INVIVO THERAPEUTICS HOLDINGS CORP.
Form 10-Q
October 30, 2017
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 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, 2017

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: 001-37350

InVivo Therapeutics Holdings Corp.

(Exact name of registrant as specified in its charter)

Nevada (State or other jurisdiction of incorporation or organization)	36-4528166 (I.R.S. Employer Identification Number)
One Kendall Square, Suite B14402 Cambridge, MA (Address of principal executive offices)	 02139 (Zip code)

(617) 863-5500

(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 preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

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

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

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

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

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

As of October 28, 2017, 34,238,044 shares of the registrant’s common stock, $0.00001 par value, were issued and outstanding.

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INVIVO THERAPEUTICS HOLDINGS CORP.

Quarterly Report on Form 10-Q for the Quarter Ended September 30, 2017

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PART I — FINANCIAL INFORMATION

Item 1.Financial Statements.

InVivo Therapeutics Holdings Corp.

Consolidated Balance Sheets

(In thousands, except share and per-share data)

(Unaudited)

	As of September 30, 2017	December 31, 2016
ASSETS:		
Current assets:		
Cash and cash equivalents	$ 16,434	$ 21,464
Restricted cash	361	361
Marketable securities	734	11,577
Prepaid expenses and other current assets	475	451
Total current assets	18,004	33,853
Property, equipment and leasehold improvements, net	190	510
Other assets	402	421
Total assets	$ 18,596	$ 34,784
LIABILITIES AND STOCKHOLDERS' EQUITY:		
Current liabilities:		
Accounts payable	$ 1,270	$ 1,011
Loan payable, current portion	444	423
Derivative warrant liability	41	1,314
Deferred rent, current portion	30	141
Accrued expenses	1,784	1,959
Total current liabilities	3,569	4,848
Loan payable, net of current portion	516	852
Deferred rent, net of current portion	208	135
Other liabilities	52	—
Total liabilities	4,345	5,835
Commitments and contingencies (Note 6)		
Stockholders' equity:		
Common stock, $0.00001 par value, authorized 100,000,000 shares; 34,234,580 shares issued and outstanding at September 30, 2017; 32,044,087 shares issued and outstanding at December 31, 2016	1	1

Additional paid-in capital	193,493	185,955
Accumulated deficit	(179,243)	(157,007)
Total stockholders’ equity	14,251	28,949
Total liabilities and stockholders’ equity	$ 18,596	$ 34,784

See notes to the unaudited consolidated financial statements.

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InVivo Therapeutics Holdings Corp.

Consolidated Statements of Operations and Comprehensive Loss

(In thousands, except share and per-share data)

(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Operating expenses:				
Research and development	$ 2,928	$ 3,294	$ 9,522	$ 8,659
General and administrative	3,388	2,584	10,389	8,573
Total operating expenses	6,316	5,878	19,911	17,232
Operating loss	(6,316)	(5,878)	(19,911)	(17,232)
Other income (expense):				
Interest income	43	50	152	133
Interest expense	(18)	(32)	(58)	(117)
Derivatives gain (loss)	(3,059)	(336)	(2,264)	(788)
Other income (expense), net	(3,034)	(318)	(2,170)	(772)
Net loss	$ (9,350)	$ (6,196)	$ (22,081)	$ (18,004)
Net loss per share, basic and diluted	$ (0.28)	$ (0.19)	$ (0.68)	$ (0.59)
Weighted average number of common shares outstanding, basic and diluted	33,445,002	31,968,357	32,516,190	30,687,263
Other comprehensive loss:				
Net loss	(9,350)	(6,196)	(22,081)	(18,004)
Other comprehensive loss:				
Unrealized gain (loss) on marketable securities	—	—	—	—
Comprehensive loss	$ (9,350)	$ (6,196)	(22,081)	$ (18,004)

See notes to the unaudited consolidated financial statements.

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InVivo Therapeutics Holdings Corp.

Consolidated Statements of Cash Flows

(In thousands)

(Unaudited)

	Nine Months Ended September 30,	
	2017	2016
Cash flows from operating activities:		
Net loss	$ (22,081)	$ (18,004)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	387	417
Derivatives (gain) loss	2,264	788
Common stock issued to 401(k) plan	154	156
Share-based compensation expense	3,614	3,571
Non-cash investment (income) expense, net	—	(193)
Changes in operating assets and liabilities:		
Prepaid expenses	(24)	(229)
Other assets	6	(308)
Accounts payable	259	35
Accrued expenses and other liabilities	(161)	1,248
Net cash used in operating activities	(15,582)	(12,519)
Cash flows from investing activities:		
Purchases of marketable securities	(8,256)	(7,987)
Sales of marketable securities	19,100	1,050
Purchases of property and equipment	(54)	(96)
Net cash (used in) provided by investing activities	10,790	(7,033)
Cash flows from financing activities:		
Proceeds from exercise of stock options	26	191
Proceeds from issuance of stock under ESPP	51	91
Repayment of loan payable	(315)	(294)
Proceeds from issuance of common stock and warrants	—	29,905
Net cash (used in) provided by financing activities	(238)	29,893
Increase (decrease) in cash and cash equivalents	(5,030)	10,341
Cash and cash equivalents at beginning of period	21,464	14,920
Cash and cash equivalents at end of period	$ 16,434	$ 25,261
Supplemental disclosure of cash flow information and non-cash transactions:		
Cash paid for interest	$ 56	$ 54
Non-cash issuance of common stock for warrants	$ 3,537	$ 62

See notes to the unaudited consolidated financial statements.

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InVivo Therapeutics Holdings Corp.

Notes to Consolidated Financial Statements for the Quarter Ended September 30, 2017 (Unaudited)

1.NATURE OF OPERATIONS, BASIS OF PRESENTATION AND RECENT ACCOUNTING PRONOUNCEMENTS

Business

InVivo Therapeutics Holdings Corp. was incorporated on April 2, 2003 under the name of Design Source, Inc., and on October 26, 2010 acquired the business of InVivo Therapeutics Corporation, which was incorporated on November 28, 2005, and continued the existing business operations of InVivo Therapeutics Corporation as a wholly-owned subsidiary of InVivo Therapeutics Holdings Corp. Unless otherwise noted herein, the "Company" refers to InVivo Therapeutics Holdings Corp. and its wholly-owned subsidiary on a consolidated basis. The Company is a research and clinical-stage biomaterials and biotechnology company with a focus on the treatment of spinal cord injuries. Its proprietary technologies incorporate intellectual property licensed under the Company's exclusive, worldwide license from Boston Children's Hospital and the Massachusetts Institute of Technology, as well as intellectual property that has been developed internally in collaboration with its advisors and partners.

Since its inception, the Company has devoted substantially all of its efforts to business planning, research and development, recruiting management and technical staff, acquiring operating assets, and raising capital. The Company has historically financed its operations primarily through the sale of equity-related securities. At September 30, 2017, the Company had cash, cash equivalents, and marketable securities of $17.2 million. The Company has not achieved profitability and may not be able to realize sufficient revenue to achieve or sustain profitability in the future. The Company does not expect to be profitable in the next several years, but rather expects to incur additional operating losses. The Company has limited liquidity and capital resources and must obtain significant additional capital resources in order to sustain its product development efforts, for acquisition of technologies and intellectual property rights, for preclinical and clinical testing of its anticipated products, for pursuit of regulatory approvals, for acquisition of capital equipment, laboratory and office facilities, for establishment of production capabilities, for selling, general, and administrative expenses, and for other working capital requirements. The Company expects that it will need additional capital to fund its operations, which it may raise through a combination of equity offerings, debt financings, other third party funding, marketing and distribution arrangements, and other collaborations, strategic alliances, and licensing arrangements.

The Company's financial statements as of September 30, 2017 were prepared under the assumption that the Company will continue as a going concern. Given the Company's development plans, it estimates cash resources will be sufficient to fund its operations into the third quarter of 2018. This estimate is based on assumptions that may prove to be wrong; expenses could prove to be significantly higher, leading to a more rapid consumption of the Company's existing resources. Based on the forecast, management determined that there is substantial doubt regarding the

Company’s ability to continue as a going concern.

Basis of Presentation

The accompanying unaudited consolidated financial statements have been prepared in conformity with generally accepted accounting principles in the United States (“GAAP”) consistent with those applied in, and should be read in conjunction with, the Company’s audited financial statements and related footnotes for the year ended December 31, 2016 included in the Company’s Annual Report on Form 10-K as filed with the United States Securities and Exchange Commission (“SEC”) on March 10, 2017. The unaudited consolidated financial statements reflect all adjustments, consisting only of normal recurring adjustments, which are, in the opinion of management, necessary for a fair presentation of the Company’s financial position as of September 30, 2017 and its results of operations and cash flows for the interim period presented, and are not necessarily indicative of results for subsequent interim periods or for the full year. The interim financial statements do not include all of the information and footnotes required by GAAP for complete financial statements, as allowed by the relevant SEC rules and regulations; however, the Company believes that its disclosures are adequate to ensure that the information presented is not misleading.

Reclassifications

Certain amounts in the prior period financial statements have been reclassified to conform to the current period presentation. Cash activities related to the purchase and sale of marketable securities have been reflected within investing activities in the statement of cash flows. The unrealized gains or losses related to these marketable securities are immaterial for the prior period presented.

Recently Issued Accounting Pronouncements

In March 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-09, Compensation – Stock Compensation (Topic 718): Improvements to Employee Share-Based Accounting ("ASU 2016-09") to require changes to several areas of employee share-based payment accounting in an effort to simplify share-based reporting. The update revises requirements in the following areas: minimum statutory withholding, accounting for income taxes, forfeitures, and intrinsic value accounting for private entities. ASU 2016-09 is effective for annual reporting periods beginning after December 15, 2016, including interim reporting periods within each annual reporting period. The Company adopted this standard on January 1, 2017. Prior to adoption, the Company recognized share-based compensation, net of estimated forfeitures, over the vesting period of the grant. Upon adoption of ASU 2016-09, the Company elected to change its accounting policy to recognize forfeitures as they occur. The Company continues to recognize share-based compensation expense over the vesting period of the grant. The new forfeiture policy election was adopted using a modified retrospective approach with a cumulative effect adjustment of $155,000 recorded to accumulated deficit on the balance sheet as of January 1, 2017. Prior to January 1, 2017, the Company recognized the excess tax benefits of stock-based compensation expense as additional paid-in capital and tax deficiencies of stock-based compensation expense in the income tax provision or as additional paid-in capital to the extent that there were sufficient recognized excess tax benefits previously recognized. Previously, the excess tax benefits reduced taxes payable prior to being recognized as an increase in additional paid-in capital, and therefore the Company had not recognized certain deferred tax assets that could be attributed to tax deductions. As a result of the adoption, the deferred tax assets associated with certain net operating losses increased, which was offset by a corresponding increase in the valuation allowance and therefore the adoption of the tax-related guidance in this standard did not have an impact on our consolidated financial statements for the period ended September 30, 2017.

In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842). The guidance in this ASU supersedes the leasing guidance in Topic 840, Leases. Under the new guidance, lessees are required to recognize lease assets and lease liabilities on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance leases or operating leases, with classification affecting the pattern of expense recognition in the statement of operations. The new standard is effective for annual reporting periods beginning after December 15, 2018, including interim reporting periods within each annual reporting period. The Company is currently evaluating the impact of the adoption of this ASU on the financial statements.

In August 2016, the FASB issued ASU No. 2016-15, Classification of Certain Cash Receipts and Cash Payments ("ASU 2016-15") to address how certain cash receipts and cash payments are presented and classified in the statement of cash flows in an effort to reduce existing diversity in practice. The update includes eight specific cash flow issues and provides guidance on the appropriate cash flow presentation for each. ASU 2016-15 is effective for annual reporting periods beginning after December 15, 2017, including interim reporting periods within each annual reporting period. The Company does not expect the adoption of this guidance to have a material impact on the financial statements.

In November 2016, the FASB issued ASU No. 2016-18, Statement of Cash Flows (Topic 230): Restricted Cash to clarify how entities should present restricted cash and restricted cash equivalents in the statement of cash flows. Under this new update, entities are required to show the changes in the total of cash, cash equivalents, restricted cash, and restricted cash equivalents in the statement of cash flows. This guidance will be applied retrospectively and is effective for annual reporting periods beginning after December 15, 2017, including interim reporting periods within each annual reporting period. The Company does not expect the adoption of this guidance to have a material impact on the financial statements.

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In May 2017, the FASB issued ASU No. 2017-09, Compensation – Stock Compensation (Topic 718): Scope of Modification Accounting ("ASU 2017-09") to clarify when to account for a change to the terms or conditions of a share-based payment award as a modification. Under this new guidance, modification accounting is required if the fair value, vesting conditions, or classification of the award changes as a result of the change in terms or conditions. ASU 2017-09 is effective for annual reporting periods beginning after December 15, 2017, including interim reporting periods within each annual reporting period. The Company does not expect the adoption of this guidance to have a material impact on the financial statements.

In July 2017, the FASB issued ASU No. 2017-11, Part I. Accounting for Certain Financial Instruments with Down Round Features and Part II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception ("ASU 2017-11"). Part I of this guidance applies to entities that issue financial instruments such as warrants, convertible debt or convertible preferred stock that contain down round features. Part II of this guidance replaces the indefinite deferrals for certain mandatorily redeemable noncontrolling interests and mandatorily redeemable financial instruments of nonpublic entities. ASU 2017-11 is effective for annual reporting periods beginning after December 15, 2018, including interim reporting periods within each annual reporting period. The Company has concluded that the adoption of this ASU will not have a material impact on the financial statements.

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers ("ASU 2014-09") to provide updated guidance on revenue recognition. ASU 2014-09 requires a company to recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. In doing so, companies may need to use more judgment and make more estimates than under today's guidance. These may include 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 2015-14, Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date, which deferred the effective date of ASU 2014-09 by one year. Accordingly, ASU 2014-09 is effective for public business entities for annual reporting periods beginning after December 15, 2017, including interim reporting periods within each annual reporting period. In March 2016, the FASB issued ASU No. 2016-08, Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross Versus Net), which clarifies the implementation guidance on principal versus agent considerations. In April 2016, the FASB issued ASU No. 2016-10, Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing, which clarifies certain aspects of identifying performance obligations and licensing implementation guidance. In May 2016, the FASB issued ASU No. 2016-12, Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients, which relates to disclosures of remaining performance obligations, as well as other amendments to guidance on collectability, non-cash consideration, and the presentation of sales and other similar taxes collected from customers. These standards are effective for annual reporting periods beginning after December 15, 2017, including interim reporting periods within each annual reporting period. Currently, this guidance is not applicable to the Company as the Company does not generate revenue. However, the Company will evaluate the impact of adopting ASU 2014-09 on its consolidated financial statements when the Company begins to generate revenue.

2.CASH AND CASH EQUIVALENTS

As of September 30, 2017, the Company held $16.4 million in cash and cash equivalents. From time to time, the Company may have cash balances in financial institutions in excess of insurance limits. The Company has never experienced any losses related to these balances. The Company considers only those investments that are highly liquid, readily convertible to cash, and that mature within three months from date of purchase to be cash equivalents.

At September 30, 2017 and December 31, 2016, cash equivalents were comprised of money market funds and other short-term investments.

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Cash and cash equivalents consisted of the following:

(In thousands)	September 30, 2017	December 31, 2016
Cash	$ (90)	$ 111
Money market funds	16,524	21,353
Total cash and cash equivalents	$ 16,434	$ 21,464

3.RESTRICTED CASH

Restricted cash as of September 30, 2017 and December 31, 2016 was $361,000 and included a $50,000 security deposit related to the Company’s credit card account and a $311,000 standby letter of credit in favor of a landlord (see Note 6).

4. MARKETABLE SECURITIES

The Company invests its excess cash in fixed income instruments denominated and payable in U.S. dollars, including money market accounts, commercial paper, asset-backed securities, and corporate obligations, in accordance with the Company’s investment policy that primarily seeks to maintain adequate liquidity and preserve capital.

As of September 30, 2017 and December 31, 2016, the Company’s investment portfolio consisted of marketable securities with an original maturity of greater than 90 days. The Company has designated all investments as available-for-sale and therefore such investments are reported at fair value. Unrealized gains or losses on marketable securities are recorded in accumulated other comprehensive loss, a component of stockholders’ equity, on the balance sheet.

The following table summarizes the Company’s investments in marketable securities by category as of September 30, 2017 and December 31, 2016:

(In thousands)	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
September 30, 2017				
Current (due within 1 year or less)				
Corporate obligations	734	—	—	734
Total	$ 734	$ —	$ —	$ 734
December 31, 2016				
Current (due within 1 year or less)				
Commercial paper	4,240	—	—	4,240
Corporate obligations	7,337	—	—	7,337
Total	$ 11,577	$ —	$ —	$ 11,577

5.FAIR VALUE OF ASSETS AND LIABILITIES

The Company groups its assets and liabilities generally measured at fair value into three levels based on the markets in which the assets and liabilities are traded and the reliability of the assumptions used to determine fair value.

Level 1 — Valuation is based on quoted prices in active markets for identical assets or liabilities. Level 1 assets and liabilities generally include debt and equity securities that are traded in an active exchange market. Valuations are obtained from readily available pricing sources for market transactions involving identical assets or liabilities.

Level 2 — Valuation is based on observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

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Level 3 — Valuation is based on unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Level 3 assets and liabilities include financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation.

The Company uses valuation methods and assumptions that consider, among other factors, the fair value of the underlying stock, risk-free interest rate, volatility, expected life, and dividend rates in estimating fair value for the warrants considered to be derivative instruments (see Notes 11 and 12).

Assets and liabilities measured at fair value on a recurring basis are summarized below:

	At September 30, 2017			
(In thousands)	Level 1	Level 2	Level 3	Fair Value
Cash equivalents	$ 16,524	$ —	$ —	$ 16,524
Marketable securities	—	734	—	734
Derivative warrant liability	$ —	$ (41)	$ —	$ (41)

	At December 31, 2016			
(In thousands)	Level 1	Level 2	Level 3	Fair Value
Cash equivalents	$ 21,353	$ —	$ —	$ 21,353
Marketable securities	—	11,577	—	11,577
Derivative warrant liability	$ —	$ (1,314)	$ —	$ (1,314)

6.COMMITMENTS AND CONTINGENCIES

Leases

On November 30, 2011, the Company entered into a commercial lease for 26,150 square feet of office, laboratory, and manufacturing space in Cambridge, Massachusetts (as amended on September 17, 2012, the “Cambridge Lease”). The term of the Cambridge Lease is six years and three months, with one five-year extension option. On August 21, 2017, the Company exercised its option for the five-year extension on the Cambridge Lease. The five-year renewal lease term commences on November 1, 2018 and ends on October 31, 2023. The terms of the Cambridge Lease require a standby letter of credit in the amount of $311,000 (see Note 3).

The Cambridge Lease contains rent holidays and rent escalation clauses. The Company recognizes rent expense on a straight-line basis over the term of the Cambridge Lease and records the difference between the amount charged to expense and the rent paid as a deferred rent liability. As of September 30, 2017, the amount of deferred rent liability was $238,000.

Pursuant to the terms of the non-cancelable lease agreements in effect at September 30, 2017, the future minimum rent commitments are as follows (in thousands):

Year Ended December 31,	
2017	314
2018	1,378
2019	1,945
2020	2,003
2021	2,063
Thereafter	3,941
Total	$ 11,644

Total rent expense for the three-month periods ended September 30, 2017 and 2016 was $269,000 and $210,000, respectively. Total rent expense for the nine-month periods ended September 30, 2017 and 2016 was $828,000 and $707,000, respectively.

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On March 31, 2016, the Company entered into a short-term lease with CRISPR Therapeutics, as subtenant, to sub-lease 5,233 square feet of the Facility (the "CRISPR Sublease"). The lease term was from April 1, 2016 through January 31, 2017. On March 31, 2016, the Company received $51,000 covering the first month's rent and a security deposit under the terms of the CRISPR Sublease. The funds received for the security deposit, $26,000, were classified as a component of accrued expenses on the balance sheet as of December 31, 2016. In connection with the CRISPR Sublease, the Company received sublease income for the nine-month periods ended September 30, 2017 and 2016 of $26,000 and $77,000, respectively, which was recorded as an offset to rent expense. The CRISPR Sublease terminated on January 31, 2017 and the security deposit was returned to the subtenant.

On June 13, 2017, the Company entered into a short-term lease with Moderna Therapeutics, as subtenant, to sub-lease 5,233 square feet of the Facility (the "Moderna Sublease"). The lease term is from July 1, 2017 through October 26, 2018. On June 19, 2017, the Company received a $55,000 security deposit under the terms of the Moderna Sublease. This security deposit is classified as a component of accrued expenses on the balance sheet as of September 30, 2017. In connection with the Moderna Sublease, the Company received sublease income of $82,000 for the nine-month period ended September 30, 2017, which was recorded as an offset to rent expense.

Litigation

Lawsuits with Former Employee

In November 2013, the Company filed a lawsuit against Francis Reynolds, its former Chairman, Chief Executive Officer and Chief Financial Officer, in Middlesex Superior Court, Middlesex County, Massachusetts (InVivo Therapeutics Holdings Corp. v. Reynolds, Civil Action No. 13-5004). The complaint alleges breaches of fiduciary duties, breach of contract, conversion, misappropriation of corporate assets, unjust enrichment, and corporate waste, and seeks monetary damages and an accounting. The lawsuit involves approximately $500,000 worth of personal and/or exorbitant expenses that the Company alleges Mr. Reynolds inappropriately caused it to pay while he was serving as the Company's Chief Executive Officer, Chief Financial Officer, President, and Chairman of the Company's Board of Directors. On December 6, 2013, Mr. Reynolds answered the complaint, and filed counterclaims against the Company and the Company's Board of Directors. The counterclaims allege two counts of breach of contract, two counts of breach of the covenant of good faith and fair-dealing, and tortious interference with a contract, and seek monetary damages and a declaratory judgment. The counterclaims relate to Mr. Reynolds's allegations that the Company and the Company's Board of Directors interfered with the performance of his duties under the terms of his employment agreement, and that Mr. Reynolds was entitled to additional shares upon the exercise of certain stock options that he did not receive. On January 9, 2014, the Company and the directors named in the counterclaim filed their answer denying that Mr. Reynolds is entitled to any relief. The parties have completed discovery. On March 3, 2017, the counterclaim defendants filed a motion for summary judgment on all counterclaims asserted by Mr. Reynolds. On October 18, 2017, the Court allowed the motion for summary judgment in substantial part, and denied it in part. The Court, citing disputed issues of fact, declined to dismiss the counterclaims for breach of contract, breach of implied covenant of good faith and fair dealing, and declaratory judgment concerning Mr. Reynolds' attempted exercise of certain stock options, which Mr. Reynolds claims is the equivalent of 47,864 shares of common stock, but dismissed all other claims asserted by Mr. Reynolds.

The Company intends to continue to defend itself against the remaining counterclaims and, to date, the Company has not recorded any provision for losses that may arise.

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7. ACCRUED EXPENSES

Accrued expenses consisted of the following:

(In thousands)	September 30, 2017	December 31, 2016
Bonus	$ 595	$ 906
Payroll	158	126
Vacation	231	91
Severance	455	385
Other accrued expenses	345	451
Total accrued expenses	$ 1,784	$ 1,959

8.LOAN PAYABLE

In October 2012, the Company entered into a loan agreement with the Massachusetts Development Finance Agency ("MassDev"). The loan agreement provided the Company with a $2.0 million line of credit from the Commonwealth of Massachusetts' Emerging Technology Fund, with $200,000 designated to be used for working capital purposes and the remainder to be used for the purchase of capital equipment. The annual interest rate on the loan is fixed at 6.5% with interest-only payments for the first thirty months, commencing on November 1, 2012, and then equal installments of interest and principal over the next fifty-four months, until the final maturity of the loan on October 5, 2019. Commencing on May 1, 2015, equal monthly payments of $41,000 are due until loan maturity. For the remainder of the year ending December 31, 2017, $108,000 will be due. For the years ending December 31, 2018 and 2019, $452,000 and $400,000, respectively, will be due. In October 2012, as part of the agreement, the Company issued MassDev a warrant for the purchase of 9,037 shares of the Company's common stock. The warrant has a seven-year term and is exercisable at $6.64 per share. The fair value of the warrant was determined to be $32,000 and is being amortized through interest expense over the life of the note. Amortization expense was $1,000 in each of the three-month periods ended September 30, 2017 and 2016, and $3,000 in each of the nine-month periods ended September 30, 2017 and 2016. This amortization expense was included in interest expense in the Company's consolidated statements of operations. The equipment line of credit is secured by substantially all the assets of the Company, excluding intellectual property. Interest expense related to this loan for the three-month periods ended September 30, 2017 and 2016 was $17,000 and $24,000, respectively. Interest expense related to this loan for the nine-month periods ended September 30, 2017 and 2016 was $56,000 and $76,000, respectively.

9.COMMON STOCK

The Company has authorized 100,000,000 shares of common stock, $0.00001 par value per share, of which 34,234,580 shares were issued and outstanding as of September 30, 2017 and 32,044,087 shares were issued and outstanding as of December 31, 2016.

During the nine-month period ended September 30, 2017, the Company issued an aggregate of 89,387 shares of common stock upon the exercise of stock options and received cash proceeds from such exercises of $26,000.

During the nine-month period ended September 30, 2017, the Company issued an aggregate of 61,587 shares of common stock with a fair value of $154,000 to the Company's 401(k) plan as a matching contribution.

During the nine-month period ended September 30, 2017, the Company issued an aggregate of 17,750 shares of common stock under the Company's Employee Stock Purchase Plan (the "ESPP") and received cash proceeds of approximately $51,000.

During the year ended December 31, 2016, the Company issued an aggregate of 135,205 shares of common stock upon the exercise of stock options and received cash proceeds from such exercises of $191,000.

During the year ended December 31, 2016, the Company issued an aggregate of 4,979 shares of common stock upon the cashless exercise of warrants.

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During the year ended December 31, 2016, the Company issued an aggregate of 37,528 shares of common stock with a fair value of $208,000 to the Company's 401(k) plan as a matching contribution.

During the year ended December 31, 2016, the Company issued an aggregate of 16,729 shares of common stock under the ESPP and received cash proceeds of $91,000.

In March 2016, the Company closed an underwritten public offering of an aggregate of 4,293,333 shares of common stock and warrants to purchase an aggregate of 2,146,666 shares of common stock at a price to the public of $7.49 per share of common stock and $0.01 per warrant. The net proceeds to the Company, after deducting underwriting discounts and offering expenses, were approximately $29.9 million. The warrants have a per share exercise price of $10.00, or approximately 133% of the public offering price of the common stock, are exercisable immediately, and expire on March 18, 2021. The warrants contain a cashless exercise feature whereby shares are withheld to cover the exercise cost and the warrant holder receives a net issuance of the remaining shares. The Company is utilizing the net proceeds from the offering to fund ongoing clinical trials and for general corporate purposes.

10.STOCK-BASED COMPENSATION

In 2007, the Company's Board of Directors adopted, and the Company's shareholders subsequently approved, the 2007 Employee, Director and Consultant Stock Plan (the "2007 Plan"). Pursuant to the 2007 Plan, the Company's Board of Directors (or committees and/or executive officers delegated by the Board of Directors) may grant incentive and nonqualified stock options to the Company's employees, officers, directors, consultants and advisors.

On October 26, 2010, the Company's Board of Directors adopted, and the Company's shareholders subsequently approved, the 2010 Equity Incentive Plan (as subsequently amended, the "2010 Plan"). The 2010 Plan provided for grants of incentive stock options to employees, and nonqualified stock options and restricted common stock to employees, consultants, and non-employee directors of the Company.

In April 2015, the Company's Board of Directors adopted, and the Company's shareholders subsequently approved, the 2015 Equity Incentive Plan (the "2015 Plan"). The 2015 Plan provides for grants of incentive stock options to employees, and nonqualified stock options, restricted common stock, restricted stock units, and stock appreciation rights to employees, consultants, and non-employee directors of the Company.

As of September 30, 2017, the total number of shares authorized for issuance under the 2015 Plan was 4,322,355 shares, consisting of 4,000,000 initially approved under the 2015 Plan shares plus the 322,355 shares that remained available for grant under the 2010 Plan at the time of its termination. Upon approval of the 2015 Plan by the Company's shareholders on June 16, 2015, the 2010 Plan was terminated and no additional shares or share awards have been subsequently granted under the 2010 Plan.

Options issued under the 2007 Plan, 2010 Plan, and 2015 Plan (collectively, the "Plans") are exercisable for up to 10 years from the date of issuance.

As of September 30, 2017, there were outstanding options to purchase an aggregate of 2,256,351, 1,670,171 and 46,476 shares under the 2015 Plan, 2010 Plan, and 2007 Plan, respectively. As of December 31, 2016, there were outstanding options to purchase an aggregate of 1,222,085, 1,821,487 and 150,207 shares under the 2015 Plan, 2010 Plan, and 2007 Plan, respectively.

In March 2015, the Company's Board of Directors adopted, and the Company's shareholders subsequently approved, the ESPP. The ESPP allows employees to buy company stock twice per year through after-tax payroll deductions at a discount from market. The Company's Board of Directors initially authorized 187,500 shares for issuance under the ESPP. Commencing on the first day of the year ended December 31, 2016 and on the first day of each year thereafter during the term of the ESPP, the number of shares of common stock reserved for issuance shall be increased by the lesser of (i) 1% of the Company's outstanding shares of common stock on such date, (ii) 50,000 shares, or (iii) a lesser amount determined by the Board of Directors. Under the terms of the ESPP, in no event shall the aggregate number of shares reserved for issuance during the term of the ESPP exceed 1,250,000

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shares. As of September 30, 2017 and December 31, 2016, there were 253,021 and 220,771 shares reserved for issuance under the ESPP, respectively.

In January 2017, 7,986 shares that were purchased in the offering period commencing on July 1, 2016 and ending on Decemer 31, 2016 were issued under the ESPP. In July 2017, 9,764 shares that were purchased in the offering period commencing on January 1, 2017 and ending on June 30, 2017 were issued under the ESPP. The ESPP is considered a compensatory plan with the related compensation cost recognized over each six-month offering period. The compensation expense related to the ESPP for the three-month periods ended September 30, 2017 and 2016 was $3,000 and $12,000, respectively, and is included in share-based compensation expense. The share-based compensation expense related to the ESPP for the nine-month periods ended September 30, 2017 and 2016 was $16,000 and $39,000.

Share-based compensation

For the three-month periods ended September 30, 2017 and 2016, the Company recorded stock-based compensation expense of $1.0 million and $1.2 million, respectively, inclusive of the expense related to the ESPP. For the nine-month periods ended September 30, 2017 and 2016, the Company recorded stock-based compensation expense of $3.6 million and $3.6 million, respectively, inclusive of the expense related to the ESPP. Stock-based compensation expense for the three-month and nine-month periods ended September 30, 2017 includes $24,000 of expense related to a stock option modification.

The Company granted 325,000 stock options to a non-employee consultant on July 5, 2017. The Company accounts for stock-based awards to non-employees in accordance with ASC Topic 505-50, Equity-Based Payments to Non-Employees (“ASC 505-50”). Stock-based awards to non-employees are remeasured at each reporting date until the options vest and expense is recognized on a straight-line basis as the services are being provided. The Company believes that the fair value of these awards is more reliably measurable than the fair value of the services rendered. The aggregate grant date fair value for the options granted on July 5, 2017 totaled approximately $764,000. The option award has a requisite service period of four years whereby the award vests 25% on the first anniversary of service, then ratably each month for the remaining 36 months, subject to continuous service by the individual. As of September 30, 2017, 325,000 options remained unvested. The fair value of the unvested options as of September 30, 2017 was estimated using a Black-Scholes model with the following assumptions: expected volatility of 108.5%, risk free interest rate of 2.3%, expected life of 9.8 years, and no dividends. Stock-based compensation expense for the three-month and nine-month periods ended September 30, 2017 includes $25,000 of expense related to the non-employee stock option grant, as a result of mark to market adjustments related to the non-employee. The stock options contain a termination clause whereby accelerated vesting occurs for 25% of the stock options if the Company does not hire the consultant as an employee on or before January 5, 2018.

As discussed in Note 1, the Company adopted ASU 2016-09 on January 1, 2017. Prior to the adoption of this standard, the Company recognized share-based compensation, net of estimated forfeitures, over the vesting period of

the grant. Upon adoption of ASU 2016-09, the Company elected to change its accounting policy to recognize forfeitures as they occur. The Company continues to recognize share-based compensation expense over the vesting period of the grant. The new forfeiture policy election was adopted using a modified retrospective approach with a cumulative effect adjustment of $155,000 recorded to accumulated deficit on the balance sheet as of January 1, 2017.

The Company estimates the fair value of each option award on the date of grant using the Black-Scholes option pricing model. The expected term of options granted under the Plans, all of which qualify as “plain vanilla,” is based on the average of the contractual term (10 years) and the vesting period (generally, 48 months). For non-employee options, the expected term is the contractual term. The risk-free rate is based on the yield of a U.S. Treasury security with a term consistent with the option.

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Stock options

A summary of option activity as of September 30, 2017 and changes for the nine-month period then ended are presented below:

Options	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Aggregate Intrinsic Value
Outstanding at December 31, 2016	3,193,785	$ 7.52		
Granted	1,439,463	$ 3.94		
Forfeited	(570,863)	$ 6.54		
Exercised	(89,387)	$ 0.29		