

TorreyPines Therapeutics, Inc.
Form 10-Q
August 11, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended June 30, 2009

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission file number: 000-25571

TORREYPINES THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

86-0883978
(IRS Employer Id. No.)

P.O. Box 231386
Encinitas, CA
(Address of principal executive offices)

92023-1386
(Zip code)

Registrant's telephone number, including area code: (858-623-5665)

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

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer
(Do not check if a

Smaller reporting company

smaller

reporting company)

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 5, 2009, there were 15,999,058 shares of our Common Stock outstanding.

TorreyPines Therapeutics, Inc.

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PART I. FINANCIAL INFORMATION

ITEM 1. Financial Statements

TorreyPines Therapeutics, Inc.

Consolidated Balance Sheets

(in thousands, except share and per share data)

	June 30, 2009 (Unaudited)	December 31, 2008
Assets		
Current assets		
Cash and cash equivalents	\$ 1,175	\$ 10,864
Prepaid expenses and other current assets	243	187
Total current assets	1,418	11,051
Property and equipment, net		40
Other assets		39
Total assets	\$ 1,418	\$ 11,130
Liabilities and stockholders' equity		
Current liabilities		
Accounts payable and accrued liabilities	\$ 149	\$ 3,865
Long-term debt, current portion		1,440
Total current liabilities		5,305
Long-term debt, net of current portion		2,112
Total liabilities	149	7,417
Commitments and contingencies		
Stockholders' equity		
Preferred stock, \$0.001 par value, 15,000,000 shares authorized, 0 shares outstanding at June 30, 2009 and December 31, 2008, respectively		
Common stock, \$0.001 par value, 150,000,000 shares authorized, 15,999,058 and 15,974,058 shares issued and outstanding at June 30, 2009 and December 31, 2008, respectively	16	16
Additional paid-in capital	123,167	122,883
Accumulated deficit	(121,914)	(119,186)
Total stockholders' equity	1,269	3,713
Total liabilities and stockholders' equity	\$ 1,418	\$ 11,130

See accompanying notes.

TorreyPines Therapeutics, Inc.**Consolidated Statements of Operations**

(in thousands, except share and per share data)

(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009	2008
Revenue				
License and option fees	\$	450	\$	\$ 1,733
Research funding		762		1,525
Other revenue	280		280	
Total revenue	280	1,212	280	3,258
Operating expenses:				
Research and development	61	5,491	916	10,751
General and administrative	742	1,751	2,010	3,199
Total operating expenses	803	7,242	2,926	13,950
Loss from operations	(523)	(6,030)	(2,646)	(10,692)
Other income (expense)				
Interest income	2	113	10	330
Interest expense	(11)	(110)	(56)	(257)
Other income (expense), net	(76)	(1,423)	(36)	(724)
Total other income (expense)	(85)	(1,420)	(82)	(651)
Net loss	\$ (608)	\$ (7,450)	\$ (2,728)	\$ (11,343)
Basic and diluted net loss per share	\$ (0.04)	\$ (0.47)	\$ (0.17)	\$ (0.72)
Weighted average shares used in the computation of basic and diluted net loss per share	15,990,725	15,748,104	15,982,391	15,743,875

See accompanying notes.

TorreyPines Therapeutics, Inc.**Consolidated Statements of Cash Flows**

(in thousands)

(Unaudited)

	Six months ended June 30,	
	2009	2008
Operating activities		
Net loss	\$ (2,728)	\$ (11,343)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	18	149
Stock-based compensation	285	350
Amortization of debt discount	11	61
Amortization of purchased patents		195
Deferred revenue		(1,733)
Gain on disposal of assets	(41)	
Loss on extinguishment of debt	76	105
Change in fair value of investment in OXIS International, Inc.		559
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets	(57)	493
Other assets		46
Accounts payable and accrued liabilities	(3,716)	(263)
Net cash used in operating activities	(6,152)	(11,381)
Investing activities		
Purchases of property and equipment		(19)
Proceeds from sale of property and equipment	63	
Net cash provided by/(used in) investing activities	63	(19)
Financing activities		
Issuance of common stock		18
Debt issue costs		(48)
Proceeds from long-term debt		3,600
Payments on long-term debt	(3,600)	(4,693)
Net cash used in financing activities	(3,600)	(1,123)
Effect of exchange rate changes on cash		208
Net decrease in cash and cash equivalents	(9,689)	(12,315)
Cash and cash equivalents at beginning of period	10,864	32,500
Cash and cash equivalents at end of period	\$ 1,175	\$ 20,185
Supplemental disclosure of cash flow information		
Cash paid for interest	\$ 45	\$ 196
Warrant issued in conjunction with debt		58

See accompanying notes.

TorreyPines Therapeutics, Inc.

Notes to Consolidated Financial Statements

June 30, 2009

(Unaudited)

(1) Basis of Presentation

The accompanying unaudited consolidated financial statements of TorreyPines Therapeutics, Inc. (together with our wholly-owned subsidiaries, TPTX, Inc. and TorreyPines Therapeutics Europe NV) should be read in conjunction with the audited financial statements and notes thereto as of, and for the year ended December 31, 2008 included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission (the SEC) on March 27, 2009. The accompanying financial statements have been prepared in accordance with United States generally accepted accounting principles (GAAP) and with the rules and regulations of the SEC related to a quarterly report on Form 10-Q. Accordingly, they do not include all of the information and disclosures required by GAAP for complete financial statements. In the opinion of our management, the accompanying financial statements reflect all adjustments (consisting of normal recurring adjustments) that are necessary for a fair presentation of the financial position, results of operations and cash flows for the interim periods presented. Interim results are not necessarily indicative of results for a full year. References in this report to TorreyPines, Company, we, us and our refer to TorreyPines Therapeutics, Inc. and its subsidiaries.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and the accompanying notes. Actual results could differ from those estimates.

(2) Going Concern Considerations

On July 27, 2009 we entered into a definitive merger agreement with Raptor Pharmaceuticals Corp. (Raptor) (see Note 8).

As of June 30, 2009 our accumulated deficit was \$121.9 million. Without additional sources of cash, our existing working capital is not sufficient to meet the cash requirements necessary to fund our planned operating expenses and working capital requirements through December 31, 2009.

These conditions raise substantial doubt about our ability to continue as a going concern. The accompanying financial statements have been prepared assuming that we will continue as a going concern. This basis of accounting contemplates the recovery of our assets and the satisfaction of liabilities in the normal course of business.

Our management plans to address the expected shortfall of working capital by completing the merger with Raptor, or securing additional funding through project financing, equity financing, a development partner or sale of assets. There can be no assurance that we will complete the merger or be able to obtain any sources of funding.

If we cannot complete the merger with Raptor in a timely manner, or otherwise obtain sufficient funding in the short-term, we may be forced to file for bankruptcy, cease operations or liquidate and dissolve the Company. The consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should we be forced to take such actions.

(3) Reduction-in-Force

In an effort to conserve financial resources, on March 31, 2009 we reduced our work force to three employees. In connection with the reduction-in-force, a restructuring charge of \$191,000 was recorded in the three months ended March 31, 2009. The restructuring charge is included in operating expenses in the statement of operations and is comprised of \$85,000 of research and development expense and \$106,000 of general and administrative expense, and all amounts have been paid at June 30, 2009.

(4) Comprehensive Loss

Statement of Financial Account Standards (SFAS) No. 130, *Reporting Comprehensive Income*, requires that all components of comprehensive income, including net income or loss and foreign currency translation adjustments, be reported in the financial statements in the period in which they are recognized. Comprehensive income or loss is defined as the change in equity during a period from transactions and other events and

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circumstances from non-owner sources. Our comprehensive loss is as follows (amounts in thousands):

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	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2009	2008	2009	2008
Net loss	\$ (608)	\$ (7,450)	\$ (2,728)	\$ (11,343)
Foreign currency translation adjustments				210
Comprehensive loss	\$ (608)	\$ (7,450)	\$ (2,728)	\$ (11,133)

(5) Net Loss Per Share

We calculate net loss per share in accordance with SFAS No. 128, *Earnings Per Share*. Net loss per share is computed on the basis of the weighted-average number of shares of common stock outstanding during the periods presented. Net loss per share assuming dilution is computed on the basis of the weighted-average number of common shares outstanding and the dilutive effect of all common stock equivalents. For the three and six month periods ended June 30, 2009 and 2008, there is no difference between basic and diluted net loss per share attributable to common stockholders because the effect of common stock equivalents outstanding during the periods, including stock options, restricted stock units and warrants, is antidilutive.

(6) Note Payable

In April 2009 we repaid the outstanding balance on a note payable that we entered into during 2008. The total payoff of the note was \$3.1 million. At the time of the payoff, unamortized debt issuance costs and unamortized debt discount equaled \$34,000 and \$42,000, respectively. The debt payoff was accounted for as a debt extinguishment, therefore the unamortized debt issuance costs and debt discount were recorded as a loss on the early extinguishment of debt on the statement of operations.

(7) Commitments and Contingencies

Several lawsuits were filed against us in February 2005 in the U.S. District Court for the Southern District of New York asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, or the Exchange Act and Rule 10b-5 thereunder on behalf of a class of purchasers of Axonyx Inc. (the predecessor legal entity to TorreyPines) common stock during the period from June 26, 2003, through and including February 4, 2005, referred to as the class period. Dr. Marvin S. Hausman, M.D., a former director and our former Chief Executive Officer, and Dr. Gosse B. Bruinsma, M.D., also a former director and our former Chief Executive Officer, were also named as defendants in the lawsuits. These actions were consolidated into a single class action lawsuit in January 2006. On April 10, 2006, the class action plaintiffs filed an amended consolidated complaint. We filed our answer to that complaint on May 26, 2006. Our motion to dismiss the consolidated amended complaint was filed on May 26, 2006 and was submitted to the court for a decision in September 2006. On March 31, 2009 the U.S. District Court for the Southern District of New York dismissed the proceedings. On April 24, 2009 an appeal was filed with the United States Court of Appeals for the Second Circuit by the class action plaintiffs.

(8) Subsequent Event

In connection with preparation of the financial statements, and in accordance with the adoption of Statement of Financial Accounting Standards No. 165, *Subsequent Events*, we evaluated subsequent events after the balance sheet date of June 30, 2009 through August 11, 2009, the date of issuance of these financial statements. On July 28, 2009 we announced that we had entered into a definitive merger agreement with Raptor. Under the terms of the agreement, which were unanimously approved by the boards of directors of Raptor and TorreyPines, upon closing, Raptor will be merged with and into a wholly-owned subsidiary of TorreyPines. TorreyPines will issue, and Raptor stockholders will receive, shares of TorreyPines common stock such that Raptor stockholders will own approximately 95% and TorreyPines stockholders will own approximately 5% of the combined company. In addition, at closing, TorreyPines will implement a reverse stock split to ensure compliance with NASDAQ listing requirements; the exact size of the reverse stock split will be determined at or shortly before closing. Closing of the merger is subject to customary conditions and contingent upon a vote of approval by both TorreyPines and Raptor's stockholders at their respective meetings of stockholders, expected to take place in the fourth quarter of 2009.

In connection with the merger described herein, TorreyPines expects to file a registration statement on Form S-4, which shall include a joint proxy statement/prospectus, with the U.S. Securities Exchange Commission (SEC) and any other necessary regulatory filings. Depending on the review process of the regulatory agencies, the companies currently expect the merger to close in the fourth quarter of 2009. Upon closing the transaction, the combined company's shares are expected to trade on the NASDAQ Capital Market.

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

This discussion and analysis should be read in conjunction with our unaudited financial statements and notes included in this Quarterly Report on Form 10-Q and the audited financial statements and notes as of and for the year ended December 31, 2008 included with the our Annual Report on Form 10-K filed with the Securities and Exchange Commission, or SEC, on March 27, 2009. Operating results are not necessarily indicative of results that may occur in future periods.

The following discussion of our financial condition contains certain statements that are not strictly historical and are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and involve a high degree of risk and uncertainty. Our actual results may differ materially from those projected in the forward-looking statements due to risks and uncertainties that exist in our operations, development efforts and business environment, including those set forth under the Section entitled Risk Factors in Part II, Item 1A, and other documents we file with the SEC, including the registration statement on Form S-4 we expect to file with the SEC in connection with the pending merger with Raptor. All forward-looking statements included in this report are based on information available to us as of the date hereof, and, unless required by law, we assume no obligation to update any such forward-looking statement.

Overview

Proposed Merger with Raptor Pharmaceuticals Corp.

On July 27, 2009, we entered into an Agreement and Plan of Merger and Reorganization (the Merger Agreement) with Raptor, a publicly traded biopharmaceutical company, and ECP Acquisition Corp., a new wholly-owned subsidiary of ours. The Merger Agreement provides that, upon the terms and subject to the conditions set forth in the Merger Agreement, Raptor will merge with and into ECP Acquisition Corp., with Raptor as the surviving corporation, becoming a wholly-owned subsidiary of ours. As a result of the merger, each outstanding share of Raptor capital stock will be converted into the right to receive shares of our common stock. Under the terms of the Merger Agreement, we will issue, and Raptor stockholders will be entitled to receive, in a tax-free exchange, shares of our common stock such that Raptor stockholders will own approximately 95% of the combined company on a pro forma basis and our stockholders will own approximately 5%.

The merger is subject to customary closing conditions, including approval by our stockholders of the issuance of our common stock in the merger. We anticipate the merger will be completed in the fourth quarter of 2009. The Merger Agreement contains certain termination rights for both us and Raptor, and further provides that, upon termination of the Merger Agreement under specified circumstances, either party may be required to pay certain of the other party's expenses, up to \$250,000.

Most, if not all, of our business immediately following the merger will be the business conducted by Raptor immediately prior to the merger, and most if not all of the descriptions of our business in this Quarterly Report on Form 10-Q, as well as the trends and risks that apply to our business, will change from those described herein based on our business to date and otherwise may no longer be applicable to us. In addition, because of the pending merger with Raptor and the other strategic transactions we are pursuing as described above, we believe our historical operating results are not indicative of future results.

We cannot assure you that we will close the pending merger with Raptor in a timely manner or at all. Our consideration and completion of the merger is subject to a variety of risks that could materially and adversely affect our business and financial results, including risks that we will forego business opportunities while any transaction is being considered or is pending; that our business may suffer due to uncertainty; and risks inherent in negotiating and completing any transaction.

Company Overview

We are a biopharmaceutical company that has been committed to providing patients with better alternatives to existing therapies through the development and commercialization of small molecule compounds. Our goal is to develop versatile product