

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

MusclePharm Corp

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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: September 30, 2016

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: 000-53166



MusclePharm Corporation

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction of
incorporation or organization)

77-0664193
(I.R.S. Employer
Identification No.)

4721 Ironton Street, Building A
Denver, Colorado
(Address of principal executive offices)

80239
(Zip code)

(303) 396-6100

(Registrant's telephone number, including area code)

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 past 12 months, and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files. Yes No

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

Large accelerated filer Accelerated filer

Non-accelerated filer 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

Number of shares of the registrant's common stock outstanding at November 1, 2016: 13,834,680, excluding 875,621 shares of common stock held in treasury.

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NOTE ABOUT FORWARD-LOOKING STATEMENTS

Except as otherwise indicated herein, the terms “Company,” “we,” “our” and “us” refer to MusclePharm Corporation and its subsidiaries. This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements contained in this Quarterly Report on Form 10-Q other than statements of historical fact, including statements regarding our future results of operations and financial position, our business strategy and plans, and our objectives for future operations, are forward-looking statements. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “expect,” and similar expressions are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in Item 1A, “Risk Factors” in our Annual Report on Form 10-K filed with the Securities and Exchange Commission (the “SEC”) on March 17, 2016, as amended on April 29, 2016. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the future events and trends discussed in this Quarterly Report on Form 10-Q may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

We undertake no obligation to revise or publicly release the results of any revision to these forward-looking statements, except as required by law. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.

PART I—FINANCIAL INFORMATION**Item 1. Financial Statements**

MusclePharm Corporation
Condensed Consolidated Balance Sheets
(In thousands, except share and per share data)

	September 30, 2016	December 31, 2015
	(Unaudited)	
ASSETS		
Current assets:		
Cash	\$ 5,894	\$ 7,081
Accounts receivable, net of allowance for doubtful accounts of \$329 and \$347, respectively	15,872	22,003
Inventory	8,047	12,549
Prepaid giveaways	65	307
Prepaid stock compensation	—	1,641
Prepaid expenses and other current assets	3,021	3,698
Total current assets	32,899	47,279
Property and equipment, net	3,298	6,693
Investments, long-term	—	977
Intangible assets, net	1,718	8,652
Other assets	420	180
TOTAL ASSETS	\$ 38,335	\$ 63,781
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	\$ 36,093	\$ 39,652
Accrued liabilities	10,065	12,526
Accrued restructuring charges, current	1,728	9,140
Obligation under secured borrowing arrangement	—	—
Convertible note with a related party, net of discount	5,988	—
Line of credit	—	3,000
Term loan	—	2,949
Other debt obligations	11	21
Total current liabilities	53,885	67,288
Convertible note with a related party, net of discount	—	5,952
Accrued restructuring charges, long-term	787	279
Other long-term liabilities	103	330
Total liabilities	54,775	73,849
Commitments and contingencies (Note 10)		
Stockholders' deficit:		
Common stock, par value of \$0.001 per share; 100,000,000 shares authorized as of September 30, 2016 and December 31, 2015; 14,803,315 and 14,664,161 shares issued as of September 30, 2016 and December 31, 2015, respectively; 13,927,694 and 13,788,540 shares outstanding as of September 30, 2016 and December 31, 2015, respectively	14	14
Additional paid-in capital	153,562	147,646
Treasury stock, at cost; 875,621 shares as of September 30, 2016 and December 31, 2015	(10,039)	(10,039)
Accumulated other comprehensive loss	(212)	(172)
Accumulated deficit	(159,765)	(147,517)
TOTAL STOCKHOLDERS' DEFICIT	(16,440)	(10,068)
TOTAL LIABILITIES AND STOCKHOLDERS' DEFICIT	\$ 38,335	\$ 63,781

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

MusclePharm Corporation
Condensed Consolidated Statements of Operations
(In thousands, except share and per share data)
(Unaudited)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2016	2015	2016	2015
Revenue, net	\$ 30,694	\$ 33,982	\$ 106,473	\$ 125,780
Cost of revenue ⁽¹⁾	20,497	23,512	70,377	83,428
Gross profit	10,197	10,470	36,096	42,352
Operating expenses:				
Advertising and promotion	1,905	7,093	8,878	22,603
Salaries and benefits	2,291	5,681	15,203	20,505
Selling, general and administrative	3,937	4,647	12,604	14,730
Research and development	270	1,437	1,664	3,323
Professional fees	1,315	1,980	4,445	5,499
Restructuring and other charges	1,667	16,650	(2,579)	16,650
Impairment of assets	137	—	4,450	—
Total operating expenses	11,522	37,488	44,665	83,310
Loss from operations	(1,325)	(27,018)	(8,569)	(40,958)
Loss on sale of subsidiary	—	—	(2,115)	—
Other expense, net	(122)	(559)	(1,426)	(1,090)
Loss before provision for income taxes	(1,447)	(27,577)	(12,110)	(42,048)
Provision for income taxes	—	71	138	104
Net loss	\$ (1,447)	\$ (27,648)	\$ (12,248)	\$ (42,152)
Net loss per share, basic and diluted	\$ (0.10)	\$ (2.01)	\$ (0.88)	\$ (3.12)
Shares used to compute net loss per share, basic and diluted	13,978,833	13,723,213	13,886,496	13,504,455

⁽¹⁾ Cost of revenue for the three and nine months ended September 30, 2016 included restructuring charges of \$0.1 million and \$2.3 million, respectively, related to write-down of inventory for discontinued products. Cost of revenue for the three and nine months ended September 30, 2015 included restructuring charges of \$1.3 million, respectively, related to write-down of inventory for discontinued products.

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

MusclePharm Corporation
Condensed Consolidated Statement of Comprehensive Loss
(In thousands)
(Unaudited)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2016	2015	2016	2015
Net loss	\$ (1,447)	\$ (27,648)	\$ (12,248)	\$ (42,152)
Other comprehensive loss:				
Change in foreign currency translation adjustment	(46)	72	(40)	(105)
Comprehensive loss	<u>\$ (1,493)</u>	<u>\$ (27,576)</u>	<u>\$ (12,288)</u>	<u>\$ (42,257)</u>

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

MusclePharm Corporation
Condensed Consolidated Statement of Stockholders' Deficit
(In thousands, except share data)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Treasury Stock	Accumulated Other Comprehensive Accumulated		Total Stockholders' Deficit
	Shares	Amount			Loss	Deficit	
Balance—December 31, 2015	13,788,540	\$ 14	\$147,646	\$ (10,039)	\$ (172)	\$ (147,517)	\$ (10,068)
Stock-based compensation related to issuance of common stock warrants to third parties for services	—	—	6	—	—	—	6
Stock-based compensation related to issuance and amortization of restricted stock awards to employees, executives and directors	372,154	—	1,441	—	—	—	1,441
Stock-based compensation related to accelerated vesting of restricted stock awards to a terminated executive	—	—	3,900	—	—	—	3,900
Stock-based compensation related to accelerated vesting of restricted stock awards to terminated employees as part of restructuring	—	—	288	—	—	—	288
Stock-based compensation related to issuance of stock options to an executive and a director	—	—	97	—	—	—	97
Issuance of shares of common stock related to sale of subsidiary	200,000	—	640	—	—	—	640
Cancellation of executive restricted stock	(433,000)	—	(456)	—	—	—	(456)
Change in foreign currency translation adjustment	—	—	—	—	(40)	—	(40)
Net loss	—	—	—	—	—	(12,248)	(12,248)
Balance—September 30, 2016	13,927,694	\$ 14	\$153,562	\$ (10,039)	\$ (212)	\$ (159,765)	\$ (16,440)

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

MusclePharm Corporation
Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2016	2015
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (12,248)	\$ (42,152)
Adjustments to reconcile net loss to net cash (used in) provided		
by operating activities:		
Depreciation of property and equipment	1,162	1,330
Amortization of intangible assets	496	776
Provision for doubtful accounts	234	168
Loss on disposal of property and equipment	122	32
Loss on sale of subsidiary	2,115	—
Non-cash impairment charges	4,380	—
Non-cash restructuring and other charges (reversals)	(4,133)	8,430
Inventory write down related to restructuring	2,285	1,262
Amortization of prepaid stock compensation	938	3,198
Amortization of prepaid sponsorship and endorsement fees	—	5,363
Amortization of debt discount and issuance costs	36	29
Stock-based compensation	4,981	8,690
Issuance of common stock warrants to third parties for services	6	62
Changes in operating assets and liabilities:		
Accounts receivable	5,069	890
Inventory	59	487
Prepaid giveaways	243	727
Prepaid sponsorship and endorsement fees	—	(6,492)
Prepaid expenses and other current assets	1,186	(1,822)
Other assets	(320)	(77)
Accounts payable and accrued liabilities	(4,908)	18,831
Accrued restructuring charges	(2,189)	7,977
Net cash (used in) provided by operating activities	<u>(486)</u>	<u>7,709</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(459)	(1,251)
Proceeds from disposal of property and equipment	40	447
Proceeds from sale of subsidiary	5,942	—
Purchase of MusclePharm apparel rights	—	(850)
Trademark registrations	(154)	(262)
Investment in contract manufacturer	—	(977)
Net cash provided by (used in) investing activities	<u>\$ 5,369</u>	<u>\$ (2,893)</u>

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

MusclePharm Corporation
Condensed Consolidated Statements of Cash Flows (Continued)
(In thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2016	2015
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from line of credit	\$ —	\$ 9,142
Payments on line of credit	(3,000)	(14,507)
Repayments of term loan	(2,949)	(731)
Proceeds from issuance of term loan	—	4,000
Issuance costs of term loan	—	(40)
Proceeds from secured borrowing arrangement, net of reserves	39,412	—
Payments on secured borrowing arrangement, net of fees	(39,412)	—
Repayments of other debt obligations	(10)	(25)
Repayment of capital lease obligations	(90)	(113)
Net cash used in financing activities	<u>(6,049)</u>	<u>(2,274)</u>
Effect of exchange rate changes on cash	(21)	(105)
NET CHANGE IN CASH	(1,187)	2,437
CASH — BEGINNING OF PERIOD	7,081	1,020
CASH — END OF PERIOD	<u>\$ 5,894</u>	<u>\$ 3,457</u>
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Cash paid for interest	\$ 1,186	\$ 384
Cash paid for taxes	\$ 206	\$ 57
SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES:		
Shares of common stock issued in conjunction with BioZone disposition	\$ 640	\$ —
Shares of common stock issued in conjunction with MusclePharm apparel rights acquisition	\$ —	\$ 1,394
Property and equipment acquired in conjunction with capital leases	\$ 24	\$ 423
Purchase of property and equipment included in accounts payable and accrued liabilities	\$ 43	\$ 148
Trademark registration included in accounts payable and accrued liabilities	\$ —	\$ 100

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

MusclePharm Corporation
Notes to Condensed Consolidated Financial Statements
(Unaudited)

Note 1. Description of Business**Description of Business**

MusclePharm Corporation, or the Company, was incorporated in Nevada in 2006. Except as otherwise indicated herein, the terms "Company," "we," "our" and "us" refer to MusclePharm Corporation and its subsidiaries. The Company is a scientifically driven, performance lifestyle company that develops, manufactures, markets and distributes branded nutritional supplements. The Company is headquartered in Denver, Colorado and, as of September 30, 2016, had the following wholly-owned operating subsidiaries: MusclePharm Canada Enterprises Corp ("MusclePharm Canada"), MusclePharm Ireland Limited ("MusclePharm Ireland") and MusclePharm Australia Pty Limited ("MusclePharm Australia"). A former subsidiary of the Company, BioZone Laboratories, Inc. ("BioZone"), was sold on May 9, 2016.

On August 24, 2015, the Company's Board of Directors (the "Board") approved a restructuring plan for the Company. The approved restructuring plan was designed to reduce costs and to better align the Company's resources for profitable growth. Specifically, through September 30, 2016, the restructuring plan resulted in: 1) reducing the Company's workforce; 2) abandoning certain leased facilities; 3) renegotiating or terminating a number of contracts with endorsers in a strategic shift away from such arrangements and toward more cost effective marketing and advertising efforts; 4) discontinuing a number of stock keeping units ("SKUs") and writing down inventory to net realizable value, or to zero in cases where the product was discontinued; and 5) writing off certain assets. Management has substantially completed the approved restructuring plan, and as such, we do not anticipate any additional restructuring charges. See Note 4 for further detail.

Management's Plans with Respect to Liquidity and Capital Resources

The Company's management believes the restructuring plan implemented during August 2015, the reduction in ongoing operating costs and expense controls and the sale of BioZone, as further described in Note 6, may enable the Company ultimately to be profitable. However, the Company may need to continue to raise capital. There can be no assurance that such capital will be available on acceptable terms or at all.

As of September 30, 2016, the Company had an accumulated deficit of \$159.8 million and recurring losses from operations. The Company may incur additional losses until such time it can generate significant revenues and/or reduce operating costs. In September 2014, the Company borrowed \$8.0 million under a line of credit with a bank. In February 2015, the Company entered into a term loan agreement with the same bank and borrowed \$4.0 million. In December 2015, the Company received \$6.0 million upon the issuance of a convertible note with a related party and subsequently repaid all borrowings. In January 2016, the Company entered into a secured borrowing arrangement, pursuant to which the Company has the ability to borrow up to \$10.0 million subject to sufficient amounts of accounts receivable to secure the loan. Under this arrangement, during the nine months ended September 30, 2016, the Company received \$39.5 million in cash and subsequently repaid \$40.0 million, including fees and interest, on or prior to September 30, 2016.

As of September 30, 2016, the Company had approximately \$5.9 million in cash and \$21.0 million in working capital deficit.

The accompanying Condensed Consolidated Financial Statements as of, and for, the three and nine months ended September 30, 2016 were prepared on the basis of a going concern, which contemplates, among other things, the realization of assets and satisfaction of liabilities in the ordinary course of business. Accordingly, they do not give effect to adjustments that would be necessary should the Company be required to liquidate its assets. The Company has not established an ongoing source of revenue sufficient to cover its operating costs for at least the next 12 months in order to continue as a going concern. The ability of the Company to meet its total liabilities of \$54.8 million as of September 30, 2016, and to continue as a going concern is dependent on the Company obtaining adequate capital to fund operating losses until it becomes profitable. The Company can give no assurances that any additional capital that it is able to obtain, if any, will be sufficient to meet its needs, or that any such financing will be obtainable on acceptable terms. If the Company is unable to obtain adequate capital, it could be forced to cease operations or substantially curtail its commercial activities. These conditions raise substantial doubt as to the Company's ability to continue as a going concern. The accompanying Condensed Consolidated Financial Statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of these uncertainties.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The accompanying Condensed Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP"). The Condensed Consolidated Financial Statements include the accounts of MusclePharm Corporation and its wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

Unaudited Interim Financial Information

The accompanying unaudited interim Condensed Consolidated Financial Statements have been prepared in accordance with GAAP and with the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial information. Accordingly, these statements do not include all of the information and notes required by GAAP for complete financial statements. The Company's management believes the unaudited interim Condensed Consolidated Financial Statements include all adjustments of a normal recurring nature necessary for the fair presentation of the Company's financial position as of September 30, 2016, results of operations for the three and nine months ended September 30, 2016 and 2015, and cash flows for the nine months ended September 30, 2016 and 2015. The results of operations for the three and nine months ended September 30, 2016 are not necessarily indicative of the results to be expected for the year ending December 31, 2016.

These unaudited interim Condensed Consolidated Financial Statements should be read in conjunction with the consolidated financial statements and related notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2015, filed with the SEC on March 17, 2016.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported and disclosed in the consolidated financial statements and accompanying notes. Such estimates include, but are not limited to, allowance for doubtful accounts, revenue discounts and allowances, the valuation of inventory and tax assets, the assessment of useful lives, recoverability and valuation of long-lived assets, likelihood and range of possible losses on contingencies, restructuring liabilities, valuations of equity securities and intangible assets, fair value of derivatives, warrants and options, among others. Actual results could differ from those estimates.

Revenue Recognition

Revenue is recognized when all of the following criteria are met:

- *Persuasive evidence of an arrangement exists.* Evidence of an arrangement consists of an order from the Company's distributors, resellers or customers.
- *Delivery has occurred.* Delivery is deemed to have occurred when title and risk of loss has transferred, either upon shipment of products to customers or upon delivery.
- *The fee is fixed or determinable.* The Company assesses whether the fee is fixed or determinable based on the terms associated with the transaction.
- *Collection is reasonably assured.* The Company assesses collectability based on credit analysis and payment history.

The Company's standard terms and conditions of sale allow for product returns or replacements in certain cases. Estimates of expected future product returns are recognized at the time of sale based on analyses of historical return trends by customer type. Upon recognition, the Company reduces revenue and cost of revenue for the estimated return. Return rates can fluctuate over time, but are sufficiently predictable with established customers to allow the Company to estimate expected future product returns, and an accrual is recorded for future expected returns when the related revenue is recognized. Product returns incurred from established customers were insignificant for the three and nine months ended September 30, 2016 and 2015, respectively.

The Company offers sales incentives through various programs, consisting primarily of advertising related credits, volume incentive rebates and sales incentive reserves. The Company records advertising related credits with customers as a reduction to revenue as no identifiable benefit is received in exchange for credits claimed by the customer. Volume incentive rebates are provided to certain customers based on contractually agreed upon percentages once certain thresholds have been met. Sales incentive reserves are computed based on historical trending and budgeted discount percentages, which are typically based on historical discount rates with adjustments for any known changes, such as future promotions or one-time historical promotions that will not repeat for each customer. The Company records sales incentive reserves and volume rebate reserves as a reduction to revenue.

During the three and nine months ended September 30, 2016, the Company recorded discounts, and to a lesser degree, sales returns, totaling \$10.8 million and \$27.9 million, respectively, which accounted for 26% and 21% of gross revenue in each period, respectively. During the three and nine months ended September 30, 2015, the Company recorded discounts, and to a lesser degree, sales returns, totaling \$5.9 million and \$19.9 million, respectively, which accounted for 15% and 14% of gross revenue in each period, respectively.

Stock-Based Compensation

The Company estimates the fair value of employee stock options on the date of grant using the Black-Scholes option-pricing model. The determination of the fair value of each stock award using this option-pricing model is affected by the Company's assumptions regarding a number of complex and subjective variables. These variables include, but are not limited to, the expected stock price volatility over the term of the awards and the expected term of the awards based on an analysis of the actual and projected employee stock option exercise behaviors and the contractual term of the awards. The Company recognizes stock-based compensation expense over the requisite service period, which is generally consistent with the vesting of the awards, based on the estimated fair value of all stock-based payments issued to employees and directors that are expected to vest.

Recent Accounting Pronouncements

During August 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-15, *Statement of Cash Flows - Classification of Certain Cash Receipts and Cash Payments*, which addresses eight specific cash flow issues with the objective of reducing the existing diversity in practice in how certain cash receipts and cash payments are presented and classified in the statement of cash flows. The standard is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. Early adoption is permitted, including adoption in an interim period. The Company is currently in the process of evaluating the impact of this new pronouncement on the Company's Condensed Consolidated Statements of Cash Flows.

In March 2016, the FASB issued Accounting Standards Update ("ASU") No. 2016-08, *Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net)* ("ASU 2016-08") which clarified the revenue recognition implementation guidance on principal versus agent considerations and is effective during the same period as ASU 2014-09. In April 2016, the FASB issued ASU No. 2016-10, *Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing* ("ASU 2016-10") which clarified the revenue recognition guidance regarding the identification of performance obligations and the licensing implementation and is effective during the same period as ASU 2014-09. In May 2016, the FASB issued ASU No. 2016-12, *Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients* ("ASU 2016-12") which narrowly amended the revenue recognition guidance regarding collectability, noncash consideration, presentation of sales tax and transition. ASU 2016-12 is effective during the same period as ASU 2014-09. The Company is still evaluating the impact of the adoption of ASU 2016-08, ASU 2016-10 and ASU 2016-12.

In March 2016, the FASB issued ASU No. 2016-09, *Compensation – Stock Compensation (Topic 718)* (“ASU 2016-09”). The standard identifies areas for simplification involving several aspects of accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, an option to recognize gross stock compensation expense with actual forfeitures recognized as they occur, as well as certain classifications on the statement of cash flows. ASU 2016-09 is effective for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years, with early adoption permitted. The Company is currently evaluating the impact of the adoption of ASU 2016-09.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*, which supersedes Topic 840, *Leases* (“ASU 2016-02”). The guidance in this new standard requires lessees to put most leases on their balance sheets but recognize expenses on their income statements in a manner similar to the current accounting and eliminates the current real estate-specific provisions for all entities. The guidance also modifies the classification criteria and the accounting for sales-type and direct financing leases for lessors. ASU 2016-02 is effective for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years, with early adoption permitted. The Company is currently evaluating the impact of the adoption of ASU 2016-02.

In July 2015, the FASB issued ASU No. 2015-11, *Inventory (Topic 330): Simplifying the Measurement of Inventory* (“ASU 2015-11”), which simplifies the subsequent measurement of inventory by requiring inventory to be measured at the lower of cost and net realizable value. Net realizable value is the estimated selling price of inventory in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. ASU 2015-11 is effective for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years. The Company is currently evaluating the impact of the adoption of ASU 2015-11.

In August 2014, the FASB issued ASU No. 2014-15, *Presentation of Financial Statements—Going Concern (Subtopic 205-40)* (“ASU 2014-15”). The standard provides guidance about management’s responsibility to evaluate whether there is substantial doubt about an entity’s ability to continue as a going concern and to provide related footnote disclosures and was issued to reduce diversity in the timing and content of disclosures. ASU 2014-15 is effective for the annual period ending after December 15, 2016, with early adoption permitted. The Company adopted ASU 2014-15 as of December 31, 2015.

In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers* (“ASU 2014-09”), which provides guidance for revenue recognition. ASU 2014-09 affects any entity that either enters into contracts with customers to transfer goods or services or enters into contracts for the transfer of nonfinancial assets and supersedes the revenue recognition requirements in Topic 605, *Revenue Recognition*, and most industry-specific guidance. This ASU also supersedes some cost guidance included in Subtopic 605-35, *Revenue Recognition- Construction-Type and Production-Type Contracts*. ASU 2014-09’s core principle is that a company will recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which a company expects to be entitled in exchange for those goods or services. In doing so, companies will need to use more judgment and make more estimates than under today’s guidance, including identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation. In August 2015, the FASB issued ASU No. 2015-14, *Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date* (“ASU 2015-14”), which delays the effective date of ASU 2014-09 by one year. The FASB also agreed to allow entities to choose to adopt the standard as of the original effective date. As such, the updated standard will be effective for the Company in the first quarter of 2018, with the option to adopt it in the first quarter of 2017. The Company may adopt the new standard under the full retrospective approach or the modified retrospective approach. The Company has not yet selected a transition method nor has determined the effect of ASU 2014-09 on its ongoing financial reporting.

Note 3. Fair Value of Financial Instruments

Management believes the fair value of the obligation under secured borrowing arrangement and convertible note with a related party approximates carrying value because the debt carries market rates of interest, and are both short-term in nature. The Company’s remaining financial instruments consisted primarily of accounts receivable, accounts payable, accrued liabilities, and accrued restructuring charges, all of which are short-term in nature with fair values approximating carrying value.

Note 4. Restructuring

As part of an effort to better focus and align the Company's resources toward profitable growth, on August 24, 2015, the Board authorized the Company to undertake steps to commence a restructuring of the business and operations, which concluded during the current quarter. The Company closed certain facilities, reduced headcount, discontinued products, and renegotiated certain contracts resulting in restructuring and other charges of \$21.2 million in 2015, of which \$2.9 million was included in "Cost of revenue" and \$18.3 million was included in operating expenses in the Consolidated Statements of Operations for the year ended December 31, 2015.

For the three and nine months ended September 30, 2016, the Company recorded restructuring charges in "Cost of revenue" of \$0.1 million and \$2.3 million, respectively, related to the write-down of inventory identified to be discontinued in the restructuring plan. For the three and nine months ended September 30, 2015, such write-down for discontinued inventory recorded in "Cost of revenue" was \$1.3 million, respectively.

For the three months ended September 30, 2016, the Company recorded restructuring charges of \$1.7 million. During the period, the Company closed its accounting and administration office in Denver, Colorado and its distribution center in Pittsburg, California.

For the nine months ended September 30, 2016, the Company recorded a credit in "Restructuring and other charges" of \$2.6 million comprised of: (i) an expense credit of \$4.8 million related to the release of a restructuring accrual of \$7.0 million, offset by the cash payment of \$2.2 million related to the settlement agreement which terminated all future commitments between ETW Corporation ("ETW") and the Company (see Note 14); (ii) \$1.3 million related to write-off of long-lived assets related to the abandonment of certain lease facilities; and (iii) \$0.9 million related to severance and other employee compensation costs. With the restructuring plan substantially complete, the Company does not anticipate incurring any additional restructuring charges for the remainder of 2016.

For the nine months ended September 30, 2015, the Company recorded expense of \$16.7 million in "Restructuring and other charges" comprised of: (i) \$9.3 million related to severance and other employee compensation costs; (ii) \$6.6 million related to cancellation of certain contracts and sponsorship agreements; and (iii) \$0.8 million for costs associated with permanently vacating certain leased facilities.

As of September 30, 2016, the restructuring charges to be paid in cash totaled \$2.5 million.

The following table illustrates the provision of the restructuring charges and the accrued restructuring charges balance as of September 30, 2016 and December 31, 2015 (in thousands):

	Employee Severance Costs	Contract Termination Costs	Purchase Commitment of Discontinued Inventories Not Yet Received	Abandoned Lease Facilities	Total
Balance as of December 31, 2014	\$ —	\$ —	\$ —	\$ —	\$ —
Expensed	1,353	6,979	350	467	9,149
Cash payments	(845)	(949)	—	(56)	(1,850)
Reclassification from accounts payable to restructuring charges	—	2,120	—	—	2,120
Balance as of December 31, 2015	508	8,150	350	411	9,419
Expensed	636	—	—	1,338	1,974
Benefit from settlement of Endorsement Agreement with ETW	—	(4,750)	—	—	(4,750)
Cash payments	(1,109)	(2,366)	(175)	(513)	(4,163)
Reclassification from capital lease liabilities to restructuring charges	—	—	—	35	35
Balance as of September 30, 2016	<u>\$ 35</u>	<u>\$ 1,034</u>	<u>\$ 175</u>	<u>\$ 1,271</u>	<u>\$ 2,515</u>

The total future payments under the restructuring plan as of September 30, 2016 are as follows (in thousands):

Outstanding Payments	Remainder of 2016	Year Ending December 31,					Total
		2017	2018	2019	2020	2021	
Contract termination costs	\$ 1,034	\$ —	\$ —	\$ —	\$ —	\$ —	\$1,034
Purchase commitment of discontinued inventories not yet received	175	—	—	—	—	—	175
Employee severance costs	35	—	—	—	—	—	35
Abandoned leased facilities	206	370	378	296	21	—	1,271
Total future payments	\$ 1,450	\$ 370	\$ 378	\$ 296	\$ 21	\$ —	\$2,515

Note 5. Capstone Nutrition Agreements

The Company entered into a series of agreements with Capstone Nutrition (“Capstone”) effective March 2, 2015, including an amendment (the “Amendment”) to a Manufacturing Agreement dated November 27, 2013 (as amended, the “Manufacturing Agreement”). Pursuant to the Amendment, Capstone shall be the Company’s nonexclusive manufacturer of dietary supplements and food products sold or intended to be sold by the Company. The Amendment includes various agreements including amended pricing terms. The initial term per this Amendment was to end on January 1, 2022, and could have been extended for three successive 24-month terms, and includes renewal options.

The Company agreed to pay to Capstone a non-refundable sum of \$2.5 million to be used by Capstone solely in connection with the expansion of its facility necessary to fulfill anticipated Company requirements under the Manufacturing Agreement and Amendment. The Company paid Capstone this \$2.5 million during 2015.

The Company and Capstone entered into a Class B Common Stock Warrant Purchase Agreement (“Warrant Agreement”) whereby the Company could purchase approximately 19.9% of Capstone’s parent company, INI Parent, Inc. (“INI”), on a fully-diluted basis as of March 2, 2015. Pursuant to the Warrant Agreement, INI issued to the Company a warrant (the “Warrant”) to purchase shares of INI’s Class B common stock, par value \$0.001 per share, at an exercise price of \$0.01 per share (the “Warrant Shares”). The Warrant could have been exercised if the Company was in compliance with the terms and conditions of the Amendment.

The Company utilized the Black-Scholes valuation model to determine the value of the Warrant and recorded an asset of \$977,000, which was accounted for under the cost method and assessed for impairment. The Warrant was included in long-term investments on the Condensed Consolidated Balance Sheet as of December 31, 2015. However, during the three months ended June 30, 2016, the Company reassessed the value of the Warrant and considered it to be fully impaired as the Company no longer believes there is any remaining value to the Warrant. The Company also had recorded \$1.5 million of prepaid expenses and other assets on the Condensed Consolidated Balance Sheet as of December 31, 2015, which were being amortized over the remaining life of the Manufacturing Agreement of 6.5 years. However, during the three months ended June 30, 2016, the Company reassessed the Manufacturing Agreement, which was the basis of the prepaid asset, and considered the entire remaining balance of \$1.4 million impaired as the Company no longer believes there is any remaining value to the Manufacturing Agreement. These conclusions were based in large part on the fact that Capstone sold its primary powder manufacturing facility during the quarter ended June 30, 2016, which significantly reduced its manufacturing capacity, and the ongoing dispute which is discussed below.

In total, the Company recognized \$2.4 million of impairment expense during the nine months ended September 30, 2016 related to previously recorded Capstone-related assets.

The Company and INI also entered into an option agreement (the “Option Agreement”). Subject to additional provisions and conditions set forth in the Option Agreement, at any time on or prior to June 30, 2016, the Company had the right to purchase for cash all of the remaining outstanding shares of INI’s common stock not already owned by the Company after giving effect to the exercise of the Warrant, based on an aggregate enterprise value, equal to \$200.0 million. The fair value of the option was deemed de minimis as of the transaction date. The Company did not exercise the option to purchase the remaining outstanding shares of INI’s common stock and such option expired on June 30, 2016.

The Company is engaged in a dispute with Capstone arising out of a Manufacturing Agreement between the parties. Capstone claims \$65.0 million in damages, including approximately \$22.0 million it claims the Company owes pursuant to the Manufacturing Agreement, of which \$21.9 million was included in the Company's accounts payable and accrued liabilities balances as of September 30, 2016. The Company claims that Capstone owes the Company at least \$13.5 million for losses caused by, among other things, Capstone's failure to timely manufacture and supply the Company's products. On February 12, 2016, Capstone commenced a mediation with the American Arbitration Association. Subsequent to September 30, 2016, the parties entered into a settlement agreement. See Note 18.

Note 6. Sale of BioZone

In May 2016, the Company completed the sale of its wholly-owned subsidiary, BioZone, for gross proceeds of \$9.8 million, including cash of \$5.9 million, a \$2.0 million credit for future inventory deliveries reflected as a prepaid asset in the Condensed Consolidated Balance Sheets and \$1.5 million which is subject to an earn-out based on the financial performance of BioZone for the twelve months following the closing of the transaction. In addition, the Company agreed to pay down \$350,000 of BioZone's accounts payables, which was deducted from the purchase price. As part of the transaction, the Company also agreed to transfer to the buyer 200,000 shares of its common stock with a market value on the date of issuance of \$640,000, for consideration of \$50,000. The Company recorded a loss of \$2.1 million related to the sale of BioZone. The loss on the sale of BioZone primarily related to the subsidiary's pre-tax losses for 2016. Pre-tax loss for BioZone for the nine months ended September 30, 2016 was \$1.5 million.

Upon closing of the sale of BioZone, the Company entered into a manufacturing and supply agreement whereby the Company is required to purchase a minimum of \$3.0 million of products from BioZone annually for an initial term of three years. The sale of BioZone did not qualify as discontinued operations as the disposal of BioZone did not represent a strategic shift that had (or will have) a major effect on the Company's operations and financial results.

The following table summarizes the components of the loss from the sale of BioZone (in thousands):

Cash proceeds from sale	\$	5,942
Consideration for common stock transferred		50
Prepaid inventory		2,000
Fair market value of the common stock transferred		(640)
Assets sold:		
Accounts receivable, net		(923)
Inventory, net		(1,761)
Fixed assets, net		(2,003)
Intangible assets, net		(5,657)
All other assets		(41)
Liabilities transferred		1,197
Transaction and other costs		(279)
Loss on sale of subsidiary	\$	<u>(2,115)</u>

In connection with the sale of BioZone, the Company and BioZone entered into a transition services agreement to provide administrative support which concluded in August 2016, and a sub-lease to the buyer for certain premises. The Company also entered into a product development and supply agreement with Flavor Producers, Inc. ("FPI"), the parent company of the buyer, to develop certain products to be sold by the Company. If the product development effort is successful, the minimum purchase commitment under the product development and supply agreement with FPI is \$3.0 million over the term of 12 months. Pursuant to the agreement, product pricing is fixed for one year, and was negotiated as an arms-length transaction. As of September 30, 2016, the product development effort had not yet commenced.

Note 7. Balance Sheet Components**Inventory**

Inventory consisted of the following as of September 30, 2016 and December 31, 2015 (in thousands):

	September 30, 2016	December 31, 2015
Raw materials	\$ —	\$ 1,385
Work-in-process	—	22
Finished goods	8,047	11,142
Inventory	<u>\$ 8,047</u>	<u>\$ 12,549</u>

The Company records charges for obsolete and slow moving inventory based on the age of the product as determined by the expiration date. Products within one year of their expiration dates are considered for write-off purposes. Historically, the Company has had minimal returns with established customers. Other than write-off of inventory during restructuring activities, the Company incurred insignificant inventory write-offs during the three and nine months ended September 30, 2016 and 2015. Inventory write-downs, once established, are not reversed as they establish a new cost basis for the inventory.

As disclosed further in Note 4, the Company executed a restructuring plan in August 2015 and wrote off inventory related to discontinued products. For the three and nine months ended September 30, 2016, discontinued inventory of \$0.1 million and \$2.3 million, respectively, was written off and included as a component of "Cost of revenue" in the accompanying Condensed Consolidated Statements of Operations. For the three and nine months ended September 30, 2015, discontinued inventory of \$1.3 million, respectively, was written off and included as a component of "Cost of revenue" in the accompanying Condensed Consolidated Statements of Operations.

In May 2016, the Company completed the sale of BioZone, which resulted in a reduction of inventory of \$1.8 million. See additional information in Note 6. Additionally, \$0.4 million of inventory related to the Arnold Schwarzenegger product line was considered impaired, and included as a component of the "Impairment of assets" in the accompanying Condensed Consolidated Statements of Operations for the nine months ended September 30, 2016. See additional information in Note 14.

Property and Equipment

Property and equipment consisted of the following as of September 30, 2016 and December 31, 2015 (in thousands):

	September 30, 2016	December 31, 2015
Furniture, fixtures and equipment	\$ 3,333	\$ 3,621
Leasehold improvements	2,498	3,227
Manufacturing and lab equipment	3	1,659
Vehicles	625	1,146
Displays	486	483
Website	478	463
Construction in process	70	54
Property and equipment, gross	7,493	10,653
Less: accumulated depreciation and amortization	(4,195)	(3,960)
Property and equipment, net	<u>\$ 3,298</u>	<u>\$ 6,693</u>

Depreciation and amortization expense related to property and equipment was \$0.3 million and \$0.5 million for the three months ended September 30, 2016 and 2015, respectively, and \$1.2 million and \$1.3 million for the nine months ended September 30, 2016 and 2015, respectively, which is included in "Selling, general, and administrative" expense in the accompanying Condensed Consolidated Statements of Operations.

In May 2016, the Company completed the sale of BioZone, which resulted in a reduction of various components of property and equipment of \$2.0 million. See additional information in Note 6. As disclosed further in Note 4, the Company executed a restructuring plan in August 2015 and wrote off certain long-lived assets, primarily leasehold improvements, related to the abandonment of certain leased facilities. The write-off of long-lived assets was \$0.3 million for the nine months ended September 30, 2016 and \$0.4 million for the three and nine months ended September 30, 2015, respectively, and was included as a component of "Restructuring and other charges" in the accompanying Condensed Consolidated Statements of Operations.

Intangible Assets

Intangible assets included the assets acquired pursuant to the BioZone asset acquisition and MusclePharm's apparel rights reacquired from Worldwide Apparel as of December 31, 2015. BioZone was sold during the nine months ended September 30, 2016. Intangible assets consisted of the following (in thousands):

As of September 30, 2016				
	Gross Value	Accumulated Amortization	Net Carrying Value	Remaining Weighted-Average Useful Lives (years)
Amortized Intangible Assets				
Brand	\$ 2,244	\$ (526)	\$ 1,718	5.4
Total intangible assets	<u>\$ 2,244</u>	<u>\$ (526)</u>	<u>\$ 1,718</u>	

As of December 31, 2015				
	Gross Value	Accumulated Amortization	Net Carrying Value	Weighted-Average Useful Lives (years)
Amortized Intangible Assets				
Customer relationships	\$ 3,130	\$ (417)	\$ 2,713	15.0
Non-compete agreements	69	(69)	—	—
Patents	2,158	(540)	1,618	8.0
Trademarks	933	(133)	800	6.7
Brand	4,020	(522)	3,498	10.5
Domain name	54	(31)	23	5.0
Total intangible assets	<u>\$ 10,364</u>	<u>\$ (1,712)</u>	<u>\$ 8,652</u>	

Intangible assets amortization expense was \$80,000 and \$278,000 for the three months ended September 30, 2016 and 2015, respectively, and \$496,000 and \$776,000 for the nine months ended September 30, 2016 and 2015, respectively, which is included in the "Selling, general, and administrative" expense in the accompanying Condensed Consolidated Statements of Operations. Additionally, \$1.2 million of trademarks with a net carrying value of \$0.8 million related to the Arnold Schwarzenegger product line were considered impaired, and included as a component of the "Impairment of assets" in the accompanying Condensed Consolidated Statements of Operations for the nine months ended September 30, 2016. See additional information in Note 14.

As of September 30, 2016, the estimated future amortization expense of intangible assets is as follows (in thousands):

Year Ending December 31,	
The remainder of 2016	\$ 80
2017	321
2018	321
2019	321
2020	321
2021	321
Thereafter	33
Total amortization expense	<u>\$ 1,718</u>

Note 8. Other Expense, net

During the three and nine months ended September 30, 2016 and 2015, "Other expense, net" consisted of the following (in thousands):

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2016	2015	2016	2015
Other expense, net:				
Interest expense	\$ (166)	\$ (99)	\$ (536)	\$ (357)
Interest expense, factored accounts receivable	(9)	—	(636)	—
Foreign currency transaction gain (loss)	19	(456)	213	(717)
Other	34	(4)	(467)	(16)
Total other expense, net	<u>\$ (122)</u>	<u>\$ (559)</u>	<u>\$ (1,426)</u>	<u>\$ (1,090)</u>

Note 9. Debt

As of September 30, 2016 and December 31, 2015, the Company's debt consisted of the following (in thousands):

	September 30,	December 31,
	2016	2015
Revolving line of credit	\$ —	\$ 3,000
Term loan	—	2,949
Convertible note – with a related party, net of discount	5,988	5,952
Obligations under secured borrowing arrangement	—	—
Other	11	21
Total debt	<u>5,999</u>	<u>11,922</u>
Less: current portion	<u>(5,999)</u>	<u>(5,970)</u>
Long term debt	<u>\$ —</u>	<u>\$ 5,952</u>

In September 2014, the Company entered into a line of credit facility with ANB Bank for up to \$8.0 million of borrowings. The line of credit originally matured in September 2017, and accrued interest at the prime rate plus 2%. The line of credit was secured by inventory, accounts receivable, intangible assets and equipment. As of December 31, 2015, the outstanding borrowings under the line of credit were \$3.0 million. The Company was not in compliance with certain financial covenants under the line of credit as of December 31, 2015, which limited further borrowings. The Company repaid its outstanding principal and accrued interest under the line of credit in full in January 2016 in conjunction with the Company's secured borrowing arrangement as described below. This line is no longer available to the Company.

In February 2015, the Company entered into a \$4.0 million term loan agreement with ANB Bank. The term loan carried a fixed interest rate of 5.25% per annum, was repayable in 36 equal monthly installments of principal and interest, and originally matured in February 2018. The term loan contained various events of default, including cross default provisions related to the line of credit, which could have required repayments of the term loan. The Company was not in compliance with certain financial covenants under the term loan as of December 31, 2015, and received various waivers from the lender during the year ended December 31, 2015. As of December 31, 2015, the outstanding borrowings under the term loan were \$2.9 million. The Company repaid its outstanding principal and accrued interest under the term loan in full in January 2016 to retire the term loan in conjunction with the Company's secured borrowing arrangement as described below.

In October 2015, the Company entered into loan modification agreements with ANB Bank under the line of credit and term loan to: (i) change the maturity date of the loans to January 15, 2016, (ii) prohibit the loans to be declared in default prior to December 10, 2015, except for defaults resulting from failure to make timely payments, and (iii) delete certain financial covenants from the line of credit. In consideration for these modifications, Ryan Drexler, Interim Chief Executive Officer, Interim President and Chairman of the Board, and a family member provided their individual guaranty for the remaining balance of the term loan and line of credit of \$6.2 million. In consideration for executing his guaranty, the Company issued to Mr. Drexler 28,571 shares of the Company's common stock with a grant date fair value of \$80,000 (based upon the closing price of the Company's common stock on the date of issuance).

In December 2015, the Company entered into a convertible secured promissory note agreement with Mr. Drexler, pursuant to which he loaned the Company \$6.0 million. Proceeds from the note were used to fund working capital requirements. The convertible note is secured by all assets and properties of the Company and its subsidiaries whether tangible or intangible. The convertible note carries an interest at a rate of 8% per annum, or 10% in the event of default. Both the principal and the interest under the convertible note are due in January 2017, unless converted earlier. The holder can convert the outstanding principal and accrued interest into shares of common stock (2,608,695 shares) for \$2.30 per share at any time. The Company may prepay the convertible note at the aggregate principal amount therein plus accrued interest by giving the holder between 15 and 60 day-notice, depending upon the specific circumstances, provided that the holder may convert the note during the notice period. The Company recorded the convertible note of \$6.0 million as a liability in the balance sheet and also recorded a beneficial conversion feature of \$52,000 as a debt discount upon issuance of the convertible note, which is being amortized over the term of the convertible debt using the effective interest method. The beneficial conversion feature was calculated based on the difference between the fair value of common stock and the effective conversion price of the convertible note. As of September 30, 2016 and December 31, 2015, the convertible note had an outstanding principal balance of \$6.0 million.

In January 2016, the Company entered into a Purchase and Sale Agreement (the "Agreement") with Prestige Capital Corporation ("Prestige") pursuant to which the Company agreed to sell and assign and Prestige agreed to buy and accept, certain accounts receivable owed to the Company ("Accounts"). Under the terms of the Agreement, upon the receipt and acceptance of each assignment of Accounts, Prestige will pay the Company 80% of the net face amount of the assigned Accounts, up to a maximum total borrowings of \$10.0 million subject to sufficient amounts of accounts receivable to secure the loan. The remaining 20% will be paid to the Company upon collection of the assigned Accounts, less any chargeback, disputes, or other amounts due to Prestige. Prestige's purchase of the assigned Accounts from the Company will be at a discount fee which varies based on the number of days outstanding from the assignment of Accounts to collection of the assigned Accounts. In addition, the Company granted Prestige a continuing security interest in and lien upon all accounts receivable, inventory, fixed assets, general intangibles and other assets. The Agreement's initial term of six months has been extended by the Company to March 31, 2017. Prestige may cancel the Agreement with 30-day notice.

During the three months ended September 30, 2016, the Company had no new transactions with Prestige. During the nine months ended September 30, 2016, the Company sold to Prestige accounts with an aggregate face amount of approximately \$49.3 million, for which Prestige paid to the Company approximately \$39.5 million in cash. During the three and nine months ended September 30, 2016, \$8.7 million and \$40.0 million was subsequently repaid to Prestige, including fees and interest. The proceeds from the initial assignment to Prestige under this secured borrowing arrangement were primarily utilized to pay off the balance of the existing line of credit and term loan with ANB Bank.

Other

Other debt primarily consists of debt in default, which was immaterial, as of September 30, 2016 and December 31, 2015 and is included as a component of short-term debt. Debt in default is related to convertible debt issued during the year ended December 31, 2012 and prior where the convertible debt was never converted to common stock, nor was the principal repaid. The Company is in the process of contacting the remaining debt holder and negotiating settlement of the debt.

Note 10. Commitments and Contingencies**Operating Leases**

The Company leases office and warehouse facilities under operating leases, which expire at various dates through 2020. The amounts reflected in the table below are for the aggregate future minimum lease payments under non-cancelable facility operating leases for properties that have not been abandoned as part of the restructuring plan. See Note 4 for additional details regarding the restructured leases. Under lease agreements that contain escalating rent provisions, lease expense is recorded on a straight-line basis over the lease term. Rent expense was \$0.2 million and \$0.4 million for the three months ended September 30, 2016 and 2015, respectively, and \$0.8 million and \$1.2 million for the nine months ended September 30, 2016 and 2015, respectively.

As of September 30, 2016, future minimum lease payments are as follows (in thousands):

Year Ending December 31,		
The remainder of 2016	\$	100
2017		156
2018		161
2019		135
2020		139
2021		—
Thereafter		—
Total minimum lease payments	\$	<u>691</u>

Capital Leases

In December 2014, the Company entered into a capital lease agreement providing for approximately \$1.8 million in credit to lease up to 50 vehicles as part of a fleet lease program. As of September 30, 2016, the Company was leasing 10 vehicles under the capital lease which were included in Property and equipment, net in the Condensed Consolidated Balance Sheets. The original cost of leased assets was \$330,000 and the associated accumulated depreciation was \$104,000. As of December 31, 2015, the Company was leasing 21 vehicles under the capital lease which were included in Property and equipment, net in the Condensed Consolidated Balance Sheets. The original cost of leased assets was \$670,000 and the associated accumulated depreciation was \$90,000. The Company also leases manufacturing and warehouse equipment under capital leases, which expire at various dates through February 2020. All but one of such leases were reclassified to the restructuring liability as of September 30, 2016, and related assets were written off to restructuring expense.

As of September 30, 2016 and December 31, 2015, short-term capital lease liabilities of \$100,000 and \$186,000, respectively, were included as a component of current liabilities, and the long-term capital lease liabilities of \$103,000 and \$330,000, respectively, were included as a component of long-term liabilities in the Condensed Consolidated Balance Sheets.

As of September 30, 2016, the Company's future minimum lease payments under capital lease agreements are as follows (in thousands):

Year Ending December 31,		
The remainder of 2016	\$	31
2017		94
2018		62
2019		28
2020		1
Total minimum lease payments		216
Less amounts representing interest		(13)
Present value of minimum lease payments	\$	<u>203</u>

As described in Note 6, the Company entered into a product development and supply agreement with FPI, the parent company of the buyer of BioZone, to develop certain products to be sold by the Company. If the product development effort is successful, the minimum purchase commitment under the product development and supply agreement with FPI is \$3.0 million over the term of 12 months. As of September 30, 2016, the product development effort had not yet commenced.

Contingencies

In the normal course of business or otherwise, the Company may become involved in legal proceedings. The Company will accrue a liability for such matters when it is probable that a liability has been incurred and the amount can be reasonably estimated. When only a range of possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. The accrual for a litigation loss contingency might include, for example, estimates of potential damages, outside legal fees and other directly related costs expected to be incurred. As of September 30, 2016 and December 31, 2015, the Company was involved in the following material legal proceedings described below.

Third-Party Manufacturer Dispute

As of September 30, 2016, the Company was engaged in a dispute with Capstone concerning amounts allegedly owed under the Manufacturing Agreement. See Note 5 and Note 18 for further details.

Supplier Complaint

In January 2016, ThermoLife International LLC ("ThermoLife"), a supplier of nitrates to MusclePharm, filed a complaint against the Company in Arizona state court. In its complaint, ThermoLife alleges that the Company failed to meet minimum purchase requirements contained in the parties' supply agreement. In March 2016, the Company filed an answer to ThermoLife's complaint, denying the allegations contained in the complaint, and filed a counterclaim alleging that ThermoLife breached its express warranty to MusclePharm because ThermoLife's products were defective and could not be incorporated into the Company's products. Therefore, the Company believes that ThermoLife's complaint is without merit.

Former Executive Lawsuit

In December 2015, the Company accepted notice by Mr. Richard Estalella ("Estalella") to terminate his employment as the Company's President. Although Estalella sought to terminate his employment with the Company for "Good Reason," as defined in Estalella's employment agreement with the Company (the "Employment Agreement"), the Company advised Estalella that it deemed his resignation to be without Good Reason.

In February 2016, Estalella filed a complaint in Colorado state court against the Company and Ryan Drexler, Interim Chief Executive Officer, Interim President and Chairman of the Board, alleging, among other things, that the Company breached the Employment Agreement, and seeking certain equitable relief and unspecified damages. The Company believes Estalella's claims are without merit. At the Company's 2016 Annual Meeting of Stockholders in June 2016, Estalella was not reelected to the Board and is no longer a member of the Board. As of the date of this report, the Company has evaluated the potential outcome of this lawsuit and recorded the liability consistent with its policy.

Shareholder Derivative Complaint

In October 2015, Brian D. Gartner, derivatively and on behalf of MusclePharm Corporation, filed a verified shareholder derivative complaint in the 8th District Court, State of Nevada, Clark County (No. A-15-726810-B) alleging, among other things, breaches of fiduciary duty as members of the Board and/or executive officers of the Company against Brad Pyatt, Lawrence S. Meer, Donald W. Prosser, Richard Estalella, Jeremy R. Deluca, Michael J. Doron, Cory Gregory, L. Gary Davis, James J. Greenwell, John H. Bluher and Daniel J. McClory. Mr. Gartner alleges a series of accounting and disclosure failures resulted in the filing of materially false and misleading filings with the SEC from 2010 through July 2014, resulting in settlement with the SEC requiring payment of \$700,000 of civil penalties. Mr. Gartner seeks various remedies, including interpretation of bylaws provisions, permanent injunctive relief, damages against the defendants for breaches of their fiduciary duty, corporate governance changes to ensure the Company maintains proper internal controls and SEC reporting procedures, as well as costs and reasonable attorneys' fees, accountants' and experts' fees, costs and expenses. The individual defendants sought removal of the action to federal court, which was granted. The plaintiff moved to remand the case back to state court, and the parties await decision on that motion.

Insurance Carrier Lawsuit

The Company is engaged in litigation with insurance carrier Liberty Insurance Underwriters, Inc. arising out of Liberty's denial of coverage. In 2014, the Company sought coverage under an insurance policy with Liberty for claims against directors and officers of the Company arising out of an investigation by the Securities and Exchange Commission. Liberty denied coverage, and, on February 12, 2015, the Company filed a complaint in the District Court, City and County of Denver, Colorado against Liberty claiming wrongful and unreasonable denial of coverage for the cost and expenses incurred in connection with the SEC investigation and related matters. Liberty removed the complaint to the United States District Court for the District of Colorado, which in August 2016 granted Liberty's motion for summary judgment, denying coverage and dismissing the Company's claims with prejudice, and denied the Company's motion for summary judgment. The Company has filed a motion for reconsideration that has not yet been decided.

Arnold Schwarzenegger

The Company is engaged in a dispute with Arnold Schwarzenegger, Marine MP, LLC, & Fitness Publications, Inc. ("AS Parties") concerning amounts allegedly owed under the parties' Endorsement Licensing and Co-Branding Agreement. In May 2016, the contract was terminated, and the AS Parties commenced arbitration, alleging that the Company breached the parties' agreement and misappropriated Schwarzenegger's likeness. They seek more than \$13.0 million for royalties, purported misuse of Schwarzenegger's likeness, and attorney fees. The Company filed its response and counterclaimed for breach of contract and breach of the implied covenant of good faith and fair dealing. The parties are engaged in discovery.

Manchester City Football Group

The Company is engaged in a dispute with City Football Group Limited ("CFG"), the owner of Manchester City Football Group, concerning amounts allegedly owed by the Company under a Sponsorship Agreement with CFG. In August 2016, CFG commenced arbitration in the United Kingdom against the Company, seeking approximately \$8.3 million for the Company's purported breach of the Agreement. The Company answered on October 7, 2016. An arbitrator has not yet been appointed and discovery has not yet begun.

Sponsorship and Endorsement Contract Liabilities

The Company has various non-cancelable endorsement and sponsorship agreements with terms expiring through 2019. The total value of future contractual payments as of September 30, 2016 are as follows (in thousands):

	Remainder of 2016	Year Ending December 31,					Total
		2017	2018	2019	2020	Thereafter	
Outstanding Payments							
Endorsement	\$ 44	\$ 80	\$ —	\$ —	\$ —	\$ —	\$ 124
Sponsorship	1,151	2,294	2,404	985	—	—	6,834
Total future payments	<u>\$ 1,195</u>	<u>\$2,374</u>	<u>\$2,404</u>	<u>\$ 985</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$6,958</u>

Note 11. Stockholders' Equity**Common Stock**

For the nine months ended September 30, 2016, the Company had the following transactions related to its common stock including restricted stock awards (in thousands, except share and per share data):

Transaction Type	Quantity (Shares)	Valuation (\$)	Range of Value per Share
Shares issued to employees, executives and directors	372,154	\$ 914	\$ 1.89-2.95
Shares issued related to sale of subsidiary	200,000	640	\$ 3.20
Cancellation and forfeiture of executive restricted stock	(433,000)	(456)	\$ 4.29-13.00
Total	<u>139,154</u>	<u>\$ 1,098</u>	\$ 1.89-13.00

For the nine months ended September 30, 2015, the Company issued common stock including restricted stock awards, as follows (in thousands, except share and per share data):

Transaction Type	Quantity (Shares)	Valuation (\$)	Range of Value per Share
Stock issued to employees, executives and directors, net of cancellations	186,354	\$ 10,029	\$ 3.48-8.60
Stock issued in conjunction with product line expansion	150,000	1,198	\$ 7.99
Stock issued in conjunction with MusclePharm apparel rights acquisition	170,000	1,394	\$ 8.20
Stock issued in conjunction with financing agreement	50,000	325	\$ 6.49
Stock issued in conjunction with consulting/endorsement agreement	55,189	320	\$ 5.30-5.85
Total	<u>611,543</u>	<u>\$ 13,266</u>	\$ 3.48-8.60

The fair value of all stock issuances above is based upon the quoted closing trading price on the date of issuance.

Common stock outstanding as of September 30, 2016 and December 31, 2015 includes shares legally outstanding even if subject to future vesting.

Treasury Stock

For the three and nine months ended September 30, 2016 and 2015, the Company did not repurchase any shares of its common stock and held 875,621 shares in treasury as of September 30, 2016 and December 31, 2015. As of December 31, 2015, 860,900 of the Company's shares held in treasury were subject to a pledge with a lender in connection with a term loan which was cancelled when the term loan was paid off in January 2016.

Note 12. Stock-Based Compensation**Restricted Stock**

The Company's stock-based compensation for the three and nine months ended September 30, 2016 consist primarily of restricted stock awards. The activity of restricted stock awards granted to employees, executives and Board members was as follows:

	Unvested Restricted Stock Awards	
	Number of Shares	Weighted-Average Grant Date Fair Value
Unvested balance – December 31, 2015	1,025,999	\$ 12.34
Granted	372,154	2.46
Vested	(675,140)	10.84
Cancelled	(260,000)	13.00
Forfeited	(100,000)	8.65
Unvested balance – September 30, 2016	363,013	5.40

The total fair value of restricted stock awards granted to employees and Board members was \$0.5 million and \$0.2 million for the three months ended September 30, 2016 and 2015, respectively, and \$0.9 million and \$1.1 million for the nine months ended September 30, 2016 and 2015, respectively. As of September 30, 2016, the total unrecognized expense for unvested restricted stock awards, net of expected forfeitures, was \$1.0 million, which is expected to be amortized over a weighted-average period of 0.9 years.

Accelerated Vesting of Restricted Stock Awards Related to Termination of Employment Agreement with Brad Pyatt, Former Chief Executive Officer

In March 2016, Brad Pyatt, the Company's former Chief Executive Officer, terminated his employment with the Company. Pursuant to the terms of the separation agreement with the Company, in exchange for a release of claims, the Company agreed to pay severance in the amount of \$1.1 million, payable over a 12-month period, a lump sum of \$250,000 payable in March 2017 and reimbursement of COBRA premiums. In addition, the remaining unvested restricted stock awards held by Brad Pyatt of 500,000 shares vested in full upon his termination in accordance with the original grant terms. In connection with the accelerated vesting of these restricted stock awards, the Company recognized stock compensation expense of \$3.9 million, which is included in "Salaries and benefits" in the accompanying Condensed Consolidated Statements of Operations for the nine months ended September 30, 2016.

Restricted Stock Awards Issued to Ryan Drexler, Interim Chief Executive Officer, Interim President and Chairman of the Board, Related to Loan Modification

In October 2015, the Company entered into loan modification agreements with the banking institution under its line of credit and term loan to: (i) change the maturity date of the loans to January 15, 2016, (ii) prohibit the loans to be declared in default prior to December 10, 2015, except for defaults resulting from failure to make timely payments, and (iii) delete certain financial covenants from the line of credit. In consideration for these modifications, Ryan Drexler, Interim Chief Executive Officer, Interim President and Chairman of the Board, and a family member, provided their individual guaranty for the remaining balance of the loans (\$6.2 million). In consideration for executing his guaranty, the Company issued to Mr. Drexler 28,571 shares of common stock with a grant date fair value of \$80,000 (based upon the closing price of the Company's common stock on the date of issuance).

Restricted Stock Awards Issued Related to Attempted Financing Agreement

In May 2015, the Company negotiated the termination of an attempted financing agreement with a lending institution and issued 50,000 shares of its common stock. The fair value of the common stock was \$325,000 based upon the closing price of the Company's common stock on the date of issuance, and was recorded as "Selling, general and administrative" expense.

Restricted Stock Awards Issued Related to Consulting/Endorsement Agreement

In May 2015, the Company entered into consulting and endorsement agreements with William Phillips. In connection with the endorsement agreements, the Company agreed to issue a total of 50,000 shares of its restricted common stock. The restricted common stock issued had a grant date fair value of \$292,000, which was included as a component of prepaid stock compensation and "Additional paid-in capital" in the Consolidated Balance Sheet upon issuance. The prepaid stock compensation was originally amortized over the performance period of three years. In connection with the restructuring disclosed in Note 4, the Company terminated the consulting and endorsement agreements with William Phillips and wrote off the unamortized prepaid stock compensation balance of \$268,000 in August 2015.

In connection with the consulting agreement, the Company also agreed to issue restricted shares worth \$25,000 (based upon the weighted average stock price during the 15-day-period prior to issuance) within 10 days after each subsequent three-month period term. In July 2015, the Company issued 5,189 shares of its common stock to William Phillips. The fair value of the common stock was \$28,000 based upon the closing price of the Company's common stock on the date of issuance, and was recorded as "Advertising and promotion" expense. No additional common stock will be issued to William Phillips under this agreement.

Restricted Stock Awards Related to Energy Drink Agreement

In January 2015, the Company entered into an energy drink agreement with Langer Juice and Creative Flavor Concepts to expand into a new product line. In connection with the agreement, the Company issued a total of 150,000 shares of its restricted common stock with trade restrictions for a period of three years. The restricted stock awards issued had a grant date fair value of approximately \$1.2 million, which was initially included as a component of "Prepaid stock compensation" and "Additional paid-in capital" in the Consolidated Balance Sheet upon issuance. The prepaid stock compensation was originally amortized over the performance period of ten years. In connection with the restructuring plan disclosed further in Note 4, the Company discontinued this product and wrote off the unamortized prepaid stock compensation balance of \$1.1 million in August 2015.

Restricted Stock Awards to Non-Employees

In July 2014, in connection with an endorsement agreement, the Company issued 446,853 shares of its restricted common stock to ETW with an aggregate market value of \$5.0 million, as further described in Note 14. In September 2014, the Company entered into a consulting agreement with a third-party service provider and issued 30,000 shares of its restricted common stock with an aggregate market value of \$402,000. These restricted stock awards granted to non-employees were initially included as a component of "Prepaid stock compensation" and "Additional paid-in capital" in the Consolidated Balance Sheet upon issuance. The prepaid stock compensation was originally amortized over the performance period. In connection with the restructuring plan disclosed further in Note 4, the Company wrote off the unamortized prepaid stock compensation balance related to these restricted stock awards to non-employees of \$3.8 million in August 2015.

Stock Options

In February 2016, the Company issued options under the 2015 Equity Incentive Plan to purchase 137,362 shares of its common stock to Mr. Drexler, the Company's Interim Chief Executive Officer, Interim President and Chairman of the Board, and 54,945 to Michael Doron, the Lead Director of the Board. These stock options have an exercise price of \$1.89 per share, a contractual term of 10 years and a grant date fair value of \$331,000, which is amortized on a straight-line basis over the vesting period of two years. The Company determined the fair value of the stock options using the Black-Scholes model. For the three and nine months ended September 30, 2016, the Company recorded stock compensation expense of \$42,000 and \$97,000, respectively. There were no options granted nor outstanding during the nine months ended September 30, 2015.

Other Stock-Based Compensation- Agreements with Worldwide Apparel, LLC – MusclePharm Apparel Rights

In February 2015, the Company entered into an agreement with Worldwide Apparel, LLC ("Worldwide") to terminate Worldwide's right to use MusclePharm's brand images in apparel effective March 28, 2015. The brand rights were originally licensed in May 2011, and amended in March 2014 prior to the termination. The consideration related to the acquisition of the MusclePharm apparel from Worldwide consisted of a cash consideration of \$850,000 and 170,000 shares of MusclePharm common stock with an aggregate fair value of \$1.4 million. The total cost of the MusclePharm apparel acquisition of \$2.2 million was included in the caption brand within "Intangible assets, net" in the Condensed Consolidated Balance Sheets, and was subject to amortization over a period of seven years.

Note 13. Net Loss per Share

Basic net loss per share is computed by dividing net loss for the period by the weighted-average number of shares of common stock outstanding during each period. There was no dilutive effect for the outstanding potentially dilutive securities for the three and nine months ended September 30, 2016 and 2015, respectively, as the Company reported a net loss for all periods.

The following table sets forth the computation of the Company's basic and diluted net loss per share for the periods presented (in thousands, except share and per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net loss	\$ (1,447)	\$ (27,648)	\$ (12,248)	\$ (42,152)
Weighted-average common shares used in computing net loss per share, basic and diluted	13,978,833	13,723,213	13,886,496	13,504,455
Net loss per share, basic and diluted	\$ (0.10)	\$ (2.01)	\$ (0.88)	\$ (3.12)

Diluted net income per share is computed by dividing net income for the period by the weighted-average number of shares of common stock, common stock equivalents and potentially dilutive securities outstanding during each period. The Company uses the treasury stock method to determine whether there is a dilutive effect of outstanding potentially dilutive securities, and the if-converted method to assess the dilutive effect of the convertible note.

There was no dilutive effect for the outstanding awards for the three and nine months ended September 30, 2016 and 2015, respectively, as the Company reported a net loss for all periods. However, if the Company had net income for the three and nine months ended September 30, 2016, the potentially dilutive securities included in the earnings per share computation would have been 2,608,695 for both periods. If the Company had net income for the three and nine months ended September 30, 2015, the no dilutive securities would have been included in the diluted earnings per share computation for either period.

Total outstanding potentially dilutive securities were comprised of the following:

	As of September 30,	
	2016	2015
Stock options	192,307	—
Warrants	100,000	100,000
Unvested restricted stock	363,014	1,880,374
Convertible note	2,608,695	—
Total common stock equivalents	3,264,016	1,980,374

Note 14. Endorsement Agreements***Arnold Schwarzenegger***

In July 2013, the Company entered into an Endorsement Licensing and Co-Branding Agreement by and among the Company, Arnold Schwarzenegger, Marine MP, LLC, and Fitness Publications, Inc. Under the terms of the agreement, Mr. Schwarzenegger was co-developing a special Arnold Schwarzenegger product line being co-marketed under Mr. Schwarzenegger's name and likeness. In connection with this agreement, the Company also issued to Marine MP, LLC fully vested restricted shares of common stock with an aggregate market value of \$8.5 million. The issuance was being amortized over the original three-year term of the agreement to "Advertising and promotion" expense.

In May 2016, the Company received written notice to terminate the Endorsement Licensing and Co-Branding Agreement effective immediately. As a result, \$2.1 million of intangible assets, prepaid assets and inventory related to the Arnold Schwarzenegger product line was written off as an impairment expense. The agreement to terminate the product line stipulates that no further use of his likeness or sales of the inventory were allowed and therefore, the Company disposed all the remaining product in inventory and other related assets. The Company is engaged in a dispute with Mr. Schwarzenegger concerning the termination of the Endorsement Licensing and Co-Branding Agreement. See Note 10 for further details.

ETW

In July 2014, the Company entered into an Endorsement Agreement with ETW. Under the terms of the agreement, Tiger Woods agreed to endorse certain of the Company's products and use a golf bag during all professional golf play that prominently displayed the MusclePharm name and logo.

In conjunction with this agreement, the Company issued 446,853 shares of the Company's restricted common stock to ETW, with an aggregate market value of \$5.0 million. The shares were amortized over the original four-year term of the agreement. The current and non-current portions of the unamortized stock compensation were initially included as a component of "Prepaid stock compensation" in the Condensed Consolidated Balance Sheets. The amount of unamortized stock compensation expense of \$3.5 million related to this agreement was written off in connection with the restructuring plan disclosed further in Note 4.

In May 2016, the Company entered into a settlement agreement with ETW, which eliminates all costs and terminates all future commitments under the Endorsement Agreement. Pursuant to the settlement agreement, the Company paid ETW \$2.2 million to terminate the parties' obligations under Endorsement Agreement and to resolve all disputes between the parties. As a result, the Company adjusted its restructuring accrual balance from \$7.0 million to \$2.2 million according to the settlement agreement and recorded an expense credit of \$4.8 million during the nine months ended September 30, 2016.

Johnny Manziel

In July 2014, the Company entered into an Endorsement Agreement for the services of Johnny Manziel. As part of this agreement, the Company issued a warrant to purchase 100,000 shares of its common stock at an exercise price of \$11.90 per share. The warrants vest monthly over a period of 24 months beginning August 15, 2014, and have a five-year contractual term. The Company recognized stock-based compensation expense of \$0 and \$17,000 for the three months ended September 30, 2016 and 2015, respectively, and \$6,000 and \$50,000 for the nine months ended September 30, 2016 and 2015, respectively, related to these warrants, which is included as a component of "Advertising and promotion" expense in the accompanying Condensed Consolidated Statements of Operations. The Company used the Black-Scholes model to determine the estimated fair value of the warrants, with the following assumptions: contractual life of five years, risk free interest rate of 1.7%, dividend yield of 0%, and expected volatility of 55%. In connection with the restructuring disclosed in Note 4, the Company notified Johnny Manziel of its intention to terminate the endorsement agreement; however, Johnny Manziel has disputed the termination notice. As of September 30, 2016, all shares were vested under the warrant.

Note 15. Income Taxes

The Company did not record an additional tax provision for the three months ended September 30, 2016. The Company recorded an income tax provision \$71,000 for the three months ended September 30, 2015, and \$138,000 and \$104,000 for the nine months ended September 30, 2016 and 2015, related to foreign income taxes and federal and state minimum taxes.

Income taxes are provided for the tax effects of transactions reported in the Condensed Consolidated Financial Statements and consist of taxes currently due. Deferred taxes relate to differences between the basis of assets and liabilities for financial and income tax reporting which will be either taxable or deductible when the assets or liabilities are recovered or settled. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The ultimate realization of deferred income tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred income tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Based on consideration of these items, management has established a full valuation allowance as it is more likely than not that the tax benefits will not be realized as of September 30, 2016.

Note 16. Segments, Geographical Information

The Company's chief operating decision maker reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. As such, the Company currently has a single reporting segment and operating unit structure. In addition, most of the Company's revenue and substantially all long-lived assets are attributable to operations in the U.S. for all the periods presented.

Revenue, net by geography is based on the company addresses of the customers. The following table sets forth revenue, net by geographic area (in thousands):

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2016	2015	2016	2015
Revenue, net:				
United States	\$ 18,744	\$ 23,676	\$ 71,955	\$ 91,534
International	11,950	10,306	34,518	34,246
Total revenue, net	<u>\$ 30,694</u>	<u>\$ 33,982</u>	<u>\$ 106,473</u>	<u>\$ 125,780</u>

Note 17. Related Party Transactions*Interim Chief Executive Officer, President and Chairman Convertible Secured Promissory Note Agreement*

In December 2015, the Company entered into a convertible secured promissory note agreement with Mr. Drexler, pursuant to which he loaned the Company \$6.0 million. Proceeds from the note were used to fund working capital requirements. The convertible note is secured by all assets and properties of the Company and its subsidiaries whether tangible or intangible. In connection with the Company entering into the convertible promissory note with Mr. Drexler, the Company granted Mr. Drexler the right to designate two directors to the Board. The Company agreed to take all actions necessary to permit such designation. See additional information in Note 9.

Sports Tickets

The Company maintains a luxury box at the Sports Authority Field in Denver, Colorado. Employees are able to attend Denver Bronco football games and utilize the luxury box. During 2015, the Company's former CEO donated tickets to a game to a youth football team in which his family member is a participant. Additionally, other family members also attended the game. The total cost for the event was approximately \$15,000.

Key Executive Life Insurance

During the year ended December 31, 2015, the Company purchased split dollar life insurance policies on certain key executives. In September 2015, the Company increased the coverage on one of the key executives. These policies provide a split of 50% of the death benefit proceeds to the Company and 50% to the officer's designated beneficiaries.

Lease Agreement with Significant Shareholder

In October 2013, the Company entered into an Office Lease Agreement with Frost Real Estate Holdings, LLC, a Florida limited liability company owned by Dr. Phillip Frost, a significant shareholder. Pursuant to the lease, the Company rented 1,437 square feet of office space for an initial term of three years, with an option to renew the lease for an additional three-year term. This facility was closed in September 2015 and included in the Company's restructuring plan. The remaining lease obligation through April 2017 for \$77,000 was included in the restructuring expense for the year ended December 31, 2015.

Lease Agreement with Former Employee

The Company leased office and warehouse facility in Hamilton, Ontario, Canada from 2017275 Ontario Inc., which is a company owned by Renzo Passaretti, former VP and General Manager of MusclePharm Canada Enterprises Corp, the Company's wholly-owned Canadian subsidiary. Mr. Passaretti separated from the Company on September 2, 2015. For the three and nine months ended September 30, 2015, the Company paid rent of \$25,000 and \$75,000, respectively. The lease was terminated in November 2015.

Business Relationship with Former Employee

Ryan DeLuca, the former Chief Executive Officer of Bodybuilding.com, is the brother of Jeremy DeLuca, the Company's former EVP, MusclePharm Brand and Global Business Development. The Company maintained a business relationship with Bodybuilding.com prior to hiring Mr. DeLuca. The Company does not offer preferential pricing of our products to Bodybuilding.com based on these relationships. Mr. DeLuca separated from the Company on September 15, 2015. Net revenue from products sales to Bodybuilding.com were \$2.8 million and \$13.7 million for the three and nine months ended September 30, 2015, respectively. The Company had \$1.5 million in trade receivables with Bodybuilding.com as of December 31, 2015. The Company purchased marketing services from Bodybuilding.com of \$0.1 million and \$0.3 million for the three and nine months ended September 30, 2015, respectively.

Note 18. Subsequent Events

GAAP requires an entity to disclose events that occur after the balance sheet date but before financial statements are issued or are available to be issued ("subsequent events") as well as the date through which an entity has evaluated subsequent events. There are two types of subsequent events. The first type consists of events or transactions that provide additional evidence about conditions that existed at the date of the balance sheet, including the estimates inherent in the process of preparing financial statements, ("recognized subsequent events"). The second type consists of events that provide evidence about conditions that did not exist at the date of the balance sheet but arose subsequent to that date ("non-recognized subsequent events"). The following significant non-recognized subsequent events occurred as of the date of this filing.

As previously disclosed, the Company has been engaged in a dispute with F.H.G. Corporation (d/b/a Capstone Nutrition), INI Parent, Inc., INI Buyer, Inc. and Medley Capital Corporation (together, "Capstone") arising out of a Manufacturing Agreement between the parties. On November 7, 2016, the parties executed a settlement agreement (the "Settlement Agreement"). Under the Settlement Agreement, the Company has agreed to pay to Capstone cash in the amount of \$11.0 million within five business days following the execution of the Settlement Agreement. All pending litigation will be dismissed with prejudice. The Settlement Agreement releases all parties from any and all claims, actions, causes of action, suits, controversies or counterclaims that the parties have had, now have or thereafter can, shall or may have. The Company will also issue to INI Buyer, Inc. a warrant to purchase an amount of the Company's common stock equal to 7.5% of the issued and outstanding capital stock of the Company on a fully diluted basis as of the date of execution of the warrant agreement, estimated to be approximately 1,289,378 shares of Company common stock (the "Warrant"). The exercise price of the Warrant will be \$1.83 per share, subject to adjustment under certain circumstances provided for therein, with a term of four years. The Company has valued these warrants by utilizing the Black Scholes model at approximately \$1.9 million based upon the best available information as of the date of this Quarterly Report on Form 10-Q. The Warrant will be subject to adjustment upon certain events provided for therein.

The Company has approximately \$21.9 million in accounts payable and accrued liabilities associated with the Capstone liability. Based upon the amounts included herein, the Company anticipates recording a gain of approximately \$8.9 million based on the Capstone settlement. Due to the nature of this gain contingency, the Company has not reflected these amounts in its third quarter Condensed Consolidated Balance Sheet and Statement of Operations. The Company intends to record this transaction in the fourth quarter of 2016.

In conjunction with the above transaction, on November 8, 2016, the Company entered into a convertible secured promissory note agreement (the "2016 Convertible Note") with Mr. Ryan Drexler, the Company's Chairman of the Board, Interim Chief Executive Officer and Interim President, pursuant to which Mr. Drexler loaned the Company \$11.0 million. Proceeds from the note were used to fund the Settlement Agreement. The 2016 Convertible Note is secured by all assets and properties of the Company and its subsidiaries, whether tangible or intangible. The 2016 Convertible Note carries interest at a rate of 10% per annum, or 12% if there is an event of default. Both the principal and the interest under the 2016 Convertible Note are due in November 2017, unless converted earlier. Mr. Drexler may convert the outstanding principal and accrued interest into shares of the Company's common stock for \$1.83 per share at any time (estimated to be approximately 6,010,929 shares as of the date of this Quarterly Report on Form 10-Q). The Company may prepay the 2016 Convertible Note at the aggregate principal amount therein, plus accrued interest, by giving Mr. Drexler between 15 and 60 days' notice depending upon the specific circumstances, provided that Mr. Drexler may convert the 2016 Convertible Note during the applicable notice period. The Company intends to record this liability as a convertible note with a related party in the fourth quarter of 2016.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our Condensed Consolidated Financial Statements and related notes included elsewhere in this Quarterly Report on Form 10-Q (the "Form 10-Q"), and with our audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2015, as filed with the Securities and Exchange Commission on March 17, 2016, or the 2015 Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed below. Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed in the section entitled "Risk Factors" included elsewhere in this Form 10-Q. Except as otherwise indicated herein, the terms "Company," "we," "our" and "us" refer to MusclePharm Corporation and its subsidiaries.

Overview

We are a scientifically driven, performance lifestyle company that develops, manufactures, markets and distributes branded nutritional supplements. We offer a broad range of powders, capsules, tablets, gels and bars. Our portfolio of recognized brands, including MusclePharm® Sport Series, and FitMiss®, are marketed and sold in more than 120 countries and available in over 50,000 retail outlets globally. These clinically developed scientifically driven nutritional supplements are developed through a six-stage research process that utilizes the expertise of leading nutritional scientists, doctors and universities. We believe we are an innovator in the sports nutrition industry.

Our primary growth strategy is to:

- drive innovation, serve the needs of all athletes and fuel the engine of sport through new products and brand extensions;
- increase our product distribution and sales through increased market penetrations both domestically and internationally;
- increase our margins by negotiating reductions in the cost of our products;
- continue to conduct additional testing of the safety and efficacy of our products and formulate new products to differentiate our products from our competition; and
- increase awareness of our products through marketing and branding opportunities with cost effective brand partnerships and grass roots marketing and advertising.

Restructuring Plan

On August 24, 2015, our Board of Directors, or the Board, approved a restructuring plan for us. The approved restructuring plan was designed to reduce costs and to better align our resources for profitable growth. Specifically, through September 30, 2016, the restructuring plan resulted in: 1) a reduction in our workforce; 2) abandoning certain leased facilities; 3) renegotiating or terminating a number of contracts with endorsers in a strategic shift away from such arrangements and towards more cost effective marketing and advertising efforts; 4) discontinuing a number of product SKU's due to lower than expected revenue or margin performance and writing down inventory to net realizable value; and 5) writing off certain assets. We completed additional reductions in workforce during the nine months ended September 30, 2016 and closed two facilities. Management has completed the approved restructuring plan, and as such, we do not anticipate any additional restructuring charges.

Outlook

As we continue to execute our growth strategy and restructuring plan, we anticipate continued improvement in our operating margins and expense structure. The termination of the Arnold Schwarzenegger product-line licensing agreement, discontinuance of unprofitable SKUs and product families, as well as the migration to new product suppliers have impacted revenue growth for the short-term. However, we anticipate revenue and gross margin to strengthen as we increase focus on our core products including our MusclePharm® Sport Series products. In addition, the sale of our wholly-owned subsidiary, BioZone, in May 2016 enables us to further narrow our focus on core MusclePharm products and further innovate to develop new products. We also anticipate continued savings in advertising and promotions expenses as we focus on effective marketing and advertising strategies and move away from celebrity endorsements.

Although we may experience additional losses for the near term, we believe that our restructuring plan, which includes a reduction in ongoing operating costs and expense controls, may enable us to be profitable; however, we may need to continue to raise capital in order to execute our business plan. There can be no assurance that such capital will be available on acceptable terms or at all.

Results of Operations
Comparison of the Three Months Ended September 30, 2016 to the Three Months Ended September 30, 2015

	Three Months Ended September 30,		\$ Change	% Change
	2016	2015		
	(\$ in thousands)			
Revenue, net	\$ 30,694	\$ 33,982	\$ (3,288)	(9.7)%
Cost of revenue ⁽¹⁾	20,497	23,512	(3,015)	(12.8)
Gross profit	<u>10,197</u>	<u>10,470</u>	<u>(273)</u>	<u>(2.6)</u>
Operating expenses:				
Advertising and promotion	1,905	7,093	(5,188)	(73.1)
Salaries and benefits	2,291	5,681	(3,390)	(59.7)
Selling, general and administrative	3,937	4,647	(710)	(15.3)
Research and development	270	1,437	(1,167)	(81.2)
Professional fees	1,315	1,980	(665)	(33.6)
Restructuring and other charges	1,667	16,650	(14,983)	90.0
Impairment of assets	137	—	137	N/A
Total operating expenses	<u>11,522</u>	<u>37,488</u>	<u>(25,966)</u>	<u>(69.3)</u>
Loss from operations	(1,325)	(27,018)	25,693	(95.1)
Other expense, net	(122)	(559)	437	78.2
Loss before provision for income taxes	(1,447)	(27,577)	26,130	(94.8)
Provision for income taxes	—	71	(71)	(100.0)
Net loss	<u>\$ (1,447)</u>	<u>\$ (27,648)</u>	<u>\$ 26,201</u>	<u>(94.8)%</u>

- (1) Cost of revenue for the three months ended September 30, 2016 and 2015 included restructuring charges of \$0.1 million and \$1.3 million, respectively, related to write-down of inventory for discontinued products.

The following table presents our operating results as a percentage of revenue, net for the periods presented:

	Three Months Ended September 30,	
	2016	2015
Revenue, net	100%	100%
Cost of revenue	67	69
Gross profit	<u>33</u>	<u>31</u>
Operating expenses:		
Advertising and promotion	6	21
Salaries and benefits	8	17
Selling, general and administrative	13	13
Research and development	1	4
Professional fees	4	6
Restructuring and other charges	6	49
Impairment of assets	—	—
Total operating expenses	<u>38</u>	<u>110</u>
Loss from operations	(5)	(79)
Other expense, net	—	(2)
Loss before provision for income taxes	(5)	(81)
Provision for income taxes	—	—
Net loss	<u>(5)%</u>	<u>(81)%</u>

Revenue, net

We derive our revenue through the sales of our various branded nutritional supplements. Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred, the price is fixed or determinable and collection is reasonably assured which generally occurs upon shipment or delivery of the products. We record sales incentives as a direct reduction of revenue for various discounts provided to our customers consisting primarily of volume incentive rebates and advertising related credits. We accrue for sales discounts over the period they are earned. Sales discounts are a significant part of our marketing plan to our customers as they help drive increased sales and brand awareness with end users through promotions that we support through our distributors and re-sellers.

Net revenue decreased \$3.3 million, or 9.7%, to \$30.7 million for the three months ended September 30, 2016, compared to \$34.0 million for the three months ended September 30, 2015. Net revenue for the three months ended September 30, 2016 decreased primarily due to the termination of the Arnold Schwarzenegger product-line licensing agreement, the sale of our BioZone subsidiary, and certain other products being discontinued and the migration of some existing products to a new supplier. Revenue from our BioZone subsidiary was \$2.4 million for the three months ended September 30, 2015. Discounts and sales allowances increased as a percentage of gross revenue to 26.1%, or \$10.8 million, for the three months ended September 30, 2016 from 14.7% of gross revenue, or \$5.9 million, for the same period in 2015. The increase in discounts and allowances as a percentage of revenue is primarily related to higher coupon promotions and discount rates on the current quarter's product mix.

During the three months ended September 30, 2016, our largest customer, Costco Wholesale Corporation, or Costco, individually accounted for more than 10% of our net revenue, representing 21% of our net revenue. During the three months ended September 30, 2015, our two largest customers, Costco and GNC Holdings Inc., or GNC, each individually accounted for more than 10% of our net revenue, and in total represented 28% of our net revenue.

Cost of Revenue and Gross Margin

Cost of revenue for MusclePharm products is directly related to the production, manufacturing and freight-in of the related products purchased from third party contract manufacturers. We mainly ship customer orders from our distribution centers in Spring Hill, Tennessee and Pittsburg, California, the latter of which was closed during the three months ended September 30, 2016. The facilities are operated with our equipment and employees, and we own the related inventory. We also use contract manufacturers to drop ship products directly to our customers.

In addition, BioZone manufactured products and, therefore, derived costs of revenue through the costs of raw materials, direct labor, freight-in and other supply and equipment expenses. We mainly shipped BioZone customer orders from our distribution center in Pittsburg, California. We completed the sale of BioZone sold during the second quarter of 2016, and closed the distribution center during the third quarter of 2016.

Our historical experience has been that, over the life cycle of a particular product, the cost of revenue as a percentage of total revenue has typically declined as a result of efficiencies and resulting decreases in our product costs. The decrease in cost generally results from an increase in the volume purchased from manufacturing suppliers, as well as yield improvements and test enhancements.

Our gross profit fluctuates due to several factors, including sales incentives, new product introductions and upgrades to existing product lines, changes in customer and product mixes, the mix of product demand, shipment volumes, our product costs, pricing and inventory write-downs. Cost of revenue is expected to decrease over time as a percentage of revenue due primarily to our focus on supply chain efficiency and negotiating better pricing with our manufacturers.

Cost of revenue decreased 12.8% to \$20.5 million for the three months ended September 30, 2016, compared to \$23.5 million for the same period in 2015. Accordingly, gross profit for the three months ended September 30, 2016 remained relatively flat, decreasing \$0.3 million to \$10.2 million compared to \$10.5 million for the same period 2015. However, gross profit margin increased to 33.2% for the three months ended September 30, 2016 compared to 30.8% for the same period in 2015.

Operating Expenses

Operating expenses for the three months ended September 30, 2016 were \$11.5 million, compared to \$37.5 million for the same period in 2015. During the three months ended September 2015, we commenced our restructuring plan, which resulted in \$16.7 million of expense compared to \$1.7 million during the current quarter. Additionally, our advertising and promotion expenses decreased \$5.2 million due to our focus on lower cost advertising, including social media. See additional discussion below.

Advertising and Promotion

Our advertising and promotions consists primarily of athletic endorsements, and sponsorships which includes both cash and stock-based compensation, promotional giveaways, trade show events, food, drug, and mass distribution costs, and digital, print, and media advertising.

Prior to our restructuring during the third quarter of 2015, advertising and promotions were a large part of both our growth strategy and brand awareness. We built strategic partnerships with sports athletes and fitness enthusiasts through endorsements, licensing, and co-branding agreements. Additionally, we co-developed products with sports athletes and teams. We expect our advertising and promotion expenses to decrease in future periods as we seek to leverage existing brand recognition and move towards lower cost advertising outlets including social media.

Advertising and promotion expenses decreased 73.1% to \$1.9 million for the three months ended September 30, 2016, or 6% of revenue, compared to \$7.1 million, or 21% of revenue, for the same period in 2015. Advertising and promotion expenses for the three months ended September 30, 2016 and 2015 included expenses related to strategic partnerships with athletes and sports teams. The expense associated with these partnerships decreased by \$3.5 million as our agreement with the UFC expired during the fourth quarter of 2015 and we renegotiated or terminated a number of contracts as part of our restructuring activities. Additionally, miscellaneous advertising expenses decreased by \$0.8 million, fees paid for athlete appearances decreased by \$0.7 million, trade show expense decreased by \$0.3 million and product giveaway costs decreased by \$0.4 million. These decreases were partially offset by an increase in partnership advertising of \$0.5 million.

Salaries and Benefits

Salaries and benefits consist primarily of salaries, bonuses, benefits and stock-based compensation. Personnel costs are a significant component of our operating expenses. During the third quarter of 2015, we executed a restructuring plan, resulting in a reduction in our workforce that concluded during the third quarter of 2016. Salaries and benefits are anticipated to continue to decrease due to potential additional headcount reductions, limited headcount additions, as well as a reduction of future restricted stock awards, and a reduction in amortization of existing stock-based grants.

Salaries and benefits decreased 59.7% to \$2.3 million, or 8% of revenue, for the three months ended September 30, 2016 compared to \$5.7 million, or 17% of revenue, for the same period in 2015. Stock-based compensation expense decreased \$2.2 million and other compensation expense decreased by \$1.2 million related to the reduction of headcount as part of the restructuring plan, and compensation paid to former CEO Brad Pyatt who resigned from the Company in March 2016 (see Note 12 to the Condensed Consolidated Financial Statements).

Selling, General and Administrative

Our selling, general and administrative expenses consist primarily of freight out, depreciation, amortization, IT equipment and network, facilities related expenses, insurance, director's fees, which include both cash and stock-based compensation, rental expenses related to equipment leases, supplies, legal settlement costs, and other corporate expenses.

Selling, general and administrative expenses decreased 15.3% to \$3.9 million, or 13% of revenue, for the three months ended September 30, 2016 compared to \$4.6 million, or 13% of revenue, for the same period in 2015. The decrease was primarily due to lower office expenses, including rent, of \$0.4 million, and lower depreciation and amortization of \$0.3 million.

Research and Development

Research and development expenses consist primarily of R&D personnel salaries, bonuses, benefits, and stock-based compensation, product quality control, which includes third-party testing, and research fees related to the development of new products. We expense research and development costs as incurred. Research and development is not a primary driver of our operating expenses and we expect research and development to decrease in future periods, as we have reduced the number of employees in this department.

Research and development expenses decreased 81.2% to \$0.3 million, or 1% of revenue, for the three months ended September 30, 2016 compared to \$1.4 million, or 4% of revenue for the same period in 2015. The decrease was primarily due to sale of BioZone and a reduction in salaries and benefits and research fees.

Professional Fees

Professional fees consist primarily of legal fees, accounting and audit fees, consulting fees, which includes both cash and stock-based compensation, and investor relations costs. We expect our professional fees to increase or remain flat as we utilize professional service providers to defend ongoing and new legal matters and advise on corporate governance, internal controls, and process improvements.

Professional fees decreased 33.6% to \$1.3 million, or 4% of revenue, for the three months ended September 30, 2016, compared to \$2.0 million, or 6% of revenue for the same period in 2015. The decrease was primarily due to a decrease in public relations fees of \$0.7 million, offset by an increase in legal fees of \$0.2 million.

Restructuring and Other Charges

For the three months ended September 30, 2016, restructuring and other charges were \$1.7 million, compared to \$16.7 million for the same period in 2015, when the restructuring plan commenced. Restructuring expenses for the three months ended September 30, 2016 primarily related to closing the accounting and administration office in Denver, Colorado and the distribution center in Pittsburg, California.

For the three months ended September 30, 2015, we incurred a total restructuring and other charges of \$17.9 million, of which \$16.6 million was recorded in operating expenses. The restructuring charges to be paid in cash totaled \$8.2 million, which are comprised of: (i) severance and termination benefit costs related to the terminated employees of \$1.2 million; (ii) charge of \$6.6 million related to cancellation of certain contracts and sponsorship agreements; and (iii) costs associated with permanently vacating certain facilities of \$0.4 million. Other non-cash charges associated with the restructuring totaled \$8.4 million, which are comprised of: (i) stock-based compensation of terminated employees of \$1.7 million; (ii) write-down of prepaid stock compensation related to terminated endorsement agreements, discontinued products, and abandoned other agreements including related prepaid assets of \$6.4 million; and (iii) write-off of long-lived assets related to the abandonment of certain lease facilities of \$0.4 million.

Impairment of Assets

During the three months ended September 30, 2016, \$0.1 million of inventory related to the Arnold Schwarzenegger product line was written off. The agreement to terminate the product line stipulates that no further use of his likeness or sales of the inventory were allowed and therefore, we disposed of all the remaining product in inventory.

Other Expense, net

During the three months ended September 30, 2016 and 2015, other expense, net consists of the following (in thousands):

	Three Months Ended	
	September 30,	
	2016	2015
Other expense, net:		
Interest expense	\$ (166)	\$ (99)
Interest expense, factored accounts receivable	(9)	—
Foreign currency transaction gain (loss)	19	(456)
Other	34	(4)
Total other expense, net	<u>\$ (122)</u>	<u>\$ (559)</u>

The decrease in other expense, net was primarily related to foreign currency transaction gains and losses due to the U.S. Dollar remaining constant, compared to the same period in 2015.

We expect interest expense to increase in the near term, related to interest on the convertible secured promissory note that we entered into in December 2015 and the secured borrowing arrangement we entered into in January 2016.

Provision for Income Taxes

Provision for income taxes consists primarily of federal and state income taxes in the United States and income taxes in foreign jurisdictions in which we conduct business. Due to uncertainty as to the realization of benefits from our deferred tax assets, including net operating loss carry-forwards, research and development and other tax credits, we have a full valuation allowance reserved against such assets. We expect to maintain this full valuation allowance at least in the near term.

Comparison of the Nine Months Ended September 30, 2016 to the Nine Months Ended September 30, 2015

	Nine Months Ended September 30,		\$ Change	% Change
	2016	2015		
	(in thousands)			
Revenue, net	\$ 106,473	\$ 125,780	\$ (19,307)	(15.3)%
Cost of revenue ⁽¹⁾	70,377	83,428	(13,051)	(15.6)
Gross profit	<u>36,096</u>	<u>42,352</u>	<u>(6,256)</u>	<u>(14.8)</u>
Operating expenses:				
Advertising and promotion	8,878	22,603	(13,725)	(60.7)
Salaries and benefits	15,203	20,505	(5,302)	(25.9)
Selling, general and administrative	12,604	14,730	(2,126)	(14.4)
Research and development	1,664	3,323	(1,659)	(49.9)
Professional fees	4,445	5,499	(1,054)	(19.2)
Restructuring and other charges	(2,579)	16,650	(19,229)	(115.5)
Impairment of assets	4,450	—	4,450	N/A
Total operating expenses	<u>44,665</u>	<u>83,310</u>	<u>(38,645)</u>	<u>(46.4)</u>
Loss from operations	(8,569)	(40,958)	32,389	(79.1)
Loss on sale of subsidiary	(2,115)	—	(2,115)	N/A
Other expense, net	(1,426)	(1,090)	(336)	30.8
Loss before provision for income taxes	(12,110)	(42,048)	29,938	(71.2)
Provision for income taxes	138	104	34	32.7
Net loss	<u>\$ (12,248)</u>	<u>\$ (42,152)</u>	<u>\$ 29,904</u>	<u>(70.9)%</u>

- (1) Cost of revenue for the nine months ended September 30, 2016 and 2015 included restructuring charges of \$2.3 million and \$1.3 million, respectively, related to write-down of inventory for discontinued products.

The following table presents our operating results as a percentage of revenue, net for the periods presented:

	Nine Months Ended September 30,	
	2016	2015
Revenue, net	100%	100%
Cost of revenue	<u>66</u>	<u>66</u>
Gross profit	34	34
Operating expenses:		
Advertising and promotion	8	18
Salaries and benefits	14	16
Selling, general and administrative	12	12
Research and development	2	3
Professional fees	4	4
Restructuring and other charges	(2)	13
Impairment of assets	4	—
Total operating expenses	<u>42</u>	<u>66</u>
Loss from operations	(8)	(32)
Loss on sale of subsidiary	(2)	—
Other expense, net	(1)	(1)
Loss before provision for income taxes	(11)	(33)
Provision for income taxes	—	—
Net loss	<u>(11)%</u>	<u>(33)%</u>

Revenue, net

Net revenue decreased \$19.3 million, or 15.3%, to \$106.5 million for the nine months ended September 30, 2016, compared to \$125.8 million for the nine months ended September 30, 2015. Net revenue for the nine months ended September 30, 2016 decreased primarily due to the termination of the Arnold Schwarzenegger product-line licensing agreement, the sale of our BioZone subsidiary, certain other products being discontinued and the migration of some existing products to a new supplier. Revenue from our BioZone subsidiary decreased \$5.7 million for the nine months ended September 30, 2016 compared to the same period in 2015. Discounts and sales allowances increased to 20.8% of gross revenue, or \$27.9 million, for the nine months ended September 30, 2016 from 13.7% of gross revenue, or \$19.9 million for the same period in 2015. The increase in discounts and allowances is primarily related to promotions of new product introductions and discounts and allowances on existing products with key customers.

During the nine months ended September 30, 2016, our two largest customers, Costco and GNC, each individually accounted for more than 10% of our net revenue, and in total represented 30% of our net revenue. During the nine months ended September 30, 2015, our three largest customers, Costco, GNC, and Bodybuilding.com, each individually accounted for more than 10% of our net revenue, and in total represented 42% of our net revenue.

Cost of Revenue and Gross Profit

Costs of revenue decreased 15.6% to \$70.4 million for the nine months ended September 30, 2016, compared to \$83.4 million for the same period in 2015. Accordingly, gross profit for the nine months ended September 30, 2016 decreased \$6.3 million to \$36.1 million compared to \$42.4 million for the same period 2015. Gross profit margin increased to 33.9% for the nine months ended September 30, 2016 compared to 33.7% for the same period in 2015, remaining relatively flat.

Operating Expenses

Operating expenses for the nine months ended September 30, 2016 were \$44.7 million, compared to \$83.3 million for the same period in 2015. During the three months ended September 2015, we commenced our restructuring plan, which resulted in \$16.7 million of expense compared to a credit of \$2.6 million during the current year. Additionally, our advertising and promotion expenses decreased \$13.7 million due to our focus on lower cost advertising, including social media and our salaries and benefits decreased by \$5.3 million. See additional discussion below.

Advertising and Promotion

Advertising and promotion expenses decreased 60.7% to \$8.9 million for the nine months ended September 30, 2016, or 8% of revenue, compared to \$22.6 million, or 18% of revenue, for the same period in 2015. Advertising and promotion expenses for the nine months ended September 30, 2016 and 2015 included expenses related to strategic partnerships with athletes and sports teams. The expense associated with these partnerships decreased by \$9.7 million as our agreement with the UFC expired during the fourth quarter of 2015 and we renegotiated or terminated a number of contracts as part of our restructuring activities. Additionally, miscellaneous advertising expenses decreased by \$1.9 million, product giveaway costs decreased by \$1.3 million, fees paid for athlete appearances decreased by \$1.2 million, and trade show expense decreased by \$0.9 million. These decreases were partially offset by an increase in partnership advertising of \$1.3 million.

Salaries and Benefits

Salaries and benefits decreased 25.9% to \$15.2 million, or 14% of revenue, for the nine months ended September 30, 2016 compared to \$20.5 million, or 16% of revenue, for the same period in 2015. Stock-based compensation expense decreased \$3.3 million and other compensation expense decreased by \$2.0 million related to the reduction of headcount as part of the restructuring plan. These cost reductions were offset by compensation paid to former CEO Brad Pyatt who resigned from the Company in March 2016 (see Note 12 to the Condensed Consolidated Financial Statements) and accounts for \$5.9 million of the \$15.2 million of salaries and benefits. Without this isolated event, salaries and benefits for the nine months ended September 30, 2016 would have been \$9.3 million, which would have been a 54.6% reduction compared to the same period in 2015.

Selling, General and Administrative

Selling, general and administrative expenses decreased 14.4% to \$12.6 million, or 12% of revenue, for the nine months ended September 30, 2016 compared to \$14.7 million, or 12% of revenue, for the same period in 2015. The decrease was primarily due to lower office expenses, including rent, of \$0.6 million, lower fees of \$0.5 million, which included a one-time restricted share grant to a financial institution of \$0.3 million in 2015 and other bank fees, lower depreciation and amortization \$0.4 million, a decrease in customer non-compliance fees of \$0.3 million and other miscellaneous cost savings, offset by a \$0.3 million increase related to information technology.

Research and Development

Research and development expenses decreased 49.9% to \$1.7 million, or 2% of revenue, for the nine months ended September 30, 2016 compared to \$3.3 million, or 3% of revenue, for the same period in 2015. The decrease was primarily due to the sale of BioZone and a reduction in salaries and benefits and research fees.

Professional Fees

Professional fees decreased 19.2% to \$4.4 million, or 4% of revenue, for the nine months ended September 30, 2016, compared to \$5.5 million for the same period in 2015. The decrease was primarily due to a decrease in public relations fees of \$1.3 million, fees related to the SEC investigation of \$0.5 million, and lower consulting fees of \$0.3 million. These decreases were offset by an increase in legal fees of \$1.2 million.

Restructuring and Other Charges

For the nine months ended September 30, 2016, the Company recorded a credit in "Restructuring and other charges" of \$2.6 million comprised of: (i) an expense credit of \$4.8 million related to the release of a restructuring accrual of \$7.0 million, offset by the cash payment of \$2.2 million related to the settlement agreement which terminated all future commitments between ETW Corporation, or ETW, and the Company (see Note 14 to the accompanying Condensed Consolidated Financial Statements); (ii) \$1.3 million related to write-off of long-lived assets related to the abandonment of certain lease facilities; and (iii) \$0.9 million related to severance and other employee compensation costs. With the restructuring plan substantially complete, the Company does not anticipate incurring any additional restructuring charges for the remainder of 2016.

For the nine months ended September 30, 2015, we incurred a total restructuring and other charges of \$17.9 million, of which \$16.6 million was recorded in operating expenses. The restructuring charges to be paid in cash totaled \$8.2 million, which are comprised of: (i) severance and termination benefit costs related to the terminated employees of \$1.2 million; (ii) charge of \$6.6 million related to cancellation of certain contracts and sponsorship agreements; and (iii) costs associated with permanently vacating certain facilities of \$0.4 million. Other non-cash charges associated with the restructuring totaled \$8.4 million, which are comprised of: (i) stock-based compensation of terminated employees of \$1.7 million; (ii) write-down of prepaid stock compensation related to terminated endorsement agreements, discontinued products, and abandoned other agreements including related prepaid assets of \$6.4 million; and (iii) write-off of long-lived assets related to the abandonment of certain lease facilities of \$0.4 million.

Impairment of Assets

During the nine months ended September 30, 2016, we determined that certain prepaid manufacturing costs and our investment in a warrant to purchase Capstone's parent company, which totaled \$2.4 million, were impaired due to Capstone's sale of their primary powder manufacturing facility in June 2016, the termination of our manufacturing relationship with them and the ongoing litigation. See additional information in Note 5 to the Condensed Consolidated Financial Statements. Additionally, during the nine months ended September 30, 2016, \$2.1 million of intangible assets, prepaid assets and inventory related to the Arnold Schwarzenegger product line was written off. Per the agreement to terminate the product line, no further use of his likeness or sales of the inventory were allowed and therefore, we disposed of all the remaining product in inventory.

Other Expense, net

During the nine months ended September 30, 2016 and 2015, other expense, net consists of the following (in thousands):

	Nine Months Ended September 30,	
	2016	2015
Other expense, net:		
Interest expense	\$ (536)	\$ (357)
Interest expense, factored accounts receivable	(636)	—
Foreign currency transaction gain (loss)	213	(717)
Other	(467)	(16)
Total other expense, net	<u>\$ (1,426)</u>	<u>\$ (1,090)</u>

Net other expense for the nine months ended September 30, 2016 increased 30.8%, or \$0.3 million, compared to the same period in 2015. The increase in net other expense was primarily related to financing and factoring fees and other miscellaneous expenses, offset by \$0.9 million gain related to foreign currency translation rates.

Loss on Sale of Subsidiary

During the nine months ended September 30, 2016, we sold a wholly-owned subsidiary, BioZone, for a loss of \$2.1 million. See additional information in Note 6 to the accompanying Condensed Consolidated Financial Statements. The loss on the sale of BioZone primarily related to the subsidiary's pre-tax losses for 2016. Pre-tax loss for BioZone for the nine months ended September 30, 2016 was \$1.5 million, which represented the operations through the disposition date in May 2016.

Non-GAAP Adjusted EBITDA

In addition to disclosing financial results calculated in accordance with U.S. Generally Accepted Accounting Principles, or GAAP, this Form 10-Q discloses Adjusted EBITDA, which is net loss adjusted for income taxes, depreciation and amortization of property and equipment, amortization of intangible assets, provision for doubtful accounts, amortization of prepaid stock compensation, amortization of prepaid sponsorship fees, stock-based compensation, issuance of common stock warrants, other expense, net, loss on sale of subsidiary, restructuring and asset impairment charges. Management believes that these non-GAAP measures provide investors with important additional perspectives into our ongoing business performance.

The GAAP measure most directly comparable to Adjusted EBITDA is net loss. The non-GAAP financial measure of Adjusted EBITDA should not be considered as an alternative to net loss. Adjusted EBITDA is not a presentation made in accordance with GAAP and has important limitations as an analytical tool and should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP. Because Adjusted EBITDA excludes some, but not all, items that affect net loss and is defined differently by different companies, our definition of Adjusted EBITDA may not be comparable to similarly titled measures of other companies.

Set forth below are reconciliations of Adjusted EBITDA to our reported GAAP net loss (in thousands):

	Nine Months Ended		Three Months Ended			Year Ended Dec. 31, 2015	Three Months Ended			
	Sept. 30, 2016	Sept. 30, 2015	Sept. 30, 2016	June 30, 2016	Mar. 31, 2016		Dec. 31, 2015	Sept. 30, 2015	June 30, 2015	Mar. 31, 2015
Net loss	\$(12,248)	\$(42,152)	\$(1,447)	\$(4,196)	\$(6,605)	\$(51,858)	\$(9,706)	\$(27,648)	\$(7,025)	\$(7,479)
Non-GAAP adjustments:										
Stock-based compensation	4,981	8,690	(116)	427	4,670	12,705	4,015	2,154	4,013	2,523
Restructuring and asset impairment charges	4,100	17,912	1,864	—	2,236	21,235	3,323	17,912	—	—
Loss on sale of subsidiary	2,115	—	—	2,115	—	—	—	—	—	—
Amortization of prepaid sponsorship fees	1,055	5,363	211	146	698	6,255	892	2,111	1,821	1,431
Other expense, net	1,426	1,090	122	592	712	1,806	716	559	348	183
Amortization of prepaid stock compensation	938	3,198	—	235	703	3,901	703	962	1,127	1,109
Depreciation and amortization of property and equipment	1,162	1,330	346	389	427	1,760	430	492	456	382
Amortization of intangible assets	496	776	80	196	220	1,055	279	278	273	225
Stock-based compensation related to issuance of common stock to a related party for guaranty of debt	—	—	—	—	—	80	80	—	—	—
(Recovery) provision for doubtful accounts	234	168	225	43	(34)	219	51	70	68	30
Issuance of common stock warrants to third parties for services	6	62	—	3	3	65	3	12	17	33
Provision for income taxes	138	104	—	7	131	105	1	71	21	12
Adjusted EBITDA	\$ 4,403	\$ (3,459)	\$ 1,285	\$ (43)	\$ 3,161	\$ (2,672)	\$ 787	\$ (3,027)	\$ 1,119	\$ (1,551)

Liquidity and Capital Resources

Since the inception of MusclePharm, other than cash from product sales, our primary source of cash has been from the sale of equity, issuance of convertible secured promissory notes and other short-term debt as discussed below. In January 2016, we entered into a factoring facility agreement with Prestige Capital Corporation. The maximum total advances outstanding at any time under this agreement is \$10.0 million.

As of September 30, 2016, our cash balance was approximately \$5.9 million, which consists primarily of cash on deposit with banks. Our principal use of cash is to purchase inventory, pay for operating expenses, acquire capital assets and historically to repurchase outstanding shares of our capital stock. As of September 30, 2016, we had a deficit in working capital of \$21.0 million, an accumulated deficit of \$159.8 million and a total stockholders' deficit of \$16.4 million. As of September 30, 2016, we had outstanding borrowings of \$6.0 million under our convertible note with a related party.

Our management believes that the recently completed restructuring, which includes a reduction in ongoing operating costs and enhanced expense controls, will enable us ultimately to be profitable; however, we may need to continue to raise capital in order to execute its business plan. There can be no assurance that such capital will be available on acceptable terms or at all.

Our net consolidated cash flows are as follows (in thousands):

	Nine Months Ended September 30,	
	2016	2015
Consolidated Statements of Cash Flows Data:		
Net cash (used in) provided by operating activities	\$ (486)	\$ 7,709
Net cash provided by (used in) investing activities	5,369	(2,893)
Net cash used in financing activities	(6,049)	(2,274)
Effect of exchange rate changes on cash	(21)	(105)
Net change in cash	<u>\$ (1,187)</u>	<u>\$ 2,437</u>

Operating Activities

Our cash (used in) provided by operating activities is driven primarily by sales of our products and vendor provided credit. Our primary uses of cash from operating activities have been for inventory purchases, advertising and promotion expenses, personnel-related expenditures, manufacturing costs, professional fees, costs related to our facilities and legal related fees. Our cash flows from operating activities will continue to be affected principally by the results of operations and the extent to which we increase spending on personnel expenditures, sales and marketing activities, and our working capital requirements.

Our operating cash flows were \$8.2 million lower for the nine months ended September 30, 2016 compared to the same period in 2015. The variance primarily relates to the net change in net operating assets and liabilities which resulted in a use of cash of \$0.9 million for the nine months ended September 30, 2016 compared to a source of cash of \$20.5 million for the same period in 2015. During the nine months ended September 30, 2016, the decrease in liabilities related to the restructuring accrual and accounts payable and accrued liabilities resulted in a \$4.9 million and a \$2.2 million decrease in working capital, respectively. These decreases were offset by a reduction in our accounts receivable balance, which provided a source of working capital. During the nine months ended September 30, 2015, increases in accounts payable and accrued liabilities provided \$18.8 million in working capital. This source was offset by an increase in prepaid sponsorship and endorsement fees and other prepaid expenses which used \$6.5 million and \$1.8 million, respectively. These changes in working capital were offset by net loss adjusted for non-cash charges, which resulted in a source of cash of \$0.4 million for the nine months ended September 30, 2016, compared to a use of cash of \$12.8 million for the same period in 2015.

Investing Activities

Cash provided by investing activities was \$5.4 million for the nine months ended September 30, 2016, primarily due to the cash proceeds from sale of BioZone of \$5.9 million, offset by cash purchases of property and equipment of \$0.4 million.

Cash used in investing activities of \$2.9 million for the nine months ended September 30, 2015, was primarily due to a cash payment of \$0.9 million related to MusclePharm apparel rights acquisition, investment in contract manufacturer of \$1.0 million related to our opportunity to acquire Capstone and purchase of property and equipment of \$1.3 million, partially offset by proceeds from disposal of property and equipment of \$0.4 million.

Financing Activities

Cash used in financing activities was \$6.0 million for the nine months ended September 30, 2016, primarily due to the repayment on our line of credit of \$3.0 million and repayment of a term loan of \$2.9 million.

Cash used in financing activities of \$2.3 million for the nine months ended September 30, 2015, was primarily due to repayment on our line of credit of \$5.4 million, partially offset by proceeds from issuance of our term loan of \$4.0 million.

Indebtedness Agreements

In September 2014, we entered into a line of credit facility with ANB Bank for up to \$8.0 million of borrowings. The line of credit originally matured in September 2017, and accrued interest at the prime rate plus 2%. The line of credit was secured by inventory, accounts receivable, intangible assets and equipment. As of December 31, 2015, the outstanding borrowings under the line of credit were \$3.0 million. We were not in compliance with certain financial covenants under the line of credit as of December 31, 2015, which limited further borrowings. We repaid our outstanding principal and accrued interest under the line of credit in full in January 2016 in conjunction with our secured borrowing arrangement as described below. This line is no longer available to us.

In February 2015, we entered into a \$4.0 million term loan agreement with ANB Bank. The term loan carried a fixed interest rate of 5.25% per annum, was repayable in 36 equal monthly installments of principal and interest, and originally matured in February 2018. The term loan contained various events of default, including cross default provisions related to the line of credit, which could have required repayments of the term loan. We were not in compliance with certain financial covenants under the term loan as of December 31, 2015, and received various waivers from the lender during the year ended December 31, 2015. As of December 31, 2015, the outstanding borrowings under the term loan were \$2.9 million. We repaid our outstanding principal and accrued interest under the term loan in full in January 2016 to retire the term loan in conjunction with our secured borrowing arrangement as described below.

In October 2015, we entered into loan modification agreements with ANB Bank under the line of credit and term loan to: (i) change the maturity date of the loans to January 15, 2016, (ii) prohibit the loans to be declared in default prior to December 10, 2015, except for defaults resulting from failure to make timely payments, and (iii) delete certain financial covenants from the line of credit. In consideration for these modifications, Ryan Drexler, Interim Chief Executive Officer, Interim President and Chairman of the Board, and a family member provided their individual guaranty for the remaining balance of the term loan and line of credit of \$6.2 million. In consideration for executing his guaranty, we issued to Mr. Drexler 28,571 shares of our common stock with a grant date fair value of \$80,000 (based upon the closing price of our common stock on the date of issuance).

In December 2015, we entered into a convertible secured promissory note agreement with Mr. Drexler, Interim Chief Executive Officer, Interim President and Chairman of the Board, pursuant to which he loaned us \$6.0 million. Proceeds from the note were used to fund working capital requirements. The convertible note is secured by all assets and properties of the Company and its subsidiaries whether tangible or intangible. The convertible note carries an interest at a rate of 8% per annum, or 10% in the event of default. Both the principal and the interest under the convertible note are due in January 2017, unless converted earlier. The holder can convert the outstanding principal and accrued interest into shares of common stock (2,608,695 shares) for \$2.30 per share at any time. We may prepay the convertible note at the aggregate principal amount therein plus accrued interest by giving the holder between 15 and 60 day-notice, depending upon the specific circumstances, provided that the holder may convert the note during the notice period. We recorded the convertible note of \$6.0 million as a liability in the balance sheet and also recorded a beneficial conversion feature of \$52,000 as a debt discount upon issuance of the convertible note, which is being amortized over the term of the convertible debt using the effective interest method. The beneficial conversion feature was calculated based on the difference between the fair value of common stock and the effective conversion price of the convertible note. As of September 30, 2016, the convertible note had an outstanding principal balance of \$6.0 million.

In January 2016, we entered into a Purchase and Sale Agreement (the "Agreement") with Prestige Capital Corporation ("Prestige") pursuant to which we agreed to sell and assign and Prestige agreed to buy and accept, certain accounts receivable owed to us ("Accounts"). Under the terms of the Agreement, upon the receipt and acceptance of each assignment of Accounts, Prestige will pay us 80% of the net face amount of the assigned Accounts, up to a maximum total borrowings of \$10.0 million subject to sufficient amounts of accounts receivable to secure the loan. The remaining 20% will be paid to us upon collection of the assigned Accounts, less any chargeback, disputes, or other amounts due to Prestige. Prestige's purchase of the assigned Accounts from us will be at a discount fee which varies based on the number of days outstanding from the assignment of Accounts to collection of the assigned Accounts. In addition, we granted Prestige a continuing security interest in and lien upon all accounts receivable, inventory, fixed assets, general intangibles and other assets. The Agreement's initial term of six months has been extended by the Company to March 31, 2017. Prestige may cancel the Agreement with 30-day notice.

During the three months ended September 30, 2016, we had no new transactions with Prestige. During the nine months ended September 30, 2016, we sold to Prestige accounts with an aggregate face amount of approximately \$49.3 million, for which Prestige paid to us approximately \$39.5 million in cash. During the three and nine months ended September 30, 2016, \$8.7 million and \$40.0 million was subsequently repaid to Prestige, including fees and interest. The proceeds from the initial assignment to Prestige under this secured borrowing arrangement were primarily utilized to pay off the balance of the existing line of credit and term loan with ANB Bank.

Contractual Obligations

Our principal commitments consist of obligations under operating leases for office and warehouse facilities, capital leases for manufacturing and warehouse equipment, debt, restructuring liability and non-cancelable endorsement and sponsorship agreements.

We presented our contractual obligations in our 2015 Form 10-K for the fiscal year ended December 31, 2015. There have been no other material changes outside of the ordinary course of business in those obligations during the current quarter.

Going Concern Opinion

Our auditors have issued a going concern opinion in their report on our financial statements for the fiscal year ended December 31, 2015. We have not established an ongoing source of revenue sufficient to cover our operating costs and are dependent on obtaining adequate capital to continue operations, which raises substantial doubt as to our ability to continue as a going concern. See "Item 1A. Risk Factors—Because our auditors have issued a going concern opinion, there is a substantial uncertainty that we will continue operations, in which case you could lose your investment" in our 2015 Form 10-K for the fiscal year ended December 31, 2015 and Note 1 to our accompanying Condensed Consolidated Financial Statements.

Off-Balance Sheet Arrangements

We did not have any off-balance sheet arrangements as of September 30, 2016.

Critical Accounting Policies and Estimates

The preparation of accompanying Condensed Consolidated Financial Statements and related disclosures in conformity with GAAP and our discussion and analysis of our financial condition and operating results require our management to make judgments, assumptions and estimates that affect the amounts reported in these Condensed Consolidated Financial Statements and accompanying notes. Management bases its estimates on historical experience and on various other assumptions we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ from these estimates, and such differences may be material.

Note 2, "Summary of Significant Accounting Policies" in Part I, Item 1 of this Form 10-Q and in the Notes to Consolidated Financial Statements in Part II, Item 8 of the 2015 Form 10-K, and "Critical Accounting Policies and Estimates" in Part I, Item 7 of the 2015 Form 10-K describe the significant accounting policies and methods used in the preparation of our Condensed Consolidated Financial Statements. There have been no material changes to our critical accounting policies and estimates since the 2015 Form 10-K.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risks related to changes to foreign currency exchange rates.

Foreign Currency Exchange Risk

We have foreign currency risks related to our revenue and operating expenses denominated in currencies other than the U.S. Dollar, primarily the Canadian Dollar and more recently the Euro and the Australian Dollar. In general, we are a net receiver of currencies other than the U.S. Dollar. Accordingly, changes in exchange rates, and in particular a strengthening of the U.S. Dollar, will negatively affect our non-dollar denominated revenue and other operating results as expressed in U.S. Dollars.

We have experienced and will continue to experience fluctuations in our net loss as a result of transaction gains or losses related to revaluing certain current asset and current liability balances that are denominated in currencies other than the functional currency of the entities in which they are recorded. At this time, we have not entered into, but in the future we may enter into, derivatives or other financial instruments in an attempt to hedge our foreign currency exchange risk. It is difficult to predict the effect hedging activities would have on our results of operations. We recognized foreign currency gain of \$19,000 and \$0.2 million for the three and nine months ended September 30, 2016.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our interim chief executive officer ("CEO") who is our interim principal executive officer and is temporarily performing the function of our principal financial officer while there is a vacancy in that position, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended ("Exchange Act")), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our interim CEO has concluded that as of September 30, 2016, our disclosure controls and procedures are designed at a reasonable assurance level and are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission ("SEC"), and that such information is accumulated and communicated to our management, including our CEO, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control

There were no changes in our internal control over financial reporting identified in management's evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the third quarter of 2016 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

Contingencies

In the normal course of business or otherwise, the Company may become involved in legal proceedings. The Company will accrue a liability for such matters when it is probable that a liability has been incurred and the amount can be reasonably estimated. When only a range of possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. The accrual for a litigation loss contingency might include, for example, estimates of potential damages, outside legal fees and other directly related costs expected to be incurred. As of September 30, 2016 and December 31, 2015, the Company was involved in the several material legal proceedings described in Note 10 to the Consolidated Financial Statements. Legal proceedings that became reportable events, or had material developments in the current quarter, are described below.

Arnold Schwarzenegger

The Company is engaged in a dispute with Arnold Schwarzenegger, Marine MP, LLC, & Fitness Publications, Inc. (“AS Parties”) concerning amounts allegedly owed under the parties’ Endorsement Licensing and Co-Branding Agreement. In May 2016, the contract was terminated, and the AS Parties commenced arbitration, alleging that the Company breached the parties’ agreement and misappropriated Schwarzenegger’s likeness. They seek more than \$13.0 million for royalties, purported misuse of Schwarzenegger’s likeness, and attorney fees. The Company filed its response and counterclaimed for breach of contract and breach of the implied covenant of good faith and fair dealing. The parties are engaged in discovery.

Manchester City Football Group

The Company is engaged in a dispute with City Football Group Limited (“CFG”), the owner of Manchester City Football Group, concerning amounts allegedly owed by the Company under a Sponsorship Agreement with CFG. In August 2016, CFG commenced arbitration in the United Kingdom against the Company, seeking approximately \$8.3 million for the Company’s purported breach of the Agreement. The Company answered on October 7, 2016. An arbitrator has not yet been appointed and discovery has not yet begun.

Item 1A. Risk Factors

There have been no material changes to the Risk Factors as disclosed in our 2015 Form 10-K for the fiscal year ended December 31, 2015 filed with the Securities and Exchange Commission on March 17, 2016.

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

None.

Item 3. Defaults Upon Senior Securities.

See Part I above.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information.

As previously disclosed, the Company has been engaged in a dispute with F.H.G. Corporation (d/b/a Capstone Nutrition), INI Parent, Inc., INI Buyer, Inc. and Medley Capital Corporation (together, "Capstone") arising out of a Manufacturing Agreement between the parties. On November 7, 2016, the parties executed a settlement agreement (the "Settlement Agreement"). Under the Settlement Agreement, the Company has agreed to pay to Capstone cash in the amount of \$11.0 million within five business days following the execution of the Settlement Agreement. All pending litigation will be dismissed with prejudice. The Settlement Agreement releases all parties from any and all claims, actions, causes of action, suits, controversies or counterclaims that the parties have had, now have or thereafter can, shall or may have. The Company will also issue to INI Buyer, Inc. a warrant to purchase an amount of the Company's common stock equal to 7.5% of the issued and outstanding capital stock of the Company on a fully diluted basis as of the date of execution of the warrant agreement, estimated to be approximately 1,289,378 shares of Company common stock (the "Warrant"). The exercise price of the Warrant will be \$1.83 per share, subject to adjustment under certain circumstances provided for therein, with a term of four years. The Company has valued these warrants by utilizing the Black Scholes model at approximately \$1.9 million based upon the best available information as of the date of this Quarterly Report on Form 10-Q. The Warrant will be subject to adjustment upon certain events provided for therein.

The Company has approximately \$21.9 million in accounts payable and accrued liabilities associated with the Capstone liability. Based upon the amounts included herein, the Company anticipates recording a gain of approximately \$8.9 million based on the Capstone settlement. Due to the nature of this gain contingency, the Company has not reflected these amounts in its third quarter Condensed Consolidated Balance Sheet and Statement of Operations. The Company intends to record this transaction in the fourth quarter of 2016.

In conjunction with the above transaction, on November 8, 2016, the Company entered into a convertible secured promissory note agreement (the "2016 Convertible Note") with Mr. Ryan Drexler, the Company's Chairman of the Board, Interim Chief Executive Officer and Interim President, pursuant to which Mr. Drexler loaned the Company \$11.0 million. Proceeds from the note were used to fund the Settlement Agreement. The 2016 Convertible Note is secured by all assets and properties of the Company and its subsidiaries, whether tangible or intangible. The 2016 Convertible Note carries interest at a rate of 10% per annum, or 12% if there is an event of default. Both the principal and the interest under the 2016 Convertible Note are due in November 2017, unless converted earlier. Mr. Drexler may convert the outstanding principal and accrued interest into shares of the Company's common stock for \$1.83 per share at any time (estimated to be approximately 6,010,929 shares as of the date of this Quarterly Report on Form 10-Q). The Company may prepay the 2016 Convertible Note at the aggregate principal amount therein, plus accrued interest, by giving Mr. Drexler between 15 and 60 days' notice depending upon the specific circumstances, provided that Mr. Drexler may convert the 2016 Convertible Note during the applicable notice period. The Company intends to record this liability as a convertible note with a related party in the fourth quarter of 2016.

Item 6. Exhibits.

Exhibit No.	Description
4.1*	Warrant, dated November 7, 2016, by and between MusclePharm Corporation and INI Buyer, Inc.
10.1*	Convertible Secured Promissory Note, dated November 8, 2016, by and between MusclePharm Corporation and Ryan Drexler.
10.2*	Amended and Restated Security Agreement, dated November 8, 2016, by and between MusclePharm Corporation and Ryan Drexler.
10.3*	Settlement Agreement, dated November 7, 2016, by and among MusclePharm Corporation and F.H.G. Corporation d/b/a Capstone Nutrition, INI Parent, Inc., INI Buyer, Inc. and Medley Capital Corporation.
31.1*	Rule 13 (A) – 14(A) Certification of Principal Executive Officer and Principal Financial Officer
32.1*	Section 1350 Certification of Principal Executive Officer and Principal Financial Officer
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase
101.DEF*	XBRL Taxonomy Extension Definition Linkbase
101.LAB*	XBRL Taxonomy Extension Label Linkbase
101.PRE*	PRE XBRL Presentation Linkbase Document

* Filed herewith.

WARRANT

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR REGISTERED OR QUALIFIED UNDER ANY STATE OR FOREIGN SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR ASSIGNED UNLESS PERMITTED HEREUNDER AND IF PERMITTED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SECURITIES IS EFFECTIVE UNDER THE ACT AND IS REGISTERED OR QUALIFIED UNDER APPLICABLE STATE AND FOREIGN LAW OR (II) THE TRANSACTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS UNDER THE ACT AND THE REGISTRATION OR QUALIFICATION REQUIREMENTS UNDER APPLICABLE STATE AND FOREIGN LAW.

Warrant Certificate No.: 1

Original Issue Date: November 7, 2016

FOR VALUE RECEIVED, MusclePharm Corporation, a Nevada corporation (the "**Company**"), hereby certifies that INI Buyer Inc., a Delaware corporation, or its registered assigns (the "**Holder**") is entitled to purchase from the Company One Million Two Hundred Eighty Nine Thousand Three Hundred Seventy Eight (1,289,378) (representing 7.5% of the issued and outstanding capital stock of the Company on a fully diluted basis as of the date of this Warrant) duly authorized, validly issued, fully paid and nonassessable shares of Common Stock at a purchase price per share of \$1.83 (the "**Exercise Price**"), all subject to the terms, conditions and adjustments set forth below in this Warrant. Certain capitalized terms used herein are defined in **Section 1** hereof.

1. Definitions. As used in this Warrant, the following terms have the respective meanings set forth below:

"**Affiliate**" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer or director of such Person.

"Aggregate Exercise Price" means an amount equal to the product of (a) the number of Warrant Shares in respect of which this Warrant is then being exercised pursuant to **Section 3** hereof, multiplied by (b) the Exercise Price.

"Board" means the board of directors of the Company.

"Business Day" means any day, except a Saturday, Sunday or legal holiday, on which banking institutions in the city of New York are authorized or obligated by law or executive order to close.

"Common Stock" means the common stock, par value \$0.001 per share, of the Company, and any capital stock into which such Common Stock shall have been converted, exchanged or reclassified following the date hereof.

"Common Stock Deemed Outstanding" means, at any given time, the sum of (a) the number of shares of Common Stock outstanding at such time, plus (b) the number of shares of Common Stock issuable upon exercise of Options outstanding at such time, plus (c) the number of shares of Common Stock issuable upon conversion or exchange of Convertible Securities outstanding at such time (treating as outstanding any Convertible Securities issuable upon exercise of Options outstanding at such time), in each case, regardless of whether the Options or Convertible Securities are exercisable at such time.

"Common Stock Equivalent" means, without duplication, any security of the Company that is convertible into, exercisable for or exchangeable for, or options, warrants or other rights to acquire, directly or indirectly, Common Stock, whether at the time of issuance or upon the passage of time or the occurrence of some future event.

"Company" has the meaning set forth in the preamble.

"Convertible Securities" means any securities (directly or indirectly) convertible into, capable of being reclassified into or exchangeable for Common Stock, but excluding Options.

"Equity Securities" means the creation and issuance of other classes or series of stock of the Company (including warrants, options or other rights to purchase or otherwise acquire stock or other interests in the Company), having rights and/or obligations different from those of the Common Stock.

"Exercise Date" means, for any given exercise of this Warrant, the date on which the conditions to such exercise as set forth in **Section 3** shall have been satisfied at or prior to 5:00 p.m., New York time, on a Business Day, including, without limitation, the receipt by the Company of the Notice of Exercise, the Warrant and the Aggregate Exercise Price.

"Exercise Period" has the meaning set forth in **Section 2**.

"Exercise Price" has the meaning set forth in the preamble.

"Fair Market Value" means, as of any particular date: (a) the volume weighted average of the closing sales prices of the Common Stock for such day on all domestic securities exchanges on which the Common Stock may at the time be listed; (b) if there have been no sales of the Common Stock on any such exchange on any such day, the average of the highest bid and lowest asked prices for the Common Stock on all such exchanges at the end of such day; (c) if on any such day the Common Stock is not listed on a domestic securities exchange, the volume weighted closing sales price of the Common Stock as quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association for such day; or (d) if there have been no sales of the Common Stock on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association on such day, the average of the highest bid and lowest asked prices for the Common Stock quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association at the end of such day; in each case, averaged over twenty (20) consecutive Business Days ending on the Business Day immediately prior to the day as of which "Fair Market Value" is being determined; provided, that if the Common Stock is listed on any domestic securities exchange, the term "Business Day" as used in this sentence means Business Days on which such exchange is open for trading. If at any time the Common Stock is not listed on any domestic securities exchange or quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association, the "Fair Market Value" of the Common Stock shall be the fair market value per share as determined jointly in good faith by the Board and the Holder.

"Governmental Authority" means the government of the United States, any other nation, country or any political subdivision thereof, whether federal, state, local, foreign or supranational, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government

"Holder" has the meaning set forth in the preamble.

"Law" means any statute, rule, regulation, code and other law (including common law, official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders, injunctions, notices and decrees of all Governmental Authorities.

"Options" means any warrants or other rights or options to subscribe for or purchase Common Stock or Convertible Securities.

"**Original Issue Date**" means November 7, 2016.

"**OTC Bulletin Board**" means the Financial Industry Regulatory Authority OTC Bulletin Board electronic inter-dealer quotation system.

"**Notice of Exercise**" has the meaning set forth in **Section 3(a)(i)**.

"**Permitted Transferee**" has the meaning set forth in **Section 6**.

"**Person**" means any individual, sole proprietorship, partnership, limited liability company, corporation, joint venture, trust, incorporated organization or government or department or agency thereof.

"**Pink OTC Markets**" means the OTC Markets Group Inc. electronic interdealer quotation system, including OTCQX, OTCQB and OTC Pink.

"**Subsidiary**" means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (ii) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons own a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity's gains or losses or shall be or control any managing director or general partner of such business entity (other than a corporation). The term Subsidiary shall include all Subsidiaries of such Subsidiary.

"**Warrant**" means this Warrant and all warrants issued upon division or combination of, or in substitution for, this Warrant.

"**Warrant Shares**" means the shares of Common Stock or other capital stock of the Company then purchasable upon exercise of this Warrant in accordance with the terms of this Warrant.

2. Term of Warrant. The term of this Warrant shall commence on the Original Issue Date and expire at 5:00 p.m., New York time, on the the fourth (4th) anniversary of the Original Issue Date or, if such day is not a Business Day, on the next preceding Business Day (the "**Exercise Period**").

3. Exercise of Warrant.

(a) **Exercise Procedure.** This Warrant may be exercised during the Exercise Period, for all or any part of the unexercised Warrant Shares, upon:

(i) surrender of this Warrant to the Company at its then principal executive offices (or an indemnification undertaking with respect to this Warrant in the case of its loss, theft or destruction), together with a Notice of Exercise in the form attached hereto as **Exhibit A** (each, a "**Notice of Exercise**"), duly completed (including specifying the number of Warrant Shares to be purchased) and executed; and

(ii) payment to the Company of the Aggregate Exercise Price in accordance with **Section 3(b)**.

(b) **Payment of the Aggregate Exercise Price** Payment of the Aggregate Exercise Price shall be made by delivery to the Company of a certified or official bank check payable to the order of the Company or by wire transfer of immediately available funds to an account designated in writing by the Company, in the amount of such Aggregate Exercise Price.

(c) **Delivery of Stock Certificates.** Upon receipt by the Company of the Notice of Exercise, surrender of this Warrant and payment of the Aggregate Exercise Price (in accordance with **Section 3(a)** hereof), the Company shall, as promptly as practicable, and in any event within ten (10) Business Days thereafter, execute (or cause to be executed) and deliver (or cause to be delivered) to the Holder a certificate or certificates representing the Warrant Shares issuable upon such exercise, together with cash in lieu of any fraction of a share, as provided in **Section 3(d)** hereof. The stock certificate or certificates so delivered shall be in such denomination or denominations as the exercising Holder shall request in the Notice of Exercise and shall be registered in the name of the Holder or, subject to compliance with **Section 6** below, such other Person's name as shall be designated in the Notice of Exercise. This Warrant shall be deemed to have been exercised and such certificate or certificates of Warrant Shares shall be deemed to have been issued, and the Holder or any other Person so designated to be named therein shall be deemed to have become a holder of record of such Warrant Shares for all purposes, as of the Exercise Date.

(d) **Fractional Shares.** The Company shall not be required to issue a fractional Warrant Share upon exercise of any Warrant. As to any fraction of a Warrant Share that the Holder would otherwise be entitled to purchase upon such exercise, the Company shall pay to such Holder an amount in cash (by delivery of a certified or official bank check or by wire transfer of immediately available funds) equal to the product of (i) such fraction multiplied by (ii) the Fair Market Value of one Warrant Share on the Exercise Date.

(e) **Delivery of New Warrant.** Unless the purchase rights represented by this Warrant shall have expired or shall have been fully exercised, the Company shall, at the time of delivery of the certificate or certificates representing the Warrant Shares being issued in accordance with **Section 3(c)** hereof, deliver to the Holder a new Warrant (with the same terms) evidencing the rights of the Holder to purchase the unexpired and unexercised Warrant Shares called for by this Warrant. Such new Warrant shall in all other respects be identical to this Warrant.

(f) **Valid Issuance of Warrant and Warrant Shares; Payment of Expenses** With respect to the exercise of this warrant, the Company hereby represents, covenants and agrees:

(i) This Warrant is, and any Warrant issued in substitution for or replacement of this Warrant shall be, upon issuance, duly authorized and validly issued.

(ii) All Warrant Shares issuable upon the exercise of this Warrant pursuant to the terms hereof shall be, upon issuance, validly issued, fully paid and non-assessable, and free and clear of all taxes, liens and charges.

(iii) The Company shall take all reasonable actions as may be necessary to ensure that all such Warrant Shares are issued without violation by the Company of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock or other securities constituting Warrant Shares may be listed at the time of such exercise.

(iv) The Company shall pay all of its expenses in connection with, and all taxes and other governmental charges that may be imposed on the Company with respect to, the issuance or delivery of Warrant Shares upon exercise of this Warrant other than taxes or other governmental charges that may be due from the Holder.

(g) **Conditional Exercise.** Notwithstanding any other provision hereof, if an exercise of any portion of this Warrant is to be made in connection with a public offering or a sale of the Company (pursuant to a merger, sale of stock, or otherwise), such exercise may at the election of the Holder be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

(h) **Reservation of Shares.** During the Exercise Period, the Company shall at all times reserve and keep available out of its authorized but unissued Common Stock or other securities constituting Warrant Shares, solely for the purpose of issuance upon the exercise of this Warrant, the maximum number of Warrant Shares issuable upon the exercise of this Warrant, and the par value per Warrant Share shall at all times be less than or equal to the applicable Exercise Price. The Company shall not increase the par value of any Warrant Shares receivable upon the exercise of this Warrant above the Exercise Price then in effect.

(i) **No Redemption.** This Warrant is not redeemable by the Company, and neither the Company nor any successor thereto will redeem this Warrant.

4. Capitalization.

(a) As of the date of this Warrant, the authorized capital stock of the Company consists of 100,000,000 shares of Common Stock, par value \$0.001 per share, of which 14,803,315 shares are issued, 13,927,694 shares are outstanding, but excludes 875,621 shares of Common Stock held in treasury.

(b) **Schedule 1** sets forth, as of the date of this Agreement, all outstanding or authorized (i) stock or other options, warrants, convertible securities or other rights (including, without limitation, purchase, sell or exchange rights), agreements, arrangements or commitments of any character relating to the capital stock of the Company or obligating the Company to, directly or indirectly, issue, sell, purchase or redeem any shares of capital stock of, or any other interest in, the Company. There are no outstanding options, warrants, rights (including conversion or preemptive rights and rights of first refusal or similar rights) or agreements, orally or in writing, to purchase or acquire from the Company any shares of Common Stock, or any securities convertible into or exchangeable for shares of Common Stock.

5. Adjustment to Number of Warrant Shares. In order to prevent dilution in certain circumstances set forth herein of the purchase rights granted under this Warrant, the number of Warrant Shares issuable upon exercise of this Warrant shall be subject to adjustment from time to time as provided in this **Section 5** (in each case, after taking into consideration any prior adjustments pursuant to this **Section 5**).

(a) **Adjustment to Number of Warrant Shares Upon Issuance of Common Stock** If the Company shall, at any time during the Exercise Period, issue or sell, or in accordance with **Section 5(b)** is deemed to have issued or sold, any shares of Common Stock without consideration or for consideration per share of Common Stock that is less than the Fair Market Value per share of the Common Stock immediately prior to such issuance or sale, then immediately upon such issuance or sale (or deemed issuance or sale), the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to any such issuance or sale (or deemed issuance or sale) shall be increased to a number of Warrant Shares equal to the product obtained by multiplying the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to such issuance or sale (or deemed issuance or sale) by a fraction (which shall in no event be less than one):

(i) the numerator of which shall be the number of shares of Common Stock Deemed Outstanding immediately after such issuance or sale (or deemed issuance or sale); and

(ii) the denominator of which shall be the sum of (A) the number of shares of Common Stock Deemed Outstanding immediately prior to such issuance or sale (or deemed issuance or sale) plus (B) the aggregate number of shares of Common Stock which the aggregate amount of consideration, if any, received by the Company upon such issuance or sale (or deemed issuance or sale) would purchase at the Fair Market Value per share of the Common Stock immediately prior to such issuance or sale (or deemed issuance or sale).

Whenever during the Exercise Period the Company issues or sells, or is deemed to have issued or sold, in one transaction or in a series of transactions, more than an additional 250,000 shares of Common Stock within a 12-month period, the Company shall prepare a certificate signed by an executive officer setting forth, in reasonable detail, the number of shares issued or sold, or deemed issued or sold, the amount and the form of the consideration received by the Company and the method of computation of such amount and, as promptly as practicable (but in any event not later than ten (10) Business Days thereafter), shall cause copies of such certificate to be mailed to the Holder at the address specified in **Section 12** hereof or at such other address as may be provided to the Company in writing by the Holder.

(b) **Effect of Certain Events on Adjustment to Number of Warrant Shares**

(i) Issuance of Options. If the Company shall, at any time or from time to time during Exercise Period, grant or sell any Options, whether or not such Options or the right to convert or exchange any Convertible Securities issuable upon the exercise of such Options are immediately exercisable, and the price per share (determined as provided in this paragraph and in **Section 5(b)(v)**) for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of Convertible Securities issuable upon the exercise of such Options is less than the Fair Market Value per share of the Common Stock immediately prior to such issuance or sale, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued as of the date of granting or sale of such Options (and thereafter shall be

deemed to be outstanding for purposes of adjusting the number of Warrant Shares under **Section 5(a)**, at a price per share equal to the quotient obtained by dividing (A) the sum (which sum shall constitute the applicable consideration received for purposes of **Section 5(a)**) of (x) the total amount, if any, received or receivable by the Company as consideration for the granting or sale of all such Options, plus (y) the minimum aggregate amount of additional consideration payable to the Company upon the exercise of all such Options, plus (z), in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Company upon the issuance or sale of all such Convertible Securities and the conversion or exchange of all such Convertible Securities, by (B) the total maximum number of shares of Common Stock issuable upon the exercise of all such Options or upon the conversion or exchange of all Convertible Securities issuable upon the exercise of all such Options. Except as otherwise provided in **Section 5(b)(iii)**, no further adjustment of the number of Warrant Shares shall be made upon the issuance of Common Stock or of Convertible Securities upon exercise of such Options or upon the issuance of Common Stock upon conversion or exchange of Convertible Securities issuable upon exercise of such Options.

(ii) Issuance of Convertible Securities. If the Company shall, at any time or from time to time during the Exercise Period, in any manner grant or sell (whether directly or by assumption in a merger or otherwise) any Convertible Securities, whether or not the right to convert or exchange any such Convertible Securities is immediately exercisable, and the price per share (determined as provided in this paragraph and in **Section 5(b)(v)**) for which Common Stock is issuable upon the conversion or exchange of such Convertible Securities is less than the Fair Market Value per share of Common Stock immediately prior to such issuance or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of the total maximum amount of such Convertible Securities shall be deemed to have been issued as of the date of granting or sale of such Convertible Securities (and thereafter shall be deemed to be outstanding for purposes of adjusting the number of Warrant Shares pursuant to **Section 5(a)**), at a price per share equal to the quotient obtained by dividing (A) the sum (which sum shall constitute the applicable consideration received for purposes of **Section 5(a)**) of (x) the total amount, if any, received or receivable by the Company as consideration for the granting or sale of such Convertible Securities, plus (y) the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange of all such Convertible Securities, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. Except as otherwise provided in **Section 5(b)(iii)**, (A) no further adjustment of the number of Warrant Shares shall be made upon the issuance of Common Stock upon conversion or exchange of such Convertible Securities and (B) no further adjustment of the number of Warrant Shares shall be made by reason of the issue or sale of Convertible Securities upon exercise of any Options to

purchase any such Convertible Securities for which adjustments of the number of Warrant Shares have been made pursuant to the other provisions of this **Section 5(b)**.

(iii) Change in Terms of Options or Convertible Securities Upon any change in any of (A) the total amount received or receivable by the Company as consideration for the granting or sale of any Options or Convertible Securities referred to in **Section 5(b)(i)** or **Section 5(b)(ii)** hereof, (B) the minimum aggregate amount of additional consideration, if any, payable to the Company upon the exercise of any Options or upon the issuance, conversion or exchange of any Convertible Securities referred to in **Section 5(b)(i)** or **Section 5(b)(ii)** hereof, (C) the rate at which Convertible Securities referred to in **Section 5(b)(i)** or **Section 5(b)(ii)** hereof are convertible into or exchangeable for Common Stock, or (D) the maximum number of shares of Common Stock issuable in connection with any Options referred to in **Section 5(b)(i)** hereof or any Convertible Securities referred to in **Section 5(b)(ii)** hereof, then (whether or not the original issuance or sale of such Options or Convertible Securities resulted in an adjustment to the number of Warrant Shares pursuant to this **Section 5**) the number of Warrant Shares issuable upon exercise of this Warrant at the time of such change shall be adjusted or readjusted, as applicable, to the number of Warrant Shares which would have been in effect at such time pursuant to the provisions of this **Section 5** had such Options or Convertible Securities still outstanding provided for such changed consideration, conversion rate or maximum number of shares, as the case may be, at the time initially granted, issued or sold.

(iv) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the number of Warrant Shares pursuant to the terms of this **Section 5**, the number of Warrant Shares shall be readjusted to the number of Warrant Shares as would have obtained had such Option or Convertible Security (or portion thereof) never been issued. In addition, if at the time of the consummation of the sale of the Company, Options or Convertible Securities which were included in calculating the number of Warrant Shares are not exercised or converted, as the case may, at the consummation of the sale of the Company, the number of Warrant Shares shall be readjusted to the number of Warrant Shares as would have obtained had such Option or Convertible Security (or portion thereof) never been issued. Any adjustments made to number of Warrant Shares pursuant to Section 5(e) shall be readjusted in a manner consistent with the terms of this **Section 5(b)(iv)**.

(v) Calculation of Consideration Received If the Company shall, at any time or from time to time during the Exercise Period, issue or sell, or is deemed to have issued or sold in accordance with **Section 5(b)**, any shares of Common Stock, Options or Convertible Securities: (A) for cash, the consideration received therefor shall be deemed to be the net amount received by the Company therefor; (B) for consideration

other than cash, the amount of the consideration other than cash received by the Company shall be the fair value of such consideration, except where such consideration consists of marketable securities, in which case the amount of consideration received by the Company shall be the market price (as reflected on any securities exchange, quotation system or association or similar pricing system covering such security) for such securities as of the end of business on the date of receipt of such securities; (C) for no specifically allocated consideration in connection with an issuance or sale of other securities of the Company, together comprising one integrated transaction, the amount of the consideration therefor shall be deemed to be the fair value of such portion of the aggregate consideration received by the Company in such transaction as is attributable to such shares of Common Stock, Options or Convertible Securities, as the case may be, issued in such transaction; or (D) to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities, as the case may be, issued to such owners. For the avoidance of doubt, notwithstanding anything to the contrary contained in this Warrant, the net amount of any cash consideration and the fair value of any consideration other than cash or marketable securities shall be determined in good faith jointly by the Board and the Holder; provided, that if the Board and the Holder are unable to agree on the net amount of any cash consideration or the fair value of any consideration other than cash or marketable securities within a reasonable period of time (not to exceed twenty (20) days from the Holder's receipt of a certificate of adjustment pursuant to **Section 5(f)(i)** relating to the applicable issuance), such net amount of cash or fair value, as applicable, shall be determined by a nationally recognized investment banking, accounting or valuation firm jointly selected by the Board and the Holder. The determination of such firm shall be final and conclusive, and the fees and expenses of such valuation firm shall be borne by the Company.

(vi) Record Date. For purposes of any adjustment to the number of Warrant Shares in accordance with this **Section 5**, in case the Company shall take a record of the holders of its Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(c) **Adjustment to Number of Warrant Shares Upon Dividend, Subdivision or Combination of Common Stock** If the Company shall, at any time or from time to time during the Exercise Period, (i) makes or declares, or fixes a record date for, any dividend or any other distribution upon the Common Stock or any other capital stock of the Company payable in shares of Common Stock or in Options or Convertible Securities, or (ii) subdivides (by any stock split, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, then in each such case the number of Warrant Shares issuable upon the exercise of this Warrant immediately prior to any such dividend, distribution or subdivision shall be proportionately increased. If the Company at any time combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to such combination shall be proportionately decreased. Any adjustment under this **Section 5(c)** shall become effective at the close of business on the date the dividend, subdivision or combination becomes effective.

(d) **Adjustment to Number of Warrant Shares Upon Reorganization, Reclassification, Consolidation or Merger** In the event of any (i) capital reorganization of the Company or (ii) reclassification of the stock of the Company (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), (iii) consolidation or merger of the Company with or into another Person, (iv) sale of all or substantially all of the Company's assets to another Person or (v) other similar transaction (other than any such transaction covered by **Section 5(c)** hereof), in each case which entitles the holders of Common Stock to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock, each Warrant shall, immediately after such reorganization, reclassification, consolidation, merger, sale or similar transaction, remain outstanding and shall thereafter, in lieu of or in addition to (as the case may be) the number of Warrant Shares then exercisable under this Warrant, be exercisable for the kind and number of shares of stock or other securities or assets of the Company or of the successor Person resulting from such transaction to which the Holder would have been entitled upon such reorganization, reclassification, consolidation, merger, sale or similar transaction if the Holder had exercised this Warrant in full immediately prior to the time of such reorganization, reclassification, consolidation, merger, sale or similar transaction and acquired the applicable number of Warrant Shares then issuable hereunder as a result of such exercise (without taking into account any limitations or restrictions on the exercisability of this Warrant); and, in such case, appropriate adjustment (in form and substance satisfactory to the Holder and the Board; provided, that if the Board and the Holder are unable to agree on such adjustment within a reasonable period of time (not to exceed twenty (20) days from the Holder's receipt of a certificate of adjustment pursuant to Section 5(f)(i)), such adjustment shall be determined by a nationally recognized investment banking, accounting or valuation firm jointly selected by the Board and the Holder, the determination of such firm shall be final and conclusive, and the fees and expenses of such valuation firm shall be borne by the

Company) shall be made with respect to the Holder's rights under this Warrant to insure that the provisions of this **Section 5** hereof shall thereafter be applicable, as nearly as possible, to this Warrant in relation to any shares of stock, securities or assets thereafter acquirable upon exercise of this Warrant (including, in the case of any consolidation, merger, sale or similar transaction in which the successor or purchasing Person is a Person other than the Company, an immediate adjustment in the Exercise Price reflected by the terms of such consolidation, merger, sale or similar transaction, and a corresponding immediate adjustment to the number of Warrant Shares acquirable upon exercise of this Warrant without regard to any limitations or restrictions on exercise, if the value so reflected is less than the Exercise Price in effect immediately prior to such consolidation, merger, sale or similar transaction). The provisions of this **Section 5(d)** shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or similar transactions. The Company shall not effect any such reorganization, reclassification, consolidation, merger, sale or similar transaction unless, prior to the consummation thereof, the successor Person (if other than the Company) resulting from such reorganization, reclassification, consolidation, merger, sale or similar transaction, shall assume, by written instrument substantially similar in form and substance to this Warrant and satisfactory to the Holder, the obligation to deliver to the Holder such shares of stock, securities or assets which, in accordance with the foregoing provisions, such Holder shall be entitled to receive upon exercise of this Warrant. Notwithstanding anything to the contrary contained herein, with respect to any corporate event or other transaction contemplated by the provisions of this **Section 5(d)**, the Holder shall have the right to elect prior to the consummation of such event or transaction, to give effect to the exercise or sale rights contained in this Warrant instead of giving effect to the provisions contained in this **Section 5(d)** with respect to this Warrant.

(e) **Certain Events.** If any event of the type contemplated by the provisions of this **Section 5** but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features) occurs, then the Board and the Holder shall jointly make an appropriate adjustment in the number of Warrant Shares issuable upon exercise of this Warrant so as to protect the rights of the Holder in a manner consistent with the provisions of this **Section 5**; provided, further, that if the Board and the Holder are unable to agree on such adjustment within a reasonable period of time (not to exceed twenty (20) days from the Holder's receipt of a certificate of adjustment pursuant to **Section 5(f)(i)**) such adjustment shall be determined by a nationally recognized investment banking, accounting or valuation firm jointly selected by the Board and the Holder. The determination of such firm shall be final and conclusive, and the fees and expenses of such valuation firm shall be borne jointly by the Holder and the Company.

(f) **Certificate as to Adjustment.**

(i) As promptly as reasonably practicable following any adjustment of the number of Warrant Shares pursuant to the provisions of this **Section 5**, but in any event not later than ten (10) Business Days thereafter, the Company shall furnish to the Holder a certificate of an executive officer setting forth in reasonable detail such adjustment and the facts upon which it is based and certifying the calculation thereof.

(ii) As promptly as reasonably practicable following the receipt by the Company of a written request by the Holder, but in any event not later than ten (10) Business Days thereafter and no more often than twice in any twelve-month period, the Company shall furnish to the Holder a certificate of an executive officer certifying the number of Warrant Shares or the amount, if any, of other shares of stock, securities or assets then issuable upon exercise of the Warrant.

(g) **Notices.** In the event:

(i) that the Company shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon exercise of the Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, to vote at a meeting (or by written consent), to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(ii) of any capital reorganization of the Company, any reclassification of the Common Stock of the Company, any consolidation or merger of the Company with or into another Person, or sale of all or substantially all of the Company's assets to another Person; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then, and in each such case, the Company shall send or cause to be sent to the Holder at least ten (10) Business Days prior to the applicable record date or the applicable expected effective date, as the case may be, for the event, a written notice specifying, as the case may be, (A) the record date for such dividend, distribution, meeting or consent or other right or action, and a description of such dividend, distribution or other right or action to be taken at such meeting or by written consent, or (B) the effective date on which such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up is proposed to take place, and the date, if any is to be fixed, as of which the books of the Company shall close or a record shall be taken with respect to which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon exercise of the Warrant) shall be entitled to exchange their shares of

Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Warrant and the Warrant Shares.

6. Transfer of Warrant. This Warrant and the rights hereunder may not be transferred by the Holder without the consent of the Board, except that this Warrant and all rights hereunder are transferable, in whole or in part, by the Holder to its affiliates, Persons, such as Medley Capital Corporation and Business Development Corporation of America, listed on **Schedule 6** or any direct or indirect equityholder or lender of the Holder or their respective affiliates (collectively, the "**Permitted Transferees**"); provided, however, that such Permitted Transferees may not transfer this Warrant to any Person that is not a Permitted Transferee without Board approval. Any transfer made in violation of the terms hereof shall be void ab initio.

7. Holder Not Deemed a Stockholder. Prior to the issuance to the Holder of the Warrant Shares to which the Holder is then entitled to receive upon the due exercise of this Warrant, the Holder shall not be entitled to vote or receive dividends or be deemed the holder of shares of capital stock of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, as such, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this **Section 7**, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders; provided, that the failure to provide such notice shall not effect any action taken by the stockholders of the Company.

8. Replacement on Loss.

(a) **Replacement of Warrant on Loss.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and upon delivery of an indemnity reasonably satisfactory to it (it being understood that a written indemnification agreement or affidavit of loss of the Holder shall be a sufficient indemnity) and, in case of mutilation, upon surrender of such Warrant for cancellation to the Company, the Company at its own expense shall execute and deliver to the Holder, in lieu hereof, a new Warrant (with the same terms) of like tenor and exercisable for an

equivalent number of Warrant Shares as the Warrant so lost, stolen, mutilated or destroyed; provided, that, in the case of mutilation, no indemnity shall be required if this Warrant in identifiable form is surrendered to the Company for cancellation.

(b) **Division and Combination of Warrant** Subject to compliance with the applicable provisions of this Warrant as to any transfer or other assignment which may be involved in such division or combination, this Warrant may be divided or, following any such division of this Warrant, subsequently combined with other Warrants, upon the surrender of this Warrant or Warrants to the Company at its then principal executive offices, together with a written notice specifying the names and denominations in which new Warrants (with the same terms) are to be issued, signed by the respective Holders or their agents or attorneys. Subject to compliance with the applicable provisions of this Warrant as to any transfer or assignment which may be involved in such division or combination, the Company shall at its own expense execute and deliver a new Warrant or Warrants (with the same terms) in exchange for the Warrant or Warrants so surrendered in accordance with such notice. Such new Warrant or Warrants (with the same terms) shall be of like tenor to the surrendered Warrant or Warrants and shall be exercisable in the aggregate for an equivalent number of Warrant Shares as the Warrant or Warrants so surrendered in accordance with such notice.

9. No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or Bylaws, or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by it hereunder, but shall at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may reasonably be requested by the Holder in order to protect the exercise rights of the Holder against dilution or other impairment, consistent with the tenor and purpose of this Warrant.

10. Compliance with the Securities Act.

(a) **Agreement to Comply with the Securities Act; Legend** The Holder, by acceptance of this Warrant, agrees to comply in all respects with the provisions of this **Section 10** and the restrictive legend requirements set forth on the face of this Warrant and further agrees that such Holder shall not offer, sell or otherwise dispose of this Warrant or any Warrant Shares to be issued upon exercise hereof except under circumstances that will not result in a violation of the Securities Act of 1933, as amended (the "**Securities Act**"). This Warrant and all Warrant Shares issued upon exercise of this Warrant (unless registered under the Securities Act) shall be stamped or imprinted with a legend in substantially the following form:

"THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE

SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR QUALIFIED UNDER ANY STATE OR FOREIGN SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR ASSIGNED UNLESS PERMITTED HEREUNDER AND IF PERMITTED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SECURITIES IS EFFECTIVE UNDER THE ACT AND IS QUALIFIED UNDER APPLICABLE STATE AND FOREIGN LAW OR (II) THE TRANSACTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS UNDER THE ACT AND THE QUALIFICATION REQUIREMENTS UNDER APPLICABLE STATE AND FOREIGN LAW."

(b) **Representations of the Holder.** In connection with the issuance of this Warrant, the Holder specifically represents, as of the date hereof, to the Company by acceptance of this Warrant as follows:

(i) The Holder is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act.

(ii) The Holder understands and acknowledges that this Warrant and the Warrant Shares to be issued upon exercise hereof are "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that, under such laws and applicable regulations, such securities may be resold without registration under the Securities Act only in certain limited circumstances.

11. Warrant Register. The Company shall keep and properly maintain at its principal executive offices books for the registration of the Warrant and any transfers thereof. The Company may deem and treat the Person in whose name the Warrant is registered on such register as the Holder thereof for all purposes, and the Company shall not be affected by any notice to the contrary, except any assignment, division, combination or other transfer of the Warrant effected in accordance with the provisions of this Warrant.

12. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses

indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 12**).

If to the Company:

MusclePharm Corporation
4721 Ironton Street, Building A
Denver, Colorado 80239
Facsimile: [•]
Attention: Ryan Drexler
E-mail: ryan.drexler@musclepharm.com Attention Maria Gorecki
E-mail: maria.gorecki@musclepharm.com

with a copy to:

Kasowitz Benson Torres & Friedman
1633 Broadway
New York, NY 10019
Facsimile: 212-506-1800
Attention: Jonathan Minsker
E-mail: jminsker@kasowitz.com

If to the Holder:

INI Buyer, Inc.
900 South Depot Drive
Ogden, Utah 84404
Facsimile: (801) 337 5961
E-mail: ctaylor@capstonenutrition.com
Attention: Craig Taylor

with a copy to:

Weil, Gotshal and Manges LLP
767 5th Avenue
New York, NY 10153
Facsimile: (212) 310 8007
E-mail: david.yohai@weil.com
Attention: David Yohai

13. Cumulative Remedies. Except to the extent expressly provided in **Section 7** to the contrary, the rights and remedies provided in this Warrant are cumulative and are not exclusive of, and are in addition to and not in substitution for, any other rights or remedies available at law, in equity or otherwise.

14. Equitable Relief. Each of the Company and the Holder acknowledges that a breach or threatened breach by such party of any of its obligations under this Warrant may give rise to irreparable harm to the other party hereto for which monetary damages may not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to seek equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction.
15. Entire Agreement. This Warrant, together with that certain Settlement Agreement, of even date herewith, by and among F.H.G Corporation d/b/a Capstone Nutrition, the Holder, INI Parent, Inc., Medley Capital Corporation and the Company, constitutes the sole and entire agreement of the parties to this Warrant with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.
16. Successor and Assigns. This Warrant and the rights evidenced hereby shall be binding upon and shall inure to the benefit of the parties hereto and the successors of the Company and the successors and permitted assigns of the Holder. Such successors and/or permitted assigns of the Holder shall be deemed to be a Holder for all purposes hereunder.
17. No Third-Party Beneficiaries. This Warrant is for the sole benefit of the Company and the Holder and their respective successors and, in the case of the Holder, permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Warrant.
18. Headings. The headings in this Warrant are for reference only and shall not affect the interpretation of this Warrant.
19. Amendment and Modification; Waiver. Except as otherwise provided herein, this Warrant may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by the Company or the Holder of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Warrant shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder

preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

20. Severability. If any term or provision of this Warrant is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Warrant or invalidate or render unenforceable such term or provision in any other jurisdiction.

21. Governing Law. This Warrant shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York.

22. Submission to Jurisdiction; Waiver of Jury Trial. (a) The parties agree to the exclusive jurisdiction of the state and federal courts in New York County, New York for any disputes arising out of or in connection with this Warrant.

(b) EACH OF THE COMPANY AND THE HOLDER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS WARRANT.

23. Counterparts. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Warrant delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant.

24. No Strict Construction. This Warrant shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Company has duly executed this Warrant on the Original Issue Date.

MUSCLEPHARM CORPORATION

By: /s/ Ryan Drexler

Name: Ryan Drexler

Title: Interim CEO and Interim President

Accepted and agreed,

INI BUYER, INC.

By: /s/ Jared Leishman

Name: Jared Leishman

Title: CEO

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

CONVERTIBLE SECURED PROMISSORY NOTE

\$11,000,000.00
CPN-2

November 8, 2016
Denver, Colorado

For value received, **MusclePharm Corporation**, a Nevada corporation (the "**Company**") promises to pay to **Ryan Drexler** or his assigns (the "**Holder**") the principal sum of **Eleven Million Dollars (\$11,000,000.00)**, together with interest on the outstanding principal amount at the rate of ten percent (10%) per annum, *provided* that, upon and during the continuance of any Event of Default (as defined below), the rate of interest shall increase to twelve percent (12%) per annum. Interest shall commence on the Issue Date (as defined below) and shall continue and accrue daily at the applicable rate on the outstanding principal amount until paid in full or converted in accordance with this note (the "**Note**"). Interest shall be computed on the basis of a year of 365 days for the actual number of days elapsed. Accrued and unpaid interest shall be paid by the Company to the Holder in cash on the Maturity Date, *provided* that any interest not paid when due shall be capitalized and added to the principal amount of this Note and begin to bear interest on the Maturity Date along with all other unpaid principal, capitalized interest and other capitalized obligations hereunder. The "Issue Date" shall be the date on which the Holder remits to the Company or its designees the initial principal amount of this Note.

This Note is secured by a lien on and security interest in all of the assets and properties of the Company, as described in the Amended and Restated Security Agreement of even date herewith by and between the Company and the Holder (the "**Security Agreement**").

WHEREAS, the Board of Directors of the Company (the "**Board**") has considered the Settlement (as defined below) to address a significant, outstanding contingent liability of the Company; and

WHEREAS, after considering the terms of the Settlement and available alternatives to finance the Settlement, the Board has determined that the Settlement, and the issuance and sale of this Note to fund the Settlement, are necessary and advisable to ensure the Company's ability to operate as a going concern and thereby protect the interests of the Company and its stockholders;

This Note is subject to the following terms and conditions:

1. **Maturity.**

(a) **Repayment.** Unless earlier converted or repaid (as applicable) as provided in Sections 1(b), 2 or 3, all outstanding principal and any accrued but unpaid interest under this Note (whether or not that interest has been capitalized) (the "**Conversion Amount**") shall be due and payable on November 8, 2017 (as such date may be accelerated, the "**Maturity Date**"). Notwithstanding the foregoing, at the option and upon the declaration of the Holder and upon written notice to the Company, the entire Conversion Amount shall become due and payable upon an Event of Default. An "**Event of Default**" shall occur if (i) the Company fails to pay any and all unpaid principal, accrued and unpaid interest and all other amounts owing under the Note when due and payable pursuant to the terms of the Note, *provided, however*, that an Event of Default shall not be deemed to have occurred on account of a failure to pay due solely to an administrative or operational error of any depository institution that is crediting by ACH or wiring such payment if the Company had the funds to make the payment when due and payment is received by the Holder within two (2) business days following the Company's knowledge of such failure to pay; (ii) the Company or any of its subsidiaries files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any general assignment for the benefit of creditors; (iii) an involuntary petition is filed against the Company or any of its subsidiaries (unless such petition is dismissed or discharged within forty-five (45) days) under any bankruptcy statute or similar law now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of the Company; or (iv) the Company breaches any other material term of this Note or the Security Agreement (unless, in the case of any curable material breach, such material breach is cured within thirty (30) days of the earlier of the date on which (x) the Holder has given notice of such breach to the Company and (y) the Company has actual knowledge of such breach); *provided, however*, that all obligations under this Note, including without limitation all principal and all accrued and unpaid interest, shall be accelerated, and shall be immediately and automatically due and payable without any notice to the Company or other action, upon the occurrence of any Event of Default described in clause (ii) or (iii) of this sentence.

(b) **Conversion.** The Holder may at any time, and from time to time, in the sole discretion of the Holder, upon written notice to the Company, elect to convert all or a portion of the Conversion Amount into shares of the Company's Common Stock, \$0.001 per share ("**Common Stock**"), at a price per share equal to one dollar and eighty-three cents (\$1.83), rounded down to the nearest whole share.

(c) **Change of Control.** The Company shall not enter into any agreement that would effect, and shall not effect, any Change of Control (as defined below) unless the Company has provided the Holder with at least fifteen (15) days' advance written notice of such Change of Control, including the anticipated consideration to be received by the holders of the Company's Common Stock, and has otherwise provided the Holder with a meaningful opportunity to

exercise its conversion rights hereunder prior to the consummation of such Change of Control; provided, that, the Holder shall maintain the confidentiality of any information provided to it pursuant to this paragraph. The term “**Change of Control**” means (i) a sale of all or substantially all of the Company’s assets other than to an Excluded Entity (as defined below), (ii) a merger, consolidation or other capital reorganization or business combination transaction of the Company with or into another corporation, limited liability company or other entity other than an Excluded Entity, in each case pursuant to which the stockholders of the Company immediately prior to such merger, consolidation or other capital reorganization or business combination transaction own less than fifty percent (50%) of the voting interests in the surviving or resulting entity, or (iii) the consummation of a transaction, or series of related transactions, in which any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of all of the Company’s then outstanding voting capital stock. Notwithstanding the foregoing, a transaction shall not constitute a Change of Control if its purpose is to (A) change the jurisdiction of the Company’s incorporation or (B) create a holding company that will be owned in substantially the same proportions by the persons who hold the Company’s voting capital stock immediately before such transaction. An “**Excluded Entity**” means a corporation or other entity of which the holders of voting capital stock of the Company outstanding immediately prior to such transaction directly or indirectly beneficially own voting capital stock representing at least a majority of the votes entitled to be cast by all of such corporation’s or other entity’s voting securities outstanding immediately after such transaction.

2. **Mechanics and Effect of Conversion.**

(a) **Effectiveness of Conversion.** Upon conversion of this Note, the Company will be forever released from all of its obligations and liabilities under this Note with respect to that portion of the Conversion Amount being converted, including without limitation the obligation to repay such portion of the principal amount and accrued and unpaid interest. Any interest accrued on the applicable portion of the principal amount of this Note that is not simultaneously converted into Common Stock by reason of such conversion shall be repaid upon demand by the Holder. Upon conversion of this Note, the Company shall take all such actions as are necessary in order to ensure that the Common Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable.

(b) **Issuance of Certificates.** Upon conversion of this Note, the Holder shall surrender this Note, duly endorsed, at the principal offices of the Company or any transfer agent of the Company. At its expense, the Company shall, as soon as practicable thereafter, issue and deliver to such Holder, at such principal office, a certificate or certificates for the number of shares of Common Stock to which such Holder is entitled upon such conversion, together with any other securities and property to which the Holder is entitled upon such conversion under the terms of this Note, including a check payable to the Holder for any cash amounts payable as described herein. Upon any partial conversion of this Note, a new Note containing the same date and provisions of this Note shall, at the request of the Holder, be issued by the Company to the Holder for the principal balance of this Note and interest which shall not have been converted or paid.

(c) **Fractional Shares.** No fractional shares of the Company's Common Stock will be issued upon conversion of this Note. If any fractional share of Common Stock would, except for the provisions hereof, be deliverable upon conversion of this Note, the Company, in lieu of delivering such fractional share, shall pay an amount in cash equal to the value of such fractional share, as determined by the per share conversion price used to effect such conversion.

3. **Payment; Prepayment.** All payments shall be made in lawful money of the United States of America at such place as the Holder hereof may from time to time designate in writing to the Company. Payment shall be credited first to any fees and expenses due and payable hereunder, then to accrued and unpaid interest, and then the remainder shall be applied to principal. The Company may prepay this Note in whole or in part at any time following at least fifteen (15) and no more than sixty (60) days' advance written notice to the Holder, **provided** that the Holder shall retain all rights of conversion until the date of repayment, notwithstanding the pendency of any prepayment notice.

4. **Adjustment Provisions.** If after the Issue Date the Company shall make or issue, or shall fix a record date for the determination of eligible holders of its capital stock entitled to receive, a dividend or other distribution payable with respect to the Common Stock that is payable in securities of the Company, assets (including cash), or rights or warrants to purchase shares of Common Stock or securities convertible into shares of Common Stock (each, a "**Dividend Event**"), and such dividend or other distribution is actually made, then, and in each such case, the Holder, upon conversion of all or a portion of the Conversion Amount into shares of Common Stock at any time after such Dividend Event, shall receive, in addition to the Common Stock issuable upon such conversion of the Note, the securities or other assets, rights or warrants that would have been issuable to the Holder had the Holder, immediately prior to such Dividend Event, converted such Conversion Amount into Common Stock.

5. **Covenants.**

(a) **Restrictions on Additional Indebtedness and Liens and Subordination** The Company may not incur or suffer to exist any Indebtedness (as defined below) other than Permitted Indebtedness (as defined below) or any Lien (as defined below) other than Permitted Liens (as defined below).

(i) "**Indebtedness**" shall mean any and all indebtedness for borrowed money; all obligations in respect of any deferred purchase price; all obligations in respect of capital leases; all reimbursement obligations in respect of letters of credit, surety bonds and similar instruments; all obligations evidenced by notes, bonds, loan agreements, debentures and similar instruments; and all guarantee obligations and contingent obligations in respect of any of the foregoing.

(ii) “**Permitted Indebtedness**” shall mean (a) Indebtedness evidenced by this Note and by that existing Convertible Secured Promissory Note dated December 7, 2015, issued by the Company in favor of the Holder (the “**Prior Note**”); (b) Indebtedness in respect of taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; **provided**, that Company maintains adequate reserves therefor; (c) Indebtedness existing as of the date hereof and set forth on the schedule of Permitted Indebtedness attached hereto, or pursuant to an instrument set forth on such schedule; (d) Indebtedness to trade creditors (including suppliers) incurred in the ordinary course of business, including Indebtedness incurred in the ordinary course of business with corporate credit cards; (e) extensions, refinancings, repayment and renewals of the obligations under the Note or the Prior Note and under any Permitted Indebtedness described in clause (d) above, **provided** that the principal amount is not increased or the terms modified to impose materially more burdensome terms upon the Company, and (f) Subordinated Indebtedness incurred after the date of this Note and approved by a majority of the Board of Directors of the Company.

(iii) “**Subordinated Indebtedness**” means secured and/or unsecured Indebtedness expressly subordinated to the obligations of the Company to the Holder hereunder, under the Prior Note and under the Security Agreement, including in payment and lien priority.

(iv) “**Lien**” shall mean any lien, claim, encumbrance or similar interest in or on any asset, including without limitation any security interest or mortgage.

(v) “**Permitted Lien**” shall mean (a) Liens securing Indebtedness evidenced by this Note and the Prior Note; (b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, **provided** that the Company maintains adequate reserves therefor; (c) claims of materialmen, mechanics, carriers, warehousemen, processors or landlords arising out of operation of law so long as the obligations secured thereby (i) are not past due or (ii) are being properly contested and for which the Company has established adequate reserves; (d) liens consisting of deposits or pledges made in the ordinary course of business in connection with workers’ compensation, unemployment insurance, social security and similar laws; (e) liens on equipment (including capital leases) to secure purchase money Indebtedness existing as of the date hereof, or any permitted refinancing thereof, so long as such security interests do not apply to any property of the Company other than the equipment so acquired, and the Indebtedness secured thereby does not exceed the cost of such equipment, and **provided** that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed, or refinanced (as may have been reduced by any payment thereon) does not increase; and (f) liens on accounts, inventory, machinery, equipment, instruments, documents, chattel paper, general intangibles and other assets to secure purchase money Indebtedness under agreements set forth on the schedule of Permitted Indebtedness attached hereto.

(b) **Use of Proceeds.** The proceeds from the issuance and sale of this Note shall be used only to pay amounts due in connection with the settlement of the Company's dispute with FHG Corporation d/b/a Capstone Nutrition (the "**Settlement**") and as may otherwise be agreed by the Holder and the Company.

6. **Transfer; Successors and Assigns.** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and assigns of the Company and the Holder. Notwithstanding the foregoing, the Holder may not assign, pledge or otherwise transfer this Note without the prior written consent of the Company. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee. Interest and principal are payable only to the registered holder of this Note.

7. **Governing Law.** This Note shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to any conflict of laws principles that would require application of the laws of another jurisdiction other than Section 5-1401 of the General Obligations Law of the State of New York.).

8. **Jurisdiction.** Each of the Company and the Holder irrevocably submits to the jurisdiction of the courts of the State of New York and of the United States sitting in the State of New York, and of the courts of its own corporate domicile with respect to actions or proceedings brought against it as a defendant, for purposes of all proceedings. Each of the Company and the Holder irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any proceeding and any claim that any proceeding has been brought in an inconvenient forum. Any process or summons for purposes of any proceeding may be served on the Company or the Holder, as applicable, by mailing a copy thereof by registered mail, or a form of mail substantially equivalent thereto, addressed to it at its address as provided for notices under this Note.

9. **Waiver of Jury Trial.** *Each of the Company and the Holder hereby irrevocably waives any and all right to trial by jury in any proceeding.*

10. **Notices.** Any notice required or permitted by this Note shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email or fax (upon customary confirmation of receipt), or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address or fax number as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address set forth in the Company's books and records; provided, that, any notice to the Company by the Holder also shall be provided to the Board of Directors.

11. **Amendments and Waivers.** Any term of this Note may be amended only with the written consent of the Company and the Holder. Any amendment or waiver effected in accordance herewith shall be binding upon the Company, the Holder and each transferee of this Note.

12. **Entire Agreement.** This Note, together with the Security Agreement, constitutes the entire agreement between the Company and the Holder pertaining to the subject matter hereof, and any and all other written or oral agreements existing between the Company and the Holder are expressly canceled.

13. **Counterparts.** This Note may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will constitute a single agreement.

14. **Action to Collect on Note.** The Company promises to pay all costs and expenses, including reasonable attorney's fees, incurred in connection with the collection or enforcement of this Note or any obligation hereunder, including without limitation during or in the context of any bankruptcy, receivership, trusteeship, reorganization or insolvency proceeding or other proceeding under any other law for the relief of, or relating to, debtors, now or hereafter in effect, and all such amounts shall be payable on demand (or, if the Holder is prevented by applicable law from making demand, as and when incurred by the Holder) and, if not paid when due, shall be capitalized and become part of the principal amount of this Note, and interest shall accrue thereon as set forth for other principal amounts under this Note.

15. **Loss of Note.** Upon receipt by the Company of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Note or any Note exchanged for it, and indemnity satisfactory to the Company (in case of loss, theft or destruction) or surrender and cancellation of such Note (in the case of mutilation), the Company will make and deliver in lieu of such Note a new Note of like tenor.

16. **Interest Rate Limitation.** Notwithstanding anything to the contrary contained herein, the interest paid or agreed to be paid under this Note shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "**Maximum Rate**"). If the Holder shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal amount remaining owed under this Note or, if it exceeds such unpaid principal amount, refunded to the Company. In determining whether the interest contracted for, charged, or received by the Holder exceeds the Maximum Rate, the Holder may, to the extent permitted by applicable law, (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of this Note.

17. **Indemnification.** The Company shall, to the fullest extent permitted by law, indemnify (but only to the extent of and out of Company assets) the Holder against all reasonable expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Holder in connection with any claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, before or by any court or any administrative or legislative body or authority, in which the Holder is involved, as a party or otherwise, or with which the Holder may be threatened, arising in connection with this Note, the Prior Note or the Security Agreement (each, an "**Action**"), except to the extent the same has been

finally adjudicated to constitute fraud, gross negligence or willful misconduct of the Holder or a breach by the Holder of this Note, the Prior Note or the Security Agreement. Promptly after receipt by the Holder of notice of the commencement or threatened commencement against it of any third party Action, the Holder will notify the Company. The Company will be entitled to assume the defense of the Action unless the Holder shall have reasonably concluded that a conflict may exist between the Company and the Holder in conducting the defense of the Action. If the Company assumes the defense of any Action in accordance with the provisions of this Section, it will not be liable to the Holder for any legal or other expenses subsequently separately incurred by the Holder in connection with the defense of such Action. The Company shall not be liable for any settlement of a third-party Action effected without its written consent, which consent may not be unreasonably withheld.

18. **Severability.** In the event that any provision of this Note is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any such provision which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision of this Note.

17. **Funding Date.** This Note has been entered into by the parties on November 8, 2016. On or prior to the fourth business day after the date hereof, the Holder shall remit to the Company or its designees the initial principal amount of this Note.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Company has caused this Convertible Secured Promissory Note to be executed as of the date indicated herein.

MusclePharm Corporation

By: /s/ Maria Gorecki
Name: Maria Gorecki
Title: General Counsel

AMENDED AND RESTATED SECURITY AGREEMENT

This **Amended and Restated Security Agreement** (this "**Agreement**"), dated as of November 8, 2016, is entered into between **Ryan Drexler**, an individual ("**Grantee**"), and **MusclePharm Corporation**, a Nevada corporation, as grantor ("**Grantor**").

Background

WHEREAS, Grantor and Grantee have entered into (i) a Convertible Secured Promissory Note dated as of December 3, 2015 (as amended, restated, or otherwise modified from time to time, the "**2015 Note**") and (ii) a Convertible Secured Promissory Note dated as of November 8, 2016 (as amended, restated, or otherwise modified from time to time, the "**2016 Note**", and together with the 2015 Note, the "**Notes**");

WHEREAS, as a condition precedent to the advancement of funds to Grantor under the 2015 Note, on December 3, 2015, Grantor entered into a Security Agreement with Grantee pursuant to which Grantor granted the security interests contemplated by this Agreement as security for the Secured Obligations (as defined therein) (the "**Existing Security Agreement**");

WHEREAS, as a condition precedent to the advancement of funds to Grantor under the 2016 Note, the parties now desire to amend and restate the Existing Security Agreement to grant a further security interest in respect of the obligations under the 2016 Note;

WHEREAS, the Board of Directors of Grantor (the "**Board**") has considered the Settlement (as defined in the 2016 Note) to address a significant, outstanding contingent liability of Grantor; and

WHEREAS, after considering the terms of the Settlement and available alternatives to finance the Settlement, the Board has determined that the Settlement, the issuance and sale of the 2016 Note to fund the Settlement and the entry into this Agreement to secure the 2016 Note are necessary and advisable to ensure Grantor's ability to operate as a going concern and thereby protect the interests of Grantor and its stockholders.

Agreement

Grantor hereby agrees, for the benefit of Grantee, as follows:

ARTICLE I
CERTAIN DEFINITIONSSection 1.01. **Definitions.**

The terms "**Account**," "**Equipment**," "**Inventory**," and "**Proceeds**" shall have the meanings ascribed to such terms in the UCC.

As used herein:

“Collateral” shall have the meaning set forth in Section 2.01.

“Dispute” means any pending, decided or settled opposition, injunction, action, claim, counterclaim, lawsuit, proceeding, hearing, investigation, complaint, arbitration, mediation, demand, decree or formal enquiry, or any other dispute, disagreement, or claim of any kind.

“Excluded Property” means (i) any permit, license, contract or lease to the extent that (and in each case only for so long as) such grant of a security interest therein or assignment thereof is prohibited by any applicable laws or is prohibited by, or constitutes a breach or default under or results in the termination of or gives rise to a right on the part of the parties thereto other than Grantor to terminate, such permit, license, contract or lease, except to the extent that such laws or the term in such permit, license, contract or lease providing for such prohibition, breach, default or right of termination are ineffective or rendered unenforceable under applicable laws (including the UCC), and (ii) any property owned by Grantor on the date hereof or hereafter acquired that is subject to a lien permitted to be incurred pursuant to clause (e) of the definition of Permitted Liens contained in a Note.

“Governmental Authority” means the government of the United States or any other country, any state or other political subdivision thereof, any supranational or multinational authority, and any entity, body or authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any of the foregoing.

“Intellectual Property” means (a) any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held (collectively, the **“Copyrights”**); (b) any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held; (c) any and all design rights that may be available, now or hereafter existing, created, acquired or held; (d) all patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same (collectively, the **“Patents”**); (e) any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill connected with and symbolized by such trademarks, other than any intent-to-use United States trademark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051I or 15 U.S.C. § 1051(d), respectively, or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office, provided that, upon such filing and acceptance, such intent-to-use applications shall be included in the definition of Collateral (collectively, the **“Trademarks”**); (f) all mask work registrations or applications therefor or similar rights, now owned or hereafter acquired (collectively, the **“Mask Works”**); (g) any and all claims for damages by way of past, present and future infringements of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above; (h) all licenses or other rights to use any of the Copyrights, Patents, Trademarks, or Mask Works and all license fees and royalties arising from such use to the extent permitted by such license or rights; (i) all amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks, Patents,

or Mask Works; and (j) all proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

“Secured Obligations” means all obligations of Grantor under or in respect of each Note and this Agreement.

“UCC” means the Uniform Commercial Code as in effect on the date hereof in the State of New York, as amended from time to time, and any successor statute; provided that if by reason of mandatory provision of law, the perfection or the effect of perfection or non-perfection of the security interest in the Collateral is governed by the Uniform Commercial Code of another jurisdiction, “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provision hereof relating to such perfection or effect of perfection or non-perfection.

Section 1.02. **Note Definitions.** Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Notes.

Section 1.03. **UCC Definitions.** Unless otherwise defined herein or the context otherwise requires, terms for which meanings are provided in the UCC are used in this Agreement, including its preamble and recitals, with such meanings; provided, however, that the term “instrument” shall be such term as defined in Article 9 of the UCC rather than Article 3 of the UCC.

Section 1.04. **Interpretation; Headings.** Each term used in any exhibit to this Agreement and defined in this Agreement but not defined therein shall have the meaning set forth in this Agreement. Unless the context otherwise requires, (i) “including” means “including, without limitation” and (ii) words in the singular include the plural and words in the plural include the singular. A reference to any party to this Agreement, the Notes, or any other agreement or document shall include such party’s successors and permitted assigns. A reference to any agreement or order shall include any amendment of such agreement or order from time to time in accordance with the terms hereof and thereof. A reference to any legislation, to any provision of any legislation or to any regulation issued thereunder shall include any amendment thereto, any modification or re-enactment thereof, any legislative provision or regulation substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto. The headings contained in this Agreement are for convenience and reference only and do not form a part of this Agreement. Section, article and exhibit references in this Agreement refer to sections or articles of, or exhibits to, this Agreement unless otherwise specified.

ARTICLE II SECURITY INTEREST

Section 2.01. **Grant of Security Interest.**

(a) As collateral security for the Secured Obligations, Grantor hereby grants to Grantee a continuing Lien on and a continuing first priority security interest in and lien and mortgage on all of Grantor’s and Grantor’s subsidiaries’ right, title, and interest in each and all of its assets and properties, wherever the same may be now or hereafter located, whether now owned by or owing to, or hereafter existing or hereafter acquired by or arising in favor of, Grantor or its subsidiaries

(including under any trade name or derivations thereof), whether tangible or intangible, and all products and Proceeds thereof (together, the "**Collateral**"), including all of the following and all products and Proceeds thereof:

(i) all Intellectual Property (the "**Intellectual Property Collateral**");

(ii) all goods and Equipment, including all laboratory equipment, computer equipment, office equipment, machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

(iii) all Inventory, including all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of Grantor's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Grantor's books relating to any of the foregoing;

(iv) all Accounts (including healthcare receivables), all contract rights or rights to payment of money, leases, license agreements, franchise agreements, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash and cash equivalents, insurance policy claims and proceeds, all general intangibles (including payment intangibles), all letters of credit, certificates of deposit, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, material intercompany notes, and all other investment property, supporting obligations, and financial assets, in each case, unless otherwise defined in this Agreement, as defined in the UCC;

(v) all books, records, databases, customer lists, credit files, computer files, programs, printouts and other computer materials and records, and all other information relating to the foregoing and any general intangibles at any time evidencing or relating to any of the foregoing; and

(vi) any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

(b) With respect to the Intellectual Property Collateral, Grantor hereby grants to Grantee all of Grantor's and Grantor's subsidiaries' right, title and interest in, to and under the Intellectual Property Collateral, including, without limitation, the following:

(i) Any and all claims for damages by way of past, present and future infringements of any of the rights in the Intellectual Property Collateral, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the rights in the Intellectual Property Collateral;

(ii) All licenses or other rights to use any of the Intellectual Property Collateral and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(iii) All amendments, extensions, renewals and extensions of any of the Intellectual Property Collateral; and

(iv) All proceeds and products of the Intellectual Property Collateral, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

Notwithstanding the foregoing, in no event shall the Collateral include any Excluded Property; provided that, notwithstanding the foregoing, a security interest shall be, and is hereby, granted in (A) any property immediately upon such property ceasing to be Excluded Property and (B) any and all proceeds, products, substitutions and replacements of Excluded Property to the extent such proceeds, products, substitutions and replacements do not themselves constitute Excluded Property.

(c) Grantor shall, and shall cause its subsidiaries to, take such commercially reasonable steps as Grantee reasonably requests in writing to obtain the consent of, or waiver by, any person whose consent or waiver is necessary, by contract or law, for the grant of the security interest in the Collateral or any portion thereof, including any license or other contract, whether now existing or entered into in the future.

Section 2.02. **Continuing Security Interest.**

(a) This Agreement creates a continuing security interest in the Collateral and shall: (i) remain in full force and effect until the date on which the Secured Obligations are paid and performed in full; (ii) be binding upon Grantor and its successors, transferees and assigns; and (iii) inure, together with the rights and remedies of Grantee, to the benefit of Grantee and its successors and assigns.

(b) Grantee shall have all rights to perfect, continue, maintain, and protect Grantee's interest and rights under each Note.

(c) Upon the date on which the Secured Obligations are paid and performed in full, the security interest granted herein shall automatically terminate and all rights to the Collateral, in each case to the extent the Collateral has not been previously disposed of or dealt with in accordance with this Agreement or otherwise, shall revert to Grantor. Upon any such termination, and from time to time following such termination, Grantee will, at Grantor's sole expense, promptly execute and deliver to Grantor such instruments and documents necessary and as Grantor shall reasonably request to evidence such termination.

Section 2.03. **Grantor Remains Liable.** Anything herein to the contrary notwithstanding: (a) Grantor shall remain liable under the contracts included in the Collateral to the extent set forth therein and as to all other Collateral, and shall perform all of its duties and obligations under such contracts and other Collateral to the same extent as if this Agreement had not been executed; (b) the exercise by Grantee of any of its rights and remedies hereunder shall not operate to release Grantor from any of its duties or obligations under any contracts included in the Collateral and as to any other Collateral; and (c) Grantee shall not have any obligation or liability under any such contracts included in the Collateral or as to any other Collateral by reason of this Agreement, and Grantee shall not be obligated to perform or fulfill any of the obligations or duties of Grantor thereunder or to take

any action to collect or to (i) make any inquiry as to the nature or sufficiency of any payment Grantor may be entitled to receive thereunder, (ii) present or file and claim or (iii) enforce any claim for payment assigned hereunder.

Section 2.04. Authorization to File Financing Statements.

(a) Grantor hereby irrevocably appoints Grantee its attorney-in-fact and authorizes Grantee at any time and from time to time, without notice to Grantor, to file in any UCC jurisdiction or other appropriate location any financing statements or other appropriate documents and any amendments thereto and continuations thereof that: (i) describe or indicate the Collateral (x) as all assets of Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or such jurisdiction, or (y) with greater detail; and (ii) contain any other information required by Article 9 of the UCC or other applicable law or as otherwise appropriate for the sufficiency or filing office acceptance of any financing statement or other document or amendment or continuation, including, as applicable, whether Grantor is an organization, the type of organization and any organization identification number issued to Grantor.

(b) Grantor agrees to furnish any such information required for purposes of Section 2.04(a) to Grantee promptly upon request.

Section 2.05. Recordation. Grantor authorizes the Commissioner for Patents, the Commissioner for Trademarks and the Register of Copyrights and any other government officials to record and register this Agreement upon request by Grantee.

Section 2.06. Other Actions. Without limiting any other obligations of Grantor in respect of the Collateral set forth herein or in the Notes, Grantor hereby agrees to take any action reasonably requested by Grantee to effect the attachment, perfection and first priority of (subject to any Permitted Liens (as such term is defined in the applicable Note)), and the ability of Grantee to enforce, Grantee's security interest in any and all of the Collateral (and to pay all reasonable documented out-of-pocket expenses incurred in connection therewith), including any of the following: (a) comply with any provision of any law as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Grantee to enforce, Grantee's security interest in any material portion of the Collateral; (b) obtain Governmental Authority and all other third party consents and approvals, including without limitation any consent of any licensor, lessor or other person obligated on the Collateral, to the extent such consent or approval is a condition to attachment, perfection or priority of, or ability of Grantee to enforce, Grantee's security interest in any material portion of the Collateral; (c) furnish to Grantee, from time to time, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Grantee may reasonably request, and all in reasonable detail; and (d) at Grantee's request, appear in and defend any Dispute that may affect Grantor's title to or Grantee's security interest in any material portion of the Collateral.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Grantor represents and warrants to Grantee as follows:

Section 3.01. **Grantor's Legal Status.** (a) Except as set forth in Schedule 3.01, Grantor's exact legal name is that indicated in the preamble hereto, Grantor has not, during the past five years, been known by or used any other corporate or fictitious name, nor been a party to any merger, acquisition or consolidation; and (b) Grantor is an organization of the type and organized in the jurisdiction set forth in the preamble hereto.

Section 3.02. **Ownership; No Liens.** Grantor owns the Collateral free and clear of any liens, security interests, or other encumbrances, except for the security interest created by this Agreement and any Permitted Liens. No effective security agreement, financing statement, assignment, equivalent security, lien or other instrument similar in effect covering all or any part of the Collateral is on file or of record in any public office, except such as may have been filed in favor of Grantee relating to this Agreement or in connection with any Permitted Liens.

Section 3.03. **Validity.**

(a) Except as set forth on Schedule 3.03, Grantor has good title to, has rights in, and has the power to transfer each item of the Collateral, free and clear of any and all liens, security interests, and other encumbrances except any Permitted Liens, and has full power and authority to grant to Grantee the security interest in such Collateral pursuant to this Agreement.

(b) Subject to Permitted Liens, this Agreement creates a valid security interest in the Collateral securing the payment and performance in full of the Secured Obligations. Upon filing appropriate financing statements in the applicable filing offices, all filings, registrations and recordings presently necessary to create and perfect the first priority security interest granted to Grantee in the Collateral for which a security interest may be perfected by filing will have been taken.

Section 3.04. **Authorization; Approval.** No authorization or approval by, and no notice to or filing with, any Governmental Authority or any person: (a) is required for the grant by Grantor of the security interest granted hereby (except as to any later arising or acquired commercial tort claims) or for the execution, delivery, and performance of this Agreement by Grantor; or (b) is required for the perfection of the security interest of Grantee in the Collateral or exercise by Grantee of its rights and remedies hereunder, other than the filing of financing statements in the appropriate offices, to the extent that the security interest in the Collateral can be perfected by the filing of financing statements.

Section 3.05. **Enforceability.** This Agreement is the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, subject, as to enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally or general equitable principles.

ARTICLE IV
COVENANTS

Section 4.01. **Covenants.**

(a) For so long as this Agreement shall remain in effect, Grantor hereby covenants and agrees to abide by and perform all obligations and covenants set forth in the Notes and

herein, including, without limitation, the conversion obligations and restrictions on indebtedness and liens set forth in the Notes.

(b) Grantor agrees that it will not interfere with any right, power and remedy of Grantee provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by Grantee of any one or more of such rights, powers or remedies.

(c) Without limiting any of the foregoing covenants, Grantor agrees (i) not to use or permit any of the Collateral to be used unlawfully in any material respect or in material violation of any provision of the Notes or any applicable law or any policy of insurance covering the Collateral and (ii) to pay promptly when due all taxes now or hereafter imposed upon or affecting any of the Collateral.

ARTICLE V
RIGHTS AND DUTIES OF GRANTEE

Section 5.01. **Grantee Appointed Attorney-in-Fact.**

(a) Grantor, on behalf of itself and its subsidiaries, hereby irrevocably appoints Grantee (and each of Grantee's designees) as Grantor's and such subsidiaries' true and lawful attorney-in-fact, with full authority and power in the place and stead of Grantor and such subsidiaries and in the name of Grantor, such subsidiaries, Grantee or otherwise, from time to time in Grantee's discretion from and after the occurrence and during the continuation of an Event of Default, to take any appropriate action and to execute any instrument that Grantee may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including: (i) to ask, demand, collect, enforce, sue for, recover, compromise, receive, and acquit and receipts for monies due and to become due under or in respect of any of the Collateral; (ii) to receive, endorse, and collect any checks, drafts or other instruments, documents, and chattel paper in connection with clause (a) above; (iii) to file any claims or take any action or institute any proceedings (or to settle, adjust or compromise any such proceeding) that Grantee may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of Grantee with respect to any of the Collateral; (iv) to perform the affirmative obligations of Grantor hereunder; (v) to execute and deliver, for and on behalf of Grantor and such subsidiaries, any and all instruments, documents, agreements, and other writings necessary or advisable for the exercise on behalf of Grantor and its subsidiaries of any rights, benefits or options created or existing under or pursuant to the Collateral (including but not limited to executing and delivering to any Governmental Authority any correspondence or other documentation necessary or advisable to effect a transfer of any regulatory approval); and (vi) to execute endorsements, assignments, or other instruments of transfer with respect to the Collateral.

(b) Notwithstanding the foregoing, Grantee shall not be obligated to and shall have no liability to Grantor or any third party for failure to take any of the actions described in Section 5.01(a).

(c) Grantor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section 5.01 is irrevocable and coupled with an interest.

Section 5.02. **Grantee May Perform.** If Grantor fails to perform any agreement or covenant contained herein, Grantee may itself (but shall not be obliged to) perform, or cause performance of, such agreement or covenant, and in connection therewith Grantee shall be entitled to act as Grantor's true and lawful attorney-in-fact and with the full benefits of Section 5.01 hereof.

ARTICLE VI
REMEDIES

Section 6.01. **Certain Remedies.** If any Event of Default shall have occurred and is continuing: (a) Grantee may exercise in respect of the Collateral, in addition to other rights available to it at law or in equity or otherwise, or under any Note, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) or any other applicable law, and also may: (i) require Grantor to, and Grantor hereby agrees that it shall, at Grantor's expense and promptly upon request of Grantee, assemble all or part of the Collateral as directed by Grantee and make it available to Grantee at a place to be designated by Grantee that is reasonably convenient to both parties; (ii) exercise any and all rights and remedies of Grantor under or in connection with the Collateral; (iii) foreclose or otherwise enforce Grantee's security interest in any manner permitted by law or provided for in this Agreement, and sell any of all of the Collateral in any commercially reasonable manner; and (iv) without notice or demand of legal process, all of which are hereby expressly waived by Grantor, enter into property where any of the Collateral is located and take possession thereof; provided, however, that notwithstanding the foregoing, Grantee may transfer the Collateral or any portion thereof without any preparation or processing; and (b) Grantor, on behalf of itself and its subsidiaries, specifically waives (to the extent permitted by law) all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter adopted.

ARTICLE VII
MISCELLANEOUS

Section 7.01. **Assignments.** Grantor and Grantee shall not be permitted to assign this Agreement without the prior written consent of the other party and any purported assignment in violation of this Section 7.01 shall be null and void.

Section 7.02. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 7.03. **Notices.** All notices and other communications shall be given as set forth in the applicable Note.

Section 7.04. **Entire Agreement.** This Agreement and the Notes contain the entire agreement between the Parties relating to the subject matter hereof and supersede all oral statements and prior writings with respect thereto.

Section 7.05. **Modification.** No provision hereof may be amended or modified except by an agreement or agreements in writing executed by Grantor and Grantee.

Section 7.06. **No Delay; Waivers; etc.**

(a) No failure to exercise and no delay in the exercise, on the part of Grantee, of any right, remedy, power or privilege hereunder and no course of dealing with respect thereto shall impair such right, remedy, power or privilege or be construed to or operate as a waiver thereof, nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Grantee shall not be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by Grantee.

(b) Grantor waives any right to require Grantee to proceed against any person or to exhaust any of the Collateral or to pursue any remedy in such Grantee's power.

(c) Notwithstanding anything to the contrary herein, the Grantee agrees and acknowledges that any Permitted Indebtedness under the 2016 Note shall constitute Permitted Indebtedness under the 2015 Note and waives any breach or default arising out of any Permitted Indebtedness incurred after the date of the 2015 Note.

Section 7.07. **Severability.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, then, to the fullest extent permitted by law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 7.08. **Governing Law.** This Agreement and the Notes shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to any conflict of laws principles that would require application of the laws of another jurisdiction other than Section 5-1401 of the General Obligations Law of the State of New York.).

Section 7.09. **Jurisdiction.** Grantor irrevocably submits to the jurisdiction of the courts of the State of New York and of the United States sitting in the State of New York, and of the courts of its own corporate domicile with respect to actions or proceedings brought against it as a defendant, for purposes of all proceedings. Grantor irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any proceeding and any claim that any proceeding has been brought in an inconvenient forum. Any process or summons for purposes of any proceeding may be served on Grantor by mailing a copy thereof by registered mail, or a form of mail substantially equivalent thereto, addressed to it at its address as provided for notices under the applicable Note.

Section 7.10. **Waiver of Jury Trial.** *Grantor hereby irrevocably waives any and all right to trial by jury in any proceeding.*

Section 7.11. **Waiver of Immunity.** To the extent that Grantor has or hereafter may be entitled to claim or may acquire, for itself or any of its assets, any immunity from suit, jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, or otherwise) with respect to itself or any of its property, Grantor hereby irrevocably waives such immunity in respect of its obligations hereunder to the fullest extent permitted by law.

Section 7.12. **Counterparts; Facsimile Signatures.** This Agreement may be executed and delivered by facsimile signature (including PDF) and in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 7.13. **Rights Not Exclusive.** The rights, powers and remedies of Grantee under this Agreement are cumulative and are not exclusive of, and shall be in addition to, all rights, powers and remedies given to Grantee by virtue of any law and/or the Notes, all of which rights, powers and remedies shall be cumulative and may be exercised successively or concurrently without impairing Grantee's security interest in the Collateral.

Section 7.14. **Indemnification.** Grantor shall, to the fullest extent permitted by law, indemnify (but only to the extent of and out of Grantor assets) Grantee against all reasonable expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by Grantee in connection with any claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, before or by any court or any administrative or legislative body or authority, in which Grantee is involved, as a party or otherwise, or with which Grantee may be threatened, arising in connection with the 2015 Note, the 2016 Note or this Agreement (each, an "**Action**"), except to the extent the same has been

finally adjudicated to constitute fraud, gross negligence or willful misconduct of Grantee or a breach by Grantee of the Notes or this Agreement. Promptly after receipt by Grantee of notice of the commencement or threatened commencement against it of any third party Action, Grantee will notify Grantor. Grantor will be entitled to assume the defense of the Action unless Grantee shall have reasonably concluded that a conflict may exist between Grantor and Grantee in conducting the defense of the Action. If Grantor assumes the defense of any Action in accordance with the provisions of this Section, it will not be liable to Grantee for any legal or other expenses subsequently separately incurred by Grantee in connection with the defense of such Action. Grantor shall not be liable for any settlement of a third-party Action effected without its written consent, which consent may not be unreasonably withheld.

Section 7.15. **Amendment and Restatement.** This Agreement amends, restates and replaces in its entirety the Existing Security Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first set forth above.

RYAN DREXLER, AN INDIVIDUAL

AS GRANTEE

/s/ Ryan Drexler

Name: Ryan Drexler

MUSCLEPHARM CORPORATION, A NEVADA CORPORATION

AS GRANTOR

By: /s/ Maria Gorecki

Name: Maria Gorecki

Title: General Counsel

SETTLEMENT AGREEMENT

F.H.G. Corporation d/b/a Capstone Nutrition ("**Capstone**"); INI Parent, Inc. ("**INI Parent**"); INI Buyer, Inc. ("**INI Buyer**"); Medley Capital Corporation ("**Medley**") (collectively, the "**Capstone Parties**"); and MusclePharm Corporation ("**MusclePharm**") (collectively with the Capstone Parties, the "**Parties**") enter into this Settlement Agreement (this "**Agreement**") as of the date the last Party to this Agreement executes the Agreement (the "**Effective Date**").

WHEREAS, Capstone and MusclePharm entered into the Manufacturing Agreement on November 27, 2013 and the First Amendment to the Manufacturing Agreement ("**First Amendment**," and collectively with the Manufacturing Agreement, the "**Contract**") on March 2, 2015;

WHEREAS, pursuant to the Contract, Capstone manufactured and delivered sports nutrition products for MusclePharm;

WHEREAS, disputes arose between the Parties concerning, among other things, their obligations under the Contract;

WHEREAS, on May 16, 2016, Capstone filed a complaint against MusclePharm in the United States District Court for the District of Colorado (Case No. 16 Civ. 1135; ECF No. 1), alleging that MusclePharm breached the Contract by failing to pay for products manufactured and delivered by Capstone, failing to take delivery of products purchased from Capstone, and failing to purchase the contractual minimum volume of product from Capstone (the "**Litigation**");

WHEREAS, on August 22, 2016, MusclePharm filed its answer and affirmative defenses to the complaint and filed amended counterclaims against Capstone, INI Parent and Medley (ECF No. 30), alleging that Capstone and INI Parent fraudulently induced MusclePharm to enter into the Contract, that Capstone breached the Contract by failing to timely deliver product ordered by MusclePharm, and that INI Parent and Medley tortiously interfered with the Contract;

WHEREAS, the Parties have agreed to settle the Litigation and all disputes between them as provided herein;

NOW, THEREFORE, the Parties for good and valuable consideration, the sufficiency of which is acknowledged and agreed, hereby stipulate and agree as follows:

1. **Payment.** Within five (5) business days following the Effective Date of this Agreement, MusclePharm shall pay to Capstone cash in the amount of Eleven Million Dollars (US \$ 11,000,000) ("**Cash Amount**") by wire transfer into the account designated in the wire transfer instructions attached hereto as **Exhibit A**.

2. **Warrant.** Within five (5) business days following the Effective Date of this Agreement, MusclePharm and INI Buyer (collectively, the "**Warrant Parties**") shall execute the Warrant Agreement, attached hereto as **Exhibit B**.

3. **Dismissal.** Within five (5) business days following the latter of (i) the transfer of the Cash Amount, or (ii) both Warrant Parties' execution of the Warrant Agreement, the Parties shall file a stipulation dismissing the Litigation, with prejudice, attached hereto as **Exhibit C**.

4. **Releases.**

(a) Upon MusclePharm's payment of the Cash Amount and both Warrant Parties' execution of the Warrant Agreement, Capstone, INI Parent, INI Buyer and Medley, and (a) each of their respective current and former parents, subsidiaries (whether wholly-owned or non-wholly-owned, direct or indirect), affiliates, directors, and officers, and (b) any of their current and former principals, agents, employees, partners, members, stockholders, attorneys, legal representatives, financial advisors, accountants, consultants, other professionals, joint venture subsidiaries, insurers, successors and assigns (together, the "**Capstone Releasers**"), hereby fully, finally, and completely, without any further action on the part of any of the Parties, remise, release, acquit, and forever discharge MusclePharm and (a) each of its current parents, subsidiaries (whether wholly-owned or non-wholly-owned, direct or indirect), affiliates, directors, and officers, and (b) any of its current and former principals, agents, employees, partners, members, stockholders, attorneys, legal representatives, financial advisors, accountants, consultants, other professionals, joint venture subsidiaries, insurers, successors and assigns (together, the "**MusclePharm Releasees**") from any and all claims, actions, causes of action, suits, controversies, or counterclaims that the Capstone Releasers ever had, now have, or hereafter can, shall or may have against the MusclePharm Releasees, whether actual or alleged, known or unknown, accrued or unaccrued, existing or potential, suspected or unsuspected, from the beginning of time to the date hereof, except for claims arising out of the duties and obligations pursuant to the terms of this Agreement and the Warrant Agreement, which shall survive as provided in this Agreement.

(b) Upon MusclePharm's payment of the Cash Amount and both Warrant Parties' execution of the Warrant Agreement, MusclePharm and (a) each of its current and former parents, subsidiaries (whether wholly-owned or non-wholly-owned, direct or indirect), affiliates, directors, and officers, and (b) any of its current and former principals, agents, employees, partners, members, stockholders, attorneys, legal representatives, financial advisors, accountants, consultants, other professionals, joint venture subsidiaries, insurers, successors and assigns (together, the "**MusclePharm Releasers**"), hereby fully, finally, and completely, without any further action on the part of any of the Parties, remise, release, acquit, and forever discharge Capstone, INI Parent, INI Buyer and Medley, and (a) each of their respective current parents, subsidiaries (whether wholly-owned or non-wholly-owned, direct or indirect), affiliates, directors, and officers, and (b) any of their current and former principals, agents, employees, partners, members, stockholders, attorneys, legal representatives, financial advisors, accountants, consultants, other professionals, joint venture subsidiaries, insurers, successors and assigns (together, the "**Capstone Releasees**") from any and all claims, actions, causes of action, suits, controversies, or counterclaims that the MusclePharm Releasers ever had, now have, or hereafter can, shall or may have against the Capstone Releasees, whether actual or alleged, known or unknown, accrued or unaccrued, existing or potential, suspected or unsuspected, from the beginning of time to the date hereof, except for claims arising out of the duties and obligations pursuant to the terms of this Agreement and the Warrant Agreement, which shall survive as provided in this Agreement.

5. **Representations and Warranties.** The Parties represent and warrant that they are the sole and lawful owner of all rights and interests to every matter and thing released by them under this Agreement, and that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any right, interest, claim, debt, liability, demand, obligation, cost, expense, damage, action or cause of action herein released or dismissed. The Parties represent that they are hereby authorized to act on behalf of the entities listed in paragraph 4 in issuing the releases described in paragraph 4. Each person who executes this Agreement represents that he or she is duly authorized to do so on behalf of the respective Parties hereto and that each such Party has full knowledge of and has consented to this Agreement.

6. **Termination of Parties' Obligations.**

(a) Upon MusclePharm's payment of the Cash Amount and both Warrant Parties' execution of the Warrant Agreement, and subject to Section 6(b), below, the Capstone Parties, on one hand, and MusclePharm, on the other, shall have no further obligations to each other (including, but not limited to, under the Contract, the October 20, 2015 Quality Agreement, the March 2, 2015 Option Agreement, the March 2, 2015 Purchase Warrant Agreement, and the March 2, 2015 Referral Agreement), except for those obligations arising under this Agreement and the Warrant Agreement.

(b) Notwithstanding Paragraph 6(a), the Parties, in order to fulfill their obligations under applicable state and federal law concerning the products manufactured pursuant to the Contract (the "Products"), agree that they shall take all actions required by federal and state law with respect to the Products. To that end, the Parties agree that, (i) within twenty (20) days of receipt from MusclePharm of any complaint concerning product manufactured by Capstone for MusclePharm (a "**Product Complaint**"), Capstone will investigate the Product Complaint and provide MusclePharm with a completed investigation and disposition report (a "**Product Complaint Investigation Report**"); and (ii) Capstone shall maintain in its files copies of all Product Complaints and Product Complaint Investigation Reports, and shall provide to MusclePharm copies of all Product Complaints and Product Complaint Investigation Reports within one business day, if required during any regulatory inspection. The obligations in this Paragraph 6(b) shall expire upon the day that it is five (5) years from the execution hereof.

7. **Survival of Claims Until Settlement Consideration Exchanged** Until and unless the Cash Amount is received and the Warrant Agreement is fully executed, the claims of the Parties regarding their respective rights and obligations to be released under paragraph 4 hereof shall be unaffected.

8. **Binding Effect.** This Agreement shall be binding upon all successors and assigns of each of the Parties to the Agreement.

9. **No Admission of Liability.** Neither this Agreement, nor the settlement provided for herein, nor any statement made, action or position taken, or document prepared or executed in connection with the negotiation, execution or implementation of this Agreement and the compromise and settlement of claims provided for herein shall be deemed to be, or construed as,

an admission by any Party of any liability, wrongdoing, act or matter or that any claim or defense has or lacks merit.

10. **Entire Agreement.** This Agreement contains the entire agreement by and between the Parties with respect to the subject matter hereof, and all prior understandings or agreements, if any, are merged into and/or superseded by this Agreement.

11. **No Oral Modifications.** This Agreement may only be changed, modified or otherwise altered in a writing executed by all the Parties to this Agreement or their respective successors or assigns. Oral modifications of this Agreement are not permitted.

12. **Governing Law and Choice of Forum** This Agreement shall be construed and interpreted in accordance with the laws of the State of New York, without regard to the choice of law principles of the State of New York. The parties agree to the exclusive jurisdiction of the state and federal courts in New York County, New York for any disputes arising out of or in connection with this Agreement.

13. **No Drafter.** For purposes of construing this Agreement, none of the Parties shall be deemed to have been the drafter of the Agreement.

14. **Counterparts.** Facsimile or other electronic copies of signatures on this Agreement are acceptable, and a facsimile or other electronic copy of a signature on this Agreement is deemed an original. This Agreement may be executed in counterparts, each of which is deemed an original, but when taken together constitute one and the same document.

15. **Notices.** Any notice or request required or desired to be given pursuant to this Agreement shall be sufficient if made in writing and sent by first class mail, postage prepaid, or email to the Parties at the addresses set forth below or to such other persons as any of the Parties may designate in writing from time to time:

As to Capstone, INI Parent, and INI Buyer:

Craig Taylor
Capstone Nutrition
900 South Depot Dr.
Ogden, Utah 84404
Fax: 801-337-5961
Email: ctaylor@capstonenutrition.com

with a copy to:

David L. Yohai
Weil, Gotshal & Manges
767 Fifth Avenue
New York, NY 10153
Fax: 212-310-8007
Email: David.Yohai@weil.com

As to Medley:

John D. Fredericks
Medley LLC
600 Montgomery St., 35th Floor
San Francisco, CA 94111
Fax: 415-358-5514
Email: john.fredericks@mdly.com

with a copy to:

Amber J. Münck
Greenberg Traurig, LLP
1200 17th Street
Suite 2400
Denver, CO 80202
Fax: 303-572-6540
Email: muncka@gtlaw.com

As to MusclePharm:

MusclePharm Corporation
Legal Department
Attn: Maria Gorecki
4721 Ironton Street, Bldg. A.
Denver, CO 80239
Fax: 800-490-7165
Email: maria.gorecki@musclepharm.com

with a copy to:

Marc E. Kasowitz
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, NY 10019

-and-

Jonathan E. Minsker
Kasowitz, Benson, Torres & Friedman LLP
1441 Brickell Avenue, Suite 1420
Miami, FL 33131
Fax: 212-506-1800
Email: JMinsker@kasowitz.com

IN WITNESS WHEREOF and in agreement herewith the Parties have executed and delivered this Agreement as of the Effective Date.

F.H.G. Corporation d/b/a/ Capstone Nutrition

MusclePharm Corporation

By: /s/ Jared Leishman

Name: Jared Leishman
Title: CEO
Date: November 4, 2016

By: /s/ Ryan Drexler

Name: Ryan Drexler
Title: Interim CEO and Interim President
Date: November 7, 2016

INI Parent, Inc.

By: /s/ Jared Leishman

Name: Jared Leishman
Title: CEO
Date: November 4, 2016

INI Buyer, Inc.

By: /s/ Jared Leishman

Name: Jared Leishman
Title: CEO
Date: November 4, 2016

Medley Capital Corporation

By: MCC Advisors LLC, its attorney-in-fact

By: /s/ Richard Allorto

Name: Richard Allorto
Title: CFO
Date: November 7, 2016

CERTIFICATION

I, Ryan Drexler, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of MusclePharm Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods present in this report;
4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2016

By: /s/ Ryan Drexler

Ryan Drexler
Interim Chief Executive Officer and Interim President
(Principal Executive Officer, Principal Accounting Officer
and Principal Financial Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with this Quarterly Report of MusclePharm Corporation (the "Company"), on Form 10-Q for the quarter ended September 30, 2016, as filed with the U.S. Securities and Exchange Commission on the date hereof (the "Report"), I, Ryan Drexler, Principal Executive Officer and Principal Financial Officer of the Company, certify pursuant to 18 U.S.C. Section. 1350, as adopted pursuant to Section. 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report, fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2016

By: /s/ Ryan Drexler

Ryan Drexler

Interim Chief Executive Officer and Interim President

(Principal Executive Officer, Principal Accounting Officer
and Principal Financial Officer)