

APPLIED DNA SCIENCES INC  
Form 10-K/A  
April 04, 2019

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K/A**

**Amendment No. 2**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF  
<sup>x</sup> 1934**

For the fiscal year ended September 30, 2018

**..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 **001-36745**

**APPLIED DNA SCIENCES, INC.**

(Exact name of registrant as specified in its charter)

<b>Delaware</b>	<b>59-2262718</b>
(State or other jurisdiction of incorporation or	(I.R.S. Employer Identification No.)

organization)

**50 Health**

**Sciences**

**Drive,**

**Stony Brook,**

**New York**

**11790**

**(631)**

**240-8800**

(Registrant's

telephone

number,

including

area code)

(Address of  
principal  
executive  
offices)

(Zip Code)

Securities registered under Section 12(b) of the Act:

**Title of Each Class**

**Name of each Exchange**

**on Which Registered**

Common Stock, \$0.001 par value

The NASDAQ Capital Market

Warrants to purchase Common Stock

The NASDAQ Capital Market

Securities registered under Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

☐ Yes ☒ No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

☐ Yes ☒ No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for

such shorter period that the registrant was required to submit such files).

☒ Yes ☐ No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ Smaller reporting company ☒  
Emerging growth company ☐

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

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

The aggregate market value of the Registrant's voting and non-voting common stock held by non-affiliates of the Registrant, based upon the last sale price of the common stock reported on The Nasdaq Capital Market as of the last business day of the Registrant's most recently completed second fiscal quarter (March 31, 2018), was approximately \$38 million. Shares of the Registrant's common stock held by each executive officer and director and by each entity or person that, to the Registrant's knowledge, owned 5% or more of the Registrant's outstanding common stock as of March 31, 2018 have been excluded in that such persons may be deemed to be affiliates of the Registrant. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of December 14, 2018, the Registrant had outstanding 30,112,057 shares of common stock, par value \$0.001 per share.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

None.



## EXPLANATORY NOTE

Applied DNA Sciences, Inc. (the “Company”, “we”, “us”, or “our”) is filing this Amendment No. 2 to Form 10-K (this “Amendment”) to amend its Annual Report on Form 10-K for the fiscal year ended September 30, 2018, which was originally filed with the Securities and Exchange Commission (the “SEC”) on December 18, 2018 (the “Original Filing”) and amended by Amendment No. 1 to Form 10-K filed with the SEC on January 28, 2019 (“Amendment No. 1”) (collectively, the “Annual Report”).

We are filing this Amendment to amend and restate the “Summary Compensation Table” and the footnotes to the “Outstanding Equity Awards at Fiscal Year-End” table of Item 11 of Part III, “Executive Compensation” in the Annual Report. With respect to the amendment and restatement of the Summary Compensation Table by this Amendment, the Company has determined that the grant date fair values of performance-based equity incentive plan awards were understated in the Summary Compensation Table included in Amendment No. 1 due to a clerical error. The Summary Compensation Table of Item 11 of Part III, as restated in Item 11 of Part III of this Amendment, reflects the correct grant date fair values of the related equity incentive plan awards. The Amendment also includes technical corrections to the footnotes to the Outstanding Equity Awards at Fiscal Year-End table of Item 11 of Part III. No other portion of the disclosures included in Item 11 of Part III of the Annual Report has been materially amended.

As required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the certifications required by Rule 13a-14(a) under the Exchange Act are also being filed as exhibits to this Amendment. This Amendment amends and restates in its entirety Item 11 of Part III and also includes the additional certifications required of the principal executive officer and principal financial officer under Section 302 of the Sarbanes-Oxley Act of 2002. Because no financial statements are contained within this Amendment, we are not including new certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Except as described above, no other changes have been made to the Annual Report, and the Original Filing and Amendment No. 1 continue to speak as of their respective dates. Except as expressly set forth herein, this Amendment does not reflect events occurring after the date of the Original Filing or Amendment No. 1 or modify or update any of the other disclosures contained therein in any way other than as required to reflect the amendments discussed above. Accordingly, this Amendment should be read in conjunction with the Original Filing, Amendment No. 1, and the Company’s other filings with the SEC.

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## **Part III**

### **ITEM 11. EXECUTIVE COMPENSATION**

#### **Compensation Overview**

Our compensation approach is necessarily tied to our stage of development as a company. We have historically been principally devoted to developing DNA embedded biotechnology security solutions, but have more recently also supplied DNA for use in in vitro medical diagnostics, preclinical biotechnology and preclinical drug and biologic development and manufacturing markets. We also have undertaken preliminary steps towards the development of drugs and biologics. We have necessarily limited the establishment of extensive administrative and operating infrastructure, and a formal executive compensation policy has not been established. We have a compensation committee of the Board of Directors that is responsible for all compensation matters of our directors and executive officers. The compensation of all our named executive officers is approved by our compensation committee, which in turn reviewed the recommendation of our Chief Executive Officer (except with respect to his own compensation). As discussed below, the recommendation of our Chief Executive Officer is largely discretionary, based on his subjective assessment of the particular executive. As we continue to grow, we expect that the specific direction, emphasis and components of our executive compensation program will continue to evolve. The compensation committee has overall responsibility for approving and evaluating our executive officers' compensation plans, policies and programs. Our compensation program is designed to employ best practices in executive compensation and consider all relevant regulatory guidance regarding sound incentive compensation policies. The remainder of this section provides a general summary of our compensation policies and procedures.

#### **Our Executive Compensation Philosophy and Objectives**

##### ***General***

The fundamental purpose of our executive compensation program is to assist us in achieving our financial and operating performance objectives. Specifically, we attempt to tailor an executive's compensation to (1) retain and motivate the executive, (2) reward him or her upon the achievement of Company-wide, and individual performance, and (3) align the executive's interest with the creation of long-term stockholder value, without encouraging excessive risk taking. To that end, and within the context of the stage of our Company, we have compensated our named executive officers through a mix of base salary, equity-based incentives, and cash bonuses.

Our business model is based on our ability to establish long-term relationships with clients and to maintain our strong mission, client focus, entrepreneurial spirit and team orientation. We have sought to create an executive compensation package that balances short-term versus long-term components when considering cash bonuses and employee equity awards, in ways we believe are most appropriate to motivate senior management and reward them for achieving the following goals:

- “ Develop a culture that embodies a commitment for our business, creative contribution and a drive to achieve established goals and performance objectives;
- “ Provide leadership to the organization in such a way as to maximize the results of our business operations;
- “ Lead us by demonstrating forward thinking in the operation, development and expansion of our business;
- “ Effectively manage organizational resources to derive the greatest value possible from each dollar invested;  
and
- “ Take strategic advantage of the market opportunity to expand and grow our business and revenues.

We believe that having a compensation program designed to align executive officers to meet our business objectives and to reinforce excellent performance and accountability is the cornerstone to successfully implement and achieve our strategic plan. In determining the compensation of our executive officers, we are guided by the following key principles:

- “ *Competition.* Compensation should reflect the competitive marketplace, so we can retain, attract and motivate talented executives.



“ *Accountability for Business Performance.* Compensation should be tied to financial performance, so that executives are held accountable through their compensation for contributions to the performance of our company as a whole as well as their performance of the business unit for which they are responsible.

“ *Accountability for Individual Performance.* Compensation should be tied to the individual’s performance to encourage and reflect individual contributions to our company’s performance. We consider individual performance as well as performance of the business and responsibility areas that an individual oversees, and weigh these factors as appropriate in assessing a particular individual’s performance.

“ *Alignment with Stockholder Interests.* Compensation should be tied to our financial performance through equity awards to align executives’ interests with those of our stockholders.

Our executive compensation structure not only aims to be competitive in our industry, but also to be fair relative to compensation paid to other professionals within our organization, relative to our short-term and long-term performance and relative to the value we deliver to our stockholders. We seek to maintain a performance-oriented culture and a compensation approach that rewards our executive officers when we achieve our goals and objectives, while putting at risk an appropriate portion of their compensation against the possibility that our goals and objectives may not be achieved.

The Chief Executive Officer is the only named executive officer with an employment agreement. In addition, there are no change in control, severance or noncompetition agreements with any other named executive officer, nor are we otherwise obligated to pay any named executive officers any amounts if there is a change in control of the Company or if such executive’s employment with us terminates, except for the Chief Executive Officer, as described below in the section entitled “—Potential Payments upon Termination of Employment or a Change of Control.”

#### ***Determination of Executive Compensation Awards***

The compensation committee establishes and monitors the basic philosophy governing the compensation of the Chief Executive Officer. On an annual basis, the compensation committee reviews the compensation of the Chief Executive Officer including incentive compensation plans and equity-based plans. Compensation decisions for all other of our executive officers are approved by our compensation committee, which in turn reviewed the recommendation of our Chief Executive Officer. We have traditionally placed significant emphasis on the recommendation of our Chief Executive Officer with respect to the determination of executive compensation (other than his own), in particular with respect to the determination of base salary, cash incentive and equity incentive awards, and typically followed such recommendations as presented by our Chief Executive Officer. However, the compensation committee in reviewing

such recommendations is free to make decisions that are contrary to the Chief Executive Officer's recommendations. As we continue to grow, we intend to make the transition to have our compensation committee be solely responsible for administering our executive compensation program, although we expect to continue to rely, in part, upon the advice and recommendations of our Chief Executive Officer (other than with respect to his own compensation), particularly with respect to those executive officers that report directly to him. The compensation committee's composition and oversight of our executive compensation program is described in more detail above in the section entitled "—Compensation Committee."

For purposes of determining our executive officer compensation in the fiscal year ended September 30, 2018 and in prior fiscal years, we considered the following factors: our understanding of the amount of compensation generally paid by similarly situated companies to their executives with similar roles and responsibilities; the roles and responsibilities of our executives; the individual experience and skills of, and expected contributions from, our executives; the amounts of compensation being paid to our other executives; our executives' historical compensation at our Company; an assessment of the professional effectiveness and capabilities of the executive officer; and the performance of the executive officer against the corporate and other scorecards used to determine incentive compensation. While we have not used any formula or formal benchmarking to determine compensation based on these factors, we have placed the most emphasis in determining compensation on our understanding of the amount of compensation generally paid by similarly situated companies to their executives with similar roles and responsibilities and the subjective assessment of the professional effectiveness and capabilities of the executive officer. Our understanding of the amount of compensation generally paid by similarly situated companies was based on our compensation committee's and our Chief Executive Officer's own business judgment and collective experience in such matters.

### ***Base Salary***

Our compensation committee sets the Chief Executive Officer's base salary annually in accordance with the terms of his employment agreement (provided that unless otherwise consented to by the Chief Executive Officer, any change by the compensation committee may increase, but not decrease, the Chief Executive Officer's annual rate of base salary). Dr. Hayward's annual base salary was voluntarily reduced by \$100,000 in fiscal 2016. Subject to the Company reaching certain financial targets, Dr. Hayward will receive certain bonuses. During 2017, Mr. Hayward's annual base salary was voluntarily reduced by an additional \$50,000. For more information, see "—Changes to Compensation of Executive Officers " and "Employment Agreement with Dr. James A. Hayward." The base salary for each of the other named executive officers is reviewed annually by the Chief Executive Officer and any adjustments recommended by him are subject to the review and approval by the compensation committee. Adjustments to base salary are based upon a review of a variety of factors, including the following:

- .. individual and Company performance, measured against quantitative and qualitative goals, such as our growth, revenue, profitability and other matters;
- .. duties and responsibilities as well as the executive's experience; and
- .. the types and amount of each element of compensation to be paid to the named executive officer.

The current base salaries for our named executive officers eligible to receive an annual incentive bonus is as follows:

Dr. James A. Hayward	\$250,000
Beth M. Jantzen	\$240,000
Judith Murrah	\$240,000

### ***Cash Bonuses***

The Chief Executive Officer is paid cash bonuses in accordance with the terms of his employment agreement as well as based on the discretion of the compensation committee. We pay discretionary cash bonuses to our other named executive officers, which are recommended by the Chief Executive Officer, although the final determination of such bonuses are made by the compensation committee. The cash bonuses, if any, which are determined after the end of each fiscal year and may be paid annually, are intended to recognize and reward those named executive officers who have contributed meaningfully to our performance for the prior year. Both personal and the Company's performance are factors that the compensation committee and Chief Executive Officer typically consider in deciding whether to award a cash bonus to a named executive officer and the amount of such bonus. No cash bonuses were paid to executive officers for the fiscal year ended September 30, 2018 due to the performance of the Company.

### ***Long-term Stock-Based Compensation***

Our long-term compensation program has historically consisted solely of stock options. Option grants made to executive officers are designed to provide them with incentive to execute their responsibilities in such a way as to generate long-term benefit to us and our stockholders. Through possession of stock options, our executives participate in the long-term results of their efforts, whether by appreciation of our Company's value or the impact of business setbacks, either Company-specific or industry-based. Additionally, stock options provide a means of ensuring the retention of our executive officers, in that they are in most cases subject to vesting over an extended period of time.

Stock options provide executives with a significant and long-term interest in our success. By only rewarding the creation of stockholder value, we believe stock options provide our executive officers with an effective risk and reward profile. Although it is our current practice to use stock options as our sole form of long-term incentive compensation, the compensation committee reviews this practice on an annual basis in light of our overall business strategy, existing market-competitive best practices and other factors.

Stock options are granted periodically and are subject to vesting based on the executive's continued employment. Historically we have granted our executive officers a combination of incentive stock options that vest over a period of time or stock options that are immediately exercisable.

Stock options are granted to our executive officers in amounts determined by the compensation committee in its discretion. Stock grants have not been formula-based, but instead have historically been granted taking into account a mixture of the following qualitative factors: the executive's level of responsibility; the competitive market for the executive's position; the executive's potential contribution to our growth; and the subjective assessment of the professional effectiveness and capabilities of these executives.

During the fiscal year ended September 30, 2018, Dr. Hayward, Ms. Jantzen, and Ms. Murrah, were granted 250,000, 100,000 and 150,000 options, respectively. These options vested immediately as cash bonuses were not paid to executives during the prior fiscal year. Subsequent to September 30, 2018 certain options of such executive officers were canceled and replaced with new options with a term of an additional five years. The combined term of these options is a total of 10 years for consistency with our current compensation practices, in which employee stock options are generally granted with a term of ten years.

### ***Benefits***

We provide the following benefits to our executive officers on the same basis as the benefits provided to all employees:

- .. health and dental insurance;
- .. life insurance;
- .. short-and long-term disability; and
- .. 401(k) Plan (currently there is no employer matching)

These benefits are generally consistent with those offered by other companies and specifically with those companies with which we compete for employees.

*Changes to Compensation of Executive Officers*

Effective March 15, 2018, the compensation committee approved a bonus of \$121,125 that would be payable to Dr. Hayward if and when the Company reaches \$3,000,000 in revenues for two consecutive quarters or \$12,000,000 in revenues for a fiscal year, provided that Dr. Hayward is still employed by the Company on such date (the “Revenue Bonus”). Effective May 2, 2018, the compensation committee increased the amount of the Revenue Bonus to \$403,623. Effective December 27, 2018, the compensation committee approved a bonus opportunity of \$150,000 for the calendar year ended December 31, 2019, that would be payable to Dr. Hayward under the same terms as described above.

**Summary Compensation Table**

The following table sets forth the compensation of our principal executive officer, our principal financial officer and our other executive officers for the fiscal years ended September 30, 2018 and 2017. We refer to these executive officers as our “named executive officers.”

	<b>Year</b>	<b>Salary (\$ (c))</b>	<b>Bonus (\$ (d))</b>	<b>Stock Awards (\$ (e))</b>	<b>Option Awards (\$ (f) (1))</b>	<b>All Other Compensation (\$ (i))</b>	<b>Total (\$ (j))</b>
James A. Hayward	2018	250,000	—	—	213,327	18,000	481,327
<i>Chairman, President and CEO</i>	2017	281,730	—	—	245,790	18,000	545,520
Beth M. Jantzen	2018	221,538	—	—	85,330	—	306,868
<i>CFO</i>	2017	246,346	—	—	98,316	—	344,662
Judith Murrah	2018	240,000	—	—	127,996	—	367,996
<i>CIO</i>	2017	246,346	—	—	98,316	—	344,662

The amounts in column (f) represent the grant date fair value calculated in accordance with ASC 718 based on the Black Scholes value of the options on the grant date. Information concerning these amounts and the assumptions (1) used to calculate these amounts are set forth in our Form 10-K for the fiscal year ended September 30, 2018 filed with the SEC on December 18, 2018 under the caption “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations —Equity Based Compensation.”

**Outstanding Equity Awards at Fiscal Year-End**

The following table shows information concerning outstanding equity awards as of September 30, 2018 held by the named executive officers.

Name	Option Awards		Option Exercise Price (\$)	Option Expiration Date
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable		
James A. Hayward	166,667 <sup>(1)</sup>	—	3.60	6/30/2020
	666,667 <sup>(2)</sup>	—	3.51	7/11/2021
	833,334 <sup>(8)</sup>	—	5.82	10/17/2018
	175,000	—	2.86	12/21/2024
	25,000	25,000	<sup>(3)</sup> 2.99	12/21/2025
	150,000	—	2.05	12/20/2026
	250,000	—	1.19	08/29/2028
Beth M. Jantzen	4,167 <sup>(4)(5)</sup>	—	5.31	10/14/2018
	4,167 <sup>(4)(5)</sup>	—	6.96	11/28/2018
	4,167 <sup>(4)(6)</sup>	—	8.16	12/09/2018
	40,000 <sup>(4)</sup>	—	2.86	12/21/2024
	22,500 <sup>(9)</sup>	7,500	3.45	2/14/2025
	25,000	25,000	<sup>(3)</sup> 2.99	12/21/2025
	60,000 <sup>(4)</sup>	—	2.05	12/20/2026
Judith Murrah	100,000	—	1.19	08/29/2028
	33,334 <sup>(7)</sup>	—	7.02	12/01/2018
	75,000	—	2.86	12/21/2024
	4,167 <sup>(6)</sup>	—	8.16	12/09/2018
	25,000	25,000	<sup>(3)</sup> 2.99	12/21/2025
	60,000	—	2.05	12/20/2026
	150,000	—	1.19	08/29/2028

On June 30, 2015, these options were canceled and replaced with new options with a term of an additional five years. The combined term of these options is a total of 10 years for consistency with our current compensation practices, in which employee stock options are generally granted for a term of 10 years. The price of our common stock was below the option exercise price at the time of such extension.

(2) On July 11, 2018, these options were canceled and replaced with new options with a term of an additional three years. The combined term of these options is a total of 10 years for consistency with our current compensation practices, in which employee stock options are generally granted for a term of 10 years. The price of our common stock was below the option exercise price at the time of such extension.

(3) 25% of these options will vest and become exercisable each anniversary for the next four years, commencing on December 21, 2016, one year from the date of grant.

(4) These options were granted to Ms. Jantzen for her service as Controller prior to her appointment as the Chief Financial Officer.

(5) On October 31, 2018 and November 28, 2018, these options were canceled and replaced with new options with terms of an additional five years. The combined terms of these options are a total of 10 years for consistency with our current compensation practices, in which employee stock options are generally granted for a term of 10 years. The price of our common stock was below the option exercise price at the time of such extension.



(6) On December 9, 2018, these options were canceled and replaced with new options with a term of an additional five years. The combined terms of these options are a total of 10 years for consistency with our current compensation practices, in which employee stock options are generally granted for a term of 10 years. The price of our common stock was below the option exercise price at the time of such extension.

(7) On December 1, 2018, these options were canceled and replaced with new options with a term of an additional five years. The combined term of these options is a total of 10 years for consistency with our current compensation practices, in which employee stock options are generally granted for a term of 10 years. The price of our common stock was below the option exercise price at the time of such extension.

(8) On October 17, 2018 these options were canceled and replaced with new options with terms of an additional five years. The combined terms of these options are a total of 10 years for consistency with our current compensation practices, in which employee stock options are generally granted for a term of 10 years. The price of our common stock was below the option exercise price at the time of such extension.

(9) We granted 30,000 options to purchase our common stock at an exercise price of \$3.45 per share for ten years to Ms. Jantzen, effective February 15, 2015, with vesting at 25% each anniversary for the next four years commencing one year from the date of grant.

### **Option Exercises and Stock Vested**

During the fiscal year ended September 30, 2018, none of our named executive officers exercised options or acquired shares upon vesting of stock awards.

### **Pension Benefits**

None of our named executive officers participates in or has account balances in qualified or non-qualified defined benefit plans sponsored by us.

### **Nonqualified Defined Contribution Plans**

None of our named executive officers participates in or has account balances in non-qualified defined contribution plans maintained by us.

## **Deferred Compensation**

None of our named executive officers participates in or has account balances in deferred compensation plans or arrangements.

## **Employment Agreement with Dr. James A. Hayward**

*The following is a discussion of our employment agreement with Dr. Hayward as of September 30, 2018 and, where indicated, compensation actions prior to such date.*

On July 28, 2017, an employment agreement was entered into with the Company's Chief Executive Officer ("CEO"), effective July 1, 2017. The employment agreement provides that Dr. Hayward will be the Company's CEO and will continue to serve on the Company's Board of Directors. The initial term was from July 1, 2017 through June 30, 2018, with automatic one-year renewal periods. As of June 30, 2018, the employment agreement renewed for an additional year. Under the new employment agreement term, the CEO will be eligible for a special cash incentive bonus of up to \$800,000, \$300,000 of which is payable if and when annual revenue reaches \$8 million and \$100,000 of which would be payable for each \$2 million of annual revenue in excess of \$8 million, provided the CEO is still employed by the Company on such date(s). Pursuant to the employment agreement, the CEO's annual salary is \$400,000. Due to previous voluntary reductions of the CEO's annual salary, Dr. Hayward's base salary for the 2018 fiscal year was \$250,000.

The Board of Directors, acting in its discretion, may grant annual bonuses to the CEO. The CEO will be entitled to certain benefits and perquisites and will be eligible to participate in retirement, welfare and incentive plans available to the Company's other employees.

The agreement with the CEO also provides that if he is terminated before the end of the initial or a renewal term by the Company without cause or if the CEO terminates his employment for good reason, then, in addition to earned and unpaid salary, bonus and benefits, and subject to the delivery of a general release and continuing compliance with restrictive covenants, the CEO will be entitled to receive a pro rata portion of the greater of either (X) the annual bonus he would have received if employment had continued through the end of the year of termination or (Y) the prior year's bonus; salary continuation payments for two years following termination equal to the greater of (i) three times base salary or (ii) two times base salary plus bonus; Company-paid COBRA continuation coverage for 18 months post-termination; continuing life insurance benefits (if any) for two years; and extended exercisability of outstanding vested options (for three years from termination date or, if earlier, the expiration of the fixed option term). If termination of employment as described above occurs within six months before or two years after a change in control of the Company, then, in addition to the above payments and benefits, all of the CEO's outstanding options and other equity incentive awards will become fully vested and the CEO will receive a lump sum payment of the amounts that would otherwise be paid as salary continuation. In general, a change in control will include a 30% or more change in ownership of the Company.

Upon termination due to death or disability, the CEO will generally be entitled to receive the same payments and benefits he would have received if his employment had been terminated by the Company without cause (as described in the preceding paragraph), other than salary continuation payments.

Effective March 15, 2018, the compensation committee, approved the Revenue Bonus of \$121,125 that would be payable to the CEO when the Company reaches \$3,000,000 in revenues for two consecutive quarters or \$12,000,000 in revenues for a fiscal year, provided that the CEO is still employed by the Company on such date. Effective May 2, 2018, the compensation committee of the Company's Board of Directors, increased the amount of the Revenue Bonus to \$403,623. Effective December 27, 2018, the compensation committee approved a bonus opportunity of \$150,000 for the calendar year ended December 31, 2019, that would be payable to Dr. Hayward under the same terms as described above.

### **Potential Payments upon Termination of Employment or a Change of Control**

There is a change-in-control provision included in Dr. Hayward's employment agreement, and we are obligated to pay severance or other enhanced benefits to him upon termination of his employment. For additional information, see "Employment Agreement with Dr. James A. Hayward" above.

If Dr. Hayward's employment was terminated on September 30, 2018 by us without "cause" or by Dr. Hayward for "good reason" (in either case, other than in connection with a change in control), he would have been entitled to a base salary component of \$750,000 (three times his annual base salary) paid in equal installments over 2 years, extended exercisability of his outstanding vested options (for three years from termination date or, if earlier, the expiration of

the fixed option term) and Company-paid COBRA continuation coverage for 18 months post-termination.

In the context of a “change in control” of the Company had it occurred on September 30, 2018, and within six months before or two years after such change in control and Dr. Hayward’s employment was terminated by us without “cause” or by Dr. Hayward for “good reason”, he would have been entitled to an estimated lump sum payment of \$750,000 (three times his annual base salary) and other benefits set forth in the preceding paragraph. In addition to the above payments and benefits, all of Dr. Hayward’s outstanding options and other equity incentive awards would have become fully vested.

If a “change in control” of the Company occurred on September 30, 2018 and Dr. Hayward’s employment was not terminated, then all of Dr. Hayward’s outstanding options and other equity incentive awards would have become fully vested.

#### **Director Compensation: Fiscal 2018**

During the fiscal year ended September 30, 2018, we did not provide any cash compensation to our non-employee directors for their service on our Board of Directors. On December 14, 2015, the Board of Directors approved the recommendation from the compensation committee that each of the non-employee directors shall annually receive, for as long as they are a member of the Board of Directors, a 10-year stock option, fully vested after one year, to purchase a number of shares of common stock having a fair value of \$75,000 as determined using the Black Scholes value, or as determined by the compensation committee. Additionally, the Board of Directors approved the recommendation from the compensation committee that stock options to purchase shares of our common stock having an aggregate fair value of \$50,000 using the Black Scholes value be granted to certain non-employee directors.

	<b>Fees Earned or Paid in Cash (\$)</b>	<b>Stock Awards (\$)</b>	<b>Option Awards (\$)(1)</b>	<b>All Other Compensation (\$)</b>	<b>Total (\$)(1)(9)</b>
Sanford R. Simon (6)	—	—	80,404	—	80,404
Yacov A. Shamash (2)(5)	—	—	94,704	—	94,704
John Bitzer, III (4)	—	—	81,304	—	81,304
Joseph D. Ceccoli (2)	—	—	87,500	—	87,500
Charles S. Ryan (4)	—	—	81,304	—	81,304
Robert C. Catell (2)	—	—	87,500	—	87,500
Elizabeth M. Schmalz Ferguson (2)(3)	—	—	131,250	—	131,250

(1) A 10-year option to purchase 63,919 shares of our common stock was granted by the Board of Directors to each of the non-employee directors on March 15, 2018 at an exercise price of \$1.57 per share, with one year vesting.

(2) A 10-year option to purchase an additional 10,653 shares of our common stock at an exercise price of \$1.57 per share was granted to each for Mr. Catell, Mr. Ceccoli, Ms. Schmalz Ferguson and Mr. Shamash on March 15, 2018, with one year vesting.

(3) A 10-year option to purchase 37,286 shares of our common stock was granted by the Board of Directors to Ms. Schmalz Ferguson on March 15, 2018 at an exercise price of \$1.57 per share, with one year vesting.

(4) A 10-year option to purchase 6,304 shares of our common stock was granted by the Board of Directors to each of Mr. Bitzer, and Mr. Ryan on March 15, 2018 at an exercise price of \$1.57 per share, with immediate vesting.

(5) A 10-year option to purchase 7,204 shares of our common stock was granted by the Board of Directors to Mr. Shamash, on March 15, 2018 at an exercise price of \$1.57 per share, with immediate vesting.

(6) A 10-year option to purchase 5,404 shares of our common stock was granted by the Board of Directors to Mr. Simon on March 15, 2018 at an exercise price of \$1.57 per share, with immediate vesting.

(7) The amounts represent the grant date fair value calculated in accordance with ASC 718 based on the Black Scholes value of the options on the grant date. Information concerning these amounts and the assumptions used to calculate these amounts are set forth in our Form 10-K for the fiscal year ended September 30, 2018 filed with the SEC on December 18, 2018 under the caption “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations —Equity Based Compensation.” As of September 30, 2018, Mr. Simon, Mr. Shamash, Mr. Bitzer, Mr. Ceccoli, Mr. Catell, Ms. Schmalz Ferguson and Mr. Ryan had total outstanding option awards (including warrants) of 242,362, 298,170, 313,204, 187,924, 152,830, 111,858 and 236,281 shares of our common

stock, respectively.

# **ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES**

The following documents are filed as part of this Form 10-K/A, Amendment No. 2 on April 4, 2019:

Exhibit Number	Description	Incorporated by Reference				Filed or Furnished Herewith
		Form	Exhibit	File No.	Date Filed	
<u>31.1</u>	<u>Certification of Chief Executive Officer, pursuant to Rules 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>					<u>Filed</u>
<u>31.2</u>	<u>Certification of Chief Financial Officer, pursuant to Rules 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>					<u>Filed</u>

## **SIGNATURES**

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

Date: April 4, 2019

**APPLIED DNA SCIENCES, INC.**

**/s/ James A. Hayward**

James A. Hayward

President and Chief Executive Officer