NUPATHE INC.
Form 10-Q
August 09, 2013
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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, 2013

OR

o **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 001-34836

NuPathe Inc.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**20-2218246** (IRS Employer Identification Number)
227 Washington Street **Suite 200** **Conshohocken, Pennsylvania** (Address of principal executive offices)	**19428** (Zip code)

Registrant s telephone number, including area code: **(484) 567-0130**

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Date 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 x No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company.

Large accelerated filer o	Accelerated filer o
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company x

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

As of August 6, 2013, there were 31,309,475 outstanding shares of the registrant s common stock, $0.001 par value.

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NUPATHE INC.

Form 10-Q for the Quarter Ended June 30, 2013

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In this Form 10-Q, unless otherwise stated or the context otherwise indicates, references to NuPathe, the Company, we, us, our, and similar references refer to NuPathe Inc.

NuPathe®, Zecuity®, SmartRelief and LAD are trademarks of NuPathe Inc. All other trademarks, trade names and service marks appearing in this Form 10-Q are the property of their respective owners.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

All statements contained in this Form 10-Q that are not historical facts are hereby identified as forward-looking statements and include, among others, statements relating to:

- the sufficiency of our cash and cash equivalents to fund our operations and debt service obligations into the fourth quarter of 2013;
- future expenses and capital requirements;
- the expected launch of Zecuity in the fourth quarter of 2013;
- our plans to obtain commercial and development partners for Zecuity and our product candidates and the timing of any such partnerships;
- our commercialization plans regarding Zecuity;
- our development plans regarding NP201 and NP202; and
- our development, manufacturing and commercialization capabilities;

as well as other statements relating to our expectations, plans and beliefs regarding our future operations, financial performance or financial condition and other future events (including assumptions relating to the foregoing). Forward-looking statements appear in this Form 10-Q primarily in Part I., Item 1 Notes to Unaudited Financial Statements and Part I., Item 2 Management s Discussion and Analysis of Financial Condition and Results of Operations . In some cases, you can identify forward-looking statements by words such as may, will, could, would, should, expect, intend, plan, anticipate, believe, estimate, predict, project, potential, continue, ongoing, scheduled an although not all forward-looking statements contain these identifying words.

Forward-looking statements are based upon our current expectations, plans and beliefs and are subject to a number of risks, uncertainties, assumptions and other factors that could cause actual results to differ materially and adversely from those expressed or implied by such statements. Factors that could cause or contribute to such differences include, but are not limited to:

- our ability to obtain additional capital on a timely basis and on agreeable terms to launch Zecuity and continue as a going concern;
- our ability to obtain commercial and development partners for Zecuity and our product candidates;
- our reliance on third parties to manufacture Zecuity and our product candidates;
- our ability to establish and effectively manage our supply chain;
- our ability to establish effective marketing and sales capabilities;
- market acceptance among physicians and patients and the availability of adequate reimbursement from third party payors for Zecuity and any product candidate for which we obtain marketing approval;
- adverse event profiles discovered after marketing approval and use of a product in a larger number of subjects for longer periods of time than in clinical trials, that could limit such product s usefulness or require its withdrawal;
- serious adverse events or other safety risks that could require us to abandon or delay development of, or preclude or limit approval of, our product candidates;
- our ability to complete, and the outcome of, the post-marketing clinical and non-clinical studies that we agreed to conduct in connection with obtaining FDA approval of Zecuity;
- varying interpretation of trial, study and market data;
- our ability to obtain and maintain intellectual property protection and the scope of such protection;
- compliance with legal and regulatory requirements; and

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- the other risks, uncertainties and factors discussed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2012 (2012 Annual Report) under the caption Item 1.A Risk Factors .

As a result, you should not place undue reliance on forward-looking statements. The forward-looking statements contained in this Form 10-Q represent our views only as of the date of this Form 10-Q (or any earlier date indicated in such statement). While we may update certain forward-looking statements from time to time, we specifically disclaim any obligation to do so, whether as a result of new information, future developments or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in the periodic and current reports that we file with the SEC. Our SEC filings are available free of charge through the Investor Relations SEC filings page of our website at www.nupathe.com and through the SEC s website at www.sec.gov. The information contained on our website, or accessible thereby, is not a part of this Form 10-Q.

The foregoing cautionary statements are intended to qualify all forward-looking statements wherever they may appear in this Form 10-Q. For all forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

NUPATHE INC.

(A Development-Stage Company)

Balance Sheets

(in thousands, except share and per share data)

(Unaudited)

		June 30, 2013		December 31, 2012
Assets				
Current assets:				
Cash and cash equivalents	$	16,056	$	22,570
Prepaid expenses and other		258		450
Total current assets		16,314		23,020
Property and equipment, net		2,258		581
Other assets		207		243
Other assets-equipment funding (Note 3(d))		7,199		6,763
Total assets	$	25,978	$	30,607
Liabilities and Stockholders Equity				
Current liabilities:				
Current portion of long-term debt	$	1,736	$	378
Accounts payable		1,827		800
Accrued expenses		2,047		1,995
Total current liabilities		5,610		3,173
Long-term debt		6,587		8,102
Other long-term liabilities				83
Warrant liability				16,236
Total liabilities		12,197		27,594
Stockholders equity (deficit):				
Preferred stock, $0.001 par value; authorized 10,000,000 shares; issued and outstanding 0 and 8,804 at June 30, 2013 and December 31, 2012, respectively				7,255
Common stock, $0.001 par value. Authorized 90,000,000 shares; issued and outstanding 31,309,475 and 20,023,949 shares at June 30, 2013 and December 31, 2012, respectively		31		20
Additional paid-in capital		176,810		136,506
Deficit accumulated during the development stage		(163,060)		(140,768)
Total stockholders equity		13,781		3,013

Total liabilities and stockholders equity	$	25,978	$	30,607

See accompanying notes to unaudited financial statements.

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NUPATHE INC.

(A Development-Stage Company)

Statements of Operations

(in thousands, except share and per share data)

(Unaudited)

	Three Months Ended June 30, 2013	Three Months Ended June 30, 2012	Six Months Ended June 30, 2013	Six Months Ended June 30, 2012	Period from January 7, 2005 (inception) through June 30, 2013
Grant revenue	$	$	$	$	$ 650
Operating expenses:					
Research and development	2,354	3,359	4,344	6,813	75,751
Acquired in-process research and development					5,500
Selling, general and administrative	2,323	2,420	5,307	4,807	40,206
Total operating expenses	4,677	5,779	9,651	11,620	121,457
Loss from operations	(4,677)	(5,779)	(9,651)	(11,620)	(120,807)
Interest income	3	6	8	16	677
Interest expense	(236)	(395)	(487)	(848)	(9,889)
Change in fair value of warrants			(12,162)		(13,449)
Loss on debt extinguishment					(799)
Loss before tax benefit	(4,910)	(6,168)	(22,292)	(12,452)	(144,267)
Income tax benefit					839
Net loss	(4,910)	(6,168)	(22,292)	(12,452)	$ (143,428)
Series A Preferred Stock dividends			(314)		
Net loss applicable to common stockholders	$ (4,910)	$ (6,168)	$ (22,606)	$ (12,452)	
Basic and diluted net loss per common share	$ (0.16)	$ (0.42)	$ (0.80)	$ (0.85)	
Weighted average basic and diluted common shares outstanding	30,668,060	14,736,809	28,289,184	14,734,696	

See accompanying notes to unaudited financial statements.

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NUPATHE INC.

(A Development-Stage Company)

Statements of Cash Flows

(in thousands, except share and per share data)

(Unaudited)

	Six Months Ended June 30, 2013	Six Months Ended June 30, 2012	Period from January 7, 2005 (inception) through June 30, 2013
Cash flows from operating activities:			
Net loss	$ (22,292)	$ (12,452)	$ (143,428)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation expense	56	52	414
Loss on asset disposal			29
Increase in fair value of warrants	12,162		13,449
Loss on debt extinguishment			799
Cash paid for interest on debt extinguishment			(350)
Acquired in-process research and development			5,500
Stock-based compensation	1,990	750	6,961
Noncash interest expense	66	129	5,824
Changes in operating assets and liabilities:			
Prepaid expenses and other current assets	102	163	1,066
Accounts payable	1,117	(55)	1,917
Accrued expenses	(31)	400	2,026
Net cash used in operating activities	(6,830)	(11,013)	(105,793)
Cash flows from investing activities:			
Purchase of in-process research and development			(5,500)
Payments under equipment funding agreement	(436)		(7,199)
Purchases of property and equipment	(1,733)	(307)	(2,701)
Net cash used in investing activities	(2,169)	(307)	(15,400)
Cash flows from financing activities:			
Proceeds from issuance of debt			26,000
Payment of debt issuance costs			(428)
Repayment of debt	(189)	(4,301)	(18,977)
Proceeds from sale of preferred stock, net			69,863
Proceeds from sale of common stock, net	2,674	12	46,324
Proceeds from sale of convertible notes, net			14,467
Net cash (used in) provided by financing activities	2,485	(4,289)	137,249
Net increase (decrease) in cash and cash equivalents	(6,514)	(15,609)	16,056
Cash and cash equivalents, beginning of period	22,570	23,059	
Cash and cash equivalents, end of period	$ 16,056	$ 7,450	$ 16,056
Supplemental cash flow disclosures:			
Noncash investing and financing activities:			
Conversion of note principal and accrued interest to redeemable convertible preferred stock	$	$	$ 4,547

Conversion of note principal and accrued interest to common stock			10,337
Conversion of redeemable convertible preferred stock into common stock			58,072
Reclassification of warrant liability	27,495		28,608
Fair value of warrants issued in connection with loan facility			485
Fair value of warrants issued in connection with equity financing			14,949
Financing arrangement with third party vendors			991
Accretion of redeemable convertible preferred stock			9,948
Dividends	314		13,564
Cash paid for interest	425	701	3,702

See accompanying notes to unaudited financial statements.

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NuPathe Inc.

(A Development-Stage Company)

Notes to Unaudited Financial Statements

(in thousands, except share and per share data)

(1) Background

NuPathe Inc. (the Company) is a specialty pharmaceutical company focused on the development and commercialization of branded therapeutics for diseases of the central nervous system. Our lead product, Zecuity® (sumatriptan iontophoretic transdermal system), was approved by the FDA on January 17, 2013 for the acute treatment of migraine with or without aura in adults. The Company was incorporated in Delaware on January 7, 2005 (inception) and has its principal office in Conshohocken, Pennsylvania. The Company operates as a single business segment and is a development-stage company.

(2) Development-Stage Risks and Liquidity

The Company has incurred recurring losses and negative cash flows from operations since its inception and has accumulated a deficit during the development stage of $163,060 as of June 30, 2013. The Company anticipates incurring additional losses until such time, if ever, that it can generate significant sales of Zecuity and its products in development.

Management estimates that the Company s cash and cash equivalents of $16,056 as of June 30, 2013 will be sufficient to fund operations and debt service obligations into the fourth quarter of 2013. However, changing circumstances may cause us to consume capital faster than we currently anticipate, and we may need to spend more money than currently expected because of such circumstances. The additional capital that the Company will require to launch Zecuity and fund its operations and debt service obligations beyond that point will depend largely upon the timing, scope, terms and structure of a commercial partnership for Zecuity. Until such time as the Company is able to secure additional capital, the Company intends to limit and delay certain expenditures required for the commercialization of Zecuity. There is no assurance that the Company will be able to secure a commercial partner on acceptable terms, and additionally no assurance that additional required capital will be available when needed or on acceptable terms. These factors raise substantial doubt about the Company s ability to continue as a going concern.

The Company is subject to those risks associated with any development-stage specialty pharmaceutical company that has substantial expenditures for development and commercialization. There can be no assurance that the Company s development projects will be successful, that products developed will obtain necessary regulatory approval, or that any approved product will be commercially successful. In addition, the Company operates in an environment of rapid technological change, and is largely dependent on the services of its employees, consultants, suppliers and contract manufacturers.

(3) Summary of Significant Accounting Policies

(a) Basis of Presentation

The accompanying unaudited interim financial statements have been prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, include all adjustments, consisting of normal recurring adjustments, which the Company considers necessary for a fair presentation of the financial position, operating results and cash flows for the periods presented.

Although the Company believes that the disclosures in these financial statements are adequate to make the information presented not misleading, certain information and footnote information normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission (SEC).

Results for any interim period are not necessarily indicative of results for any future interim period or for the entire year. The accompanying unaudited interim financial statements should be read in conjunction with the financial statements and related notes included in the Company s Annual Report on Form 10-K for the year ended December 31, 2012, filed with the SEC, which includes audited balance sheets as of December 31, 2012 and 2011, and the related statements of operations, redeemable convertible preferred stock and stockholders equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2012 and the period from January 7, 2005 (inception) through December 31, 2012.

(b) Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from such estimates.

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(c) Fair Value of Financial Instruments

Management believes that the carrying amounts of its financial instruments, including cash equivalents, prepaid expenses and other, accounts payable and accrued expenses, approximate fair value due to the short-term nature of those instruments. The carrying amount of the Company s debt obligations approximate fair value based on interest rates available on similar borrowings.

The Company follows Financial Accounting Standards Board (FASB) accounting guidance on fair value measurements for financial assets and liabilities measured on a recurring basis. The guidance requires fair value measurements be classified and disclosed in one of the following three categories:

- *Level 1:* Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

- *Level 2:* Quoted prices in markets that are not active, or input which are observable, either directly or indirectly, for substantially the full term of the asset or liabilities; or

- *Level 3:* Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

The Company had Level 1 fair value measurements of its cash equivalents of $12,997 and $21,964 at June 30, 2013 and December 31, 2012, respectively. The Company had no Level 2 fair value instruments at June 30, 2013 and December 31, 2012. The Company had Level 3 fair value measurements of its warrant liability of $0 and $16,236 at June 30, 2013 and December 31, 2012, respectively. A reconciliation of warrant liability measured at fair value on a recurring basis using unobservable inputs (Level 3) is shown in the table below.

Warrant Liability

Balance at January 1, 2013	$	16,236
Issuance of warrants		
Change in fair value of warrant liability		12,162
Transaction expenses included in change in fair value of warrant liability		(903)
Reclassified to equity as warrants no longer meet the liability classification requirements		(27,495)
Balance at June 30, 2013	$	

(d) Other Assets-Equipment Funding

In June 2010, the Company entered into an equipment funding agreement with LTS Lohmann Therapie-Systeme AG (LTS) under which the Company agreed to fund the purchase by LTS of manufacturing equipment for the Company s primary product candidate, Zecuity. The Company made 14 monthly installments to LTS that commenced in June 2010 and ended in August 2011. As of December 31, 2012, $6,763 was recorded as a noncurrent asset in the Other assets-equipment funding account on the accompanying balance sheet.

Additionally, in the first quarter of 2013, the Company amended the LTS funding agreement to provide additional funding for commercial manufacturing capacity. The Company s additional funding obligations resulting from such amendment are denominated in Euros and total approximately $800 based on exchange rates in effect at the time the amendment was initiated. As of June 30, 2013, the Company has capitalized $436 related to the amendment, which is also included in the Other assets-equipment funding account on the accompanying balance sheet, and expects to incur the remaining balance in 2013.

Amounts capitalized under the LTS funding agreement are expected to be amortized to cost of goods sold upon the commencement of commercial sales of Zecuity. LTS owns the purchased equipment and is responsible for its routine and scheduled maintenance and repair and is required to use the equipment solely to manufacture Zecuity.

(e) Net Loss per Common Share

Basic and diluted net loss per common share is determined by dividing net loss attributable to common stockholders by the weighted-average common shares outstanding less the weighted-average shares subject to repurchase during the period. For all periods presented, common stock options, unvested restricted shares of common stock, unvested restricted stock units and stock warrants have been excluded from the calculation because their effect would be anti-dilutive. Therefore, the weighted-average shares used to calculate both basic and diluted loss per share are the same.

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The following potentially dilutive securities have been excluded from the computations of diluted weighted-average shares outstanding as of June 30, 2013 and 2012, as they would be anti-dilutive:

	June 30,	
	2013	**2012**
Shares underlying outstanding options to purchase common stock	1,578,994	2,308,290
Shares of unvested restricted stock and restricted stock units	1,936,364	12,000
Shares underlying outstanding warrants to purchase common stock	10,916,216	200,268

(4) Capital Facility and Equity Financings

(a) Term Loan and Vendor Debt

2012 Term Loan

In November 2012, the Company entered into a Loan and Security Agreement with Hercules Technology Growth Finance, Inc. (Hercules) and received loan proceeds of $8,500 (the 2012 Term Loan). The 2012 Term Loan bears interest at an annual rate equal to the Wall Street Journal prime rate minus 3.25%, subject to a minimum rate of 9.85%. At June 30, 2013, the 2012 Term Loan bore interest at 9.85%. The Company is required to make interest-only payments for the first twelve months of the 2012 Term Loan s 42-month term; principal payments will commence in December 2013 and the loan matures in May 2016. As of June 30, 2013, the balance of the 2012 Term Loan, net of the $177 unamortized debt discount discussed below, is $8,323 with $1,736 of the amount being classified as current.

In connection with the 2012 Term Loan, NuPathe paid an origination fee to Hercules consisting of a cash payment of $43 and 50,000 shares of common stock. The fair value of the common stock of $146 was recorded as debt issuance costs. The Company also issued Hercules a warrant to purchase 106,631 shares of common stock at an exercise price of $2.79. The warrant has a five year exercise period. The fair value of the warrant was $213, which was recorded as a debt discount at the time of issuance and will be amortized to interest expense over the life of the loan. At the time of final payment of the 2012 Term Loan, the Company will be required to pay a final payment fee of $298.

The Company s obligations under the 2012 Term Loan are secured by a first priority lien on all of the Company s assets, excluding intellectual property, which is subject to a negative pledge. The Company s cash and investment accounts are subject to account control agreements with Hercules that give Hercules the right to assume control of the account in the event of a default under the Loan and Security Agreement. The Loan and Security Agreement contains operating covenants including, among others, covenants restricting the Company s ability to incur additional indebtedness, pay dividends or other distributions, effect a sale of any part of its business or merge with or acquire another company. The 2012 Term Loan also includes customary events of default including, among others, upon the occurrence of a payment default, a covenant default, a material adverse change or insolvency. Upon the occurrence of an event of default, the interest rate will be increased by 3% over the rate that would otherwise be applicable. In addition, the occurrence of an event of default could result in the acceleration of the Company s obligations under the 2012 Term Loan as well as grant Hercules the right to exercise remedies with respect to the collateral.

Vendor Debt

In August 2012 and September 2012, the Company entered into two short-term loan agreements with third party vendors to finance insurance premiums. The aggregate amount financed under the agreements was $434. As of June 30, 2013, these short-term loan agreements had been fully paid.

(b) Equity Financing

October 2012 Financing

In September 2012, the Company entered into a Securities Purchase Agreement (the Purchase Agreement) with certain qualified institutional purchasers and individual investors, pursuant to which the Company sold 14,000,000 units of the Company s securities (the Units) to investors for an aggregate purchase price of $28,000 (the October 2012 Financing). The per Unit purchase price for the Units was $2.00, and each Unit consisted of one one-thousandth (1/1,000) of a share of the Company s newly designated Series A Preferred Stock, par value $0.001 per share (the Series A Preferred Stock), and a warrant (the Warrants) to purchase one share of the Company s common stock, par value $0.001 per share, at an exercise price of $2.00 per share.

Each 1/1,000 of a share of Series A Preferred Stock accrued dividends quarterly in arrears at a rate per annum of 8% of $2.00 and was convertible, at the holder s option, into such number of shares of common stock equal to (i) $2.00 divided by the conversion price then in effect (which conversion price was initially equal to $2.00), plus (ii) an amount equal to all accrued but unpaid dividends on such fractional share divided by the closing price of the Company s common stock as reported on the NASDAQ Global Market on the trading day immediately preceding the date of conversion, unless the Company elected to pay the dividend amount in cash upon conversion.

The terms of the Series A Preferred Stock provided for the automatic conversion into common stock upon (i) the consent of the holders of a majority of the shares of the Series A Preferred Stock, (ii) the conversion of a majority of the shares of Series A Preferred Stock, or (iii) the second to occur of (A) FDA approval of the Company s Zecuity product candidate and (B) consummation of a

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financing, licensing, partnership or other corporate collaboration resulting in gross proceeds to the Company of at least $22 million. On February 4, 2013, as a result of the conversion of a majority of the shares of Series A Preferred Stock, the automatic conversion of the remaining shares of Series A Preferred Stock was triggered.

During the six months ended June 30, 2013, the Company issued an aggregate of 8,891,821 shares of common stock in connection with the conversion of Series A Preferred Stock, of which 87,821 shares of common stock were issued in satisfaction of the $314 dividend that accrued on outstanding shares of Series A Preferred Stock on January 23, 2013. The value of converted shares of $8,158 was reclassified from Series A Preferred Stock to common stock and additional paid in capital.

Warrants sold as part of the October 2012 Financing entitle the holders to purchase one share of common stock at a price of $2.00 per share. The exercise price of the Warrants was subject to full ratchet antidilution price protection such that, in the event the Company issued shares of common stock or securities convertible into shares of common stock at an effective per share price less than the exercise price then in effect, the exercise price would have been reduced to the effective price per share for such additional shares of common stock. Because of this antidilution feature, the warrants were liability classified on the Company s December 31, 2012 balance sheet, and they were re-measured on the Company s reporting dates with changes in the carrying value reflected in current results of operations.

The fair value of the Warrants on the date of issuance was determined to be $14,750 and was recorded as a liability. On February 4, 2013, upon the automatic conversion of the Series A Preferred Stock, the full ratchet antidilution feature of the Warrants terminated and the Warrants were marked to market to a fair value of $27,495 and then reclassified to equity. The change in fair value of warrants from January 1, 2013 through February 4, 2013 was $11,259 and the associated expense has been included in the Company s statement of operations.

The fair value of the warrants was determined using a Monte Carlo analysis. The fair value was subjective and was affected by changes in inputs to the valuation model including the price per share of the Company s common stock, assumptions regarding FDA approval, future stock price activity, the timing of exercise of the warrants, volatility of the Company s common stock and peer company common stock and risk-free rates based on U.S. Treasury yields.

As of June 30, 2013, 3,487,500 of the originally issued 14,000,000 Warrants have been exercised, resulting in the issuance of 2,210,397 shares of common stock and cash proceeds of $2,650.

Aspire Capital

As of June 30, 2013, the Company has not made any sales to Aspire Capital other than the 70,721 shares of common stock sold to Aspire Capital upon execution of the common stock purchase agreement in August 2010 (Purchase Agreement) and the 84,866 shares of common stock issued to Aspire Capital as a commitment fee in consideration for entering into the Purchase Agreement. The Purchase Agreement expires in August 2013.

(5) Stockholders Equity

The following table summarizes the Company s share activity for the six months ended June 30, 2013:

	Convertible Preferred Shares	Common Shares
Shares outstanding January 1, 2013	8,804	20,023,949
Conversion of Series A Preferred Stock into common stock	(8,804)	8,804,000
Common stock issued as dividends on Series A Preferred Stock		87,821
Restricted stock awards issued, net of forfeitures		132,598
Common stock issued pursuant to warrant exercises		2,210,397
Common stock issued pursuant to option exercises		50,710
Shares outstanding June 30, 2013		31,309,475

(a) Warrants

As of June 30, 2013, the following warrants to purchase common stock were outstanding:

	Number of Shares		Exercise Price	Expiration
Common stock	10,700,926	$	2.00	2017
Common stock	106,631	$	2.79	2017
Common stock	108,659	$	7.45	2016
	10,916,216			

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(6) Stock-Based Compensation

On January 3, 2013, an additional 1,001,197 shares of common stock became available under the Company s 2010 Omnibus Incentive Compensation Plan (the 2010 Plan), pursuant to its evergreen provision . On April 24, 2013, the 2010 Plan was amended to, among other things, increase the number of shares available under the Plan by 1,200,000, bringing the total shares authorized for issuance under the 2010 Plan to 5,176,582. Awards under the 2010 Plan are made by the compensation committee of the Company s board of directors and may be made to eligible employees, directors, consultants and advisors to the Company in the form of restricted stock, stock options, stock appreciation rights, stock units, performance units and other stock-based awards. As of June 30, 2013, there were 1,578,994 incentive and non-qualified stock options, 2,089,493 restricted stock units, and 132,598 restricted stock awards outstanding under the 2010 Plan. As of June 30, 2013, there were 1,194,454 shares of common stock available for future grants under the 2010 Plan.

(a) Stock Option Exchange

In January 2013, the Company completed an exchange of certain previously issued stock options for shares of restricted stock and restricted stock units (the Exchange). In the Exchange, certain employees of the Company exchanged two eligible stock options for one share of restricted stock (RSA) or one restricted stock unit (RSU). The Exchange was completed in accordance with, and as permitted by, the terms of the 2010 Plan. In connection with the Exchange, options to purchase 1,236,837 shares were cancelled and 618,415 shares of restricted stock and restricted stock units were issued.

RSAs and RSUs issued in the Exchange will vest 50% on January 7, 2014, with the remaining shares vesting in four equal quarterly installments thereafter. RSAs and RSUs issued in the Exchange are subject to forfeiture if the employee s service to the Company terminates before those shares vest, except as otherwise provided in written employment agreement entered into between the employee and the Company which, in certain cases, may provide for continued or accelerated vesting of equity securities, including RSAs or RSUs, in the event the employee is terminated without cause or the employee resigns for good reason (as such terms are defined in the applicable employment agreement). Shares of Company common stock will be issued with respect to vested RSUs on the earliest of: (i) June 30 of the calendar year immediately following the year in which the RSU vests; (ii) a change of control of the Company; or (iii) the employee s separation from service from the Company.

The exchange-date fair value of the options that were canceled in the Exchange was $2,727 and the fair value of the RSUs and RSAs that were issued in the Exchange was $2,103. For this purpose, fair value of the options was determined using the Black-Scholes option pricing model. Expense of $2,396 relating to the options canceled in the Exchange and RSUs/RSAs that were issued in the Exchange is being recognized through January 2015.

(b) Stock Options

The following is a summary of all stock option activity for the six months ended June 30, 2013:

	Number of Shares		Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Aggregate Intrinsic Value
Outstanding at January 1, 2013	2,788,599	$	3.58		
Granted	160,593		3.05		
Exercised	(94,736)		1.73		
Cancelled/forfeited	(1,275,462)				