MusclePharm Corp
Form 10-Q
August 14, 2017

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

[X]
QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended: June 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: 000-53166

MusclePharm Corporation
(Exact name of registrant as specified in its charter)

Nevada	77-0664193
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
4721 Ironton Street, Building A Denver, Colorado	80239
(Address of principal executive offices)	(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 [X]

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 [X] No [ ]

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

Large accelerated filer	[ ]	Accelerated filer	[ ]
Non-accelerated filer	[ ] (Do not check if a smaller reporting company)	Smaller reporting company	[X]
		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 [X]

Number of shares of the registrant's common stock outstanding as of August 1, 2017: 14,481,771, excluding 875,621 shares of common stock held in treasury.

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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 t 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 15, 2017, as amended on May 1, 2017. 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)

	June 30, 2017	December 31, 2016
	(Unaudited)	
ASSETS		
Current assets:		
Cash	$3,553	$4,943
Accounts receivable, net of allowance for doubtful accounts of $631 and $462, respectively	13,408	13,353
Inventory	6,133	8,568
Prepaid giveaways	135	205
Prepaid expenses and other current assets	2,403	1,725
Total current assets	25,632	28,794
Property and equipment, net	2,498	3,243
Intangible assets, net	1,478	1,638
Other assets	146	421
TOTAL ASSETS	$29,754	$34,096
LIABILITIES AND STOCKHOLDERS’ DEFICIT		
Current liabilities:		
Accounts payable	$9,134	$9,625
Accrued liabilities	8,115	9,051
Accrued restructuring charges, current	588	614
Obligation under secured borrowing arrangement	3,147	2,681
Convertible notes with a related party, net of discount	16,772	16,465
Total current liabilities	37,756	38,436
Accrued restructuring charges, long-term	161	208
Other long-term liabilities	1,851	332
Total liabilities	39,768	38,976
Commitments and contingencies (Note 9)		
Stockholders' deficit:		
Common stock, par value of $0.001 per share; 100,000,000 shares authorized as of June 30, 2017 and December 31, 2016; 15,357,392 and 14,987,230 shares issued as of June 30, 2017 and December 31, 2016, respectively; 14,481,771 and 14,111,609 shares outstanding as of June 30, 2017 and December 31, 2016, respectively	14	14
Additional paid-in capital	157,448	156,301
Treasury stock, at cost; 875,621 shares as of June 30, 2017 and December 31, 2016	(10,039)	(10,039)

Accumulated other comprehensive loss	(145)	(162)
Accumulated deficit	(157,292)	(150,994)
TOTAL STOCKHOLDERS' DEFICIT	(10,014)	(4,880)
TOTAL LIABILITIES AND STOCKHOLDERS' DEFICIT	$29,754	$34,096

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 June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Revenue, net	$26,192	$32,867	$52,201	$75,779
Cost of revenue (1)	18,576	22,181	38,115	49,880
Gross profit	7,616	10,686	14,086	25,899
Operating expenses:				
Advertising and promotion	2,240	2,686	4,128	6,973
Salaries and benefits	2,620	3,292	5,889	12,912
Selling, general and administrative	2,829	4,424	5,715	8,667
Research and development	152	531	289	1,394
Professional fees	727	1,742	1,609	3,130
Restructuring and other charges	—	(4,820)	—	(4,246)
Settlement of obligation	1,453	—	1,453	—
Impairment of assets	—	4,313	—	4,313
Total operating expenses	10,021	12,168	19,083	33,143
Loss from operations	(2,405)	(1,482)	(4,997)	(7,244)
Gain on settlement of accounts payable	22	—	471	—
Loss on sale of subsidiary	—	(2,115)	—	(2,115)
Other expense, net (Note 7)	(690)	(592)	(1,668)	(1,304)
Loss before provision for income taxes	(3,073)	(4,189)	(6,194)	(10,663)
Provision for income taxes	76	7	104	138
Net loss	$(3,149)	$(4,196)	$(6,298)	$(10,801)
Net loss per share, basic and diluted	$(0.23)	$(0.30)	$(0.46)	$(0.78)
Weighted average shares used to compute net loss per share, basic and diluted	13,845,301	13,874,209	13,809,603	13,855,754

(1)
Cost of revenue for the three and six months ended June 30, 2016 included restructuring charges of $0.5 million and $2.2 million, respectively, related to write-down of inventory for discontinued products.

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Net loss	$(3,149)	$(4,196)	$(6,298)	$(10,801)
Other comprehensive loss:				
Change in foreign currency translation adjustment	11	11	17	6
Comprehensive loss	$(3,138)	$(4,185)	$(6,281)	$(10,795)

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

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

	Common Stock		Additional Paid-in	Treasury	Accumulated Other Comprehensive	Accumulated	Total Stockholders'
	Shares	Amount	Capital	Stock	Loss	Deficit	Deficit
Balance—December 31, 2016	14,111,609	$14	$156,301	$(10,039)	$(162)	$(150,994)	$(4,880)
Stock-based compensation related to issuance and amortization of restricted stock awards to employees, executives and directors	370,162	—	1,064	—	—	—	1,064
Stock-based compensation related to issuance of stock options to an executive and a director	—	—	83	—	—	—	83
Change in foreign currency translation adjustment	—	—	—	—	17	—	17
Net loss	—	—	—	—	—	(6,298)	(6,298)
Balance—June 30, 2017	14,481,771	$14	$157,448	$(10,039)	$(145)	$(157,292)	$(10,014)

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

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

	Six Months Ended June 30,	
	2017	2016
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$(6,298)	$(10,801)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	790	1,232
Gain on settlement of accounts payable	(471)	—
Loss on sale of subsidiary	—	2,115
Impairment of assets	—	4,313
Inventory write down related to restructuring	—	2,169
Non-cash restructuring and other charges (reversals)	—	(4,607)
Amortization of prepaid stock compensation	—	938
Amortization of prepaid sponsorship and endorsement fees	—	844
Stock-based compensation	1,148	5,097
Other	819	156
Changes in operating assets and liabilities:		
Accounts receivable	(120)	952
Inventory	2,465	1,359
Prepaid giveaways	70	196
Prepaid expenses and other current assets	(677)	(260)
Other assets	—	(55)
Accounts payable and accrued liabilities	530	(1,173)
Accrued restructuring charges	(73)	(3,161)
Net cash used in operating activities	(1,817)	(686)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	—	(378)
Proceeds from sale of subsidiary	—	5,942
Proceeds from disposal of property and equipment	—	40
Trademark registrations	—	(154)
Net cash provided by investing activities	—	5,450
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from secured borrowing arrangement, net of reserves	12,116	38,041
Payments on secured borrowing arrangement, net of fees	(11,650)	(30,791)
Payments on line of credit	—	(3,000)
Repayments of term loan	—	(2,949)
Repayment of capital lease and other obligations	(63)	(81)
Net cash provided by financing activities	403	1,220
Effect of exchange rate changes on cash	24	(13)

NET CHANGE IN CASH	(1,390)	5,971
CASH — BEGINNING OF PERIOD	4,943	7,081
CASH — END OF PERIOD	$3,553	$13,052
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Cash paid for interest	$1,086	$926
Cash paid for taxes	$62	$113
SUPPLEMENTAL DISCLOSURE OF NON-CASH ACTIVITIES:		
Property and equipment acquired in conjunction with capital leases	$12	$24
Shares of common stock issued for BioZone disposition	$—	$640
Purchase of property and equipment included in current liabilities	$—	$40

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 June 30, 2017, 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.

Management's Plans with Respect to Liquidity and Capital Resources

Management believes the restructuring plan completed during 2016, the continued reduction in ongoing operating costs and expense controls, and our recently implemented growth strategy, will enable the Company to ultimately be profitable. Management believes it has reduced its operating expenses sufficiently so that its ongoing source of revenue will be sufficient to cover its expenses for the next twelve months, which management believes will allow the Company to continue as a going concern. The Company can give no assurances that this will occur.

As of June 30, 2017, the Company had an accumulated deficit of $157.3 million and recurring losses from operations. To manage cash flow, in January 2016, the Company entered into a secured borrowing arrangement, pursuant to which it has the ability to borrow up to $10.0 million subject to sufficient amounts of accounts receivable to secure the loan. This arrangement was extended on October 25, 2016 and then again on March 22, 2017 each time for an additional six months with similar terms. Under this arrangement, during the six months ended June 30, 2017, the Company received $12.1 million in cash and subsequently repaid $11.8 million, including fees and interest, on or prior to June 30, 2017.

As of June 30, 2017, the Company had approximately $3.6 million in cash and a $12.1 million working capital deficit. This working capital deficit is primarily driven by the short-term classification of approximately $16.8 million in convertible notes due to a related party.

The accompanying Condensed Consolidated Financial Statements as of and for the six months ended June 30, 2017 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's ability to meet its total liabilities of $39.8 million as of June 30, 2017, and to continue as a going concern, is partially dependent on meeting our operating plans, and partially dependent on our Chairman of the Board, Chief Executive Officer and President, Ryan Drexler, either converting or extending his two fixed maturity notes prior to or upon their maturity. Mr. Drexler has verbally conveyed his intentions of doing so and management believes that this alone would enable the Company to meet its obligations over the next twelve months. In addition, Mr. Drexler has verbally both stated his intent and ability to put more capital into the business if necessary. However, Mr. Drexler is under no obligation to the Company to do so, and we can give no assurances that Mr. Drexler will be willing or able to do so at a future date and/or that he will not demand payment of the convertible notes at the maturity date.

The Company’s ability to continue as a going concern and raise capital for specific strategic initiatives is also dependent on 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 or at all.

If the Company is unable to obtain adequate capital or Mr. Drexler does not extend or convert his fixed maturity notes, it could be forced to cease operations or substantially curtail its commercial activities. These conditions, or significant unforeseen expenditures including the unfavorable settlement of its legal disputes, could 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 unaudited 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 June 30, 2017, results of operations for the three and six months ended June 30, 2017 and 2016, and cash flows for the six months ended June 30, 2017 and 2016. The results of operations for the three and six months ended June 30, 2017 are not necessarily indicative of the results to be expected for the year ending December 31, 2017.

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, 2016, filed with the SEC on March 15, 2017.

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, typically upon shipment of products to customers.

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.

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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 six months ended June 30, 2017 and 2016, 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 months ended June 30, 2017 and 2016, the Company recorded discounts, and to a lesser degree, sales returns, totaling $4.3 million and $8.9 million, respectively, which accounted for 14% and 21% of gross revenue in each period, respectively. During the six months ended June 30, 2017 and 2016, the Company recorded discounts, and to a lesser degree, sales returns, totaling $12.3 million and $17.1 million, respectively, which accounted for 19% and 18% of gross revenue in each period, respectively.

Concentrations

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and accounts receivable. The Company minimizes its credit risk associated with cash by periodically evaluating the credit quality of its primary financial institution. The cash balance at times may exceed federally insured limits. Management believes the financial risk associated with these balances is minimal and has not experienced any losses to date.

Significant customers are those which represent more than 10% of the Company’s net revenue for each period presented. For each significant customer, revenue as a percentage of total revenue is as follows:

	Percentage of Net Revenue for the Three Months Ended June 30,		Percentage of Net Revenue for the Six Months Ended June 30,	
	2017	2016	2017	2016
Customers				
Costco Wholesale Corporation	17%	25%	26%	20%
Amazon	12%	*	*	*

GNC Holdings Inc.	*	10%	*	11%
Bodybuilding.com	*	*	*	10%

* Represents less than 10% of net revenue.

Share-Based Payments and Stock-Based Compensation

Share-based compensation awards, including stock options and restricted stock awards, are recorded at estimated fair value on the applicable award's grant date, based on estimated number of awards that are expected to vest. The grant date fair value is amortized on a straight-line basis over the time in which the awards are expected to vest, or immediately if no vesting is required. Share-based compensation awards issued to non-employees for services are recorded at either the fair value of the services rendered or the fair value of the share-based payments whichever is more readily determinable. The fair value of restricted stock awards is based on the fair value of the stock underlying the awards on the grant date as there is no exercise price.

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The fair value of stock options is estimated 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. Due to the Company's limited experience with the expected term of options, the simplified method was utilized in determining the expected option term as prescribed in Staff Accounting Bulletin No. 110. 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 Accounting Standards Update ("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 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 plans to adopt this guidance under the modified retrospective approach. We are monitoring the evolving interpretations and implementations guidance. Based on our preliminary assessment, we do not expect the new standard to have a material impact on the Company's financial position or results of operations.

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) ("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. We are monitoring the evolving interpretations and implementations guidance. Based on our preliminary assessment, we do not expect the new standard to have a material impact on the Company's financial position or results of operations.

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 was effective for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years, with early adoption permitted. The adoption of this guidance did not have a significant impact on the Condensed Consolidated Financial Statements.

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 or 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 was effective for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years. The adoption of this guidance did not have a significant impact on our Condensed Consolidated Financial Statements.

Note 3. Fair Value of Financial Instruments

Management believes the fair values of the obligations under the secured borrowing arrangement and the convertible notes with a related party approximate carrying value because the debt carries market rates of interest available to the Company, 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. As of June 30, 2017 and December 31, 2016, the Company held no assets or liabilities that required re-measurement at fair value on a recurring basis.

Note 4. 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 for the three and six months ended June 30, 2016. 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 three and six months ended June 30, 2016 was $0.5 million and $1.5 million, respectively. The potential earn-out was not achieved in May 2017.

Purchase Commitment

Upon the completion of the sale of BioZone, the Company entered into a manufacturing and supply agreement whereby the Company is required to purchase a minimum of approximately $2.5 million of products per year from BioZone annually for an initial term of three years. If the minimum order quantities of specific products are not met, a $3.0 million minimum purchase of other products must be met in order to waive the shortfall, which is at 25% of the realized shortfall. Due to the timing of achieving the minimum purchase quantities, we are below these targets. As a result, we have reserved an amount to cover the estimated purchase commitment shortfall during the three and six months ended June 30, 2017.

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	$(2,115)

Note 5. 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 third quarter of 2016. The Company closed certain facilities, reduced headcount, discontinued products and renegotiated certain contracts. For the three months ended June 30, 2016, the Company recorded a credit in restructuring and other charges of $4.8 million comprised of the release of restructuring accrual of $7.0 million, offset by the cash payment of $2.2 million related to a settlement agreement. For the six months ended June 30, 2016, this credit was offset by additional restructuring expenses resulting in a net credit of $4.2 million.

For the three and six months ended June 30, 2016, the Company recorded restructuring charges in "Cost of revenue" of $0.5 million and $2.2 million, respectively, related to the write-down of inventory identified for discontinued products in the restructuring plan.

The following table illustrates the provision of the restructuring charges and the accrued restructuring charges balance as of June 30, 2017 (in thousands):

	Contract Termination Costs	Purchase Commitment of Discontinued Inventories Not Yet Received	Abandoned Lease Facilities	Total
Balance as of December 31, 2016	$308	$175	$339	$822
Expensed	—	—	—	—
Cash payments	—	—	(73)	(73)
Balance as of June 30, 2017	$308	$175	$266	$749

The total future payments under the restructuring plan as of June 30, 2017 are as follows (in thousands):

	For the Year Ending December 31,					
Outstanding Payments	Remainder of 2017	2018	2019	2020	2021	Total
Contract termination costs	$308	$—	$—	$—	$—	$308
Purchase commitment of discontinued inventories not yet received	175	—	—	—	—	175
Abandoned leased facilities	58	92	91	25	—	266
Total future payments	$541	$92	$91	$25	$—	$749

Note 6. Balance Sheet Components

Inventory

Inventory consisted of the following as of June 30, 2017 and December 31, 2016 (in thousands):

	As of June 30, 2017	As of December 31, 2016
Finished goods	$6,133	$8,568
Inventory	$6,133	$8,568

The Company records charges for obsolete and slow moving inventory based on the age of the product as determined by the expiration date and when conditions indicate by specific identification. 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 six months ended June 30, 2017 and 2016. Inventory write-downs, once established, are not reversed as they establish a new cost basis for the inventory.

As disclosed further in Note 5, the Company executed a restructuring plan in August 2015 and wrote off inventory related to discontinued products. For the three and six months ended June 30, 2016, discontinued inventory of $0.5 million and $2.2 million, respectively, was written off and included as a component of “Cost of revenue” in the accompanying Condensed Consolidated Statements of Operations. Additionally, $0.4 million of inventory related to the Arnold Schwarzenegger product line was considered impaired, and included as a component of “Impairment of assets” in the accompanying Condensed Consolidated Statements of Operations for the three and six months ended June 30, 2016.

Property and Equipment

Property and equipment consisted of the following as of June 30, 2017 and December 31, 2016 (in thousands):

	As of	As of

	June 30, 2017	December 31, 2016
Furniture, fixtures and equipment	$3,598	$3,521
Leasehold improvements	2,504	2,504
Manufacturing and lab equipment	3	3
Vehicles	86	334
Displays	484	483
Website	462	462
Construction in process	—	55
Property and equipment, gross	7,137	7,362
Less: accumulated depreciation and amortization	(4,639)	(4,119)
Property and equipment, net	$2,498	$3,243

Depreciation and amortization expense related to property and equipment was $0.3 million and $0.4 million for the three months ended June 30, 2017 and 2016, respectively, and $0.6 million and $0.8 million for the six months ended June 30, 2017 and 2016, respectively, which is included in “Selling, general and administrative” expense in the accompanying Condensed Consolidated Statements of Operations.

Intangible Assets

Intangible assets consisted of the following (in thousands):

	As of June 30, 2017			
	Gross Value	AccumulatedAmortization	NetCarryingValue	Remaining Weighted-AverageUseful Lives(years)
Amortized Intangible Assets				
Brand	$2,244	$(766)	$1,478	4.6
Total intangible assets	$2,244	$(766		