones associated with achievement of certain regulatory events. During the six months ended June 30, 2015, the Company received \$0.9 million of such prepayments, which have been recorded as deferred revenue, current in the accompanying condensed consolidated balance sheet. During the six months ended June 30, 2015 and June 30, 2014,

the Company recognized \$0.9 million and \$10.8 million, respectively, of reimbursable expenses related to its Endo agreement, which is recorded as research and development reimbursement revenue on the accompanying condensed consolidated statement of operations. During the three months ended June 30, 2015 and June 30, 2014, the Company recognized \$0.08 million and \$2.3 million, respectively, of reimbursable expenses related to its Endo agreement, which is recorded as research and development reimbursement revenue on the accompanying condensed consolidated statement of operations.

On December 23, 2014, the Company, along with Endo, announced the submission of a NDA for BELBUCA to the FDA, which was accepted February 23, 2015.

## **7. License Obligations:**

### ***Arcion License Agreement***

On March 26, 2013, the Company entered into a license agreement with Arcion Therapeutics, Inc. (the Arcion Agreement ) pursuant to which Arcion granted to the Company an exclusive commercial world-wide license, with rights of sublicense, under certain patent and other intellectual property rights related to in-process research and development to develop, manufacture, market, and sell gel products containing clonidine (or a derivative thereof) for the treatment of painful diabetic neuropathy ( PDN ) and other indications (the Arcion Products ).

Pursuant to the Arcion Agreement, the Company is responsible for using commercially reasonable efforts to develop and commercialize Arcion Products, including the use of such efforts to conduct certain clinical trials within certain time frames.

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**(U.S. DOLLARS, IN THOUSANDS)**

**(Unaudited)**

**7. License Obligations (continued):**

***Arcion License Agreement (continued)***

The Company is required to make the following payments to Arcion:

\$2.5 million upon filing and acceptance by the FDA of an NDA with respect to an Arcion Product payable, at the Company's option, in cash or unregistered shares of Common Stock (with such shares being subject to a nine month lock-up and certain limitations on sale thereafter); and

up to a potential \$60 million in cash payments upon achieving certain pre-determined sales thresholds in the U.S., none of which occur prior to achieving at least \$200 million in U.S. net sales.

In addition, the Company shall pay Arcion \$35 million in cash on initial FDA approval of an Arcion Product, unless: (i) the Company does not receive at least \$70 million in FDA approval-related milestone payments from its US sublicensees (if any sublicenses are involved) with respect to the Arcion Product, in which case the Company shall pay Arcion a prorated amount between \$17.5 million and \$35 million based on the total amount of such milestone payments received by the Company and its affiliates from its sublicenses (if any sublicenses are involved); or (ii) the FDA requires or recommends the performance of a capsaicin challenge test (to see if C-fiber function is present in the skin by determining if subjects experience pain, and to determine pain intensity if present) as a precondition or precursor to the prescribing of the Arcion Product (as a condition of approval, a labeling requirement, or otherwise), in which case such milestone shall be reduced to \$17.5 million, but the first and second sales threshold payments described above shall each be increased by \$8 million.

All milestone payments due to Arcion under the Arcion Agreement are payable only once each.

In addition to the milestones set forth above, the Company will pay royalties to Arcion based upon sales of Arcion Products by the Company, its affiliate and sub-licensees (if any), all as defined in the Arcion Agreement.

In addition, in the event the amount due upon FDA approval of the Arcion Product in the U.S. is less than \$35 million for any reason other than an FDA requirement or recommendation of a capsaicin challenge test, as described above, the Company shall pay Arcion a portion of any milestone payments received by the Company and its affiliates from their sublicensees on the basis of any events occurring in the U.S. following FDA approval but prior to (and including)



first commercial sale of an Arcion Product in the U.S., and certain of the payments to Arcion referred to above shall also be subject to upward adjustment (with such upward adjustments payable in the form of cash or unregistered shares of the Company's Common Stock, as elected solely by the Company), until such time as the sum of all such additional payments and upward adjustments (including the value of any issuances of stock, if elected by the Company) and the initial amount paid on the initial FDA approval totals \$35 million.

The term of the Arcion Agreement continues, on a country-by-country and product-by-product basis, until the earlier of (i) the expiration of the royalty term for a particular Arcion Product in a particular country or (ii) the effective date of termination by either party pursuant to customary termination provisions. The royalty term for any given country is the later of (i) the first date there are no valid claims against any Arcion patent, (ii) expiration of patent exclusivity or (iii) tenth anniversary of the first commercial sale.

On March 30, 2015, the Company announced that the primary efficacy endpoint in its initial Phase 3 clinical study of Clonidine Topical Gel compared to placebo for the treatment of PDN did not meet statistical significance. Analyses of the trial results indicated significant differences in patient response between centers and among patient subpopulations. Based on review of these analyses with statistical and clinical consultants, the Company has elected to initiate an additional placebo-controlled study with entry criteria and design features that attempt to control for the challenges of assay sensitivity and accuracy of pain assessment in diabetic patients with neuropathic pain. The additional study is planned to start in fourth quarter of 2015. The company will be discussing the design of this study with the European Medicines Agency to assess its adequacy as the single study required for EU submission.

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**(U.S. DOLLARS, IN THOUSANDS)**

**(Unaudited)**

**7. License Obligations (continued):**

***Evonik Development and Exclusive License Option Agreement:***

On October 27, 2014, the Company entered into a definitive Development and Exclusive License Option Agreement (the "Development Agreement") with Evonik Corporation, ("Evonik") to develop and commercialize an injectable, extended release, microparticle formulation of buprenorphine for the treatment of opioid dependence (the "Product"). Under the Development Agreement, the Company also has the right to pursue development of the Product for pain management.

Under the Development Agreement, Evonik has also granted to the Company two exclusive options to acquire exclusive worldwide licenses, with rights of sublicense, to certain patents and other intellectual property rights of Evonik to develop and commercialize certain products containing buprenorphine. If such options are exercised, such licenses would be memorialized in the License Agreement (as defined below).

Pursuant to the Development Agreement, Evonik is responsible for using commercially reasonable efforts to develop a formulation for the Product in accordance with a work plan mutually agreed upon by the parties (the "Project"). Should the Project proceed past the Product formulation stage, Evonik also has the right to manufacture clinical and commercial supplies of Product, such manufacturing arrangement to be negotiated by the Parties in good faith in a formal License and Supply Agreement(s) (the "License Agreement"), with such License Agreement covering Evonik's intellectual property rights to be entered into between the parties if certain conditions are met and terms are mutually agreed upon.

Should Evonik and the Company enter into the License Agreement following the attainment of a Phase 1 ready formulation for one or both of the opioid dependence or pain management indications, the Company would pay Evonik certain non-refundable, non-creditable one-time payment in conjunction with certain future regulatory filings and approvals and royalties on net sales of Product.

The Development Agreement contains customary termination provisions, and the Company may additionally terminate the Development Agreement at any time after the completion of certain enumerated tasks as provided in the Development Agreement, for any reason or no reason, by providing written notice of termination to Evonik. Upon termination of the Development Agreement, Evonik will be paid any amounts owed to Evonik in accordance with the Estimated Budget for work that has been performed under the Development Agreement through the effective date of termination, including any reasonable, documented, non-cancelable third party costs and any reasonable, documented wind-down costs reasonably incurred by Evonik in connection with the Project. Should the Company terminate for reasons other than for a material, uncured breach by Evonik or Evonik's bankruptcy, Evonik shall have the right to use any and all data and intellectual property generated under the Project for any purpose.

## 8. Note Payable:

On May 29, 2015, the Company entered into a \$30 million secured loan facility (the "Loan") with MidCap Financial Trust, as agent and lender ("MidCap"), pursuant to the terms and conditions of that certain Amended and Restated Credit and Security Agreement, dated as of May 29, 2015 (the "Credit Agreement"), between the Company and MidCap. The Credit Agreement is a restatement, amendment and modification of a prior Credit and Security Agreement, dated as of July 5, 2013 (the "Prior Agreement") between the Company, MidCap Financial SBIC, LLP, a predecessor to MidCap, and certain lenders thereto. The Credit Agreement restructures, renews, extends and modifies the obligations under the Prior Agreement and the other financing documents executed in connection with the Prior Agreement (the "Prior Loan"). The Company received net Loan proceeds in the aggregate amount of approximately \$20.1 million and will use the Loan proceeds for general corporate purposes or other activities of the Company permitted under the Credit Agreement.

The Loan has a term of 42 months, with interest only payments for the first 12 months. The interest rate is 8.45% plus a LIBOR floor of 0.5% (total of 8.95% at June 30, 2015), with straight line amortization, commencing on June 1, 2016, in an amount equal to \$1 million per month. Upon execution of the Credit Agreement, the Company paid to MidCap a closing fee from the prior loan of approximately \$0.4 million. Upon repayment in full of the Loan, the Company is obligated to make a final payment fee equal to 2.75% of the aggregate Loan amount. The 2.75% exit fee has been recorded as deferred loan costs, the current portion of which is included in prepaid expenses and other current assets and the long-term portion in other assets and is being amortized over the life of the loan. The payable is recorded as other long-term liabilities.

In addition, the Company may prepay all or any portion of the Loan at any time subject to a prepayment premium of: (i) 5% of the Loan amount prepaid in the first year following the execution of the Credit Agreement and (ii) 3% of the Loan amount prepaid in each year thereafter.

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**(Unaudited)**

**8. Note Payable (continued):**

The obligations of the Company under the Credit Agreement are secured by a first priority lien in favor of MidCap on substantially all of the Company's existing and after-acquired assets, but excluding certain intellectual property and general intangible assets of the Company (but not any proceeds thereof). The obligations of the Company under the Credit Agreement are also secured by a first priority lien on the equity interests held by the Company. The Company entered into and reaffirmed, as applicable, customary pledge and intellectual property security agreements to evidence the security interest in favor of MidCap.

Under the Credit Agreement, the Company is subject to affirmative covenants which are customary for financings of this type, including, but not limited to, the obligations of the Company to: (i) maintain good standing and governmental authorizations, (ii) provide certain information and notices to MidCap, (iii) deliver quarterly and annual financial statements to MidCap, (iv) maintain insurance, property and books and records (v) discharge all taxes, (vi) protect their intellectual property and (vii) generally protect the collateral granted to MidCap.

The Company is also subject to negative covenants customary for financings of this type, including, but not limited to, that they may not: (i) enter into a merger or consolidation or certain change of control events without complying with the terms of the Credit Agreement, (ii) incur liens on the collateral, (iii) incur additional indebtedness, (iv) dispose of any property, (v) amend material agreements or organizational documents, (vi) change their business, jurisdictions of organization or their organizational structures or types, (vii) declare or pay dividends (other than dividends payable solely in Common Stock), (viii) make certain investments or acquisitions except under certain circumstances as set forth in the Credit Agreement, or (ix) enter into certain transactions with affiliates, in each case subject to certain exceptions provided for in the Credit Agreement. Notwithstanding the foregoing, the Credit Agreement amends certain negative covenants contained in the Prior Agreement such that (i) licensing and acquisition are added as permitted business activities of the Company and (ii) the Company is no longer required to obtain the prior written consent of MidCap for any in-licensing, product or entity acquisitions by the Company by way of merger or consolidation, so long as no event of default has occurred and certain financial metrics are adhered to.

The Credit Agreement provides for several events of default under the Loan. Upon the occurrence of any event of default, the Company's obligations under the Credit Agreement will bear interest at a rate equal to the lesser of: (i) 4% above the rate of interest applicable to such obligations immediately prior to the occurrence of the event of default and (ii) the maximum rate allowable under law.

The balance of the Loan as of June 30, 2015 is \$29.7 million, and is recorded in the accompanying condensed consolidated balance sheet, net of unamortized discount of \$0.3 million.

**9. Stockholders Equity:*****Stock-based compensation***

During the six months ended June 30, 2015, a total of 271,614 options to purchase Common Stock with an aggregate fair market value of approximately \$1.8 million were granted to Company employees and contractors. The options granted have a term of 10 years from the grant date and vest ratably over a three year period. The fair value of each option is amortized as compensation expense evenly through the vesting period.

The Company's stock-based compensation expense is allocated between research and development and selling, general and administrative as follows:

<b>Stock-based compensation expense</b>	<b>Three months ended,</b>		<b>Six months ended,</b>	
	<b>June 30,</b>	<b>June 30,</b>	<b>June 30,</b>	<b>June 30,</b>
	<b>2015</b>	<b>2014</b>	<b>2015</b>	<b>2014</b>
Research and Development	\$1.1	\$	\$1.9	\$
Selling, General and Administrative	\$3.1	\$0.4	\$5.7	\$2.5

The fair value of each option award is estimated on the grant date using the Black-Scholes valuation model that uses assumptions for expected volatility, expected dividends, expected term, and the risk-free interest rate. Expected volatilities are based on implied volatilities from historical volatility of the Common Stock, and other factors estimated over the expected term of the options. The expected term of options granted is derived using the simplified method which computes expected term as the average of the sum of the vesting term plus contract term. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant for the

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period of the expected term. The weighted average for key assumptions used in determining the fair value of options granted during the six months ended June 30, 2015 follows:

Expected price volatility	72.82% -73.33%
Risk-free interest rate	1.44%
Weighted average expected life in years	6 years
Dividend yield	

Option activity during the six months ended June 30, 2015 was as follows:

	<b>Number of Shares</b>	<b>Weighted Average Exercise Price Per Share</b>	<b>Aggregate Intrinsic Value</b>
Outstanding at January 1, 2015	3,196,100	\$ 4.32	
Granted	271,614	10.23	
Exercised	(75,050)	4.04	
Forfeitures	(114,237)	12.57	
Outstanding at June 30, 2015	3,278,427	\$ 5.44	\$ 10,769

As of June 30, 2015, options exercisable totaled 2,612,446. There was approximately \$36.7 million of unrecognized compensation cost related to non-vested share-based compensation awards, including options and restricted stock units ( RSUs ) granted. These costs will be expensed through 2018.

***Warrants***

The Company has granted warrants to purchase shares of Common Stock. Warrants may be granted to affiliates in connection with certain agreements. During the six months ended June 30, 2015, the remaining 284 outstanding warrants were exercised at a price of \$3.12 per share.

### ***Earnings Per Share***

During the six months ended June 30, 2015 and 2014, outstanding stock options, RSUs, warrants and convertible preferred stock of 9.5 million and 9.7 million, respectively, were not included in the computation of diluted earnings per share, because to do so would have had an antidilutive effect.

### ***Recovery of Stockholder Short Swing Profit***

In February 2015, an executive officer of the Company paid a total of approximately \$0.006 million to the Company, representing the disgorgement of short swing profits under Section 16(b) under the Exchange Act. The amount was recorded as additional paid-in capital.

### ***Restricted Stock Units***

During the six months ended June 30, 2015, approximately 2.1 million RSUs were granted to members of the Company's senior management, with a fair market value of approximately \$30.8 million. There were no grants during the three months ended June 30, 2015. The fair value of restricted units is determined using quoted market prices of the Common Stock and the number of shares expected to vest. These RSUs were issued under the Company's 2011 Equity Incentive Plan, as amended, and vest in equal installments over three years.

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Restricted stock activity during the six months ended June 30, 2015 was as follows:

	<b>Number of Restricted Shares</b>	<b>Weighted Average Fair Market Value Per RSU</b>
Outstanding at January 1, 2015	2,849,076	\$ 6.08
Granted:		
Executive officers	2,102,615	14.63
Directors		
Vested	(712,677)	14.23
Forfeitures	(65,853)	11.69
Outstanding at June 30, 2015	4,173,161	\$ 10.25

**10. Commitments and contingencies:***Litigation Related To ONSOLIS®*

In March 2012, the Company announced that the New Jersey Federal Court granted a stay of further litigation in the patent infringement lawsuit previously filed by MonoSol Rx, LLC ( MonoSol ) against the Company and its ONSOLIS® commercial partners. The court ordered that the case would be stayed pending resolution by the United States Patent and Trademark Office ( USPTO ) of reexamination proceedings and follows the recent rejection by the USPTO of all claims in all three patents asserted by MonoSol against the Company and its commercial partners for ONSOLIS®.

Based on the Company's original assertion that its proprietary manufacturing process for ONSOLIS® does not infringe on patents held by MonoSol, and the denial and subsequent narrowing of the claims on the two reissued patents MonoSol has asserted against the Company while the third has had all claims rejected by the USPTO, the Company remains very confident in its original stated position regarding this matter. Thus far, the Company has proven that the original 292 and 891 patents in light of their reissuance with fewer and narrower claims were indeed invalid and the



third and final patent, the 588 patent, was invalid as well with all MonoSol's claims cancelled.

Given the outcomes of the 292, 891 and 588 reexamination proceedings, at a January 22, 2015 status meeting, the Court decided to lift the stay and grant the Company's request for the case to proceed on an expedited basis with a Motion for Summary Judgment to dismiss the action. In doing so, the Judge denied MonoSol's request for full litigation proceedings (including, for example, discovery and claim construction proceedings). The Company filed its motion for summary judgment on March 13, 2015 and the briefing took place during March. The Court indicated it would rule on the Company's summary judgment motion without an oral hearing. The Company expects a decision within the second half of 2015. Based upon the outcome from reexaminations and the Court's grant of the Company's request for the proceedings to move directly to a motion for summary judgment, the Company believes it will prevail and the case will be dismissed. However, if this does not occur and the case proceeds to trial, the Company will continue to defend this case vigorously and seek a dismissal at trial. Ultimately, whether now with the motion for summary judgment proceedings or later with trial proceedings, the Company anticipates that MonoSol's claims against the Company will be rejected.

#### *Litigation Related To BUNAVAIL®*

On October 29, 2013, Reckitt Benckiser, Inc. RB Pharmaceuticals Limited, and MonoSol RX, LLC (collectively, the RB Plaintiffs) filed an action against the Company relating to the Company's BUNAVAIL® product in the United States District Court for the Eastern District of North Carolina for alleged patent infringement. BUNAVAIL® is a proposed treatment for opioid dependence. The RB Plaintiffs claim that the formulation for BUNAVAIL®, which has never been disclosed publicly, infringes its patent (United States Patent No. 8,475,832). The Company strongly refutes as without merit the RB Plaintiffs' assertion of patent infringement and will vigorously defend the lawsuit.

On September 20, 2014, based upon the Company's position and belief that its BUNAVAIL® product does not infringe any patents owned by the RB Plaintiffs, the Company proactively filed a declaratory judgment action in the United States District Court for the

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**(U.S. DOLLARS, IN THOUSANDS)**

**(Unaudited)**

**10. Commitments and contingencies (continued):**

Eastern District of North Carolina, requesting the Court to make a determination that the Company's BUNAVAIL® product does not infringe the RB Plaintiffs' 832 Patent, US Patent No. 7,897,080 ( 080 Patent) and US Patent No. 8,652,378 ( 378 Patent). With the declaratory judgment, there is an automatic stay in proceedings. The RB Plaintiffs may request that the stay be lifted, but they have the burden of showing that the stay should be lifted. For the 832 Patent, the January 15, 2014 Inter Partes Review (IPR) was instituted and in June 2015, all challenged claims were rejected for both anticipation and obviousness. The RB Plaintiffs may now request rehearing or appeal to the Federal Circuit. For the 080 Patent, all claims have been rejected in an inter partes reexamination and the rejection of all claims as invalid over the prior art has been affirmed on appeal by the Patent Trial and Appeal Board (PTAB) in a decision dated March 27, 2015. In May 2015, the RB Plaintiffs filed a response after the decision to which the Company filed comments. The Company is awaiting a further decision from the Board, which the Company has no reason to believe will be inconsistent with the original decision rendered in March 2015. For the 378 Patent, an IPR was filed on June 1, 2014, but an IPR was not instituted. However, in issuing its November 5, 2014 decision not to institute the IPR, the PTAB construed the claims of the 378 Patent narrowly. As in prior litigation proceedings, the Company believes these IPR and the reexamination filings will provide support for maintaining the stay until the IPR and reexamination proceedings conclude. Indeed, given the PTAB's narrow construction of the claims of the 378 Patent, the Company filed a motion to withdraw the 378 Patent from the case on December 12, 2014. In addition, the Company also filed a joint motion to continue the stay (with RB Plaintiffs) in the proceedings on the same day. Both the motion to withdraw the 378 Patent from the proceedings and motion to continue the stay were granted.

On September 22, 2014, the RB Plaintiffs filed an action against the Company (and the Company's commercial partner) relating to its BUNAVAIL® product in the United States District Court for the District of New Jersey for alleged patent infringement. The RB Plaintiffs claim that BUNAVAIL®, whose formulation and manufacturing processes have never been disclosed publicly, infringes its patent U.S. Patent No. 8,765,167 ( 167 Patent). As with prior actions by the RB Plaintiffs, the Company believes this is another anticompetitive attempt by the RB Plaintiffs to distract the Company's efforts from commercializing BUNAVAIL®. The Company strongly refutes as without merit the RB Plaintiffs' assertion of patent infringement and will vigorously defend the lawsuit. On December 12, 2014, the Company filed motions to transfer the case from New Jersey to North Carolina and to dismiss the case against the Company's commercial partner. The Court issued an opinion on July 21, 2015 granting the Company's motion to transfer the venue to the Eastern District of North Carolina (EDNC), but denying the Company's motion to dismiss in its entirety as moot. The Company will continue to vigorously prosecute this case in the EDNC.

In a related matter, on October 28, 2014, the Company filed multiple IPR requests on the 167 Patent demonstrating that certain claims of such patent were anticipated by or obvious in the light of prior art references, including prior art references not previously considered by the USPTO, and thus, invalid. The USPTO instituted three of the four IPR requests and the Company filed a request for rehearing for the non-instituted IPR. A final decision on the instituted

167 IPRs is expected in May 2016.

On January 22, 2014, MonoSol filed a Petition for IPR on US Patent No. 7,579,019 (the '019 Patent). The Petition asserted that the claims of the '019 Patent are alleged to be unpatentable over certain prior art references. The IPR was instituted on August 6, 2014. An oral hearing was held in April 2015 and a decision upholding all 7 claims was issued August 5, 2015. MonoSol may request rehearing to the USPTO or they may appeal the decision to the Federal Circuit. The Company will continue to vigorously defend its '019 patent if this favorable IPR decision is appealed.

**11. Subsequent events:**

On July 2, 2015, the Company filed a shelf registration statement which registered up to \$150 million of the Company's securities for potential future issuance, and such registration statement was declared effective on July 13, 2015. Concurrent with the filing of such registration statement, the Company established an at-the-market offering program utilizing the universal shelf registration for up to \$40 million of Common Stock.

On July 16, 2015, the Company held its 2015 Annual Meeting of Stockholders (the Annual Meeting). During the Annual Meeting, the amendment to the Company's 2011 Equity Incentive Plan to increase the number of shares of common stock authorized for issuance under the plan by 2,250,000 shares from 8,800,000 to 11,050,000 was approved by stockholders.

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

*The following discussion and analysis should be read in conjunction with the Condensed Consolidated Financial Statements and Notes thereto included elsewhere in this Quarterly Report. This discussion contains certain forward-looking statements that involve risks and uncertainties. The Company's actual results and the timing of certain events could differ materially from those discussed in these forward-looking statements as a result of certain factors, including, but not limited to, those set forth herein and elsewhere in this Quarterly Report and in the Company's other filings with the Securities and Exchange Commission (the SEC). See Cautionary Note Regarding Forward Looking Statements below.*

#### **Overview**

##### *Strategy*

We are a specialty pharmaceutical company that is developing and commercializing, either on our own or in partnerships with third parties, new applications of approved therapeutics to address important unmet medical needs using both proven and new drug delivery technologies. We have developed and are continuing to develop pharmaceutical products aimed principally in the areas of pain management and addiction.

Our strategy is to:

Focus our commercial and development efforts in the areas of pain management and addiction within the U.S. pharmaceutical marketplace;

Identify and acquire rights to products that we believe have potential for near-term regulatory approval through the FDA's 505(b)(2) approval process, or are already approved;

Market our products through specialty sales teams by primarily focusing on high-prescribing U.S. physicians in pain and addiction.

We believe this strategy will allow us to increase our revenues, improve our margins and profitability and enhance stockholder value.

##### *Second Quarter 2015 Highlights*

On May 14, 2015, we and Endo Pharmaceutical Inc. (Endo) presented pivotal data from two Phase 3 studies for investigational study drug buprenorphine HCL buccal film. The findings, presented at the American Pain Society's 34th Annual Scientific Meeting in Palm Springs, CA, showed BEM's buprenorphine consistently decreased pain scores compared to the placebo. The drug is currently under review by the FDA with a Prescription Drug User Fee Act (or PDUFA) action date in October 2015. If approved, we would be entitled to a \$50 million milestone payment from Endo.

On May 29, 2015, we entered into a \$30 million secured loan facility with MidCap Financial Trust, ( MidCap ). The Credit Agreement is a restatement, amendment and modification of a prior credit and security agreement, dated as of July 5, 2013 among us and MidCap Financial SBIC, LLP, a predecessor to MidCap, and certain lenders thereto. We received net loan proceeds in the aggregate amount of approximately \$20.1 million and will use the loan proceeds for general corporate purposes or other activities permitted under the credit agreement.

*Opportunities and Trends*

Our franchise currently consists of five products, two of which are approved by the FDA and three of which are in development. Three of these five products utilize our patented BEMA® thin film drug delivery technology.

ONSOLIS® is approved in the U.S., Canada, EU (where it is marketed as BREAKYL ) and Taiwan (where it is marketed as PAINKYL ), for the management of breakthrough pain in opioid tolerant, adult patients with cancer. The commercial rights to ONSOLIS® are licensed to Meda for all territories worldwide except for Taiwan (licensed to TTY) and South Korea (licensed to Kunwha).

Our second product using the BEMA® technology is BUNAVAIL® (buprenorphine and naloxone) buccal film, which was approved by the FDA in June 2014 for the maintenance treatment of opioid dependence. We are commercializing BUNAVAIL® ourselves and launched the product during the fourth quarter 2014. As with all other buprenorphine containing products for opioid dependence, the approval of BUNAVAIL® carries a standard post-approval requirement by the FDA to conduct a study to determine the effect of BUNAVAIL® on QT prolongation (i.e., an abnormal lengthening of the heartbeat). The clinical study results must be reported to the FDA by the end of 2016.

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Our third product using the BEMA® technology, BELBUCA, is for the management of pain severe enough to require daily, around-the-clock, long-term opioid treatment and for which alternative treatment options are inadequate. This product is licensed on a worldwide basis to Endo. On December 23, 2014, we announced along with Endo the submission of a NDA for BELBUCA (BEMA® Buprenorphine) to the FDA, which was accepted February 23, 2015, with a decision due from the FDA in October, 2015.

Our fourth product is Clonidine Topical Gel, which is currently in Phase 3 development for the treatment of painful diabetic neuropathy (or PDN), which we licensed from Arcion in March 2013. In June 2014, we announced the completion of patient enrollment for our Phase 3 study of Clonidine Topical Gel. In August 2014, we announced our completion of a pre-specified interim analysis of the ongoing initial pivotal Phase 3 trial for Clonidine Topical Gel, at which point we re-opened enrollment to complete recruitment. On March 30, 2015, we announced that the primary efficacy endpoint in our initial Phase 3 clinical study of Clonidine Topical Gel compared to placebo for the treatment of PDN did not meet statistical significance. Analyses of the trial results indicated significant differences in patient response between centers and among patient subpopulations. Based on review of these analyses with statistical and clinical consultants, we have elected to initiate an additional placebo-controlled study with entry criteria and design features that attempt to control for the challenges of assay sensitivity and accuracy of pain assessment in diabetic patients with neuropathic pain. The additional study is planned to start in fourth quarter of 2015. We will be discussing the design of this study with the European Medicines Agency to assess its adequacy as the single study required for EU submission.

Our fifth product is Buprenorphine Depot Injection, which is in development as an injectable, extended release, microparticle formulation of buprenorphine for the treatment of opioid dependence and chronic pain, the rights to which we secured when we entered into a definitive development and exclusive license option agreement from Evonik in October 2014. This product candidate is currently in the pre-clinical stage of development.

As we focus on the growth of our existing products and other product candidates, we also continue to position ourselves to execute upon the licensing and acquisition opportunities that will drive our next phase of growth. Our organization is fully committed to this effort, and we believe we will be successful in executing upon our corporate strategy in ways that will provide this future growth.

In order to do so, we will need to continue to maintain our strategic direction, manage and deploy our available cash efficiently and strengthen our alliance and partner relationships. We believe these actions, combined with the experience and expertise of our management team, position us well to deliver future growth of our revenue and income.

We expect to continue research and development of pharmaceutical products and related drug delivery technologies, some of which will be funded by our commercialization agreements. We will continue to seek additional license agreements, which may include upfront payments. We anticipate that funding for the next several years will come primarily from milestone payments and royalties from Meda and Endo, revenues from sales of BUNAVAIL®, potential sales of securities and collaborative research agreements, including those with pharmaceutical companies.

### *Update on Relaunch Activities in the U.S. for ONSOLIS®*

On March 12, 2012, we announced the postponement of the U.S. re-launch of ONSOLIS® following the initiation of the class-wide Risk Evaluation and Mitigation Strategy (REMS) until the product formulation could be modified to address two appearance-related issues. Such appearance-related issues involved the formation of microscopic crystals and a fading of the color in the mucoadhesive layer, raised by the FDA during an inspection of our North American manufacturing partner for ONSOLIS®, Aveva Drug Delivery Systems, Inc. (Aveva). While the appearance issues do

not affect the product's underlying integrity, safety or performance, the FDA believes that the fading of the color in particular may potentially confuse patients, necessitating a modification of the product and its specification before it can be manufactured and distributed. The source of microcrystal formation and the potential for fading of the color in the mucoadhesive layer of ONSOLIS® was found to be specific to a buffer used in its formulation. We modified the formulation and as of the date of this report have more than 12 months of stability data on the reformulated product that shows no signs of microcrystal formation or color changes.

On January 27, 2015, we announced that we had entered into an assignment and revenue sharing agreement with Meda to return to us the marketing authorization for ONSOLIS® for the U.S. and the right to seek marketing authorizations for ONSOLIS® in Canada and Mexico. Following return of the US marketing authorization from Meda, we submitted a prior approval supplement for the new formulation to the FDA in March that provided responses to earlier questions and requests. FDA's review of the application may take up to 6 months; therefore, it is possible to have a decision before the end of 2015.

Our supply agreement with Aveva will expire on October 15, 2015. We have been working to find a new commercial partner and will seek alternative manufacturing arrangements for ONSOLIS® in the U.S. in the event we are able to secure a new commercial partner for the product.

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**Results of Operations**

**Comparison of the three months ended June 30, 2015 and 2014**

**Product Sales.** We recognized \$0.8 million in product sales during the three months ended June 30, 2015 from the launch of BUNAVAIL®. There were no product sales during the three months ended June 30, 2014, as we had not yet launched our BUNAVAIL® product.

**Product Royalty Revenues.** We recognized \$0.5 million and \$0.9 million in product royalty revenue during the three months ended June 30, 2015 and 2014, respectively, under our license agreement with Meda. The product royalty revenues can be attributed to a percentage of net sales of the BREAKYL product under our license agreement with Meda. The decrease is due to lower sales of BREAKYL during the three months ended June 30, 2015 as compared to June 30, 2014.

**Research and Development Reimbursements.** We recognized \$0.08 million and \$2.3 million of reimbursable revenue related to our agreement with Endo during the three months ended June 30, 2015 and 2014, respectively. The research and development reimbursements can be attributed to certain research and development expenses, the aggregate of which exceeds \$45 million and is related to the BELBUCA program and reimbursable from Endo. The decrease is due to the completion of the BELBUCA development program during the first quarter of 2015.

**Contract Revenues.** We recognized \$0.4 million and \$10.6 million in contract revenue during the three months ended June 30, 2015 and 2014, respectively, under our license agreement with Endo. We also recognized \$0.05 million during the three months ended June 30, 2014, in contract revenue related to previously deferred revenue under our license agreement with Meda. The increase in contract revenues during the three months ended June 30, 2014 can be attributed to the \$10 million milestone earned from Endo that was associated with the BEMA® Buprenorphine chronic pain database lock. We also recognized \$0 and \$0.05 million during the three months ended June 30, 2015 and 2014, in contract revenue related to previously deferred revenue under our license agreement with Meda.

**Cost of Sales.** We incurred \$2.6 million and \$0.7 million in cost of sales during the three months ended June 30, 2015 and 2014, respectively. Cost of sales during the three months ended June 30, 2015 was related primarily to BUNAVAIL®, which includes \$1.0 million of product cost, lower of cost or market adjustment and depreciation, \$0.9 million for batches not meeting specifications and raw material yield loss, \$0.2 million in cost of sales related to BREAKYL, as well as quarterly minimum royalty payments to CDC IV, LLC (or CDC), which provided early funding for this product, of \$0.4 million. Cost of sales during the three months ended June 30, 2014 was composed of BREAKYL cost of sales of \$0.3 million as well as quarterly minimum royalty payments to CDC of \$0.4 million.

***Expenditures for Research and Development Programs***

***BUNAVAIL®***

We incurred research and development expenses for BUNAVAIL® of approximately \$1.2 million for three months ended June 30, 2015 and approximately \$0.7 million for the three months ended June 30, 2014. We have incurred approximately \$29.2 million in the aggregate since inception of our development of this product. BUNAVAIL® was approved by the FDA in 2014. Therefore, BUNAVAIL® research and development expenses in 2014 and 2015 primarily consist of manufacturing process development and stability work prior to approval.

***BELBUCA***



We incurred research and development expenses for BELBUCA of approximately \$0.3 million for the three months ended June 30, 2015 and approximately \$5.1 million for the three months ended June 30, 2014. Aggregate expenses for the development of this product approximate \$113.8 million since inception for the project. Our expense obligations for this product candidate were detailed in our license and development agreement with Endo. Since our license agreement with Endo in 2012, a portion of these expenses were reimbursed by Endo. Our expenses for this product over such periods consisted primarily of three large clinical trials addressing the efficacy and safety of the product, along with formulation and manufacturing development.

***Clonidine Topical Gel***

We incurred research and development expenses for Clonidine Topical Gel of approximately \$2.0 million for the three months ended June 30, 2015 and 2014, respectively, and have incurred approximately \$17.9 million in the aggregate since inception of our development of this product candidate. Our expenses for this product candidate over such periods consisted mainly of Phase 2 and Phase 3 trials testing the efficacy of the product and performing a long term safety study.

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### ***Buprenorphine Depot Injection***

We incurred research and development expenses for Buprenorphine Depot Injection of approximately \$0.7 million for the three months ended June 30, 2015 and none for the three months ended June 30, 2014, and have incurred approximately \$1.2 million in the aggregate since inception of our development of this product candidate. Our expenses on Buprenorphine Depot Injection have been for development of analytical methods and initial formulations for animal testing.

***Selling, General and Administrative Expenses.*** During the three months ended June 30, 2015 and 2014, general and administrative expenses totaled \$13.3 million and \$7.3 million, respectively. General and administrative costs include commercialization costs for BUNAVAIL®, legal, accounting and management wages, consulting and professional fees, travel costs, and stock compensation expenses. The increase in general and administrative expenses during the three months ended June 30, 2015 can principally be attributed to the launch of BUNAVAIL® in November 2014 and its ongoing commercialization.

***Interest expense, net.*** During the three months ended June 30, 2015, we had net interest expense of \$0.5 million, consisting of \$0.4 million of scheduled interest payments and \$0.1 million of related amortization of discount and loan costs related to our secured loan facility from Midcap. During the three months ended June 30, 2014 we had net interest expense of \$0.5 million, consisting of \$0.4 million of scheduled interest payments and \$0.2 million of related amortization of discount and loan costs related to MidCap, offset by interest income of \$0.03 million.

***Derivative loss.*** There was no derivative related activity during the three months ended June 30, 2015 which compared to a \$4.1 million charge to income for the three month ended June 30, 2014 that consisted of free standing warrants measured at their fair market value, using the Black-Scholes model.

### **Comparison of the six months ended June 30, 2015 and 2014**

***Product Sales.*** We recognized \$1.5 million in product sales during the six months ended June 30, 2015 from the launch of BUNAVAIL®. There were no product sales during the six months ended June 30, 2014.

***Product Royalty Revenues.*** We recognized \$0.7 million and \$1.8 million in product royalty revenue during the six months ended June 30, 2015 and 2014, respectively, under our license agreement with Meda. The product royalty revenues can be attributed to a percentage of net sales of the BREAKYL product under our license agreement with Meda. The decrease is due to lower sales of BREAKYL during the six months ended June 30, 2015 as compared to June 30, 2014. We also recognized \$0.07 million in product royalty revenue during the six months ended June 30, 2015 under our license agreement with TTY. There was no such product royalty revenue during the same period ended June 30, 2014.

***Research and Development Reimbursements.*** We recognized \$0.9 million and \$10.8 million of reimbursable revenue related to our agreement with Endo during the six months ended June 30, 2015 and 2014, respectively. The research and development reimbursements relate to certain research and development expenses, the aggregate of which exceeded \$45 million and was related to the BELBUCA program and reimbursable from Endo. The decrease is due to the completion of the BELBUCA development program during the first quarter of 2015.

***Contract Revenues.*** We recognized \$10.4 million and \$21.9 million in contract revenue during the six months ended June 30, 2015 and 2014, respectively, under our license agreement with Endo. During the six months ended June 30, 2015, contract revenues included the \$10 million milestone earned upon FDA acceptance of filing the NDA. During the six months ended June 30, 2014, contract revenues included the \$10 million milestone payment received from

Endo associated with a BEMA<sup>®</sup> Buprenorphine chronic pain Phase 3 study database lock. Also earned during the corresponding period was a second \$10 million milestone from Endo associated with a second Phase 3 study database lock. We also recognized \$1.1 million and \$1.8 million during the six months ended June 30, 2015 and 2014, respectively, in contract revenue related to previously deferred revenue under our license agreement with Meda. We further earned \$0.3 million in contract revenue during the six months ended June 30, 2015 under our license agreement with Kunwha. There was no such contract revenue during the same period ended June 30, 2014.

**Cost of Sales.** We incurred \$3.7 million and \$1.4 million in cost of sales during the six months ended June 30, 2015 and 2014, respectively. Cost of sales during the six months ended June 30, 2015 was related primarily to BUNAVAIL<sup>®</sup>, which includes \$1.7 million of product cost, lower of cost or market adjustment and depreciation, \$0.9 million for batches not meeting specifications and raw material yield loss, \$0.2 million in cost of sales related to BREAKYL, as well as quarterly minimum royalty payments to CDC IV, LLC (or CDC), of \$0.8 million. Cost of sales during the six months ended June 30, 2014 was composed of BREAKYL cost of sales of \$0.3 million as well as quarterly minimum royalty payments to CDC of \$0.8 million.

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***Expenditures for Research and Development Programs***

***BUNAVAIL®***

We incurred research and development expenses for BUNAVAIL® of approximately \$1.9 million for six months ended June 30, 2015 and approximately \$2.4 million for the six months ended June 30, 2014. We have incurred approximately \$29.2 million in the aggregate since inception of our development of this product. BUNAVAIL® was approved by the FDA in 2014. Therefore, BUNAVAIL® research and development expenses (i) in 2015 primarily consist of manufacturing process development and (ii) in 2014 primarily consisted of stability work prior to approval.

***BELBUCA***

We incurred research and development expenses for BELBUCA of approximately \$2.4 million for the six months ended June 30, 2015 and approximately \$16.9 million for the six months ended June 30, 2014. Aggregate expenses approximate \$113.8 million since inception of our development of this product candidate. Our expense obligations for this product candidate were detailed in our license and development agreement with Endo. Since our license agreement with Endo in 2012, a portion of these expenses were reimbursed by Endo. Our expenses for this product over such periods consisted primarily of three large clinical trials addressing the efficacy and safety of the product, along with formulation and manufacturing development. The decrease in expenditures in 2015 as compared to the prior year is representative of the natural and expected tapering of research related expenses that coincided with completion of the clinical development program which resulted in filing of the NDA in December 2014.

***Clonidine Topical Gel***

We incurred research and development expenses for Clonidine Topical Gel of approximately \$5.6 million for the six months ended June 30, 2015 and approximately \$3.1 million for the six months ended June 30, 2014, and have incurred approximately \$17.9 million in the aggregate since inception of our development of this product candidate. Our expenses for this product candidate over such periods consisted mainly of Phase 2 and Phase 3 trials testing the efficacy of the product and performing a long term safety study.

***Buprenorphine Depot Injection***

We incurred research and development expenses for Buprenorphine Depot Injection of approximately \$0.8 million for the six months ended June 30, 2015 and none for the six months ended June 30, 2014, and have incurred approximately \$1.2 million in the aggregate since inception of our development of this product candidate. Our expenses on Buprenorphine Depot Injection have been for development of analytical methods and initial formulations for animal testing, which we began to develop October 2014.

***Selling, General and Administrative Expenses.*** During the six months ended June 30, 2015 and 2014, general and administrative expenses totaled \$26.5 million and \$11.9 million, respectively. General and administrative costs include commercialization costs for BUNAVAIL, legal, accounting and management wages, and consulting and professional fees, travel costs, and stock compensation expenses. The increase in general and administrative expenses during the six months ended June 30, 2015 can principally be attributed to the launch of BUNAVAIL in November 2014 and its ongoing commercialization.

***Interest expense, net.*** During the six months ended June 30, 2015, we had net interest expense of \$0.9 million, consisting of \$0.6 million of scheduled interest payments and \$0.3 million of related amortization of discount and loan costs related to our secured loan facility from Midcap. During the six months ended June 30, 2014 we had net interest

expense of \$1.1 million, consisting of \$0.8 million of scheduled interest payments and \$0.3 million of related amortization of discount and loan costs related to MidCap, offset by interest income of \$0.07 million.

***Derivative loss.*** There was no derivative related activity during the six months ended June 30, 2015 which compared to a \$8.9 million charge to income for the six month ended June 30, 2014 that consisted of free standing warrants measured at their fair market value, using the Black-Scholes model.

### **Liquidity and Capital Resources**

Since inception, we have financed our operations principally from the sale of equity securities, proceeds from secured debt facilities, short-term borrowings or convertible notes, funded research arrangements and revenue generated as a result of our worldwide license and development agreement with Meda regarding ONSOLIS® and revenue generated as a result of our January 2012 agreement with Endo regarding our BELBUCA product candidate. We intend to finance our research and development, commercialization and working capital needs from existing cash, royalty revenue, sales revenue from the commercialization of BUNAVAIL®, new sources of debt and equity financing, existing and new licensing and commercial partnership agreements and, potentially, through the exercise of outstanding common stock options and warrants to purchase common stock.

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At June 30, 2015, we had cash and cash equivalents of approximately \$67.7 million. We used \$19.4 million of cash from operations during the six months ended June 30, 2015 and had stockholders' equity of \$34.9 million, versus \$54.4 million at December 31, 2014. We expect that we will have sufficient cash to manage our business into mid 2016, although this assumes that we do not accelerate the development of other opportunities available to us or otherwise face unexpected events, costs or contingencies, any of which could affect our cash requirements. This expectation does not account for the potential receipt by us of up to a \$50 million milestone payment from Endo, our commercial partner for BELBUCA, should that product be approved by the FDA.

Additional capital will likely be required to support our ongoing commercialization activities for BUNAVAIL®, the reformulation project for and anticipated commercial relaunch and manufacturing of ONSOLIS®, development of Clonidine Topical Gel and Buprenorphine Depot Injection or other products which we may acquire or license, and general working capital. Based on product development timelines and agreements with our development partners, the ability to scale up or reduce personnel and associated costs are factors considered throughout the product development life cycle. Available resources may be consumed more rapidly than currently anticipated, potentially resulting in the need for additional funding.

Accordingly, we may need to raise additional capital, which may be available to us through a variety of sources, including:

public equity markets;

private equity financings;

commercialization agreements and collaborative arrangements;

sale of product royalty;

grants and new license revenues;

bank loans;

equipment financing;

public or private debt; and

exercise of existing warrants and options.

Readers are cautioned that additional funding, capital or loans (including, without limitation, milestone or other payments from potential commercialization agreements) may be unavailable on favorable terms, if at all. If adequate

funds are not available, we may be required to significantly reduce or refocus our operations or to obtain funds through arrangements that may require us to relinquish rights to certain technologies and drug formulations or potential markets, any of which could have a material adverse effect on us, our financial condition and our results of operations in 2015 and beyond. To the extent that additional capital is raised through the sale of equity or convertible debt securities or exercise of warrants and options, the issuance of such securities would result in ownership dilution to existing stockholders.

If we are unable to attract additional funds on commercially acceptable terms, it may adversely affect our ability to achieve our development and commercialization goals, which could have a material and adverse effect on our business, results of operations and financial condition.

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

Our contractual obligations as of June 30, 2015 are as follows in thousands:

		Payments Due by Period			
		Less than	More than		
	Total	1 year*	1-3 years	3-5 years	5 years
Operating lease obligations	\$ 2,411	\$ 132	\$ 650	\$ 1,044	\$ 585
Secured loan facility	30,000		19,000	11,000	
Purchase obligations**	313	85	228		
Interest on secured loan facility	6,043	1,387	4,158	498	
Minimum royalty expenses***	6,375	750	3,000	2,625	
Total contractual cash obligations****	\$ 45,142	\$ 2,354	\$ 27,036	\$ 15,167	\$ 585

\* This amount represents obligations through the end of the calendar year ended December 31, 2015.

\*\* Purchase obligations are primarily related to long term contracts for minimum services from commercial vendors.

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- \*\*\* Minimum royalty expenses represent a contractual floor that we are obligated to pay CDC and Athyrium regardless of actual sales.
- \*\*\*\* We signed a commercialization agreement with Endo in January 2012. Endo will have worldwide rights to market our BELBUCA product. In return for milestone payments and royalties, we are required to conduct and pay for certain clinical trials as outlined in a mutually agreed development plan. These costs will depend on the size and scope of the required trials. The Endo agreement does not specify minimums in terms of the cost of the trials.

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

As of June 30, 2015, we had no off-balance sheet arrangements.

### ***Effects of Inflation***

We do not believe that inflation has had a material effect on our financial position or results of operations. However, there can be no assurance that our business will not be affected by inflation in the future.

### **Critical Accounting Policies**

Our condensed consolidated financial statements have been prepared in accordance with GAAP. For information regarding our critical accounting policies and estimates, please refer to Management's Discussion and Analysis of Financial Condition and Results of Operations Critical Accounting Policies and Estimates contained in our annual report on Form 10-K for the year ended December 31, 2014. There have not been material changes to the critical accounting policies previously disclosed in that report.

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

### ***Foreign currency exchange risk***

We currently have limited, but may in the future have increased, clinical and commercial manufacturing agreements which are denominated in Euros or other foreign currencies. As a result, our financial results could be affected by factors such as a change in the foreign currency exchange rate between the U.S. dollar and the Euro or other applicable currencies, or by weak economic conditions in Europe or elsewhere in the world. We are not currently engaged in any foreign currency hedging activities.

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

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

As of the end of the period covered by this Quarterly Report, the Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer (the Certifying Officers), conducted evaluations of our disclosure controls and procedures. As defined under Sections 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the Exchange Act), the term disclosure controls and procedures means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC. Disclosure controls and procedures include without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including the Certifying Officers, to allow timely decisions regarding required disclosures.



Readers are cautioned that our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will necessarily prevent all fraud and material error. An internal control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our control have been detected. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any control design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate.

Based on this evaluation, the Certifying Officers have concluded that our disclosure controls and procedures were effective.

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

There were no changes in our internal control over financial reporting during our second quarter of 2015 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **CAUTIONARY NOTE ON FORWARD-LOOKING STATEMENTS**

Certain information set forth in this Quarterly Report on Form 10-Q, including in Item 2, Management's Discussion and Analysis of Financial Condition and Results of Operations (and the Liquidity and Capital Resources section thereof) and elsewhere may address or relate to future events and expectations and as such constitutes forward-looking statements within the meaning of the Private Securities Litigation Act of 1995. Such forward-looking statements involve significant risks and uncertainties. Such statements may include, without limitation, statements with respect to our plans, objectives, projections, expectations and intentions and other statements identified by words such as projects, may, could, would, should, believes, expects, anticipates, estimates, intends, plans or These statements are based upon the current beliefs and expectations of our management and are subject to significant risks and uncertainties, including those detailed in our filings with the SEC. Actual results, including, without limitation: (i) actual sales results (including the results of the continuing commercial launch of BUNAVAIL ) and royalty or milestone payments, if any, (ii) the application and availability of corporate funds and our need for future funds, or (iii) the timing for completion, and results of, scheduled or additional clinical trials and the FDA's review and/or approval and commercial launch of our products and product candidates and regulatory filings related to the same, may differ significantly from those set forth in the forward-looking statements. Such forward-looking statements also involve other factors which may cause our actual results, performance or achievements to materially differ from any future results, performance, or achievements expressed or implied by such forward-looking statements and to vary significantly from reporting period to reporting period. Such factors include, among others, those listed under Item 1A of our 2014 Annual Report and other factors detailed from time to time in our other filings with the SEC. Although management believes that the assumptions made and expectations reflected in the forward-looking statements are reasonable, there is no assurance that the underlying assumptions will, in fact, prove to be correct or that actual future results will not be different from the expectations expressed in this Quarterly Report. We undertake no obligation to publically update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

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### **PART II. OTHER INFORMATION**

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

##### *Litigation Related To ONSOLIS®*

On November 2, 2010, MonoSol filed an action against us and our commercial partners for ONSOLIS® in the Federal District Court of New Jersey (the DNJ) for alleged patent infringement and false marking. We were formally served in this matter on January 19, 2011. MonoSol claims that our manufacturing process for ONSOLIS®, which has never been disclosed publicly and which we and our partners maintain as a trade secret, infringes its patent (United States Patent No. 7,824,588) (the 588 Patent). Of note, the BEMA® technology itself is not at issue in the case, nor is BELBUCA® or BUNAVAI®, but rather only the manner in which ONSOLIS®, which incorporates the BEMA® technology, is manufactured. Pursuant to its complaint, MonoSol is seeking an unspecified amount of damages, attorney's fees and an injunction preventing future infringement of MonoSol's patents.

We strongly refute as without merit MonoSol's assertion of patent infringement, which relates to our confidential, proprietary manufacturing process for ONSOLIS®. On February 23, 2011, we filed our initial answer in this case. In our answer, we stated our position that our products, methods and/or components do not infringe MonoSol's 588 Patent because they do not meet the limitations of any valid claim of such patent. Moreover, in our answer, we stated our position that MonoSol's 588 Patent is actually invalid and unenforceable for failure to comply with one or more of the requirements of applicable U.S. patent law.

On September 12, 2011, we filed a request for inter partes reexamination in the United States Patent and Trademark Office (USPTO) of MonoSol's 588 Patent demonstrating that all claims of such patent were anticipated by or obvious in the light of prior art references, including several prior art references not previously considered by the USPTO, and thus invalid. On September 16, 2011, we filed in court a motion for stay pending the outcome of the reexamination proceedings, which subsequently was granted due to the results of the USPTO proceedings as described below.

On November 28, 2011, we announced that we were informed by the USPTO that it had rejected all 191 claims of MonoSol's 588 Patent. On January 20, 2012, we filed requests for reexamination before the USPTO of MonoSol's US patent No 7,357,891 (the 891 Patent), and No 7,425,292 (the 292 Patent), the two additional patents asserted by MonoSol, demonstrating that all claims of those two patents were anticipated by or obvious in the light of prior art references, including prior art references not previously considered by the USPTO, and thus invalid.

In February and March 2012, respectively, the USPTO granted the requests for reexamination we filed with respect to MonoSol's 292 and 891 Patents. In its initial office action in each, the USPTO rejected every claim in each patent. Based on the action of the USPTO on these three patent reexaminations, the court in our case with MonoSol conducted a status conference on March 7, 2012, at which it granted our motion to stay the case pending final outcome of the reexamination proceedings in the USPTO.

As expected, in the 891 Patent and 292 Patent Ex Parte Reexamination proceedings, MonoSol amended the claims several times and made multiple declarations and arguments in an attempt to overcome the rejections made by the USPTO. These amendments, declarations and other statements regarding the claim language significantly narrowed the scope of their claims in these two patents. In the case of the 891 Patent, not one of the original claims survived reexamination and five separate amendments were filed confirming our position that the patent was invalid. Additionally, we believe that arguments and admissions made by MonoSol prevent it from seeking a broader construction during any subsequent litigation by employing arguments or taking positions that contradict those made during prosecution.

A Reexamination Certificate for MonoSol's 891 Patent in its amended form was issued August 21, 2012 (Reexamined Patent No. 7,357,891C1 or the 891C1 Patent). A Reexamination Certificate for MonoSol's 292 Patent in its amended form was issued on July 3, 2012 (Reexamined Patent No. 7,425,292C1 or the 292C1 Patent). These actions by the USPTO confirm the invalidity of the original patents and through the narrowing of the claims in the reissued patents strengthens our original assertion that our products and technologies do not infringe on MonoSol's original patents.

Inter partes reviews (IPRs), a new USPTO process to review the patentability of one or more claims of patents, was enacted in September, 2012. As such, on June 12, 2013, despite our previously noted success in the prior ex parte reexaminations for the 292 and 891 Patents, we availed ourselves of this new process and filed requests for inter partes reviews on the narrowed yet reexamined patents, the 292 C1 and 891 C1 Patents, to challenge their validity and continue to strengthen our position. This inter partes review process allows us to actively participate in the reviews and address any of MonoSol's arguments and representations made during the review process, which heightens our ability to invalidate these patents. On November 13, 2013, the USPTO decided not to institute the two inter partes reviews for the 891 C1 and 292 C1 Patents. The USPTO's decision was purely on statutory grounds and based on a technicality (in that the IPRs were not filed within what the USPTO determined to be the statutory period) rather than substantive grounds. Thus, even though the inter partes reviews were not instituted, the USPTO decision preserves our right to raise the same arguments at a later time (e.g., during litigation). Regardless, our assertion that our products and technologies do not infringe the original 292 and 891 Patents and, now, the reexamined 891 C1 and 292 C1 Patents remains the same.

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Importantly, in the case of MonoSol's 588 Patent, at the conclusion of the reexamination proceedings (and its appeals process), on April 17, 2014, the Patent Trial and Appeal Board (PTAB) issued a Decision on Appeal affirming the Examiner's rejection (and confirming the invalidity) of all the claims of the 588 Patent. MonoSol did not request a rehearing by the May 17, 2014 due date for making such a request and did not further appeal the Decision to the Federal Court of Appeals by the June 17, 2014 due date for making such an appeal. Subsequently, on August 5, 2014, the USPTO issued a Certificate of Reexamination cancelling the 588 Patent claims.

Based on our original assertion that our proprietary manufacturing process for ONSOLIS® does not infringe on patents held by MonoSol, and the denial and subsequent narrowing of the claims on the two reissued patents MonoSol has asserted against us while the third has had all claims rejected by the USPTO, we remain very confident in our original stated position regarding this matter. Thus far, we have proven that the original 292 and 891 patents in light of their reissuance with fewer and narrower claims were indeed invalid and the third and final patent, the 588 patent, was invalid as well with all its claims cancelled. Given the outcomes of the 292, 891 and 588 reexamination proceedings, at a January 22, 2015 status meeting, the Court decided to lift the stay and grant our request for the case to proceed on an expedited basis with a Motion for Summary Judgment to dismiss the action. In doing so, the Judge denied MonoSol's request for full litigation proceedings (including, for example, discovery and claim construction proceedings). We filed our motion for summary judgment on March 13, 2015 and briefing took place during March. The Court indicated it would rule on our summary judgment motion without an oral hearing. We expect a decision during the second half of 2015. Based upon the outcome from reexaminations and the Court's grant of our request for the proceedings to move directly to a motion for summary judgment, we believe we will prevail and the case will be dismissed. However, if this does not occur and the case proceeds to trial, we will continue to defend this case vigorously and seek a dismissal at trial. Ultimately, whether now with the motion for summary judgment proceedings or later with trial proceedings, we anticipate that MonoSol's claims against us will be rejected.

### *Litigation Related To BUNAVAIL®*

On October 29, 2013, Reckitt Benckiser, Inc., RB Pharmaceuticals Limited, and MonoSol (collectively, the RB Plaintiffs) filed an action against us relating to our BUNAVAIL® product in the United States District Court for the Eastern District of North Carolina for alleged patent infringement. BUNAVAIL® is a drug approved for the maintenance treatment of opioid dependence. The RB Plaintiffs claim that the formulation for BUNAVAIL®, which has never been disclosed publicly, infringes its patent (United States Patent No. 8,475,832) (the 832 Patent).

On May 21, 2014, the Court granted our motion to dismiss. In doing so, the Court dismissed the case in its entirety. The RB Plaintiffs did not appeal the Court Decision by the June 21, 2014 due date and therefore, the dismissal will stand and the RB Plaintiffs lose the ability to challenge the Court Decision in the future. The possibility exists, however, that the RB Plaintiffs could file another suit alleging infringement of the 832 Patent. If this occurs, based on our original position that our BUNAVAIL® product does not infringe the 832 Patent, we would defend the case vigorously (as we have done so previously), and we anticipate that such claims against us ultimately would be rejected.

On September 20, 2014, based upon our position and belief that our BUNAVAIL® product does not infringe any patents owned by the RB Plaintiffs, we proactively filed a declaratory judgment action in the United States District Court for the Eastern District of North (EDNC) Carolina, requesting the Court to make a determination that our BUNAVAIL® product does not infringe the RB Plaintiffs' 832 Patent, US Patent No. 7,897,080 (080 Patent) and US Patent No. 8,652,378 (378 Patent). With the declaratory judgment, there is an automatic stay in proceedings. The RB Plaintiffs may request that the stay be lifted, but they have the burden of showing that the stay should be lifted. For the 832 Patent, the January 15, 2014 IPR was instituted and in June 2015, all challenged claims were rejected for both anticipation and obviousness. The RB Plaintiffs may now request rehearing or appeal to the Federal Circuit. For the

080 Patent, all claims have been rejected in an inter partes reexamination and the rejection of all claims as invalid over the prior art has been affirmed on appeal by the PTAB in a decision dated March 27, 2015. In May 2015, the RB Plaintiffs filed a response after the decision to which we filed comments. We are awaiting a further decision from the Board, which we have no reason to believe will be inconsistent with the original decision rendered in March 2015. For the 378 Patent, an IPR was filed on June 1, 2014, but an IPR was not instituted. However, in issuing its November 5, 2014 decision not to institute the IPR, the PTAB construed the claims of the 378 Patent narrowly. As in prior litigation proceedings, we believe these IPR and the reexamination filings will provide support for maintaining the stay until the IPR and reexamination proceedings conclude. Indeed, given the PTAB's narrow construction of the claims of the 378 Patent, we filed a motion to withdraw the 378 Patent from the case on December 12, 2014. In addition, we also filed a joint motion to continue the stay (with RB Plaintiffs) in the proceedings on the same day. Both the motion to withdraw the 378 Patent from the proceedings and motion to continue the stay were granted.

On September 22, 2014, the RB Plaintiffs filed an action against us (and our commercial partner) relating to our BUNAVAIL® product in the United States District Court for the District of New Jersey for alleged patent infringement. The RB Plaintiffs claim that BUNAVAIL®, whose formulation and manufacturing processes have never been disclosed publicly, infringes its patent U.S. Patent No. 8,765,167 (167 Patent). As with prior actions by the RB Plaintiffs, we believe this is another anticompetitive attempt by the RB

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Plaintiffs to distract our efforts from commercializing BUNAVAIL®. We strongly refute as without merit the RB Plaintiffs' assertion of patent infringement and will vigorously defend the lawsuit. On December 12, 2014, we filed a motion to transfer the case from New Jersey to North Carolina and a motion to dismiss the case against our commercial partner. The Court issued an opinion on July 21, 2015 granting our motion to transfer the venue to the EDNC, but denying our motion to dismiss in its entirety as moot. We will continue to vigorously prosecute this case in the EDNC.

In a related matter, on October 28, 2014, we filed multiple IPR requests on the 167 Patent demonstrating that certain claims of such patent were anticipated by or obvious in the light of prior art references, including prior art references not previously considered by the USPTO, and thus, invalid. The USPTO instituted three of the four IPR requests and we filed a request for rehearing for the non-instituted IPR. A final decision on the instituted 167 IPRs is expected in May 2016.

On January 22, 2014, MonoSol filed a Petition for IPR on US Patent No. 7,579,019 (the 019 Patent). The Petition asserted that the claims of the 019 Patent are alleged to be unpatentable over certain prior art references. The IPR was instituted on August 6, 2014. An oral hearing was held in April 2015 and a decision upholding all 7 claims was issued August 5, 2015. MonoSol may request rehearing to the USPTO or they may appeal the decision to the Federal Circuit. We will continue to vigorously defend our 019 patent if this favorable IPR decision is appealed.

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

The Company hereby updates its risk factors to update the following risk factor relating to its May 2015 amended and restated secured loan facility of \$30 million with MidCap Financial.

***Our amended and restated credit and security Agreement with MidCap Financial Trust (or MidCap) contains restrictions that limit our flexibility in operating our business. We may be required to make a prepayment or repay the outstanding indebtedness earlier than we expect under our Credit Agreement if a prepayment event or an event of default occurs, including a material adverse change with respect to us, which could have a materially adverse effect on our business.***

In May 2015, we entered into a \$30 million amended and restated credit and secured loan facility with MidCap. The credit agreement is a restatement, amendment and modification of a prior credit and security agreement, dated as of July 5, 2013 between us and MidCap, and certain lenders thereto. The credit agreement restructures, renews, extends and modifies the obligations under the prior agreement and the other financing documents executed in connection with the prior agreement. The amount of principal under the prior loan, which was included as part of the Loan, was approximately \$9.3 million. We received net loan proceeds in the aggregate amount of approximately \$20.1 million. The agreement contains various covenants that limit our ability to engage in specified types of transactions. These covenants limit our ability to, among other things:

- incur additional indebtedness;
- enter into a merger, consolidation or certain change of control events without complying with the terms of the credit agreement;
- change the nature of our business;
- change our organizational structure or type;
- amend, modify or waive any of our material agreements or organizational documents;
- grant certain types of liens on our assets;

- make certain investments;
- pay cash dividends;
- enter into certain transactions with affiliates; and

The restrictive covenants of the Credit Agreement could cause us to be unable to pursue business opportunities that we or our stockholders may consider beneficial. A breach of any of these covenants could result in an event of default under the Credit Agreement. An event of default will also occur if, among other things, a material adverse change in our business, operations or condition occurs, or a material impairment of the prospect of our repayment of any portion of the amounts we owe under the Credit Agreement occurs. In the case of a continuing event of default under the agreement, MidCap could elect to declare all amounts outstanding to be immediately due and payable and terminate all commitments to extend further credit, proceed against the collateral in which we granted MidCap a security interest under the Credit Agreement, or otherwise exercise the rights of a secured creditor. Amounts outstanding under the Credit Agreement are secured by all of our existing and future assets (excluding certain intellectual property).

We may not have enough available cash or be able to raise additional funds on satisfactory terms, if at all, through equity or debt financings to make any required prepayment or repay such indebtedness at the time any such prepayment event or event of default occurs. In such an event, we may be required to delay, limit, reduce or terminate our product development or commercialization efforts or grant to others rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves. Our business, financial condition and results of operations could be materially adversely affected as a result.



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

None.

**Item 3. Defaults upon Senior Securities.**

None.

**Item 4. Mine Safety Disclosures.**

Not applicable.

**Item 5. Other Information.**

None.

**Item 6. Exhibits.**

<b>Number</b>	<b>Description</b>
31.1	Certification of Chief Executive Officer Pursuant To Sarbanes-Oxley Section 302 (*)
31.2	Certification of Chief Financial Officer Pursuant To Sarbanes-Oxley Section 302 (*)
32.1	Certification Pursuant To 18 U.S.C. Section 1350 (*)
32.2	Certification Pursuant To 18 U.S.C. Section 1350 (*)
101.ins	XBRL Instance Document
101.sch	XBRL Taxonomy Extension Schema Document
101.cal	XBRL Taxonomy Calculation Linkbase Document
101.def	XBRL Taxonomy Definition Linkbase Document
101.lab	XBRL Taxonomy Label Linkbase Document
101.pre	XBRL Taxonomy Presentation Linkbase Document

\* A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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**SIGNATURES**

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

BIODELIVERY SCIENCES INTERNATIONAL, INC.

Date: August 10, 2015

By: /s/ Mark A. Sirgo  
Mark A. Sirgo, President and Chief Executive Officer  
(Principal Executive Officer)

Date: August 10, 2015

By: /s/ Ernest R. De Paolantonio  
Ernest R. De Paolantonio, Secretary, Treasurer and  
Chief Financial Officer (Principal Accounting Officer)

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