Sorrento Therapeutics, Inc.
Form 10-Q
November 09, 2018

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, 2018
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 001-36150

SORRENTO THERAPEUTICS, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	33-0344842
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification Number)

4955 Directors Place
San Diego, California 92121
(Address of Principal Executive Offices)
(858) 203-4100
(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 every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated file, 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	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 .

The number of shares of the issuer's common stock, par value $0.0001 per share, outstanding as of November 6, 2018 was 122,273,467.

Sorrento Therapeutics, Inc.
Form 10-Q for the Quarter Ended September 30, 2018
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PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements.

SORRENTO THERAPEUTICS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)
(In thousands, except for share amounts)

	September 30, 2018	December 31, 2017
ASSETS		
Current assets:		
Cash and cash equivalents	$135,441	$20,429
Marketable securities	297	441
Grants and accounts receivables, net	2,278	2,211
Income tax receivable	424	1,715
Prepaid expenses and other	6,805	4,904
Total current assets	145,245	29,700
Property and equipment, net	21,467	19,345
Intangibles, net	69,133	71,013
Goodwill	38,298	38,298
Cost method investments	237,008	237,008
Equity method investments	29,073	32,999
Restricted cash	45,000	—
Other, net	2,740	3,250
Total assets	$587,964	$431,613
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$17,203	$9,911
Accrued payroll and related benefits	8,168	4,485
Accrued expenses	12,938	7,274
Current portion of deferred revenue	632	3,864
Current portion of deferred rent	309	212
Acquisition consideration payable	14,929	53,209
Current portion of debt	28,231	—
Total current liabilities	82,410	78,955
Long-term debt	145,535	5,211
Deferred tax liabilities	12,472	15,535
Deferred revenue	118,127	119,287
Deferred rent and other	5,860	6,015
Total liabilities	364,404	225,003
Commitments and contingencies (See Note 14)		
Equity:		
Sorrento Therapeutics, Inc. equity		
Preferred stock, $0.0001 par value; 100,000,000 shares authorized and no shares issued or outstanding	—	—
	13	9

Common stock, $0.0001 par value; 750,000,000 shares authorized and 118,867,459 and 82,903,567 shares issued and outstanding at September 30, 2018 and December 31, 2017, respectively		
Additional paid-in capital	588,938	413,901
Accumulated other comprehensive income (loss)	79	242
Accumulated deficit	(317,974)	(165,120)
Treasury stock, 7,568,182 shares at cost at September 30, 2018, and December 31, 2017	(49,464)	(49,464)
Total Sorrento Therapeutics, Inc. stockholders' equity	221,592	199,568
Noncontrolling interests	1,968	7,042
Total equity	223,560	206,610
Total liabilities and stockholders' equity	$587,964	$431,613

See accompanying unaudited notes

SORRENTO THERAPEUTICS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Revenues:				
Grant	$294	$11	$294	$206
Royalty and license	120	118,667	360	123,500
Sales and services	3,691	3,232	13,610	7,743
Total revenues	4,105	121,910	14,264	131,449
Operating costs and expenses:				
Costs of revenues	2,177	1,085	4,715	2,965
Research and development	19,567	16,604	52,124	42,667
Acquired in-process research and development	9,478	902	9,478	1,102
General and administrative	20,102	10,214	41,102	31,194
Intangible amortization	655	656	1,974	1,948
Loss (gain) on contingent liabilities and acquisition consideration payable	33	(4,468)	13,696	(8,558)
Total operating costs and expenses	52,012	24,993	123,089	71,318
Income (loss) from operations	(47,907)	96,917	(108,825)	60,131
Income (loss) on trading securities	(26)	231	(144)	(218)
Gain (loss) on foreign currency exchange	18	(215)	(551)	(215)
Interest expense	(2,684)	(1,208)	(48,744)	(4,017)
Interest income	219	(265)	229	192
Income (loss) before income tax	(50,380)	95,460	(158,035)	55,873
Income tax expense (benefit)	(826)	57,480	(3,152)	54,386
Loss on equity method investments	(900)	(36,527)	(3,926)	(38,577)
Net income (loss)	(50,454)	1,453	(158,809)	(37,090)
Net income (loss) attributable to noncontrolling interests	(3,126)	3,514	(5,045)	2,223
Net loss attributable to Sorrento	$(47,328)	$(2,061)	$(153,764)	$(39,313)
Net loss per share - basic per share attributable to Sorrento	$(0.40)	$(0.03)	$(1.52)	$(0.59)
Net loss per share - diluted per share attributable to Sorrento	$(0.40)	$(0.03)	$(1.52)	$(0.59)
Weighted-average shares used during period - basic per share attributable to Sorrento	117,021	76,887	100,959	66,122
Weighted-average shares used during period - diluted per share attributable to Sorrento	117,021	76,888	100,959	66,122

See accompanying unaudited notes

SORRENTO THERAPEUTICS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Unaudited)
(In thousands)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Net income (loss)	$(50,454)	$1,453	$(158,809)	$(37,090)
Other comprehensive income (loss):				
Foreign currency translation adjustments	(74)	(95)	(163)	241
Total other comprehensive income (loss)	(74)	(95)	(163)	241
Comprehensive income (loss)	(50,528)	1,358	(158,972)	(36,849)
Comprehensive income (loss) attributable to noncontrolling interests	(3,126)	3,514	(5,045)	2,223
Comprehensive loss attributable to Sorrento	$(47,402)	$(2,156)	$(153,927)	$(39,072)

See accompanying unaudited notes

SORRENTO THERAPEUTICS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited)
(In thousands, except for share amounts)

	Nine Months Ended September 30, 2018								
	Common Stock		Treasury Stock						
	Shares	Amount	Shares	Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Noncontrolling Interest	Total
Balance, December 31, 2017	82,903,567	$ 9	7,568,182	(49,464)	$413,901	$ 242	$(165,120)	$ 7,042	$206,610
Adoption impact of ASC 606	—	—	—	—	—	—	910	—	910
Issuance of common stock upon exercise of stock options	42,565	—	—	—	302	—	—	—	302
Issuance of common stock for BDL settlement	309,916	—	—	—	2,340	—	—	—	2,340
Issuance of common stock for Scilex settlement	1,381,346	—	—	—	13,744	—	—	—	13,744
Issuance of common stock for public placement, net	10,396,489	2	—	—	71,475	—	—	—	71,477
Issuance of common stock for Virttu settlement	1,795,011	—	—	—	11,308	—	—	—	11,308
Issuance of common stock related to conversion of notes payable	22,038,565	2	—	—	49,998	—	—	—	50,000
Beneficial conversion feature recorded on convertible notes	—	—	—	—	12,006	—	—	—	12,006
Warrants issued in connection with convertible notes	—	—	—	—	9,646	—	—	—	9,646
Stock-based compensation	—	—	—	—	4,218	—	—	(29)	4,189
Foreign currency translation	—	—	—	—	—	(163)	—	—	(163)

adjustment									
Net loss	—	—	—	—	—	—	(153,764)	(5,045)	(158,809)
Balance, September 30, 2018	118,867,459	$ 13	7,568,182	(49,464)	$588,938	$ 79	$(317,974)	$ 1,968	$223,560

Three Months Ended September 30, 2018

	Common Stock		Treasury Stock					
	Shares	Amount	Shares	Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Noncontrolling Interest	Total
Balance, June 30, 2018	116,240,963	12	7,568,182	(49,464)	574,316	153	(270,646)	5,094	259,465
Issuance of common stock upon exercise of stock options	16,750	—	—	—	141	—	—	—	141
Issuance of common stock for public placement, net	2,609,746	1	—	—	13,204	—	—	—	13,205
Stock-based compensation	—	—	—	—	1,277	—	—	—	1,277
Foreign currency translation adjustment	—	—	—	—	—	(74)	—	—	(74)
Net income (loss)	—	—	—	—	—	—	(47,328)	(3,126)	(50,454)
Balance, September 30, 2018	118,867,459	13	7,568,182	(49,464)	588,938	79	(317,974)	1,968	223,560

Nine Months Ended September 30, 2017

	Common Stock		Treasury Stock			Accumulated Other Comprehensive Income (Loss)			
	Shares	Amount	Shares	Amount	Additional Paid-in Capital		Accumulated Deficit	Noncontrolling Interest	Total
Balance, December 31, 2016	50,882,856	$ 6	7,568,182	(49,464)	$303,865	$ (118)	$(174,252)	$ 6,465	$86,502
Scilex acquisition adjustments	—	—	—	—	(627)	—	—	(1,400)	(2,027)
Issuance of common stock for public placement and investments, net	26,082,325	3	—	—	47,641	—	—	—	47,644
Issuance of common stock for private placement and investments, net	4,246	—	—	—	30	—	—	—	30
Stock-based compensation	—	—	—	—	3,936	—	—	—	3,936
Foreign currency translation adjustment	—	—	—	—	—	241	—	—	241
Issuance of common stock for business combinations, net	1,552,011	—	—	—	3,053	—	—	—	3,053
Net income (loss)	—	—	—	—	—	—	(39,313)	2,223	(37,090)
Balance, September 30, 2017	78,521,438	$ 9	7,568,182	(49,464)	$357,898	$ 123	$(213,565)	$ 7,288	$102,289

Three Months Ended September 30, 2017

	Common Stock		Treasury Stock			Accumulated Other Comprehensive Income (Loss)			
	Shares	Amount	Shares	Amount	Additional Paid-in Capital		Accumulated Deficit	Noncontrolling Interest	Total
Balance, June 30, 2017	76,540,055	9	7,568,182	(49,464)	353,162	218	(211,503)	3,774	96,196
Issuance of common stock for public placement and investments, net	1,226,453	—	—	—	2,045	—	—	—	2,045
Stock-based compensation	—	—	—	—	1,310	—	—	—	1,310
	—	—	—	—	—	(95)	—	—	(95)

Foreign currency translation adjustment									
Issuance of common stock for business combinations, net	754,930	—	—	—	1,381	—	—	—	1,381
Net income (loss)	—	—	—	—	—	—	(2,062)	3,514	1,453
Balance, September 30, 2017	78,521,438	9	7,568,182	(49,464)	357,898	123	(213,565)	7,288	102,289

See accompanying unaudited notes

SORRENTO THERAPEUTICS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited) (In thousands)

	Nine Months Ended September 30,	
	2018	2017
Operating activities		
Net loss	$ (158,809)	$ (37,090)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	6,192	5,271
Non-cash interest expense	44,272	920
Loss on trading securities	144	218
Acquired in process research and development	9,478	—
Amortization of debt issuance costs and debt discount	2,634	455
Stock-based compensation	4,188	3,936
Loss on equity method investments	3,926	38,577
Non-cash income on cost method investments	—	(116,249)
Loss (gain) on contingent liabilities and acquisition consideration payable	13,696	(8,558)
Deferred tax provision	(3,062)	54,445
Changes in operating assets and liabilities, excluding effect of acquisitions:		
Grants and other receivables	(67)	3
Accrued payroll	3,683	593
Prepaid expenses and other	(1,900)	886
Deposits and other assets	1,801	233
Accounts payable	7,233	4,572

Deferred revenue	(3,482)	(2,243)
Deferred rent and other	(359)	212
Acquisition consideration payable	(2,020)	—
Accrued expenses and other liabilities	5,663	(509)
Net cash used for operating activities	(66,789)	(54,328)
Investing activities		
Purchases of property and equipment	(5,748)	(9,371)
Purchase of assets related to Sofusa	(10,000)	—
Investment in Celularity	—	(5,000)
Purchase of business, net of cash acquired	—	(557)
Net cash used in investing activities	(15,748)	(14,928)
Financing activities		
Proceeds from bridge loan for Scilex regulatory milestone	20,000	—
Repayment of bridge loan for Scilex regulatory milestone	(20,000)	—
Repayment under the amended loan and security agreement	—	(21,500)
Proceeds from loan agreement	1,586	—
Payments under deferred compensation arrangements	—	(1,012)
Short-term bridge loan, net of issuance costs	19,675	—
Scilex consideration for regulatory milestone	(22,466)	—
Proceeds from issuance of common stock, net of issuance costs	71,481	47,674
Proceeds from issuance of Scilex notes	140,000	—
Scilex notes issuance costs	(5,725)	—

Proceeds from issuance of convertible notes	37,849		—	
Proceeds from exercise of stock options	303		—	
Net cash provided by financing activities	242,703		25,162	
Net change in cash, cash equivalents, and restricted cash	160,166		(44,094	)
Net effect of exchange rate changes on cash	(154	)	19	
Cash, cash equivalents, and restricted cash at beginning of period	20,429		82,398	
Cash, cash equivalents, and restricted cash at end of period	$ 180,441		$ 38,323	
Supplemental disclosures:				
Cash paid during the period for:				
Income taxes	$ 15		$ 34	

Interest paid	$1,453	$2,808
Supplemental disclosures of non-cash investing and financing activities:		
Virttu acquisition non-cash consideration	$11,308	$15,465
BDL non-cash consideration	$2,340	$—
Property and equipment costs incurred but not paid	$59	$130
Scilex non-cash consideration for regulatory milestone	$13,744	$1,380
Conversion of convertible notes	$50,000	$—
Reconciliation of cash, cash equivalents, and restricted cash within the Company's condensed consolidated balance sheets:		
Cash and cash equivalents	135,441	38,323
Restricted cash	45,000	—
Cash, cash equivalents, and restricted cash	180,441	38,323

See accompanying unaudited notes

SORRENTO THERAPEUTICS, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2018

1. Nature of Operations and Business Activities

Nature of Operations and Basis of Presentation

Sorrento Therapeutics, Inc. (Nasdaq: SRNE), together with its subsidiaries (collectively, the "Company"), is a clinical stage biotechnology company focused on delivering clinically meaningful therapies to patients and their families, globally. The Company's primary focus is to transform cancer into a treatable or chronically manageable disease. The Company also has programs assessing the use of its technologies and products in auto-immune, inflammatory, neurodegenerative, infectious diseases and pain indications with high unmet medical needs.

At its core, the Company is an antibody-centric company and leverages its proprietary G-MAB™ library to identify, screen and validate fully human antibodies against high impact oncogenic targets and mutations, immune modulators and intracellular targets. To date, the Company has screened over 100 validated targets and generated a number of fully human antibodies against these targets which are at various stages of preclinical development. These include PD-1, PD-L1, CD38, CD123, CD47, c-MET, VEGFR2, CCR2, OX40, TIGIT and CD137 among others.

The Company's vision is to leverage these antibodies in conjunction with proprietary targeted delivery modalities to generate the next generation of cancer therapeutics. These modalities include proprietary antibody drug conjugates ("ADCs"), bispecific approaches, as well as T-Cell Receptor ("TCR")-like antibodies. With LA Cell, Inc. ("LA Cell"), the Company's joint venture with City of Hope, the Company's objective is to become the global leader in the development of antibodies against intracellular targets such as STAT3, mutant KRAS, MYC, p53 and TAU. Additionally, the Company has acquired and is assessing the regulatory and strategic path forward for its portfolio of late stage biosimilar/biobetter antibodies based on Erbitux®, Remicade®, Xolair®, and Simulect® as these may represent nearer term commercial opportunities.

With each of its programs, the Company aims to tailor its therapies to treat specific stages in the evolution of cancer, from elimination, to equilibrium and escape. In addition, the Company's objective is to focus on tumors that are resistant to current treatments and where the Company can design focused trials based on a genetic signature or biomarker to ensure patients have the best chance of a durable and significant response. The Company has several immuno-oncology programs that are in or near to entering the clinic. These include cellular therapies, an oncolytic virus and a palliative care program targeted to treat intractable cancer pain. Finally, as part of its global aim to provide a wide range of therapeutic products to meet underserved therapeutic markets, the Company has made investments and developed a separate pain focused franchise, which the Company believes will serve to provide short term upside to its core thesis as well as investments in drug delivery technology aimed at increased efficacy for delivering injectable medicines.

Through September 30, 2018, the Company had devoted substantially all of its efforts to product development, raising capital and building infrastructure.

The accompanying condensed consolidated financial statements include the accounts of the Company's subsidiaries. For consolidated entities where the Company owns or is exposed to less than 100% of the economics, the Company records net income (loss) attributable to noncontrolling interests in its condensed consolidated statements of operations equal to the percentage of the economic or ownership interest retained in such entities by the respective noncontrolling parties. All intercompany balances and transactions have been eliminated in consolidation.

In the opinion of management, the unaudited financial information for the interim periods presented reflects all adjustments, which are only normal, recurring and necessary for a fair statement of financial position, results of operations and cash flows. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2017. Operating results for interim periods are not expected to be indicative of operating results for the Company's 2018 fiscal year, or any subsequent period.

2. Liquidity and Going Concern

The accompanying condensed consolidated financial statements have been prepared assuming that the Company will continue as a going concern which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The Company has historically operated with working capital deficiencies and expects to operate in the future with working capital deficiencies and has incurred substantial net losses for the years ended December 31, 2017 and 2016, and

anticipates that it will continue to do so for the foreseeable future as it continues to identify and invest in advancing product candidates, as well as expanding corporate infrastructure. These conditions, among others, raise substantial doubt about the Company's ability to continue as a going concern.

As of September 30, 2018, the Company had $37.8 million of long term debt issued in a private placement (the "Private Placement") pursuant to a Securities Purchase Agreement, dated as of March 26, 2018, as amended by Amendment No. 1 thereto, dated as of June 13, 2018 (the “Securities Purchase Agreement”), among the Company and certain accredited investors (collectively, the “Purchasers”). Pursuant to the Securities Purchase Agreement, the Company issued and sold to the Purchasers (1) convertible promissory notes in an aggregate principal amount of $37,848,750 (the “Notes”), which accrue simple interest at a rate equal to 5.0% per annum and mature upon the earlier to occur of (a) June 13, 2023, and (b) the date of the closing of a change in control of the Company (the “Maturity Date”), and (2) warrants (the “Warrants”) to purchase an aggregate of 2,698,662 shares of the common stock of the Company.

Each of the Notes provide that, upon the occurrence of an event of default, the Purchasers thereof may, by written notice to the Company, declare all of the outstanding principal and interest under such Notes immediately due and payable. For purposes of the Notes, an event of default includes, among other things, one or more events that have, or could reasonably be expected to have, a material adverse effect on (i) the Company’s ability to comply with its obligations under the Securities Purchase Agreement, the Notes or the Warrants or the registration rights agreement entered into with the Purchasers in connection with the Private Placement, or (ii) the rights of the Purchasers under the Notes. The Company believes that it is not probable that the material adverse event clause under the Notes will be exercised.

As of September 30, 2018, the Company had approximately $224.0 million of senior notes issued by Scilex Pharmaceuticals Inc. (“Scilex”), a majority owned subsidiary of the Company, which entered into Purchase Agreements (the “2018 Purchase Agreements”) with certain investors (collectively, the “Purchasers”) and the Company on September 7, 2018. Pursuant to the 2018 Purchase Agreements, on September 7, 2018, Scilex, among other things, issued and sold to the Purchasers senior secured notes due 2026 in an aggregate principal amount of $224,000,000 (the “Scilex Notes”) for an aggregate purchase price of $140,000,000 (the “Offering”). In connection with the Offering, Scilex also entered into an indenture (the “Indenture”) governing the Scilex Notes with U.S. Bank National Association, a national banking association, as trustee (the “Trustee”) and collateral agent (the “Collateral Agent”), and the Company. Pursuant to the Indenture, the Company agreed to irrevocably and unconditionally guarantee, on a senior unsecured basis, the punctual performance and payment when due of all obligations of Scilex under the Indenture (the “Guarantee”).

The net proceeds of the Offering were approximately $89.3 million, after deducting the Offering expenses payable by Scilex and funding a segregated reserve account with $20.0 million (the “Reserve Account”) and a segregated collateral account with $25.0 million (the “Collateral Account”) pursuant to the terms of the Indenture. The net proceeds of the Offering will be used by Scilex to support the commercialization of ZTlido™ (lidocaine topical system 1.8%), for working capital and general corporate purposes in respect of the commercialization of ZTlido™ (lidocaine topical system 1.8%). Funds in the Reserve Account will be released to Scilex upon receipt by the Trustee of an officer’s certificate under the Indenture from Scilex confirming receipt of a marketing approval letter from the United States Food and Drug Administration with respect to ZTlido™ (lidocaine topical system 5.4%) or a similar product with a concentration of not less than 5% (the “Marketing Approval Letter”) on or prior to July 1, 2023.

Funds in the Collateral Account will be released upon receipt of a written consent authorizing such release from the holders of a majority in principal amount of the Scilex Notes issued.

The Company has plans in place to obtain sufficient additional fundraising to fulfill its operating and capital requirements for the next 12 months. The Company’s plans include continuing to fund its operating losses and capital funding needs through public or private equity or debt financings, strategic collaborations, licensing arrangements, asset sales, government grants or other arrangements. Although management believes such plans, if executed as planned, should provide the Company sufficient financing to meet its needs, successful completion of such plans is dependent on factors outside of the Company’s control. As such, management cannot conclude that such plans will be effectively implemented within one year after the date that the condensed consolidated financial statements are issued.

If the Company is unable to raise additional capital in sufficient amounts or on terms acceptable, the Company may have to significantly delay, scale back or discontinue the development or commercialization of one or more of its product candidates. The Company may also seek collaborators for one or more of its current or future product candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available.

The condensed consolidated financial statements do not reflect any adjustments that might be necessary if the Company is unable to continue as a going concern.

Universal Shelf Registration

In November 2014, the Company filed a universal shelf registration statement on Form S-3 (the "2014 Shelf Registration Statement") with the SEC, which was declared effective by the SEC in December 2014. This 2014 Shelf Registration Statement provided the Company with the ability to offer up to $250 million of securities, including equity and other securities as described in the registration statement. Included in the 2014 shelf registration was a sales agreement prospectus covering the offering, issuance and sale by the Company of up to a maximum aggregate offering price of $50.0 million of the Company's common stock that could be issued and sold under a sales agreement with MLV & Co. LLC (the "2014 ATM Facility"). During the twelve months ended December 31, 2017, the Company sold approximately $13.9 million in shares of common stock under the 2014 ATM Facility. The 2014 Shelf Registration Statement expired in December 2017.

In April 2017, the Company completed a public offering of $47.5 million of shares of common stock pursuant to the 2014 Shelf Registration Statement for net proceeds of approximately $43.1 million.

In November 2017, the Company filed a universal shelf registration statement on Form S-3 (the "2017 Shelf Registration Statement") with the SEC, which was declared effective by the SEC in December 2017. The 2017 Shelf Registration Statement provides the Company with the ability to offer up to $350 million of securities, including equity and other securities as described in the registration statement. Included in the 2017 Shelf Registration Statement is a sales agreement prospectus covering the offering, issuance and sale by the Company of up to a maximum aggregate offering price of $100.0 million of the Company's common stock that may be issued and sold under a sales agreement with B. Riley FBR, Inc. (the "ATM Facility"). During the twelve months ended December 31, 2017, the Company sold approximately $0.9 million in shares of common stock under the ATM Facility. During the three and nine month periods ended September 30, 2018, the Company sold approximately $0.5 million and approximately $60.7 million in shares of common stock, respectively, under the ATM Facility. The Company can offer up to approximately $39.3 million of additional shares of common stock under the ATM Facility, subject to certain limitations.

Pursuant to the 2017 Shelf Registration Statement, the Company may offer such securities from time to time and through one or more methods of distribution, subject to market conditions and the Company's capital needs. Specific terms and prices will be determined at the time of each offering under a separate prospectus supplement, which will be filed with the SEC at the time of any offering. However, the Company cannot be sure that such additional funds will be available on reasonable terms, or at all.

2016 Private Investment in Public Entity Financing

On April 3, 2016, the Company entered into a Securities Purchase Agreement (the "ABG Purchase Agreement") with ABG SRNE Limited and Ally Bridge LB Healthcare Master Fund Limited (collectively, "Ally Bridge"), pursuant to which, among other things, the Company agreed to issue and sell to Ally Bridge and other purchasers designated by Ally Bridge (collectively, the "ABG Purchasers"), in a private placement transaction (the "ABG Private Placement"), up to $50.0 million in shares of the Company's common stock and warrants to purchase shares of common stock. Upon the closing of the ABG Private Placement, the Company issued to the ABG Purchasers (1) an aggregate of 9,009,005 shares (the "ABG Shares") of common stock, and (2) warrants to purchase an aggregate of 2,702,700 shares of common stock (each, an "ABG Warrant"). Each ABG Warrant has an exercise price of $8.50 per share, was immediately exercisable upon issuance, has a term of three years and is exercisable on a cash or cashless exercise basis.

Under the terms of the ABG Purchase Agreement, the Company was obligated to prepare and file with the SEC, within 30 days of the closing date of the ABG Private Placement, a registration statement to register for resale the ABG Shares and the shares of common stock issuable upon exercise of each ABG Warrant (the "ABG Warrant Shares"), and may be required to effect certain registrations to register for resale the ABG Shares and the ABG Warrant Shares in connection with certain "piggy-back" registration rights granted to the ABG Purchasers.

On April 3, 2016, the Company also entered into a Securities Purchase Agreement (collectively, the "Additional Purchase Agreements") with each of Beijing Shijilongxin Investment Co., Ltd. ("Beijing Shijilongxin"), FREJOY Investment Management Co., Ltd. ("Frejoy") and Yuhan Corporation ("Yuhan"), pursuant to which, among other things, the Company agreed to issue and sell, in separate private placement transactions: (1) to Beijing Shijilongxin, 8,108,108 shares of common stock, and a warrant to purchase 1,176,471 shares of common stock, for an aggregate purchase price of $45.0 million; (2) to Frejoy, 8,108,108 shares of common stock, and a warrant to purchase

1,176,471 shares of common stock, for an aggregate purchase price of $45.0 million; and (3) to Yuhan, 1,801,802 shares of common stock, and a warrant to purchase 235,294 shares of common stock, for an aggregate purchase price of $10.0 million. The warrants issued pursuant to each of the Additional Purchase Agreements (collectively, the "Additional Warrants" and, together with each ABG Warrant, the "ABG Warrants") have an exercise price of $8.50 per share, were immediately exercisable upon issuance, have a term of three years and are exercisable on a cash or cashless exercise basis.

Under the terms of the Additional Purchase Agreements, each of Beijing Shijilongxin, Frejoy and Yuhan had the right to demand, at any time beginning six months after the closing of the transactions contemplated by the applicable Additional

Purchase Agreement, that the Company prepare and file with the SEC a registration statement to register for resale such investor's shares of common stock purchased pursuant to the applicable Additional Purchase Agreement and the shares of common stock issuable upon exercise of such investor's Additional Warrant. In addition, the Company may be required to effect certain registrations to register for resale such shares in connection with certain "piggy-back" registration rights granted to Beijing Shijilongxin, Frejoy and Yuhan.

On May 2, 2016, the Company closed its private placement of common stock and warrants with Yuhan for gross proceeds of $10.0 million. Yuhan purchased 1,801,802 shares of common stock at $5.55 per share and a warrant to purchase 235,294 shares of common stock. The warrant is exercisable for three years at an exercise price of $8.50 per share.

Between May 31, 2016 and June 7, 2016, the Company closed on the remainder of the $150.0 million financing with the ABG Purchasers, Beijing Shijilongxin, and Frejoy. The ABG Purchasers led the financing and, together with Beijing Shijilongxin and Frejoy, collectively purchased 25,225,221 shares of common stock at $5.55 per share and warrants to purchase 5,055,642 shares of common stock for total cash consideration of $86.5 million and secured promissory notes (the "ABG Notes") in an aggregate principal amount of $53.5 million.

On December 31, 2016, the Company entered into Warrant and Note Cancellation and Share Forfeiture Agreements (the "Cancellation and Forfeiture Agreements") with certain investors (the "Investors") that held an aggregate of 7,838,259 shares of common stock and certain of the Warrants granting the right to purchase an aggregate of 1,137,316 shares of common stock. Pursuant to the Cancellation and Forfeiture Agreements, effective December 31, 2016, the ABG Warrants held by the Investors and the ABG Notes, of which $43.5 million was then outstanding, were cancelled and the shares of common stock held by the Investors were forfeited and returned to the Company.

2017 Private Investment in Public Entity Financing

On December 11, 2017, the Company entered into a Securities Purchase Agreement (the "December 2017 Securities Purchase Agreement") with certain accredited investors (collectively, the "December 2017 Purchasers"). Pursuant to the December 2017 Securities Purchase Agreement, on December 21, 2017, the Company issued and sold to the December 2017 Purchasers, in a private placement transaction, (1) convertible promissory notes in an aggregate principal amount of $50,000,000 (the "December 2017 Notes"), which accrued simple interest at a rate equal to 5.0% per annum and would mature upon the earlier to occur of (a) December 21, 2022, and (b) the date of the closing of a change in control of the Company (the "December 2017 Warrant Maturity Date"), and (2) warrants (the "December 2017 Warrants") to purchase an aggregate of 12,121,210 shares of the common stock of the Company.

At any time and from time to time before the December 2017 Warrant Maturity Date, each December 2017 Purchaser had the option to convert any portion of the outstanding principal amount of such December 2017 Purchaser's December 2017 Note that was equal to or greater than the lesser of: (1) $4,000,000, and (2) the then-outstanding principal amount of such December 2017 Purchaser's December 2017 Note into shares of common stock at a price per share of $2.26875, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions. Accrued but unpaid interest on the December 2017 Notes was to be paid in cash semi-annually in arrears on or prior to the 30th day of June and 31st day of December of each calendar year commencing with the year ending December 31, 2018.

Each December 2017 Warrant has an exercise price of $2.61 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, became exercisable on June 20, 2018, has a term of five and a half years and is exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the December 2017 Warrants, in which case the December 2017 Warrants shall also be exercisable on a cashless exercise basis.

On May 17, 2018, the December 2017 Purchasers converted the full outstanding principal under the December 2017 Notes into 22,038,565 shares of the Company's common stock, and the Company paid to the December 2017 Purchasers cash in an aggregate amount of $1.0 million in accrued but unpaid interest. The unamortized discount remaining at the date of conversion of $44.3 million was recognized immediately at that date as interest expense.

See Note 3 for discussion of the Company's policies for accounting for debt with detachable warrants. In connection with the issuance of the Notes and Warrants, the Company recorded a debt discount of approximately $44.8 million based on an allocation of proceeds to the Warrants of approximately $12.7 million and a beneficial conversion

feature of approximately $32.1 million, before issuance costs. The Company accounts for the debt at amortized cost and amortizes the debt discount to interest expense using the effective interest method over the expected term of the Notes.

2018 Private Investment in Public Entity Financing

On March 26, 2018, the Company entered into the Securities Purchase Agreement with the Purchasers. Pursuant to the Securities Purchase Agreement, the Company agreed to issue and sell to the Purchasers, in the Private Placement, the Notes in an aggregate principal amount of $120,500,000 and Warrants to purchase an aggregate of 8,591,794 shares.
On June 13, 2018, the Company entered into an amendment (the "Amendment") to the Securities Purchase Agreement. Under the terms of the Amendment, the Company and the Purchasers agreed that the aggregate principal amount of the Notes was reduced to $37,848,750 and that the aggregate number of shares of the common stock issuable upon exercise of the Warrants was reduced to 2,698,662, and also agreed to certain other adjustments to the threshold principal amount of the Notes required to remain outstanding in order for certain rights and obligations to apply to the Notes.
On June 13, 2018, pursuant to the Securities Purchase Agreement, the Company issued and sold to the Purchasers, in the Private Placement (1) Notes in an aggregate principal amount of $37,848,750, and (2) Warrants to purchase an aggregate of 2,698,662 shares of the common stock of the Company.
At any time and from time to time before the Maturity Date, each Purchaser shall have the option to convert any portion of the outstanding principal amount of such Purchaser's Note that is equal to or greater than the lesser of: (1) $4,000,000, and (2) the then-outstanding principal amount of such Purchaser's Note into shares of common stock at a price per share of $7.0125, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions. Accrued but unpaid interest on the Notes shall be paid in cash semi-annually in arrears on or prior to the 30th day of June and 31st day of December of each calendar year commencing with December 31, 2018. If a Purchaser elects to convert any of the principal amount of their Note, then all accrued but unpaid interest on such portion of the principal amount shall become due and payable in cash. The Notes contain restrictive covenants and event of default provisions that are customary for transactions of this type.
Each Warrant has an exercise price of $8.77 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will become exercisable on December 11, 2018, has a term of five and a half years from the date of issuance and will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Warrants, in which case the Warrants shall also be exercisable on a cashless exercise basis.
If the Company raises additional funds by issuing equity securities, substantial dilution to existing stockholders would result. If the Company raises additional funds by incurring debt financing, the terms of the debt may involve significant cash payment obligations as well as covenants and specific financial ratios that may restrict the Company's ability to operate its business.

3. Significant Accounting Policies

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of expenses during the reporting period. Management believes that these estimates are reasonable; however, actual results may differ from these estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents. The Company minimizes its credit risk associated with cash and cash equivalents by periodically evaluating the credit quality of its primary financial institution. The balance at times may exceed federally insured limits. The Company has not experienced any losses on such accounts.

Restricted Cash

Restricted cash in our condensed consolidated balance sheet as of September 30, 2018, included approximately $45 million of restricted cash related to the Scilex Notes in the form of both the Reserve Account and the Collateral Account.

Fair Value of Financial Instruments

The Company follows accounting guidance on fair value measurements for financial instruments measured on a recurring basis, as well as for certain assets and liabilities that are initially recorded at their estimated fair values. Fair value is

defined as the exit price, or the amount that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company uses the following three-level hierarchy that maximizes the use of observable inputs and minimizes the use of unobservable inputs to value its financial instruments:

- Level 1: Observable inputs such as unadjusted quoted prices in active markets for identical instruments.
- Level 2: Quoted prices for similar instruments that are directly or indirectly observable in the marketplace.
- Level 3: Significant unobservable inputs which are supported by little or no market activity and that are financial instruments whose values are determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant judgment or estimation.

Financial instruments measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires it to make judgments and consider factors specific to the asset or liability. The use of different assumptions and/or estimation methodologies may have a material effect on estimated fair values. Accordingly, the fair value estimates disclosed or initial amounts recorded may not be indicative of the amount that the Company or holders of the instruments could realize in a current market exchange.

The carrying amounts of cash equivalents and marketable securities approximate their fair value based upon quoted market prices. Certain of the Company's financial instruments are not measured at fair value on a recurring basis, but are recorded at amounts that approximate their fair value due to their liquid or short-term nature, such as cash, accounts receivable and payable, and other financial instruments in current assets or current liabilities.

Marketable Securities

Marketable securities are designated either as trading or available-for-sale securities and are accounted for at fair value. Marketable securities are classified as short-term or long-term based on the nature of the securities and their availability to meet current operating requirements. Marketable securities that are readily available for use in current operations and are classified as short-term available-for-sale securities are reported as a component of current assets in the accompanying condensed consolidated balance sheets. Marketable securities that are not trading securities and are not considered available for use in current operations are classified as long-term available-for-sale securities and are reported as a component of long-term assets in the accompanying condensed consolidated balance sheets.

Securities that are classified as trading are carried at fair value, with changes to fair value reported as a component of income. Securities that are classified as available-for-sale are carried at fair value, with temporary unrealized gains and losses reported as a component of stockholders' equity until their disposition. The cost of securities sold is based on the specific identification method.

All of the Company's marketable securities are subject to a periodic impairment review. The Company recognizes an impairment charge when a decline in the fair value of its investments below the cost basis is judged to be other-than-temporary. For the three and nine months ended September 30, 2018 and 2017, no other-than-temporary impairment charges were recorded.

Grants and Accounts Receivable

Grants receivable at September 30, 2018 and December 31, 2017 represent amounts due under several federal contracts with the National Institute of Allergy and Infectious Diseases ("NIAID"), a division of the National Institutes of Health ("NIH"). The Company considers the grants receivable to be fully collectible; accordingly, no allowance for doubtful amounts has been established. If amounts become uncollectible, they are charged to operations.

Accounts receivable at September 30, 2018 and December 31, 2017 consist of trade receivables from sales and services provided to certain customers, which are generally unsecured and due within 30 days. Estimated credit losses related to trade accounts receivable are recorded as general and administrative expenses and as an allowance for doubtful accounts within grants and accounts receivable, net. The Company reviews reserves and makes adjustments based on historical experience and known collectability issues and disputes. When internal collection efforts on accounts have been exhausted, the accounts are written off by reducing the allowance for doubtful accounts. As of each of September 30, 2018 and December 31, 2017, the allowance for doubtful accounts was $20 thousand.

Property and Equipment

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Property and equipment are carried at cost less accumulated depreciation. Depreciation of property and equipment is computed using the straight-line method over the estimated useful lives of the assets, which are generally three to five years. Leasehold improvements are amortized over the lesser of the life of the lease or the life of the asset. Repairs and maintenance are charged to expense as incurred.

Acquisitions and Intangibles

The Company has engaged in business combination and asset acquisition activity. The accounting for business combinations and asset acquisitions not meeting the criteria of a business combination requires management to make judgments and estimates of the fair value of assets acquired, including the identification and valuation of intangible assets, as well as liabilities assumed. Such judgments and estimates directly impact the amount of goodwill recognized in connection with a business combination, as goodwill presents the excess of the purchase price of an acquired business over the fair value of its net tangible and identifiable intangible assets.

Goodwill and Other Long-Lived Assets

Goodwill, which has an indefinite useful life, represents the excess of cost over fair value of net assets acquired. Goodwill is reviewed for impairment at least annually during the fourth quarter, or more frequently if events occur indicating the potential for impairment. During its goodwill impairment review, the Company may assess qualitative factors to determine whether it is more likely than not that the fair value of its reporting unit is less than its carrying amount, including goodwill. The qualitative factors include, but are not limited to, macroeconomic conditions, industry and market considerations, and the overall financial performance of the Company. If, after assessing the totality of these qualitative factors, the Company determines that it is not more likely than not that the fair value of its reporting unit is less than its carrying amount, then no additional assessment is deemed necessary. Otherwise, the Company proceeds to perform the two-step test for goodwill impairment. The first step involves comparing the estimated fair value of the reporting unit with its carrying value, including goodwill. If the carrying amount of the reporting unit exceeds its fair value, the Company performs the second step of the goodwill impairment test to determine the amount of loss, which involves comparing the implied fair value of the goodwill to the carrying value of the goodwill. The Company may also elect to bypass the qualitative assessment in a period and elect to proceed to perform the first step of the goodwill impairment test. The Company performed its annual assessment for goodwill impairment in the fourth quarter of 2017, noting no impairment. There have not been any triggering events indicating the potential for impairment through September 30, 2018.

The Company evaluates its long-lived and intangible assets with definite lives, such as property and equipment, acquired technology, customer relationships, patent and license rights, for impairment by considering competition by products prescribed for the same indication, the likelihood and estimated future entry of non-generic and generic competition with the same or similar indication and other related factors. The factors that drive the estimate of useful life are often uncertain and are reviewed on a periodic basis or when events occur that warrant review. Recoverability is measured by comparison of the assets' book value to future net undiscounted cash flows that the assets are expected to generate. There have not been any impairment losses of long-lived assets through September 30, 2018.

Acquisition Consideration Payable - Gain or Loss on Contingent Liabilities

Acquisition consideration payable relates to the Company's acquisition of businesses and various other assets and is recorded on the Company's condensed consolidated balance sheets at fair value and is re-measured at each balance sheet date until such contingent liabilities have been settled, with changes in fair value recorded as gain or loss on contingent liabilities. The Company estimates the fair value of contingent consideration based on level 3 inputs primarily driven by the probability of achieving certain financing or operating related milestones.

Debt with Detachable Warrants

Debt with detachable warrants are evaluated for the classification of warrants as either equity instruments, derivative liabilities, or liabilities depending on the specific terms of the warrant agreement. In circumstances in which debt is issued with equity-classified warrants, the proceeds from the issuance of convertible debt are first allocated to the debt and the warrants at their relative estimated fair values. The portion of the proceeds so allocated to the warrants are accounted for as paid-in capital and a debt discount. The remaining proceeds, as further reduced by discounts created by the bifurcation of embedded derivatives and beneficial conversion features, are allocated to the debt. The Company accounts for debt as liabilities measured at amortized cost and amortizes the resulting debt discount from the

allocation of proceeds, to interest expense using the effective interest method over the expected term of the debt instrument. The Company considers whether there are any embedded features in debt instruments that require bifurcation and separate accounting as derivative financial instruments pursuant to Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 815.

If the amount allocated to the convertible debt results in an effective per share conversion price less than the fair value of the Company's common stock on the commitment date, the intrinsic value of this beneficial conversion feature is recorded as a discount to the convertible debt with a corresponding increase to additional paid in capital. The beneficial conversion feature discount is equal to the difference between the effective conversion price and the fair value of the Company's common stock at the commitment date, unless limited by the remaining proceeds allocated to the debt.

Derivative Liability

Derivative liabilities are recorded on the Company's condensed consolidated balance sheets at their fair value on the date of issuance and are revalued on each balance sheet date until such instruments are exercised or expire, with changes in the fair value between reporting periods recorded as other income or expense. The Company estimates the fair value of derivative liabilities using the Black-Scholes option pricing model.

Investments in Other Entities

The Company holds a portfolio of investments in equity securities that are accounted for under either the equity method or cost method. Investments in entities over which the Company has significant influence but not a controlling interest are accounted for using the equity method, with the Company's share of earnings or losses reported in loss on equity method investments.

The Company's cost method investments are included in cost method investments on the condensed consolidated balance sheets. The Company's equity method investments are included in equity method investments on the condensed consolidated balance sheets.

All investments are reviewed on a regular basis for possible impairment. If an investment's fair value is determined to be less than its net carrying value and the decline is determined to be other-than-temporary, the investment is written down to its fair value. Such an evaluation is judgmental and dependent on specific facts and circumstances. Factors considered in determining whether an other-than-temporary decline in value has occurred include: the magnitude of the impairment and length of time that the market value was below the cost basis; financial condition and business prospects of the investee; the Company's intent and ability to retain the investment for a sufficient period of time to allow for recovery in market value of the investment; issues that raise concerns about the investee's ability to continue as a going concern; any other information that the Company may be aware of related to the investment. The Company does not report the fair value of its equity investments in non-publicly traded companies because it is not practical to do so.

Research and Development Costs and Collaborations

All research and development costs are charged to expense as incurred. Such costs primarily consist of lab supplies, contract services, stock-based compensation expense, salaries and related benefits.

Acquired In-Process Research and Development Expense

The Company has acquired and may continue to acquire the rights to develop and commercialize new drug candidates. The up-front payments to acquire a new drug compound or drug delivery devices, as well as future milestone payments associated with asset acquisitions that do not meet the definition of derivative and are deemed probable to achieve the milestones, are immediately expensed as acquired in-process research and development provided that the drug has not achieved regulatory approval for marketing and, absent obtaining such approval, have no alternative future use. The acquired in-process research and development related to the business combinations of Virttu Biologics Limited ("Virttu") and Scilex, for which certain products are under development and expected to be commercialized in the future, was capitalized and recorded within "Intangibles, net" on the accompanying condensed consolidated balance sheet. The Company intends to commence amortization of acquired in-process research and development upon commercialization of the related products. Capitalized in-process research and development will be reviewed annually for impairment or more frequently as changes in circumstance or the occurrence of events suggest that the remaining value may not be recoverable. (See Note 4 for further discussion of acquired in-process research and development expense related to the Sofusa acquisition).

Income Taxes

The provisions of ASC Topic 740 "Income Taxes," addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC Topic 740-10, the

Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The Company has determined that it has uncertain tax positions.

The Company accounts for income taxes using the asset and liability method to compute the differences between the tax basis of assets and liabilities and the related financial amounts, using currently enacted tax rates.

The Company has deferred tax assets, which are subject to periodic recoverability assessments. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount that more likely than not will be realized. As of each of December 31, 2017 and September 30, 2018, the Company maintained a full valuation allowance against its deferred tax assets, with the exception of an amount equal to its deferred tax liabilities, an amount equal to its alternative minimum tax credits and state research and development tax credits for which there is no expiration and the deferred tax assets related to its investment in Scilex.

Revenue Recognition

The Company’s revenues are generated from various NIH grant awards, license fees, the sale of customized reagents and other materials, and the provision of contract manufacturing and other services. The Company does not have significant costs associated with costs to obtain contracts with its customers. Substantially all of the Company’s grants and accounts receivable result from contracts with customers.

Grant Revenues

The revenue from the NIH grant awards is based upon subcontractor and internal costs incurred that are specifically covered by the grant, and where applicable, a facilities and administrative rate that provides funding for overhead expenses. These revenues are recognized when expenses have been incurred by subcontractors or when the Company incurs internal expenses that are related to the grant.

Royalty and License Revenues

License fees for the licensing of product rights are recorded as deferred revenue upon receipt of cash and recognized as revenue on a straight-line basis over the license period, with the exception of license agreements with no remaining performance obligations or undelivered obligations. The Company applies judgment in determining the timing of revenue recognition related to contracts that include multiple performance obligations. The total transaction price of the contract is allocated to each performance obligation in an amount based on the estimated relative standalone selling prices of the promised goods or services underlying each performance obligation. For goods or services for which observable standalone selling prices are not available, the Company develops an estimated standalone selling price of each performance obligation.

As of December 31, 2017 and September 30, 2018, the future performance obligations for royalty and license revenues relate to the ImmuneOncia Therapeutics, LLC (“ImmuneOncia”) and NantCell, Inc. (“NantCell”) license agreements.

The total consideration for the ImmuneOncia license performance obligation, effective September 1, 2016, represented $9.6 million. The estimated revenue expected to be recognized for future performance obligations, as of December 31, 2017 and September 30, 2018, was approximately $9.0 million and $8.6 million, respectively. The Company expects to recognize license revenue of approximately $0.5 million of the remaining performance obligation annually through the remaining term. The Company applied judgment in estimating the 20-year contract term, analogous to the expected life of the patent, over which revenue is recognized over time given the ongoing performance obligation related to the Company's participation on a steering committee for the technologies under the agreement.

As of December 31, 2017 and September 30, 2018, the NantCell license agreement, effective April 21, 2015, represented $110 million of contract liabilities reflected in long-term deferred revenue. See Note 11 for additional information regarding the remaining performance obligation for the significant agreement.

Sales and Services Revenues

Sales and services revenues are comprised of contract manufacturing associated with sales of customized reagents at Concortis Biosystems Corporation, materials and supply agreements, contract manufacturing services at BioServ Corporation, and the Company’s joint development agreement with Celularity Inc.

The Company does not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less and (ii) contracts for which it recognizes revenue at the amount to which it has the right to invoice for services performed. The Company applied the practical expedient in ASC Topic 606-10-50-14 to the revenue contracts for our Concortis Biosystems Corporation sales and services and materials and supply

agreements due to the short-term length of such contracts.

The following table shows sales and service revenues disaggregated by product and services type for the three and nine months ended September 30, 2018 (in thousands):

	Three Months Ended September 30, 2018	Nine Months Ended September 30, 2018
Concortis sales and services	1,042	3,400
Materials and supply agreements	1,121	1,982
Bioserv sales and services	1,528	4,895
Joint development agreement	—	3,333
	$ 3,691	$ 13,610

The Company is obligated to accept from customers the return of products sold that are damaged or do not meet certain specifications. The Company may authorize the return of products sold in accordance with the terms of its sales contracts, and estimates allowances for such amounts at the time of sale. The Company has not experienced any sales returns.

Concortis Biosystems Corporation (“Concortis”)

Contract manufacturing associated with sales of customized reagents for Concortis operations relate to providing synthetic expertise to customers’ synthesis by delivering proprietary cytotoxins, linkers and linker-toxins and ADC service using industry standard toxin and antibodies provided by customers which are recognized upon the transfer of control, which is generally upon shipment given the short contract terms which are generally three months or less.

Materials and Supply Agreements

Revenues from the sale of materials associated with our research and development arrangements are recognized upon the transfer of control, which is generally, upon shipment. Outstanding performance obligations related to materials and supply agreements was $1.2 million as of September 30, 2018, and the Company expects to fulfill such obligations during the remainder of 2018.

Bioserv Corporation (“Bioserv”)

Contract manufacturing services associated with the Company's Bioserv operations related to finish and fill activities for drug products and reagents are recognized ratably over the contract term based on a time-based measure which reflects the transfer of services to the customer because the manufactured products are highly customized and do not have an alternative use to the Company. As of December 31, 2017 and September 30, 2018, the Company had approximately $0.5 million and $0.3 million of unbilled accounts receivable for which revenue has been recognized but not billed at the reporting date, respectively. As of December 31, 2017 and September 30, 2018, the Company had approximately $0.4 million and $0.2 million of upfront payments related to its contract manufacturing services included in deferred revenue, respectively.

As of December 31, 2017 and September 30, 2018, the estimated revenue expected to be recognized for future performance obligations associated with contract manufacturing services was approximately $3.0 million and $1.8 million, respectively. The Company expects to recognize revenue on approximately $1.0 million of these remaining performance obligations over the next twelve months.

The following table includes Bioserv sales and services revenue expected to be recognized in the future related to performance obligations that are undelivered or partially delivered at the end of the reporting period and do not include contracts with original durations of one year or less (in thousands):

	Remainder of 2018	2019	2020 and thereafter
Contract manufacturing services	$693	$742	$410

Joint Development Agreement

On September 26, 2017, the Company entered into a joint development agreement with Celularity Inc. whereby the Company agreed to provide research services to Celularity Inc. through June 30, 2018 in exchange for an

upfront payment of $5.0 million. The revenue related to the joint development agreement of $5.0 million will be recognized over the length of the service agreement as services are performed. The Company recorded sales and services revenues under the joint development

agreement of $0 million and $3.3 million for the three and nine months ended September 30, 2018, respectively, and $1.7 million for the year ended December 31, 2017.

Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with ASC Topic 718 “Compensation – Stock Compensation,” which establishes accounting for equity instruments exchanged for employee services. Under such provisions, stock-based compensation cost is generally measured at the grant date, based on the calculated fair value of the award and an estimate of forfeitures, and is recognized as an expense, under the straight-line method, over the employee’s requisite service period (generally the vesting period of the equity grant).

The Company accounts for equity instruments, including restricted stock or stock options, issued to non-employees in accordance with authoritative guidance for equity based payments to non-employees. Stock options issued to non-employees are accounted for at their estimated fair value determined using the Black-Scholes option-pricing model. The fair value of options and restricted stock granted to non-employees is re-measured over the vesting period, and the resulting changes in fair value are recognized as expense in the period of the change in proportion to the services rendered to date.

Comprehensive Income (Loss)

Comprehensive income (loss) is primarily comprised of net income (loss) and adjustments for the change in unrealized gains and losses on the Company’s investments in available-for-sale marketable securities, net of taxes. The Company displays comprehensive income (loss) and its components in its condensed consolidated statements of comprehensive income (loss).

Net Loss per Share

Basic net loss per share is computed by dividing net loss for the period by the weighted average number of common shares outstanding during the period. Diluted net income (loss) per share reflects the additional dilution from potential issuances of common stock, such as stock issuable pursuant to the exercise of stock options or the exercise of outstanding warrants. The treasury stock method and if-converted method are used to calculate the potential dilutive effect of these common stock equivalents. Potentially dilutive shares are excluded from the computation of diluted net loss per share when their effect is anti-dilutive. In periods where a net loss is presented, all potentially dilutive securities are anti-dilutive and are excluded from the computation of diluted net loss per share.

These outstanding securities consist of the following:

	Quarters Ended September 30,	
	2018	2017
Outstanding options	10,207,700	6,932,300
Outstanding warrants	19,346,132	5,932,998

Segment Information

The Company is engaged primarily in the discovery and development of innovative therapies focused on oncology and the treatment of chronic cancer pain as well as immunology and infectious diseases based on its platform technologies. Accordingly, the Company has determined that it operates in one operating segment.

Recent Accounting Pronouncements

In May 2014, the FASB issued Accounting Standards Update (“ASU”) No. 2014-09, Revenue from Contracts with Customers (Topic 606), which supersedes all existing revenue recognition requirements, including most industry-specific guidance. The new standard requires a company to recognize revenue when it transfers goods or services to customers in an amount that reflects the consideration that the company expects to receive for those goods or services. ASU No. 2014-09 was originally effective for annual reporting periods beginning after December 15, 2016, and interim periods thereafter. In August 2015, the FASB issued ASU No. 2015-14, Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date, which delayed the effective date of the new standard for annual reporting periods beginning after December 15, 2017, and interim periods thereafter. The FASB also agreed to allow entities to choose to adopt the standard as of the original effective date. The standard allows for either a full retrospective or modified retrospective method of adoption. The Company adopted this standard on its effective date, January 1, 2018 under the modified retrospective method of adoption. Under this method, entities recognize the

cumulative impact of applying the new standard at the date of adoption without restatement of prior

periods presented. The cumulative effect of applying the new standard to contracts that were not completed as of January 1, 2018 did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In January 2016, the FASB issued ASU No. 2016-01, Financial Instruments-Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities. The ASU amends the guidance in GAAP on the classification and measurement of financial instruments. Changes to the current guidance primarily affect the accounting for equity investments, financial liabilities under the fair value option, and the presentation and disclosure requirements for financial instruments. ASU No. 2016-01 is effective for fiscal years and interim periods beginning after December 15, 2017, and upon adoption, an entity should apply the amendments by means of a cumulative-effect adjustment to the balance sheet at the beginning of the first reporting period in which the guidance is effective. Early adoption is not permitted except for the provision to record fair value changes for financial liabilities under the fair value option resulting from instrument-specific credit risk in other comprehensive income. The adoption of this standard did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In February 2016, the FASB issued ASU No. 2016-02, Leases. ASU No. 2016-02 is aimed at making leasing activities more transparent and comparable, and requires substantially all leases be recognized by lessees on their balance sheet as a right-of-use asset and corresponding lease liability, including leases currently accounted for as operating leases. ASU No. 2016-20 is effective for financial statements issued for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating the impact that the adoption of ASU No. 2016-02 will have on its consolidated financial position, results of operations and cash flows which may result in an increase in assets and liabilities due to the recognition of the required right-of-use asset and corresponding liability for all lease obligations currently classified as operating leases. The Company's leases are discussed in Note 14. The Company currently expects to record right-of-use assets and lease liabilities with regard to its leases in the consolidated balance sheets using the modified retrospective approach for fiscal years beginning after December 15, 2018 and interim periods within those fiscal years.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, to improve financial reporting by requiring timelier recording of credit losses on loans and other financial instruments held by financial institutions and other organizations. The ASU requires the measurement of all expected credit losses for financial assets held at the reporting date based on historical experience, current conditions and reasonable and supportable forecasts. The ASU also requires enhanced disclosures to help investors and other financial statement users better understand significant estimates and judgments used in estimating credit losses, as well as the credit quality and underwriting standards of an organization's portfolio. The ASU is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Early application will be permitted for all organizations for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The Company is currently evaluating the impact that the adoption of ASU No. 2016-13 will have on its consolidated financial position, results of operations and cash flows.

In August 2016, the FASB issued ASU No. 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments, to improve financial reporting in regards to how certain transactions are classified in the statement of cash flows. The ASU requires that (1) debt extinguishment costs be classified as cash outflows for financing activities and provides additional classification guidance for the statement of cash flows, (2) the classification of cash receipts and payments that have aspects of more than one class of cash flows to be determined by applying specific guidance under generally accepted accounting principles, and (3) each separately identifiable source or use within the cash receipts and payments be classified on the basis of their nature in financing, investing or operating activities. The ASU is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. The adoption of this standard did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In November 2016, the FASB issued ASU No. 2016-18, "Statement of Cash Flows (Topic 230): Restricted Cash (a consensus of the FASB Emerging Issues Task Force)." The ASU requires the statement of cash flows to explain the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or

restricted cash equivalents. Therefore, amounts generally described as restricted cash and restricted cash equivalents are to be included with cash and cash equivalents when reconciling the beginning of period and end of period amounts shown on the statement of cash flows. The ASU is effective for the Company for annual reporting periods beginning after December 15, 2017 and is required to be adopted using a retrospective approach, if applicable, with early adoption permitted. The Company adopted the new standard on January 1, 2018. The adoption of this ASU impacted the presentation of cash flows with the inclusion of restricted cash for the nine months ended September 30, 2018.

In January 2017, the FASB issued ASU No. 2017-01, Business Combinations (Topic 805): Clarifying the Definition of a Business, to clarify the definition of a business to add guidance for evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. Specifically, this ASU provides a screen to assist entities in determining when a set should not be considered a business, which screen provides that if substantially all of the fair value of the gross assets acquired (or disposed of) is concentrated in a single identifiable asset or group of similar assets, the set is not a business. The ASU is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. The Company applied this standard in the evaluation of the Sofusa acquisition. (See Note 4).

In January 2017, the FASB issued ASU No. 2017-04, Simplifying the Test for Goodwill Impairment (Topic 350). This standard eliminates Step 2 from the goodwill impairment test, instead requiring an entity to recognize a goodwill impairment charge for the amount by which the goodwill carrying amount exceeds the reporting unit's fair value. This guidance is effective for interim and annual goodwill impairment tests in fiscal years beginning after December 15, 2019 with early adoption permitted. This guidance must be applied on a prospective basis. The Company is currently evaluating the impact that the adoption of ASU No. 2017-04 will have on the Company's consolidated financial position, results of operations or cash flows.

In May 2017, the FASB issued ASU No. 2017-09, Compensation - Stock Compensation (Topic 718): Scope of Modification Accounting, to provide clarity and reduce both the diversity in practice and cost of complexity when applying the guidance. Specifically, the ASU provides additional modification conditions in determining whether or not modification accounting should be applied. The ASU is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. The adoption of this standard did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In February 2018, the FASB issued ASU No. 2018-02, Income Statement - Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income, to allow a reclassification from accumulated other comprehensive income to retained earnings for stranded tax effects resulting from the Tax Cuts and Jobs Act and improves the usefulness of information reported to financial statement users. The ASU is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The adoption of this standard is not expected to have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In June 2018, the FASB issued ASU No. 2018-07, Compensation - Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting, to include share-based payment transactions for acquiring goods and services from nonemployees. The ASU is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The Company is currently evaluating the impact that the adoption of ASU No. 2018-07 will have on the Company's consolidated financial position, results of operations or cash flows.

In August 2018, the FASB issued ASU No. 2018-13, Disclosure Framework-Changes to the Disclosure Requirements for Fair Value Measurement, to improve the effectiveness of the disclosure requirements for fair value measurements. The ASU is effective for fiscal years and interim periods beginning after December 15, 2019. Amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements and the narrative description of measurement uncertainty will be applied prospectively as of the beginning of the fiscal year of adoption with all other amendments being applied retrospectively to all periods presented upon their effective date. Early adoption is permitted. The Company is evaluating the impact of adopting this standard.

In August 2018, the FASB issued ASU No. 2018-15, Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract. The amendments in this update align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal-use software license). The amendments in this update are effective for interim and annual periods for the Company beginning on January 1, 2020, with early adoption permitted. The amendments in this update may be applied either

retrospectively or prospectively. The Company is evaluating the impact the standard will have on its consolidated financial statements.

In November 2018, the FASB issued ASU No. 2018-18, Collaborative Arrangements (Topic 808): Clarifying the Interaction Between Topic 808 and Topic 606. The amendments in this update provide guidance on how to assess whether certain transactions between collaborative arrangement participants should be accounted for within the revenue recognition standard. The amendments in this update are effective for interim and annual periods for the Company beginning on January 1, 2020, with early adoption permitted. The Company is in the process of evaluating the impact the standard will have on its consolidated financial statements.

4. Acquisitions

Acquisition of Virttu Biologics Limited

On April 27, 2017, the Company entered into a Share Purchase Agreement (the “Virttu Purchase Agreement”) with TNK Therapeutics, Inc., a majority-owned subsidiary of the Company (“TNK”), Virttu, the shareholders of Virttu (the “Virttu Shareholders”) and Dayspring Ventures Limited, as the representative of the Virttu Shareholders ("Dayspring"), pursuant to which, among other things, TNK acquired from the Virttu Shareholders 100% of the outstanding ordinary shares of Virttu (the “Virttu Acquisition”).

Virttu focuses on the development of oncolytic viruses that infect and selectively multiply in and destroy tumor cells without damaging healthy tissue. Its lead oncolytic virus candidate, Seprehvir, infects and replicates in cancer cells selectively, leaving normal cells unharmed.

Under the Virttu Purchase Agreement, the total amount of the consideration payable to the Virttu Shareholders in the Virttu Acquisition is equal to $25 million, less Virttu’s net debt (the “Virttu Base Consideration”). An additional $10 million contingent consideration is payable upon the achievement of certain regulatory milestones (as described below) (the “Regulatory Approval Consideration”).

At the closing of the Virttu Acquisition (the “Virttu Closing”), the Company issued to the Virttu Shareholders consideration valued at approximately $2.2 million, which consisted primarily of an aggregate of 797,081 shares (the “Virttu Closing Shares”) and approximately $557,000 in cash (the “Cash Consideration”). The issuance of the Virttu Closing Shares and the payment of the Cash Consideration satisfied TNK’s obligation to pay 20% of the Virttu Base Consideration at the Virttu Closing. Under the terms of the Virttu Purchase Agreement, the Company agreed to provide additional consideration to the Virttu Shareholders, as follows:

(1) Upon a financing resulting in gross proceeds (individually or in the aggregate) to TNK of at least $50.0 million (a “Qualified Financing”), TNK would have issued to the Virttu Shareholders an aggregate number of shares of its capital stock (“TNK Capital Stock”) as is equal to the quotient obtained by dividing 80% of the Virttu Base Consideration by the lowest per share price paid by investors in the Qualified Financing (the “TNK Financing Consideration”); provided, however, that 20% of the TNK Financing Consideration was held in escrow until April 27, 2018 (the “Financing Due Date”), to be used to, among other things, satisfy the indemnification obligations of the Virttu Shareholders. In the event that a Qualified Financing did not occur, then on the Financing Due Date, the Company would issue to the Virttu Shareholders an aggregate number of shares of the Company’s common stock as is equal to the quotient obtained by dividing 80% of the Virttu Base Consideration, by $5.55 (as adjusted, as appropriate, to reflect any stock splits or similar events affecting the Company’s common stock after the Virttu Closing).

(2) Within 45 business days after Virttu becomes aware that certain governmental bodies in the United States, the European Union, the United Kingdom or Japan have approved for commercialization, on or before October 26, 2024, Seprehvir (or any enhancement, combination or derivative thereof) as a monotherapy or in combination with one or more other active components (each of the first two such approvals by a governmental body being a “Regulatory Approval”), TNK shall pay half of the Regulatory Approval Consideration to the Virttu Shareholders, in a combination of (a) up to $5.0 million in cash (the “Regulatory Approval Cash”) and/or (b) (i) such number of shares of the Company’s common stock as is equal to the quotient obtained by dividing $5.0 million less the Regulatory Approval Cash (the “Regulatory Approval Share Value”) by the 30 Day VWAP (as defined below) of one share of the Company’s common stock; (ii) if TNK has completed its first public offering of TNK Capital Stock, the number of shares of TNK Capital Stock as is equal to the quotient obtained by dividing the Regulatory Approval Share Value by the 30 Day VWAP of one share of TNK Capital Stock; or (iii) such number of shares of common stock of a publicly traded company as is equal to the quotient obtained by dividing the Regulatory Approval Share Value by the volume weighted average price of the relevant security, as reported on the Nasdaq Capital Market (or other principal stock exchange or securities market on which the shares are then listed or quoted) for the thirty trading days immediately following the receipt of Regulatory Approval (the “30 Day VWAP”), with the composition of the Regulatory Approval Consideration to be at TNK’s option. In order for a second regulatory approval to qualify as a Regulatory Approval under the Virttu Purchase Agreement, the second approval must be granted by a different governmental body in a different jurisdiction than that which granted the first Regulatory Approval.

At April 27, 2017, the 80% of the Virttu Base Consideration was valued at $12.8 million. The fair value of the 80% of the Virttu Base Consideration is recorded as a current liability and will be adjusted quarterly for changes in fair value or as events and circumstances arise. At April 27, 2017, the contingent Regulatory Approval Consideration was valued at $1.0 million. The fair value of the contingent Regulatory Approval Consideration is recorded as a non-current liability within "Deferred rent and other" on the accompanying condensed consolidated balance sheet and will be adjusted quarterly for changes in fair value or as events and circumstances arise.

The consolidated financial statements include the preliminary results of operations from this transaction, which have been accounted for as a business combination, and require, among other things, that assets acquired and liabilities assumed be recognized at their fair values as of the acquisition date. The final valuation of the acquired assets and liabilities resulted in the recognition of identifiable assets of approximately $16.0 million comprised mainly of in-process research and development of approximately $15.4 million, deferred tax liabilities of $0.8 million and goodwill of approximately $1.4 million. Various factors contributed to the establishment of goodwill, including an assembled workforce.

In connection with the Virttu transaction, the Company recorded acquisition costs of approximately $0.9 million in general and administrative expenses for the twelve months ended December 31, 2017, for legal and related costs. No acquisition costs in connection with the Virttu transaction were recorded for the three and nine months ended September 30, 2018. Acquisition costs are expensed as incurred.

TNK did not complete a Qualified Financing prior to the Financing Due Date and on April 27, 2018, the Company, TNK and Dayspring entered into the Amendment, pursuant to which, among other things, the Company agreed that the acquisition consideration, otherwise payable on April 27, 2018 to the Virttu Shareholders, shall be as follows: (1) an issuance of 1,795,011 shares of its common stock to the Virttu Shareholders and (2) $9.9 million payable in cash.

The Company issued an aggregate of 1,795,011 shares of its common stock to the Virttu Shareholders on April 27, 2018 for a value of $11.3 million. The approximately $9.9 million payable in cash has not been paid as of the date of this filing.

Acquisition of Scilex Pharmaceuticals Inc.

On November 8, 2016, the Company entered into a Stock Purchase Agreement (the “Scilex Purchase Agreement”) with Scilex and a majority of the stockholders of Scilex (the “Scilex Stockholders”) pursuant to which, on November 8, 2016, the Company acquired from the Scilex Stockholders, and the Scilex Stockholders sold to the Company, approximately 72% of the outstanding capital stock of Scilex (the “Scilex Acquisition”). The remainder of the outstanding capital stock of Scilex represents a noncontrolling interest of which approximately 23% continues to be held by ITOCHU CHEMICAL FRONTIER Corporation following the Scilex Acquisition.

Scilex focuses on the development and commercialization of specialty pharmaceutical products for the treatment of pain; its lead product, ZTlido™ (lidocaine topical system 1.8%, is a branded lidocaine topical system formulation being developed for the treatment of chronic pain. ZTlido™ (lidocaine topical system 1.8%) will be manufactured by a contract manufacturer.

Under the terms of the Scilex Purchase Agreement, upon receipt of notice from the U.S. Food and Drug Administration (the "FDA") that the FDA has approved Scilex's new drug application for ZTlido™ (lidocaine topical system 1.8%) for the treatment of postherpetic neuralgia (the "NDA") for commercialization, the Company was obligated to deliver to the Scilex Stockholders cash and shares of its common stock in such proportion to be determined in the Company’s sole discretion as a milestone payment. On February 28, 2018, the Company received notice from the FDA that the FDA had approved the NDA. As a result, the Company issued to the Scilex Stockholders consideration valued at approximately $38.2 million, which included an aggregate of 1,381,346 shares of common stock of approximately $13.7 million, cash payment of approximately $24.5 million, which included a bridge loan of approximately $20.0 million with B. Riley FBR to facilitate the timing of the cash payment and resulted in a change in fair value of $6.0 million since December 31, 2017, for the contingent consideration upon settlement.

Acquired In-process Research and Development of BDL

In August 2015, the Company and TNK entered into a Stock Purchase Agreement (the “Stock Purchase Agreement”) with BDL Products, Inc. (“BDL”) and the stockholders of BDL (“Stockholders”) pursuant to which the Stockholders sold all of their shares of capital stock in BDL to TNK for: (1) a cash payment of $100.00, and (2) $6.0 million in shares of TNK Class A Stock, subject to adjustment in certain circumstances, to be issued to the Stockholders upon a financing resulting in gross proceeds (individually or in the aggregate) to TNK of at least $50.0 million (a “Qualified Financing”). In accordance with subsequent amendments to the Stock Purchase Agreement, in the event a Qualified Financing does not occur by October 15, 2017 (which is subject to further extension as implied and based on previously amended dates) or TNK does not complete an initial public offering of shares of its capital stock by September 15, 2017, in lieu of receiving shares of TNK pursuant to the acquisition, the Stockholders shall receive an

aggregate of 309,916 shares of the Company's common stock, subject to adjustment in certain circumstances. TNK did not complete a Qualified Financing by the financing deadline and the Company issued 309,916 shares of its common stock to the Stockholders on March 19, 2018.

Sofusa™ Acquisition

On July 2, 2018, the Company entered into an Asset Purchase Agreement (the "Sofusa Purchase Agreement") with Kimberly-Clark Corporation ("KCC"); Kimberly-Clark Global Sales, LLC ("KCCGS"); and Kimberly-Clark Worldwide, Inc. ("KCCW" and together with KCC and KCCGS, "Kimberly-Clark") pursuant to which, among other things, the Company acquired certain of Kimberly-Clark's assets related to micro-needle drug delivery system, including the Sofusa™ platform (the "Sofusa Assets") and related fixed assets, and assumed certain of Kimberly-Clark's liabilities related to the Sofusa Assets (the "Sofusa Acquisition"). The closing of the Sofusa Acquisition (the "Sofusa Closing") occurred on July 2, 2018. At the Sofusa Closing, the Company paid $10 million and agreed to pay additional consideration to Kimberly-Clark upon the achievement of certain regulatory and net sales milestones, as well as a percentage in the low double-digits of any non-royalty amounts received by the Company in connection with any license, sale or other grant of rights by the Company to develop or commercialize the Sofusa Assets (all such additional consideration, the "Sofusa Contingent Consideration"). Under the Sofusa Purchase Agreement, the aggregate amount of the Sofusa Contingent Consideration payable by the Company will not exceed $300.0 million. The Company also agreed to pay Kimberly-Clark a low single-digit royalty on all net sales with respect to the first five products developed by the Company or its licensees that utilizes intellectual property included in the Sofusa Assets. The transaction was accounted for as an asset acquisition since substantially all the value of the gross assets was concentrated in single asset. Under the Asset Purchase Agreement, the Company acquired the Sofusa DoseDisc micro-needle technology designed to increase the efficacy of drug delivery by way of transdermal drug delivery for cash consideration of $10.0 million which was allocated based on the relative fair value of the assets acquired. No contingent consideration was recorded at September 30, 2018 since the related regulatory approval milestones are not deemed probable until they actually occur. As a result, $9.5 million was expensed as a component of acquired in-process research and development and the remaining $0.5 million was recorded primarily to fixed assets during the three months ended September 30, 2018.

5. Fair Value Measurements

Fair value measurement is defined as the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. A fair value hierarchy is established, which prioritizes the inputs used in measuring fair value into three broad levels as follows:

Level 1—Quoted prices in active markets for identical assets or liabilities.

Level 2—Inputs, other than quoted prices in active markets, that are observable either directly or indirectly.

Level 3—Unobservable inputs based on the Company's own assumptions.

The following table presents the Company’s financial assets and liabilities that are measured at fair value on a recurring basis (in thousands):

	Fair Value Measurements at September 30, 2018			
	Balance	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Cash and cash equivalents	$135,441	$135,441	$ —	$ —
Restricted cash	$45,000	$45,000	$ —	$ —
Marketable securities	$297	$250	$ —	$ 47
Total assets	$180,738	$180,691	$ —	$ 47
Liabilities:				
Acquisition consideration payable	$16,089	$—	$ —	$ 16,089
Total liabilities	$16,089	$—	$ —	$ 16,089

	Fair Value Measurements at December 31, 2017			
	Balance	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Cash and cash equivalents	$20,429	$20,429	$ —	$ —
Marketable securities	$441	$356	$ —	$ 85
Total assets	$20,870	$20,785	$ —	$ 85
Liabilities:				
Acquisition consideration payable	$54,272	$—	$ —	$ 54,272
Total liabilities	$54,272	$—	$ —	$ 54,272

The Company's financial assets and liabilities carried at fair value are comprised of cash and cash equivalents, restricted cash, and acquisition consideration payable. Cash and cash equivalents consist of money market accounts and bank deposits which are highly liquid and readily tradable. These investments are valued using inputs observable in active markets for identical securities. Marketable securities are valued using inputs observable in active markets for identical securities. The Company recorded contingent consideration as part of its investment in Shanghai Three Alliance Biotech Co. LTD (“Shanghai Three”), agreement with Roger Williams Medical Center (“RWMC”), and acquisitions of Concortis, Inc., (“Concortis”), and Virttu. The fair value of the contingent consideration is measured at fair value on a recurring basis using significant unobservable inputs (Level 3). Contingent consideration is measured using the income approach and discounting to present value the contingent payments expected to be made based on assessment of the probability that the company would be required to make such future payment.

The following table includes a summary of the Company’s contingent consideration liabilities and acquisition consideration payables associated with acquisitions. The contingent consideration is measured at fair value using significant unobservable inputs (Level 3) during the nine months ended September 30, 2018:

(in thousands)	Fair Value
Beginning Balance at December 31, 2017	54,272
Re-measurement of Fair Value	13,696
Payment of current year contingent consideration	(51,879)
Ending Balance at September 30, 2018	$16,089

The payment of current year contingent consideration for the nine months ended September 30, 2018 includes the settlement of Scilex and BDL liabilities for $38.2 million and $2.3 million, respectively, and the $11.3 million partial settlement of the Virttu financing milestone in common shares of the Company ($9.9 million of the Virttu contingent liability remains to be paid in cash).

The following table includes a summary of the Company's contingent and financing liabilities, related inputs used to determine fair value, and the valuation methodologies used for the fair value measurements using significant unobservable inputs (Level 3) at September 30, 2018:

(in thousands)	Fair Value Measurements at September 30, 2018	Valuation Methodology	Significant Unobservable Input	Weighted Average (range, if applicable)
Virttu Contingent Consideration (Non-current)	$ 1,160	Multiple outcome discounted cash flow	Discount Rate Probability of Regulatory Milestone	12.21% 16%
Concortis Contingent Consideration	$ 511	Multiple outcome discounted cash flow	Discount Rate Percent probabilities assigned to scenarios	19.20% 20%
Shanghai Three Contingent Consideration	$ 1,782	Multiple outcome discounted cash flow	Discount Rate Percent probabilities assigned to scenarios	12.21% 50%
RWMC Contingent Consideration	$ 2,673	Multiple outcome discounted cash flow	Discount Rate, Percent probabilities assigned to scenarios	12.21% 50%

The principal significant unobservable inputs used in the valuations of the contingent considerations are the discount rates and probabilities assigned to scenario outcomes. An increase in the discount rate or decrease in the probability of regulatory milestone achievement will cause a decrease in the fair value of the contingent consideration. Conversely, a decrease in the discount rate will cause an increase in the fair value of the contingent consideration. An increase in the probabilities assigned to certain scenarios will cause the fair value of contingent consideration to increase. Conversely, a decrease in the probabilities assigned to certain scenarios will cause the fair value of contingent considerations to decrease.

6. Marketable Securities

Marketable securities consisted of the following as of September 30, 2018 and December 31, 2017 (in thousands):

	September 30, 2018			
	Cost	Gross Unrealized Gains (Losses)	Gross Realized Gains (Losses)	Fair Value
Trading securities:				
MedoveX common shares and warrants	$750	$ (453)	$ —	$ 297

	December 31, 2017			
	Cost	Gross Unrealized Gains (Losses)	Gross Realized Gains (Losses)	Fair Value
Trading securities:				
MedoveX common shares and warrants	$750	$ (309)	$ —	$ 441

Trading Securities

On August 5, 2016, the Company entered into a Unit Purchase Agreement (the "Unit Purchase Agreement") with MedoveX Corporation ("MedoveX"). Pursuant to the terms of the Unit Purchase Agreement, the Company purchased three Units for $750,000. Each Unit had a purchase price of $250,000 and consisted of (i) 208,333 shares of MedoveX common stock (the "MedoveX Common Stock"), and (ii) a warrant to purchase 104,167 shares of MedoveX Common Stock (the "MedoveX Warrant"). The MedoveX Warrant has an initial exercise price of $1.52 per share,

subject to adjustment, and is initially exercisable six months following the date of issuance for a period of five years from the date of issuance. In addition, the Company entered into a Registration Rights Agreement with MedoveX pursuant to which MedoveX was required to file a registration statement registering for resale all shares of MedoveX Common Stock and shares of MedoveX Common Stock issuable pursuant to the MedoveX Warrant issued as part of the Units.

For the three months ended September 30, 2018 and 2017, the Company recorded a loss of $26 thousand and a gain of $231 thousand, respectively, on trading securities. For the nine months ended September 30, 2018 and 2017, the Company

recorded a loss of $144 thousand and a loss of $218 thousand on trading securities, respectively. The Company's investment in MedoveX will be revalued on each balance sheet date. The fair value of the Company's holding in MedoveX Common Stock at September 30, 2018 is a Level 1 measurement. The fair value of the Company's holdings in the MedoveX Warrant was estimated using the Black-Scholes option-pricing method. The risk-free rate was derived from the U.S. Treasury yield curve, matching the MedoveX Warrant's term, in effect at the measurement date. The volatility factor was determined based on MedoveX's historical stock prices. The warrant valuation is a Level 3 measurement.

The following table includes a summary of the warrant measured at fair value using significant unobservable inputs (Level 3) during the nine months ended September 30, 2018 (in thousands):

	Total
Beginning balance at December 31, 2017	$84
Change in fair value of warrant	(37)
Ending balance at September 30, 2018	$47

7. Property and Equipment

Property and equipment consisted of the following as of September 30, 2018 and December 31, 2017 (in thousands):

	September 30, 2018	December 31, 2017
Furniture and fixtures	1,096	1,035
Office equipment	621	493
Machinery and lab equipment	24,981	19,868
Leasehold improvements	7,491	7,327
Construction in progress	827	—
	35,016	28,723
Less accumulated depreciation	(13,549)	(9,378)
	$21,467	$19,345

Depreciation expense for the three months ended September 30, 2018 and 2017 was $1.5 million and $1.4 million, respectively. Depreciation expense for the nine months ended September 30, 2018 and 2017 was $4.1 million and $3.3 million, respectively.

8. Cost Method Investments

As of September 30, 2018 and December 31, 2017, the aggregate carrying amount of the Company's cost-method investments in non-publicly traded companies was $237.0 million and included an ownership interest in NantCell, Inc. ("NantCell"), NantBioScience, Inc. ("NantBioScience"), Globavir Biosciences, Inc., Brink Biologics, Inc., Coneksis, Inc., and Celularity Inc.

The Company's cost-method investments are assessed for impairment quarterly. The Company has determined that it is not practicable to estimate the fair value of its cost-method investments on a regular basis and does not reassess the fair value of cost-method investments if there are no identified events or changes in circumstances that may have a significant adverse effect on the fair value of the investments. No impairment losses were recorded during the nine months ended September 30, 2018.

9. Equity Method Investments

NANTibody

In 2013, the Company acquired IgDraSol Inc. ("IgDraSol"), a private company focused on the development of oncologic agents for the treatment of cancer, from a third party unrelated to the NantWorks, LLC ("NantWorks") affiliated entities for 3.0 million shares of the Company's common stock and $380,000 of cash for a total purchase price of $29.1 million. This transaction included the acquisition of IgDraSol's lead compound, CynviloqTM, a micellar diblock copolymeric paclitaxel formulation drug product.

In May 2015, the Company entered into an agreement with NantPharma, LLC (“NantPharma”), a NantWorks company, pursuant to which the Company sold to NantPharma all of its equity interests in IgDraSol, which continued to hold the rights to CynviloqTM. Pursuant to the agreement, NantPharma paid the Company an upfront fee of $90.1 million, of which $60.0 million was required to be used by the Company to fund two joint ventures, as described below.

In April 2015, the Company and NantCell, a subsidiary of NantWorks, a private company owned by Dr. Patrick Soon-Shiong, established a new entity called Immunotherapy NANTibody, LLC (“NANTibody”) as a stand-alone biotechnology company with $100.0 million initial joint funding. NantCell owns 60% of the equity interest of NANTibody and agreed to contribute $60.0 million to NANTibody. The Company owns 40% of NANTibody and in July 2015, the Company had NantPharma, contribute its portion of the initial joint funding of $40.0 million to NANTibody from the proceeds of the sale of IgDraSol. Additionally, the Company and NantCell were allowed to appoint two and three representatives, respectively, to NANTibody’s five-member Board of Directors. NANTibody will focus on accelerating the development of multiple immuno-oncology mAbs for the treatment of cancer, including but not limited to anti-PD-1, anti-PD-L1, anti-CTLA4mAbs, and other immune-check point antibodies as well as ADCs and bispecific antibodies.

NANTibody had been formed to advance pre-clinical and clinical immunology assets contributed by the Company and NantCell. The Company continues to hold 40% of the outstanding equity of NANTibody and NantCell holds the remaining 60%. Until July 2, 2017, NANTibody held approximately $100.0 million of cash and cash equivalents, and the Company recorded its investment in NANTibody at approximately $40.0 million. As an equity method investment, the Company's ratable portion of 40% of money expended for the development of intellectual property assets held by NANTibody would be reflected within income (loss) on equity method investments in its statement of operations. As a result of limited spending at NANTibody, the cash on hand at NANTibody remained at approximately at $100.0 million since the inception of the NANTibody joint venture until July 2, 2017. Further, the Company's equity method investment in NANTibody remained at approximately $40.0 million until July 2, 2017. The financial statements of NANTibody are not received sufficiently timely for the Company to record its portion of earnings or loss in the current financial statements and therefore the Company reports its portion of earnings or loss on a quarter lag.

In February 2018, NANTibody notified the Company that on July 2, 2017, NANTibody acquired all of the outstanding equity of IgDraSol in exchange for $90.1 million in cash. NANTibody purchased IgDraSol from NantPharma, which is controlled by NantWorks, an entity with a controlling interest in NantCell and NantPharma. Although the Company has had a designee serving on the Board of Directors of NANTibody since the formation of NANTibody in April 2015, and although the Company has held 40% of the outstanding equity of NANTibody since NANTibody’s formation, neither the Company nor its director designee was given any advance notice of NANTibody’s purchase of IgDraSol or of any board meeting or action to approve such purchase. As such, the Company's designee on NANTibody’s Board of Directors was not given an opportunity to consider or vote on the transaction as a director and the Company was not given an opportunity to consider or vote on the transaction in its position as a significant (40%) equity holder of NANTibody.

As a result of the July 2, 2017 purchase of IgDraSol, NANTibody’s cash and cash equivalents were reduced from $99.6 million as of June 30, 2017 to $9.5 million as of September 30, 2017, and NANTibody’s contributed capital was reduced from $100.0 million as of June 30, 2017 to $10.0 million as of September 30, 2017, to effect the transfer of IgDraSol from NantPharma to NANTibody. No additional information was provided to the Company to explain why NANTibody’s total assets as of September 30, 2017 were reduced by approximately $90.1 million. The Company requested, but did not receive, additional information from NANTibody for purposes of supporting the value of IgDraSol, including any information regarding clinical advancements in the entity since the sale of IgDraSol by the Company in May 2015.

Prior to the communication of the transfer of IgDraSol from NantPharma to NANTibody, the Company relied on the cash and cash equivalents of NANTibody for purposes of determining the value of its investment in NANTibody, which capital was expended by NANTibody to acquire IgDraSol on July 2, 2017. As a result of the transfer of IgDraSol, the Company reassessed the recoverability of its equity method investment in NANTibody as of July 2, 2017. In doing so, the Company considered the expected outcomes for the intellectual property assets held by

NANTibody as of July 2, 2017. As a result of the lack of evidence of any development activity associated with any of the assets held in NANTibody, given the passage of time since the formation of the joint venture, many competitive products from other drug developers worldwide have advanced and/or commercialized for the targeted disease indications of the assets held in NANTibody, and given the Company's minority interest in NANTibody (the investee), the Company concluded that it does not have the ability to recover the carrying amount of the investment and an other-than-temporary decline in the value of the investment had occurred. Accordingly, an impairment was recorded to the Company's equity method investment in NANTibody for the three and nine months ended September 30, 2017. The fair value of the Company’s investment in NANTibody was measured at fair value on July 2, 2017 using significant unobservable inputs (Level 3) due to the determination of fair value requiring significant judgment, including the potential outcomes of the intellectual property assets held by NANTibody. For these reasons, fair value was determined by applying the

Company's 40% equity interest in NANTibody to the remaining cash and cash equivalents, which resulted in an impairment of $36.0 million. The impairment resulted in a revised carrying value of the Company's investment in NANTibody of $3.7 million which approximates its ratable 40% ownership of the cash maintained by NANTibody expected to be used for future research and development. As of September 30, 2018, the carrying value of the Company's investment in NANTibody was approximately $3.4 million.

NANTibody recorded net loss of $66 thousand and net profit $375 thousand for the three months ended June 30, 2018 and 2017, respectively. The Company recorded its portion of loss from NANTibody in loss on equity method investments on its condensed consolidated statement of operations for the nine months ended September 30, 2018 and 2017. As of June 30, 2018, NANTibody had $9.6 million in current assets and $1.6 million in current liabilities and no noncurrent assets or noncurrent liabilities.

NantStem

In July 2015, the Company and NantBioScience, a wholly-owned subsidiary of NantWorks, established a new entity called NantCancerStemCell, LLC ("NantStem") as a stand-alone biotechnology company with $100.0 million initial joint funding. As initially organized, NantBioScience was obligated to make a $60.0 million cash contribution to NantStem for a 60% equity interest in NantStem, and the Company was obligated to make a $40.0 million cash contribution to NantStem for a 40% equity interest in NantStem. Fifty percent of these contributions were funded in July 2015 and the remaining amounts were to be made by no later than September 30, 2015. The Company had NantPharma contribute its portion of the initial joint funding of $20.0 million to NantStem from the proceeds of the sale of IgDraSol. Pursuant to a Side Letter dated October 13, 2015, the NantStem joint venture agreement was amended to relieve the Company of the obligation to contribute the second $20.0 million payment, and its ownership interest in NantStem was reduced to 20%. NantBioScience's funding obligations were unchanged. The Side Letter was negotiated at the same time the Company issued a call option on shares of NantKwest that it owned to Cambridge Equities, L.P. ("Cambridge"), a related party to NantBioScience.

In the fourth quarter of 2015, the Company determined it had an other-than-temporary decline in the value of NantStem and recognized a loss of $4.0 million in loss on equity method investments on its condensed consolidated statement of operations for the year ended December 31, 2015. There was no loss related to other-than-temporary impairment recognized for the equity investment for the year ended December 31, 2017. A loss related to other-than-temporary impairment of $0.5 million was recognized for the equity investment in NantStem for the three months ended June 30, 2018.

The Company is accounting for its interest in NantStem as an equity method investment, due to the significant influence the Company has over the operations of NantStem through its board representation and 20% voting interest. The Company's investment in NantStem is reported in equity method investments on its condensed consolidated balance sheets and its share of NantStem's loss is recorded in loss on equity method investments on its condensed consolidated statement of operations. As of September 30, 2018, the carrying value of the Company's investment in NantStem was approximately $18.0 million. The difference between the Company's investment in NantStem and the Company's 20% interest in the net assets of Nantstem was approximately $1.7 million at September 30, 2018.

The financial statements of NantStem are not received sufficiently timely for the Company to record its portion of earnings or loss in the current financial statements and therefore the Company reports its portion of earnings or loss on a quarter lag.

NantStem recorded net loss of $621 thousand and net profit of $461 thousand for the three months ended June 30, 2018 and 2017, respectively. The Company recorded its portion of loss from NantStem (in addition to the immaterial impairment) in loss on equity method investments on its condensed consolidated statement of operations for the nine months ended September 30, 2018 and 2017. As of June 30, 2018, NantStem had $74.0 million in current assets and $119 thousand in current liabilities and $7.8 million noncurrent assets and no noncurrent liabilities.

Yuhan Agreement

In March 2016, the Company and Yuhan , a South Korea company, entered into an agreement to form a joint venture company called ImmuneOncia Therapeutics, LLC ("ImmuneOncia") to develop and commercialize a number of immune checkpoint antibodies against undisclosed targets for both hematological malignancies and solid

tumors. Under the terms of the joint venture agreement, Yuhan contributed an initial investment of $10.0 million to ImmuneOncia, and the Company granted ImmuneOncia an exclusive license to one of its immune checkpoint antibodies for specified countries while retaining the rights for the U.S., European and Japanese markets, as well as global rights for ImmuneOncia to two additional antibodies that will be selected by ImmuneOncia from a group of pre-specified antibodies from the Company's immuno-oncology antibody portfolio. During October 2016, funding and operations of ImmuneOncia commenced. Yuhan owns 51% of ImmuneOncia, while the Company owns 49%.

The Company is accounting for its interest in ImmuneOncia as an equity method investment, due to the significant influence the Company has over the operations of ImmuneOncia through its board representation and 49% voting interest while not sharing joint control with Yuhan. The Company's investment in ImmuneOncia is reported in equity method investments on its condensed consolidated balance sheets and its share of ImmuneOncia's loss is recorded in loss on equity method investments on its condensed consolidated statement of operations. As of September 30, 2018, the carrying value of the Company's investment in ImmuneOncia was approximately $3.8 million. The difference between the Company's investment in ImmuneOncia and the Company's 49% interest in the net assets of ImmuneOncia was approximately $0.7 million at September 30, 2018.

ImmuneOncia recorded a net loss of $1.5 million and $0.5 million for the three months ended September 30, 2018 and 2017, respectively. ImmuneOncia recorded a net loss of $6.2 million and $2.0 million for the nine months ended September 30, 2018 and 2017, respectively. The Company recorded its portion (49% equity interest) of loss from ImmuneOncia in loss on equity method investments on its condensed consolidated statement of operations for the three and nine months ended September 30, 2018 and 2017. As of September 30, 2018, ImmuneOncia had $1.9 million in current assets, $187 thousand in current liabilities, $7.5 million in noncurrent assets, and $18 thousand in noncurrent liabilities.

In April 2016, Yuhan purchased $10.0 million of shares of common stock, and warrants as part of the Company's private placement offering.

Shanghai Three

On March 7, 2016, TNK agreed to issue to SiniWest Holdings, Inc. ("SiniWest Holdings") $4.0 million in shares of TNK Class A Stock, subject to certain circumstances, to be issued upon a financing resulting in gross proceeds (individually or in the aggregate) to TNK of at least $10.0 million and a $1.0 million upfront cash payment in exchange for SiniWest Holdings transferring certain assets to TNK, including SiniWest Holdings' 25% interest in Shanghai Three, a China based company. The Company is accounting for its interest in Shanghai Three as an equity method investment, due to the significant influence the Company has over the operations of Shanghai Three through its 25% voting interest. The Company's investment in Shanghai Three is reported in equity method investments on the condensed consolidated balance sheets and its share of Shanghai Three's income or loss is recorded in income (loss) on equity method investments on the condensed consolidated statement of operations. As of September 30, 2018, the carrying value of the Company's investment in Shanghai Three was approximately $3.8 million.

The financial statements of Shanghai Three are not received sufficiently timely for the Company to record its portion of earnings or loss in the current financial statements and therefore the Company reports its portion of earnings or loss on a quarter lag.

Shanghai Three incurred no operating expenses or net loss for the three and nine months ended June 30, 2018 and 2017. As of June 30, 2018, Shanghai Three had $0.4 million in current assets, $2.9 million in current liabilities, $5.5 million in noncurrent assets, and $2.2 million in noncurrent liabilities.

Fair Value of Equity Method Investment

The Company periodically evaluates the carrying value of its equity method investments, when events and circumstances indicate that the carrying amount of an asset may not be recovered. The Company determines the fair value of its equity method investments to evaluate whether impairment losses shall be recorded using Level 3 inputs. These investments include the Company's holdings in privately held biotechnology companies that are not exchange traded and therefore not supported with observable market prices. However, these investments are valued by reference to their net asset values and unobservable inputs, including future cash flows.

10. Goodwill and Intangible Assets

At September 30, 2018 and December 31, 2017, the Company had recorded goodwill of $38.3 million. The Company performed a qualitative test for goodwill impairment during the quarter ended December 31, 2017. Based upon the results of the qualitative testing the Company concluded that it is more-likely-than-not that the fair values of the Company's goodwill was in excess of its carrying value and therefore performing the first step of the two-step impairment test was unnecessary. No goodwill impairment was recognized for the three and nine months ended September 30, 2018 and 2017 and will perform its annual test for goodwill impairment in the fourth quarter of 2018. A summary of the Company's goodwill as of September 30, 2018 is as follows (in thousands):

	Total
Balance at December 31, 2017	$38,298
Goodwill Acquired from Acquisitions	—
Balance at September 30, 2018	$38,298

The Company's intangible assets, excluding goodwill, include acquired license and patent rights, core technologies, customer relationships and acquired in-process research and development. Amortization for the intangible assets that have finite useful lives is generally recorded on a straight-line basis over their useful lives. A summary of the Company's identifiable intangible assets as of September 30, 2018 and December 31, 2017 is as follows (in thousands):

	September 30, 2018		
	Gross Carrying Amount	Accumulated Amortization	Intangibles, net
Customer relationships	$1,585	$ 1,310	$ 275
Acquired technology	3,410	841	2,569
Acquired in-process research and development	37,660	—	37,660
Patent rights	32,720	4,196	28,524
Other	$105	$ —	$ 105
Total intangible assets	$75,480	$ 6,347	$ 69,133

	December 31, 2017		
	Gross Carrying Amount	Accumulated Amortization	Intangibles, net
Customer relationships	$1,585	$ 1,091	$ 494
Acquired technology	3,410	709	2,701
Acquired in-process research and development	37,660	—	37,660
Patent rights	32,720	2,562	30,158
Total intangible assets	$75,375	$ 4,362	$ 71,013

As of September 30, 2018, the remaining weighted average life for identifiable intangible assets is 15 years.

Patent rights are stated at cost and amortized on a straight-line basis over the estimated useful lives of the assets, determined to be approximately fifteen years or nineteen years from the date of transfer of the rights to the Company. Amortization expense for the three months ended September 30, 2018 and 2017 was $545 thousand and $538 thousand, respectively, which has been included in intangible amortization on the condensed consolidated statement of operations. Amortization expense for the nine months ended September 30, 2018 and 2017 was $1,635 thousand and $1,597 thousand, respectively, which has been included in intangible amortization on the condensed consolidated statement of operations.

Acquired technology is stated at cost and depreciated on a straight-line basis over the estimated useful lives of the assets, determined to be approximately 19 years from the date of acquisition of the technology in December 2013. Amortization expense for each of the three months ended September 30, 2018 and 2017 was $44 thousand, which has been included in intangibles amortization on the condensed consolidated statement of operations. Amortization expense for each of the nine months ended September 30, 2018 and 2017 was $132 thousand, which has been

included in intangible amortization on the condensed consolidated statement of operations.

Customer relationships are stated at cost and depreciated on a straight-line basis over the estimated useful lives of the assets, determined to be approximately five years from the date of acquisition. Amortization expense for the three months

ended September 30, 2018 and 2017, was $73 thousand and $73 thousand, respectively, which has been included in intangibles amortization. Amortization expense for each of the nine months ended September 30, 2018 and 2017 was $218 thousand, which has been included in intangible amortization on the condensed consolidated statement of operations.

Acquired in-process research and development is stated at cost and may be immediately expensed if there is no alternative future use. The Company intends to begin amortization of acquired in-process research and development costs associated with the Scilex and Virttu business combinations upon commercialization of the respective products. The acquired in-process research and development is reviewed annually for impairment or more frequently as changes in circumstance or the occurrence of events suggest that the remaining value may not be recoverable.

Estimated future amortization expense related to intangible assets at September 30, 2018 is as follows (in thousands):

Years Ending December 31,	Amount
2018	$1,019
2019	3,845
2020	3,845
2021	5,040
2022	5,040
Thereafter	50,344
Total	$69,133

11. Significant Agreements and Contracts

License Agreement with Mabtech Limited

In August 2015, the Company entered into an exclusive licensing agreement to develop and commercialize multiple prespecified biosimilar and biobetter antibodies from Mabtech Limited. Under the terms of the agreement, the Company will develop and market four mAbs for the North American, European and Japanese markets. The Company made an initial license payment of $10.0 million and in February 2016, paid an additional $10.0 million license payment, both of which were recognized as acquired in-process research and development expense in the condensed consolidated statements of operations as the Company determined there was no alternative future use for the license.

In June 2016, the Company agreed to accelerate and pay a $30.0 million milestone license payment which has been recognized as acquired in-process research and development expense in the condensed consolidated statements of operations, in exchange for the purchase by Mabtech Limited in June 2016, of $10.0 million of shares of common stock and warrants.

In December 2017, the Company agreed to accelerate and, as a result, paid a $25.0 million milestone license payment, which has been recognized as acquired in-process research and development expense in the consolidated statements of operations for the year ended December 31, 2017. The amended agreement includes additional milestone payments totaling $125.0 million payable following the completion of the technology transfer from Mabtech Limited and for payables to extend the license agreement. The remaining anniversary payments are due on December 31, 2018 and 2019. The Company is not obligated to extend the license agreement. Accordingly, the additional future milestone payments have not yet been accrued as of September 30, 2018.

Immunotherapy Research Collaboration Agreement with Roger Williams Medical Center

In April 2016, the Company entered into an immunotherapy research collaboration agreement with RWMC to provide certain clinical trial, research and manufacturing services. Under the terms of the agreement, RWMC will perform pre-clinical and clinical research related to the development and delivery of CAR-T immunotherapies. In exchange, the Company granted RWMC $6.0 million in shares of TNK Class A Stock, subject to adjustment in certain circumstances, to be issued upon a financing resulting in gross proceeds (individually or in the aggregate) to TNK of at least $20.0 million. The Company determined the fair value of this obligation was $3.4 million as of the April of 2016 agreement effective date, and the amount was recognized as prepaid expense and other and acquisition consideration payable in the condensed consolidated balance sheet. The Company will recognize the upfront payment over the expected performance period of five years. During each of the quarters ended September 30, 2018 and 2017, the Company recognized approximately $170 thousand in pre-clinical research and development expense pursuant to the agreement. During the nine months ended September 30, 2018 and 2017, the Company recognized approximately

$510 thousand and $510 thousand in pre-clinical research and development expense pursuant to the agreement, respectively.

License Agreement with NantCell

In April 2015, the Company and NantCell entered into a license agreement. Under the terms of the agreement the Company granted an exclusive license to NantCell covering patent rights, know-how, and materials related to certain antibodies, ADCs and two CAR-TNK products. NantCell agreed to pay a royalty not to exceed five percent (5%) to the Company on any net sales of products (as defined) from the assets licensed by the Company to NantCell. In addition to the future royalties payable under this agreement, NantCell paid an upfront payment of $10.0 million to the Company and issued 10 million shares of NantCell common stock to the Company valued at $100.0 million based on a recent equity sale of NantCell common stock to a third party. As of September 30, 2018, the Company had not yet provided all of the items noted in the agreement, including research services for and on behalf of NantCell, and therefore has recorded the entire upfront payment and value of the equity interest received as deferred revenue. Specifically, only a portion of the materials associated with the licensed assets have been delivered while the majority of the licensed assets remain undelivered and the related research activities are still to be performed. The Company will recognize the upfront payment and the value of the equity interest received over the period beginning with the commencement of the last item delivered. The Company's ownership interest in NantCell does not provide the Company with control or the ability to exercise significant influence; therefore the $100.0 million investment is carried at cost in the condensed consolidated balance sheets and evaluated for other-than-temporary impairment on a quarterly basis.

License Agreement with The Scripps Research Institute

In January 2010, the Company entered into a license agreement (the "TSRI License") with The Scripps Research Institute ("TSRI"). Under the TSRI License, TSRI granted the Company an exclusive, worldwide license to certain TSRI patent rights and materials based on quorum sensing for the prevention and treatment of Staphylococcus aureus ("S. aureus" or "Staph") infections, including Methicillin-resistant Staph. In consideration for the license, the Company: (i) issued TSRI a warrant for the purchase of common stock, (ii) agreed to pay TSRI a certain annual royalty commencing in the first year after certain patent filing milestones are achieved and (iii) agreed to pay a royalty on any sales of licensed products by the Company or its affiliates and a royalty for any revenues generated by the Company through its sublicense of patent rights and materials licensed from TSRI under the TSRI License. The TSRI License requires the Company to indemnify TSRI for certain breaches of the agreement and other matters customary for license agreements. The parties may terminate the TSRI License at any time by mutual agreement. In addition, the Company may terminate the TSRI License by giving 60 days' notice to TSRI and TSRI may terminate the TSRI License immediately in the event of certain breaches of the agreement by the Company or upon the Company's failure to undertake certain activities in furtherance of commercial development goals. Unless terminated earlier by either or both parties, the term of the TSRI License will continue until the final expiration of all claims covered by the patent rights licensed under the agreement. For the quarters ended September 30, 2018 and 2017, the Company recorded $21 thousand and $72 thousand in patent prosecution and maintenance costs associated with the TSRI License, respectively. For the nine months ended September 30, 2018 and 2017, the Company recorded $45 thousand and $112 thousand in patent prosecution and maintenance costs associated with the TSRI License, respectively. All such costs have been included in general and administrative expenses.

NIH Grants

In June 2014, the NIAID awarded the Company a Phase II Small Business Technology Transfer ("STTR") grant (the "Staph Grant III Award") to support the advanced preclinical development of human bispecific antibody therapeutics to prevent and treat Staph infections, including methicillin-resistant S. aureus ("MRSA"). The project period for the Staph Grant III Award covered a two-year period which commenced in June 2014, which was subsequently extended by one year, with total funds available of approximately $1.0 million per year for up to two years. The Staph Grant III Award was not extended beyond June 30, 2017 and the remaining amounts for the award have been recorded as of September 30, 2018. During the quarter ended September 30, 2018 and 2017, the Company recorded $0 and $11 thousand of revenue associated with the Staph Grant III Award, respectively. During the nine months ended September 30, 2018 and 2017, the Company recorded $0 and $206 thousand of revenue associated with the Staph Grant III Award, respectively.

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12. Loan and Security Agreement and Convertible Notes

Loan and Security Agreement with Hercules Capital, Inc.

On November 23, 2016, the Company and certain of its domestic subsidiaries (together with the Company, the "Borrowers") entered into a Loan and Security Agreement (the "Loan Agreement") with Hercules Capital, Inc. ("Hercules"), as a lender and agent for several banks and other financial institutions or entities from time to time party to the Loan Agreement (collectively, the "Lenders") for a term loan of up to $75.0 million, subject to funding in multiple tranches (the "Term Loan"). The Term Loan will mature on December 1, 2020. The proceeds of the Term Loan will be used for general corporate purposes and coincided with the repayment of the outstanding debt financing arrangement with Oxford Finance LLC and Silicon Valley Bank.

The first tranche of $50.0 million was funded upon execution of the Loan Agreement on November 23, 2016. Under the terms of the Loan Agreement, the Borrowers may, but are not obligated to, request additional funds of up to $25.0 million which are available until June 30, 2018, subject to approval by Hercules' Investment Committee. Pursuant to the terms of the third amendment to the Loan Agreement entered into on March 15, 2017, the Company paid Hercules $1.5 million for a portion of the backend fee. Pursuant to the terms of the fourth amendment to the Loan Agreement entered into on March 23, 2017 (the "Fourth Amendment"), the Company repaid Hercules, without repayment penalty, $20.0 million of the outstanding principal and unpaid interest accrued thereon on March 23, 2017. The Fourth Amendment also provided for the following: (1) Hercules reduced the minimum amount of unrestricted cash that the Company must maintain under the Loan Agreement, and (2) the parties agreed to change the date by which the Company must achieve a fundraising milestone.

The Loan Agreement contains customary affirmative and restrictive covenants and representations and warranties, including financial reporting obligations and significant limitations on dividends, indebtedness, liens (including a negative pledge on intellectual property and other assets), collateral, investments, distributions, transfers, mergers or acquisitions, taxes, corporate changes, deposit accounts, and subsidiaries. Additionally, the Loan Agreement contains covenants requiring the Borrowers (i) to achieve certain fundraising requirements by certain dates and (ii) to maintain $20.0 million of unrestricted cash prior to achieving its corporate and fundraising milestones. The Company's public offering for net proceeds of $43.1 million satisfied the fundraising requirements and fundraising milestone.

Pursuant to the terms of the seventh amendment to the Loan Agreement entered into on November 6, 2017 (the "Seventh Amendment"), (i) the Company repaid Hercules, without repayment penalty, $10.0 million of the outstanding principal and unpaid interest accrued thereon on November 6, 2017, and (ii) Hercules agreed to reduce the minimum amount of unrestricted cash that the Company must maintain under the Loan Agreement from $20.0 million to $8.0 million.

On December 21, 2017, the Company paid off all obligations owing under, and terminated, the Loan Agreement. The secured interests were terminated in connection with the Company's discharge of indebtedness thereunder.

In connection with the Loan Agreement, the Company issued Hercules a warrant, dated November 23, 2016 (the "Hercules Warrant"), to purchase up to 460,123 shares of common stock, at an initial exercise price of $4.89, subject to adjustment as provided in the Hercules Warrant. The Hercules Warrant is initially exercisable for 306,748 shares of common stock, and may automatically become exercisable for additional shares of common stock on such dates (if any) based upon the funding amounts of any additional tranches of the Term Loan that may be extended to the Borrowers. The Hercules Warrant will terminate, if not earlier exercised, on the earlier of November 23, 2023 and the closing of certain merger or other transactions in which the consideration is cash, stock of a publicly-traded acquirer or a combination thereof.

In connection with the extinguishment of the Loan Agreement on December 21, 2017, a loss of $4.3 million on the extinguishment of debt was recorded representing the difference between the reacquisition price of debt and the net carrying amount of the loan as of December 21, 2017.

2018 Chinese Yuan ("RMB") Loan

In March 2018, the Company entered into a term loan in the aggregate principal amount of $1.6 million ("RMB 10.0 million") with the Bank of China and the Agricultural Bank of China, which is guaranteed by Levena Suzhou Biopharma, Co. Ltd. This one year bank facility was used for working capital purposes. The proceeds from the loan agreement are reflected as financing activities in the condensed consolidated statements of cash flows for the nine

months ended September 30, 2018. The outstanding balance is repayable from February 2018 to March 2019. The interest rate on this loan is 5%.

2017 Securities Purchase Agreement in Private Placement

On December 11, 2017, the Company entered into the December 2017 Securities Purchase Agreement with the December 2017 Purchasers. Pursuant to the December 2017 Securities Purchase Agreement, on December 21, 2017, the

Company issued and sold to the December 2017 Purchasers, in a private placement transaction, the December 2017 Notes and the December 2017 Warrants.

At any time and from time to time before the December 2017 Warrant Maturity Date, each December 2017 Purchaser had the option to convert any portion of the outstanding principal amount of such December 2017 Purchaser's December 2017 Note that was equal to or greater than the lesser of: (1) $4,000,000, and (2) the then-outstanding principal amount of such December 2017 Purchaser's December 2017 Note into shares of common stock at a price per share of $2.26875, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions. Accrued but unpaid interest on the December 2017 Notes was to be paid in cash semi-annually in arrears on or prior to the 30th day of June and 31st day of December of each calendar year commencing with the year ending December 31, 2018.

Each December 2017 Warrant has an exercise price of $2.61 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, became exercisable on June 20, 2018, has a term of five and a half years and is exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the December 2017 Warrants, in which case the December 2017 Warrants shall also be exercisable on a cashless exercise basis.

On May 17, 2018, the December 2017 Purchasers converted in full the outstanding principal and accrued interest under the December 2017 Notes into 22,038,565 shares of the Company's common stock, and the Company paid to the December 2017 Purchasers cash in an aggregate amount of $1.0 million in accrued but unpaid interest. The unamortized discount remaining at the date of conversion of $44.3 million was recognized immediately at that date as interest expense.

See Note 3 for discussion of the Company's policies for accounting for debt with detachable warrants. In connection with the issuance of the Notes and Warrants, the Company recorded a debt discount of approximately $44.8 million based on an allocation of proceeds to the Warrants of approximately $12.7 million and a beneficial conversion feature of approximately $32.1 million, before issuance costs.

2018 Securities Purchase Agreement in Private Placement

On March 26, 2018, the Company entered into the Securities Purchase Agreement with the Purchasers. Pursuant the Securities Purchase Agreement, the Company agreed to issue and sell to the Purchasers, in the Private Placement, (1) the Notes in an aggregate principal amount of $120,500,000, and (2) the Warrants to purchase 8,591,794 shares of the common stock of the Company.

On June 13, 2018, the Company entered into an amendment (the "Amendment") to the Securities Purchase Agreement. Under the terms of the Amendment, the Company and the Purchasers agreed that the aggregate principal amount of the Notes was reduced to $37,848,750 and that the aggregate number of shares of Common Stock issuable upon exercise of the Warrants was reduced to 2,698,662, and also agreed to certain other adjustments to the threshold principal amount of the Notes required to remain outstanding in order for certain rights and obligations to apply to the Notes.

On June 13, 2018, pursuant to the Securities Purchase Agreement, the Company issued and sold to the Purchasers, in the Private Placement (1) Notes in an aggregate principal amount of $37,848,750, and (2) Warrants to purchase an aggregate of 2,698,662 shares of Common Stock.

At any time and from time to time before the Maturity Date, each Purchaser shall have the option to convert any portion of the outstanding principal amount of such Purchaser's Note that is equal to or greater than the lesser of: (1) $4,000,000, and (2) the then-outstanding principal amount of such Purchaser's Note into shares of common stock at a price per share of $7.0125, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions. Accrued but unpaid interest on the Notes shall be paid in cash semi-annually in arrears on or prior to the 30th day of June and 31st day of December of each calendar year commencing with December 31, 2018.

Each Warrant has an exercise price of $8.77 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will become exercisable on December 11, 2018, has a term of five and a half years from the date of issuance and will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Warrants, in which case the Warrants shall also be

exercisable on a cashless exercise basis.

See Note 3 for discussion of the Company's policies for accounting for debt with detachable warrants. In connection with the issuance of the Notes and Warrants, the Company recorded a debt discount of approximately $21.6 million based on an allocation of proceeds to the Warrants of approximately $9.6 million and a beneficial conversion feature of approximately $12.0

million, before issuance costs. The Company accounts for the debt at amortized cost and amortizes the debt discount to interest expense using the effective interest method over the expected term of the Notes.

The fair value of the Notes was estimated using a lattice model with Level 2 inputs including the stock price volatility, risk-free interest rate, and debt yield. As of September 30, 2018, the estimated fair value of the Notes was approximately $32.3 million, compared to the carrying value of $16.8 million, as a result of unamortized debt discount. A substantial portion of the market value of the Company's debt in excess of the outstanding principal amount relates to the discount on the Notes.

Convertible debt and unamortized discount balances are as follows (in thousands):

Face value of loan	$37,849
Debt discount - warrant	(9,643)
Debt discount - beneficial conversion feature	(12,005)
Capitalized debt issuance costs	(95)
Accretion of debt issuance costs and other	—
Accretion of debt discount	658
Balance at September 30, 2018	16,764

Future minimum payments under the amended and restated loan and security agreement are as follows (in thousands) as of September 30, 2018:

Years Ending December 31,	
2018	—
2019	1,892
2020	1,892
2021	1,892
2022	1,892
2023	39,741
Total future minimum payments	47,309
Unpaid interest	(9,462)
Unamortized debt discount	(20,988)
Unamortized capitalized debt issuance costs	(95)
Total minimum payment	16,764
Current portion	—
Long-term debt	$16,764

2018 Purchase Agreements and Indenture for Scilex

On September 7, 2018, Scilex entered into the 2018 Purchase Agreements with the Purchasers and the Company. Pursuant to the 2018 Purchase Agreements, on September 7, 2018, Scilex, among other things, issued and sold the Scilex Notes to the Purchasers for an aggregate purchase price of $140,000,000. In connection with the Offering, Scilex also entered into the Indenture governing the Scilex Notes with the Trustee and Collateral Agent, and the Company. Pursuant to the Indenture, the Company agreed to the Guarantee.

The net proceeds of the Offering were approximately $89.3 million, after deducting the Offering expenses payable by Scilex and funding the Reserve Account and the Collateral Account pursuant to the terms of the Indenture. The net proceeds of the Offering will be used by Scilex to support the commercialization of ZTlido™ (lidocaine topical system 1.8%), for working capital and general corporate purposes in respect of the commercialization of ZTlido™ (lidocaine topical system 1.8%). Funds in the Reserve Account will be released to Scilex upon receipt by the Trustee of an officer’s certificate under the Indenture from Scilex confirming receipt of the Marketing Approval Letter on or prior to July 1, 2023. Funds in the Collateral Account will be released upon receipt of a written consent authorizing such release from the holders of a majority in principal amount of the Scilex Notes issued.

The holders of the Scilex Notes will be entitled to receive quarterly payments of principal of the Scilex Notes equal to a percentage, in the range of 10% to 20% of the net sales of ZTlido™ (lidocaine topical system 1.8%) for the prior fiscal quarter, beginning on February 15, 2019. If Scilex has not received the Marketing Approval Letter by March 31, 2021, the percentage of net sales payable shall be increased to be in the range of 15% to 25%. If actual cumulative net sales

of ZTlido™ (lidocaine

topical system 1.8%) from October 1, 2022 through September 30, 2023 are less than 60% of a predetermined target sales threshold for such period, then Scilex will be obligated to pay an additional installment of principal of the Scilex Notes each quarter in an amount equal to an amount to be determined by reference to the amount of such deficiency. The aggregate principal amount due under the Scilex Notes shall be increased by $28,000,000 on February 15, 2022 if actual cumulative net sales of ZTlido™ (lidocaine topical system 1.8%) from the issue date of the Scilex Notes through December 31, 2021 do not equal or exceed 95% of a predetermined target sales threshold for such period. If actual cumulative net sales of ZTlido™ (lidocaine topical system 1.8%) for the period from October 1, 2022 through September 30, 2023 do not equal or exceed 80% of a predetermined target sales threshold for such period, the aggregate principal amount shall also be increased on November 15, 2023 by an amount equal to an amount to be determined by reference to the amount of such deficiency.

The final maturity date of the Scilex Notes will be August 15, 2026. The Scilex Notes may be redeemed in whole at any time upon 30 days' written notice at Scilex's option prior to August 15, 2026 at a redemption price equal to 100% of the then-outstanding principal amount of the Scilex Notes. In addition, upon a change of control of Scilex (as defined in the Indenture), each holder of a Scilex Note shall have the right to require Scilex to repurchase all or any part of such Scilex Note holder's Scilex Note at a repurchase price in cash equal to 101% of the then-outstanding principal amount thereof.

The 2018 Purchase Agreements include the terms and conditions of the offer and sale of the Scilex Notes, representations and warranties of the parties, indemnification and contribution obligations and other terms and conditions customary in agreements of this type.

The Indenture governing the Scilex Notes contains customary events of default with respect to the Scilex Notes (including a failure to make any payment of principal on the Scilex Notes when due and payable), and, upon certain events of default occurring and continuing, the Trustee by notice to Scilex, or the holders of at least 25% in principal amount of the outstanding Scilex Notes by notice to Scilex and the Trustee, may (subject to the provisions of the Indenture) declare 100% of the then-outstanding principal amount of the Scilex Notes to be due and payable. Upon such a declaration of acceleration, such principal will be due and payable immediately. In the case of certain events, including bankruptcy, insolvency or reorganization involving the Company or Scilex, the Scilex Notes will automatically become due and payable.

Pursuant to the Indenture, the Company and Scilex must also comply with certain covenants with respect to the commercialization of ZTlido™ (lidocaine topical system 1.8%), as well as customary additional affirmative covenants, such as furnishing financial statements to the holders of the Scilex Notes, minimum cash requirements and net sales reports; and negative covenants, including limitations on the following: the incurrence of debt; the payment of dividends, the repurchase of shares and under certain conditions making certain other restricted payments; the prepayment, redemption or repurchase of subordinated debt; a merger, amalgamation or consolidation involving Scilex; engaging in certain transactions with affiliates; and the making of investments other than those permitted by the Indenture.

The Scilex Notes and related Guarantee have not been, and will not be, registered under the Securities Act of 1933, as amended, or the securities laws of any other jurisdiction and may not be offered or sold in the United States without registration or an applicable exemption from registration requirements. The holders of the Scilex Notes do not have any registration rights.

Pursuant to a Collateral Agreement by and among Scilex, the Trustee and the Collateral Agent (the "Collateral Agreement"), the Scilex Notes will be secured by ZTlido™ (lidocaine topical system 1.8%) and all of the existing and future property and assets of Scilex necessary for, or otherwise relevant to, now or in the future, the manufacture and sale of ZTlido™ (lidocaine topical system 1.8%), on a worldwide basis (exclusive of Japan), including, but not limited to, the intellectual property related to ZTlido™ (lidocaine topical system 1.8%), the marketing or similar regulatory approvals related to ZTlido™ (lidocaine topical system 1.8%), any licenses, agreements and other contracts related to ZTlido™ (lidocaine topical system 1.8%), and the current assets related to ZTlido™ (lidocaine topical system 1.8%) such as inventory, accounts receivable and cash and any and all future iterations, improvements or modifications of such product made, developed or licensed (or sub-licensed) by Scilex or any of its affiliates or licensees (or sub-licensees) (including ZTlido™ (lidocaine topical system 5.4%)).

Pursuant to the terms of the Indenture, the Company issued an irrevocable standby letter of credit to Scilex (the "Letter of Credit"), which provides that, in the event that (1) Scilex does not hold at least $35,000,000 in unrestricted cash as of the end of any calendar month during the term of the Scilex Notes, (2) actual cumulative net sales of ZTlido™ (lidocaine topical system 1.8%) from the issue date of the Scilex Notes through December 31, 2021 are less than a specified sales threshold for such period, or (3) actual cumulative net sales of ZTlido™ (lidocaine topical system 1.8%) for any calendar year during the term of the Scilex Notes, beginning with the 2022 calendar year, are less than a specified sales threshold for such calendar year, Scilex, as beneficiary of the Letter of Credit, will draw, and the Company will pay to Scilex, $35,000,000 in a single lump-sum amount as a subordinated loan. The Letter of Credit will terminate upon the earliest to occur of: (a) the repayment of the Scilex Notes in full, (b) the actual net sales of ZTlido™ (lidocaine topical system 1.8%) for any calendar year during the term of the

Scilex Notes exceeding a certain threshold, (c) the consummation of an initial public offering on a major international stock exchange by Scilex that satisfies certain valuation thresholds, and (d) the replacement of the Letter of Credit with another letter of credit in form and substance, including as to the identity and creditworthiness of issuer, reasonably acceptable to the holders of at least 80% in principal amount of outstanding Scilex Notes.

As of September 30, 2018, the fair value was considered comparable to the carrying value of $135.7 million, as a result of the short passage of time between the issuance date and the last day of the quarter.

Borrowings of the 2018 Purchase Agreements and Indenture for Scilex consisted of the following (in thousands):

Face value of loan	$224,000
Debt discount	(82,637)
Capitalized debt issuance costs	(5,632)
Balance at September 30, 2018	135,731

Debt discount and debt issuance costs, which are presented as a direct reduction of the Scilex Notes in the consolidated balance sheets, are amortized as interest expense using the effective interest method. As principal repayments on the Scilex Notes are based on a percentage of net sales of ZTlido™ (lidocaine topical system 1.8% and lidocaine topical system 5.4%, if a Marketing Approval Letter is received), Sorrento has elected to account for changes in estimated cash flows from future net sales prospectively. Specifically, a new effective interest rate will be determined based on revised estimates of remaining cash flows and changes in expected cash flows will be recognized prospectively. The amount of debt discount and debt issuance costs included in interest expense for the quarter ended September 30, 2018 was approximately $1,456,000.

The Company identified a number of embedded derivatives that require bifurcation from the Scilex Notes and separate accounting as a single compound derivative. However, as the current fair value attributed to the bifurcated compound derivative is immaterial, The Company has not recorded this derivative within its consolidated financial statements. The Company will re-evaluate this assessment each reporting period.

2018 Short-term Bridge Loan

On September 10, 2018, the Company entered into a Short-term Bridge Loan Agreement ("Bridge Loan) in which the Company received proceeds of approximately $19.6 million, net of approximately $0.3 million of commitment fees to facilitate the timing of a cash payment. Interest on the Bridge Loan is 8.5 percent annually and the maturity date is November 12, 2018. The Bridge Loan was paid in full as of the date of this filing.

13. Stock Incentive Plans

2009 Non-Employee Director Grants

In September 2009, prior to the adoption of the 2009 Stock Incentive Plan, the Company’s Board of Directors approved the reservation and issuance of 8,000 non-statutory stock options to the Company’s non-employee directors. The options vested on the one year anniversary of the vesting commencement date in October 2010, and are exercisable for up to ten years from the grant date. No further shares may be granted under this plan and, as of September 30, 2018, 3,200 options with a weighted-average exercise price of $1.12 were outstanding.

2009 Stock Incentive Plan

In October 2009, the Company’s stockholders approved the 2009 Stock Incentive Plan. In July 2017, the Company’s stockholders approved, among other items, the amendment and restatement of the 2009 Stock Incentive Plan (as amended and restated, the “Stock Plan”) to increase the number of shares of the Company’s common stock authorized to be issued pursuant to the Stock Plan to 11,260,000. Such shares of the Company’s common stock are reserved for issuance to employees, non-employee directors and consultants of the Company. The Stock Plan provides for the grant of incentive stock options, non-incentive stock options, stock appreciation rights, restricted stock awards, unrestricted stock awards, restricted stock unit awards and performance awards to eligible recipients. Recipients of stock options shall be eligible to purchase shares of the Company’s common stock at an exercise price equal to no less than the estimated fair market value of such stock on the date of grant. The maximum term of options granted under the Stock Plan is ten years. Employee option grants generally vest 25% on the first anniversary of the original vesting commencement date, with the balance vesting monthly over the remaining three years. The vesting schedules for grants to non-employee directors and consultants will be determined by the Company’s

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Compensation Committee. Stock options are generally not exercisable prior to the applicable vesting date, unless otherwise accelerated under the terms of the applicable stock plan agreement.

The following table summarizes stock option activity as of September 30, 2018 and the changes for the period then ended (dollar values in thousands, other than weighted-average exercise price):

	Options Outstanding	Weighted-Average Exercise Price	Aggregate Intrinsic Value
Outstanding at December 31, 2017	6,343,400	$ 4.74	$ 6,290
Options Granted	4,262,800	$ 5.41	
Options Canceled	(352,935)	$ 4.96	
Options Exercised	(45,565)	$ 4.20	
Outstanding at September 30, 2018	10,207,700	$ 5.01	$ 7,966

The aggregate intrinsic value of options exercised during the three months ended September 30, 2018 and 2017 was $61 thousand and $0, respectively. The aggregate intrinsic value of options exercised during the nine months ended September 30, 2018 and 2017 was $114 thousand and $0, respectively. The Company uses the Black-Scholes valuation model to calculate the fair value of stock options. The fair value of employee stock options was estimated at the grant date using the following assumptions:

	Nine Months Ended September 30,	
	2018	2017
Weighted-average grant date fair value	$3.79	$1.82
Dividend yield	— %	— %
Volatility	81 %	81 %
Risk-free interest rate	2.93 %	2.16 %
Expected life of options	6.1 years	6.1 years

The assumed dividend yield was based on the Company’s expectation of not paying dividends in the foreseeable future. Due to the Company’s limited historical data, the estimated volatility incorporates the historical volatility of comparable companies whose share prices are publicly available. The risk-free interest rate assumption was based on the U.S. Treasury’s rates for U.S. Treasury zero-coupon bonds with maturities similar to those of the expected term of the award being valued. The weighted average expected life of options was estimated using the average of the contractual term and the weighted average vesting term of the options.

The total employee and director stock-based compensation recorded as operating expenses was $1.2 million and $1.1 million for the three months ended September 30, 2018 and 2017, respectively, and $3.4 million and $3.6 million for the nine months ended September 30, 2018 and 2017, respectively.

The total unrecognized compensation cost related to unvested employee and director stock option grants as of September 30, 2018 was $17.7 million and the weighted average period over which these grants are expected to vest is 3.0 years.

The Company records equity instruments issued to non-employees as expense at their fair value over the related service period as determined in accordance with the authoritative guidance and periodically revalues the equity instruments as they vest. Stock-based compensation expense related to non-employee consultants recorded as operating expenses was $74 thousand and $52 thousand for the three months ended September 30, 2018 and 2017, respectively, and $349 thousand and $178 thousand for the nine months ended September 30, 2018 and 2017, respectively.

Common Stock Reserved for Future Issuance

Common stock reserved for future issuance consists of the following at September 30, 2018:

Common stock warrants outstanding under the underwriters agreement	—
Common stock warrants outstanding under the loan and security agreement	65,892
Common stock warrants outstanding under the Hercules securities agreement	306,748
Common stock warrants outstanding under the convertible notes	14,819,872
Common stock warrants outstanding under private placements	4,153,620
Common stock options outstanding under the Non-Employee Director Plan	3,200
Authorized for future grant or issuance under the 2009 Stock Incentive Plan	18,336,531
Shares issuable upon the conversion of the 2018 Notes	5,397,325
Issuable under assignment agreement based upon achievement of certain milestones	80,000
	43,163,188

2017 Equity Incentive Plan

In June 2017, the Company’s subsidiary, Scilex, adopted the Scilex 2017 Equity Incentive Plan, reserved 24.0 million post-split shares of Scilex common stock and awarded 6.0 million options to certain Company personnel, directors and consultants under such plan. The Company's subsidiary, Scilex, also awarded 2.3 million options to employees in September 2018. Stock options granted under this plan typically vest 1/4th of the shares on the first anniversary of the vesting commencement date and 1/48th of the remaining options vest each month thereafter. As of September 30, 2018, 4.5 million options were outstanding.

2015 Stock Option Plans

In May 2015, the Company’s subsidiary, TNK, adopted the TNK 2015 Stock Option Plan, reserved 10.0 million shares of TNK class A common stock and awarded 3.6 million options to certain Company personnel, directors and consultants under such plan. In November 2015, TNK awarded 0.5 million options to certain Company personnel. Stock options granted under this plan typically vest a portion immediately upon grant and the remaining options over two to four years or monthly over four years from the grant date and have a contractual term of ten years. Effective August 29, 2017, options to purchase an aggregate of 1.0 million shares were canceled. Effective May 16, 2018, options to purchase an aggregate of 0.2 million shares were canceled. As of September 30, 2018, 0.9 million options were outstanding.

In May 2015, TNK granted a warrant to the Company’s CEO to purchase 9.5 million shares of TNK class B common stock, which have 10 to 1 voting rights. Warrant shares totaling 4.0 million were exercisable evenly over forty months and the remaining warrant shares were exercisable if certain defined events occur within four years from date of issuance at an initial exercise price of $0.01 per share. This warrant was canceled in its entirety effective August 29, 2017.

In May 2015, the Company’s subsidiary, LA Cell, adopted the LA Cell 2015 Stock Option Plan reserved 10.0 million shares of LA Cell class A common stock and awarded 2.9 million options to certain Company personnel, directors and consultants under such plan. Stock options granted under this plan typically vest a portion immediately upon grant and the remaining options over two to four years or monthly over four years from the grant date and have a contractual term of ten years. Effective August 29, 2017, options to purchase an aggregate of 1.5 million shares were canceled. Effective May 16, 2018, options to purchase an aggregate of 0.2 million shares were canceled. As of September 30, 2018, 0.3 million options were outstanding.

In May 2015, LA Cell granted a warrant to the Company’s CEO to purchase 9.5 million shares of LA Cell class B common stock, which have 10 to 1 voting rights. Warrant shares totaling 4.0 million were exercisable evenly over forty months and the remaining warrant shares were exercisable if certain defined events occur within four years from date of issuance at an initial exercise price of $0.01 per share. This warrant was canceled in its entirety effective August 29, 2017.

In October 2015, the Company’s subsidiary, Concortis Biosystems, Corp. (“CBC”), adopted the CBC 2015 Stock Option Plan and reserved 10.0 million shares of CBC class A common stock and awarded 1.8 million options to certain Company personnel, directors and consultants under such plan. Stock options granted under this plan typically vest a

portion immediately upon grant and the remaining options over two to four years or monthly over four years from the grant date and have a contractual term of ten years. Effective August 29, 2017, options to purchase an aggregate of 1.6 million shares were canceled. Effective May 16, 2018, options to purchase an aggregate of 0.1 million shares were canceled. As of September 30, 2018, no options were outstanding.

In October 2015, CBC granted a warrant to the Company's CEO to purchase 9.5 million shares of CBC class B common stock, which have 10 to 1 voting rights. Warrant shares totaling 4.0 million were exercisable evenly over forty months and the remaining warrant shares were exercisable if certain defined events occur within four years from date of issuance at an initial exercise price of $0.25 per share. This warrant was canceled in its entirety effective August 29, 2017.

In October 2015, the Company's subsidiary, Scintilla, adopted the Scintilla 2015 Stock Option Plan, reserved 10.0 million shares of Scintilla class A common stock and awarded 1.8 million options to certain Company personnel, directors and consultants under such plan. Stock options granted under this plan typically vest a portion immediately upon grant and the remaining options over two to four years or monthly over four years from the grant date and have a contractual term of ten years. Effective August 29, 2017, options to purchase an aggregate of 0.8 million shares were canceled. Effective May 16, 2018, options to purchase an aggregate of 0.1 million shares were canceled. As of September 30, 2018, no options were outstanding.

In October 2015, Scintilla granted a warrant to the Company's CEO to purchase 9.5 million shares of Scintilla class B common stock, which have 10 to 1 voting rights. Warrant shares totaling 4.0 million were exercisable evenly over forty months and the remaining warrant shares were exercisable if certain defined events occur within four years from date of issuance at an initial exercise price of $0.01 per share. This warrant was canceled in its entirety effective August 29, 2017.

In October 2015, the Company's subsidiary, Sorrento Biologics, Inc. ("Biologics"), adopted the Biologics 2015 Stock Option Plan, reserved 10.0 million shares of Biologics class A common stock and awarded 2.6 million options to certain Company personnel, directors and consultants under such plan. Stock options granted under this plan typically vest a portion immediately upon grant and the remaining options over two to four years or monthly over four years from the grant date and have a contractual term of ten years. Effective August 29, 2017, options to purchase an aggregate of 1.3 million shares were canceled. Effective May 16, 2018, options to purchase an aggregate of 75,000 shares were canceled. As of September 30, 2018, no options were outstanding.

In October 2015, Biologics granted a warrant to the Company's CEO to purchase 9.5 million shares of Biologics class B common stock which have 10 to 1 voting rights. Warrant shares totaling 4.0 million were exercisable evenly over forty months and the remaining warrant shares were exercisable if certain defined events occur within four years from date of issuance at an initial exercise price of $0.01 per share. This warrant was canceled in its entirety effective August 29, 2017.

On August 29, 2017, the options and warrants were canceled in accordance with the terms of a settlement agreement with Wildcat Liquid Alpha, LLC and, as a result, unrecognized compensation expense of $281 thousand associated with these previously issued shares was accelerated and recognized upon cancellation.

The total director stock-based compensation recorded as operating expenses by the Company for TNK, LA Cell, CBC, Scintilla and Biologics for the three months ended September 30, 2018 and 2017 was $0 and $285 thousand, respectively and was $0 and $380 thousand for the nine months ended September 30, 2018 and 2017, respectively. No unrecognized stock-based compensation expense related to unvested director stock option and warrant grants remained for these entities as of September 30, 2018. The Company records equity instruments issued to non-employees as expense at their fair value over the related service period as determined in accordance with the authoritative guidance and periodically revalues the equity instruments as they vest. Stock based compensation expense related to non-employee consultants recorded as operating expenses by the Company for TNK, LA Cell, CBC, Scintilla and Biologics was $149 thousand and $46 thousand for the three months ended September 30, 2018 and 2017, respectively, and was $507 thousand and $137 thousand for the nine months ended September 30, 2018 and 2017, respectively.

The weighted-average assumptions used in the Black-Scholes option and warrant pricing model used by TNK, LA Cell, CBC, Scintilla and Biologics to determine the fair value of stock option grants for directors and non-employee consultants for the nine months ended September 30, 2018 were as follows: expected dividend yield – 0%, risk-free interest rate –2.42% to 2.48%, expected volatility – 65% to 77%, and expected term of 4.0 to 6.1 years.

2014 Stock Option Plan

In May 2014, the Company's subsidiary, Ark Animal Health, Inc. ("Ark"), adopted the Ark 2014 Stock Option Plan and reserved and awarded 600,000 options to certain directors and consultants under such plan. Stock options granted under such plan typically vest a portion immediately upon grant and the remaining options over one year from the grant date and have a contractual term of ten years. Effective August 29, 2017, options to purchase an aggregate of 135,000 shares were canceled. As of September 30, 2018, 88,000 options were outstanding.

The total director and consultant stock-based compensation recorded as operating expenses by the Company for Ark was $0 for each of the three and nine months ended September 30, 2018 and 2017. No unrecognized stock-based compensation expense remains related to stock option grants as of September 30, 2018.

14. Commitments and Contingencies

Litigation

In the normal course of business, the Company may be named as a defendant in one or more lawsuits. The Company is not a party to any outstanding material litigation and management is currently not aware of any legal proceedings that, individually or in the aggregate, are deemed to be material to the Company's financial condition or results of operations.

Immunomedics Litigation

On June 26, 2015, Immunomedics, Inc. ("Immunomedics") filed a complaint in the United States District Court for the District of New Jersey (the "New Jersey Case") against the Board of Directors of RWMC, Dr. Richard P. Junghans, Dr. Steven C. Katz, the Office of the Board of Advisors of Tufts University School of Medicine, and one or more individuals or entities to be identified later. This complaint (the "Initial Complaint") alleged, among other things: (1) breach of contract; (2) breach of covenant of good faith and fair dealing; (3) tortious interference with prospective economic gain; (4) tortious interference with contracts; (5) misappropriation; (6) conversion; (7) bailment; (8) negligence; (9) vicarious liability; and (10) patent infringement. Overall, the allegations in the Initial Complaint were generally directed to an alleged material transfer agreement dated December 2008 and Immunomedics' alleged request for the return of certain alleged research material, as well as the alleged improper use and conversion of such research materials outside the scope of the material transfer agreement.

On October 22, 2015, Immunomedics filed an amended complaint (the "First Amended Complaint"), which, among other things, no longer named the Board of Directors of RWMC and The Office of the Board of Advisors of Tufts University School of Medicine as defendants. RWMC and Tufts Medical Center were added as new defendants. On January 14, 2016, Immunomedics filed a second amended complaint (the "Second Amended Complaint"), which, among other things, no longer named Tufts Medical Center as a defendant. In addition, the Second Amended Complaint contained allegations directed to two additional alleged material transfer agreements dated September 1993 and May 2010, respectively, and also added an allegation of unjust enrichment. The Second Amended Complaint also no longer asserted claims for (1) breach of covenant of good faith and fair dealing; (2) misappropriation; (3) bailment; (4) negligence; and (5) vicarious liability.

On October 12, 2016, Immunomedics filed a third amended complaint (the "Third Amended Complaint"), which added the Company, TNK, BDL and CARgenix as defendants. TNK is a subsidiary of the Company and purchased BDL and CARgenix in August 2015. The Third Amended Complaint included, among other things, allegations against the Company, TNK, BDL and CARgenix regarding (1) conversion; (2) tortious interference; and (3) unjust enrichment.

On December 2, 2016, the Company, TNK, BDL, and CARgenix filed a motion to dismiss Immunomedics' complaint against them for lack of personal jurisdiction. On January 25, 2017, the District of New Jersey granted this motion, and the Company, TNK, BDL and CARgenix were dismissed as defendants from the New Jersey Case. Under various agreements, TNK has certain indemnification obligations to RWMC, Dr. Richard P. Junghans and Dr. Steven C. Katz that may be implicated by the New Jersey Case. The New Jersey Case remains pending against defendants RWMC, Dr. Junghans, and Dr. Katz. A trial date has not yet been set.

On April 27, 2018, Immunomedics filed a complaint against the Company and TNK in San Diego Superior Court, Case No. 37-2018-00021006-CU-NP-CTL (the "San Diego Case"). The complaint includes, among other things, allegations against the Company and TNK regarding: (1) conversion; (2) tortious interference; and (3) inducing breach of contract.

On October 25, 2018, the parties to the New Jersey Case and the San Diego Case entered into a Mutual General Release and Settlement Agreement resolving both matters. Pursuant to the terms of the settlement, among other things, both the New Jersey Case and San Diego Case will be dismissed with prejudice upon payment by the Company to Immunomedics of $2.35 million, which payment was paid in full on October 31, 2018.

Cantor Fitzgerald & Co. Litigation

On May 25, 2018, Cantor Fitzgerald & Co. (“CF&Co.”) filed a complaint against the Company in the Supreme Court of the State of New York, County of New York, Index No. 652633/2018. The complaint includes, among other things, allegations against the Company for breach of contract arising out of a letter agreement whereby CF&Co. was to supply certain services to the Company in exchange for a fee (the “CF & Co. Litigation”). The Company has filed an Answer and Counterclaim for breach of contract against CF&Co claiming that CF&Co. did not perform under the letter agreement. The

Company believes CF&Co.'s claims against the Company are without merit and will vigorously defend itself in the litigation. At this point in time, the Company is unable to determine whether any loss is probable or reasonably possible with respect to the CF&Co. Litigation or to estimate the range of such potential loss; therefore, no amount of loss has been accrued by the Company as of the date of filing of this Quarterly Report on Form 10-Q.

Operating Leases

The Company currently leases in San Diego, California approximately 130,575 square feet of corporate office and laboratory space and approximately 1,405 square feet of office space at a second location as well as approximately 36,400 square feet for offices, facilities for cGMP fill and finish and storage space.

The Company's lease agreements in San Diego, as amended, for its corporate office and laboratory space, its second laboratory and office space and its third office space, expire in December 2026, November 2025 and September 2020, respectively. The Company also leases 25,381 square feet of office and laboratory space in Suzhou, China, which lease expires in June 2019. The Company leases 2,312 square feet of office, laboratory, and storage space in Scotland, which lease expires in March 2021. The Company subleases in New York, New York for approximately 4,550 square feet of additional corporate office space. The sublease began in July of 2017 and expires in December 2020. The Company leases approximately 3,432 square feet of office and laboratory space in Atlanta, Georgia which began in October of 2018 and expires in September 2024.

15. Income Taxes

The Company maintains deferred tax assets that reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. These deferred tax assets include net operating loss carryforwards, research credits and temporary differences. In assessing the Company's ability to realize deferred tax assets, management considers, on a periodic basis, whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. As such, management has determined that it is appropriate to maintain a valuation allowance against the Company's U.S. federal and state deferred tax assets, with the exception of an amount equal to its deferred tax liabilities, an amount equal to its alternative minimum tax credits and state research and development tax credits for which there is no expiration.

The Company's income tax benefit of $3.2 million and income tax expense of $54.4 million reflect effective tax rates of 2.0% and 314.44% for the nine months ended September 30, 2018 and 2017, respectively.

The difference between the expected statutory federal tax expense of 21% and the 2.0% effective tax expense for the nine months ended September 30, 2018 was primarily attributable to the valuation allowance against most of the Company's deferred tax assets. For the nine months ended September 30, 2018, when compared to the same period in 2017, the decrease in the tax expense and change in effective income tax rate was primarily attributable to the deferred tax expense recorded in 2017 related to the Company's Celularity investment.

The Company is subject to taxation in the U.S. and various state jurisdictions. The Company's tax years for 2007 and later are subject to examination by the U.S. and state tax authorities due to the existence of the NOL carryforwards. As of September 30, 2018, the Company had approximately $3.9 million of unrecognized tax benefits that, if recognized, would impact the effective income tax rate for continuing operations, subject to possible offset by an increase in the deferred tax asset valuation allowance. As of September 30, 2017, the Company had approximately $2.7 million of unrecognized tax benefits that, if recognized, would impact the effective income tax rate for continuing operations, subject to possible offset by an increase in the deferred tax asset valuation allowance.

The Company recognizes interest and penalties related to unrecognized tax benefits in its provision for income taxes. For the nine months ended September 30, 2018 and 2017, no expense was recorded related to interest and penalties. The Company believes that no significant amount of the liabilities for uncertain tax positions will expire within twelve months of September 30, 2018.

U.S. Tax Reform

The Tax Cuts and Jobs Act ("Tax Act") was enacted on December 22, 2017. The Tax Act reduces the U.S. federal corporate tax rate from 35% to 21%, as well as making several other significant changes to the tax law, effective January 1, 2018. Pursuant to the Securities and Exchange Commission Staff Accounting Bulletin No. 118, Income

Tax Accounting Implications of the Tax Cuts and Jobs Act (SAB 118), given the amount and complexity of the changes in tax law resulting from the Tax Act, the Company has not finalized the accounting for the income tax effects of the Tax Act. This includes the

provisional amounts recorded related to the re-measurement of the deferred taxes and the change to the Company's valuation allowance. The impact of the Tax Act may differ from this estimate, during the one-year measurement period due to, among other things, further refinement of the Company's calculation, changes in interpretations and assumptions the Company has made, guidance that may be issued and actions the Company may take as a result of the Tax Act. The Company is still analyzing certain aspects of the Tax Act and refining its calculations, which could potentially affect the analysis of the Company's deferred tax assets and liabilities. Any subsequent adjustment is expected to be offset by a change in valuation allowance and have no impact on the Company's financial position or results of operations.

16. Related Party Agreements

During the year ended December 31, 2015, the Company entered into a joint venture called NANTibody, with NantCell, a subsidiary of NantWorks. In July 2015, the Company contributed its portion of the initial joint funding of $40.0 million to the NANTibody joint venture. The Company and NantCell have also entered into a license agreement pursuant to which the Company received a $10.0 million upfront license payment and $100.0 million of vested NantCell common stock.

During the year ended December 31, 2015, the Company entered into a joint venture called NantStem, with NantBioScience, a wholly-owned subsidiary of NantWorks. In connection with negotiated changes to the structure of NantStem the Company issued a call option on shares of NantKwest that it owned to Cambridge, a related party to the Company and to NantBioScience. In April 2015, the Company purchased 1.0 million shares of NantBioScience common stock for $10.0 million.

In March 2016, the Company and Yuhan entered into an agreement to form a joint venture company called ImmuneOncia Therapeutics, LLC, to develop and commercialize a number of immune checkpoint antibodies against undisclosed targets for both hematological malignancies and solid tumors. As of September 30, 2018, the carrying value of the Company's investment in ImmuneOncia Therapeutics, LLC was approximately $3.8 million. During the three months ended June 30, 2016, Yuhan purchased $10.0 million of common stock and warrants.

On August 15, 2017, the transactions contemplated by that certain Contribution Agreement, dated June 12, 2017, by and among the Company, TNK and Celularity Inc. ("Celularity"), pursuant to which, among other things, the Company and TNK agreed to contribute certain intellectual property rights related to their proprietary chimeric antigen receptor constructs and related CARs to Celularity in exchange for shares of Celularity's Series A Preferred Stock equal to 25% of Celularity's outstanding shares of capital stock, calculated on a fully-diluted basis closed. Dr. Henry Ji, the Company's Chairman of the Board, President and Chief Executive Officer, Jaisim Shah, a member of the Company's Board of Directors and David Deming, a member of the Company's Board of Directors, were previously appointed as members of the board of directors of Celularity.

On November 8, 2016, the Company entered into the Scilex Purchase Agreement, pursuant to which the Company acquired from the Scilex Stockholders approximately 72% of the outstanding capital stock of Scilex. Dr. Henry Ji, the Company's President and Chief Executive Officer and a member of the Company's Board of Directors, and George K. Ng, the Company's Vice President, Chief Administrative Officer and Chief Legal Officer, were stockholders of Scilex prior to the acquisition transaction.

The remainder of the outstanding capital stock of Scilex represents a noncontrolling interest of which approximately 23% continues to be held by ITOCHU CHEMICAL FRONTIER Corporation following the Scilex acquisition. Scilex has entered into a product development agreement with ITOCHU CHEMICAL FRONTIER Corporation which serves as the sole manufacturer and supplier to Scilex for the ZTlido™ product.

17. Loss Per Share

For the three and nine months ended September 30, 2018 and 2017, basic loss per common share is computed by dividing net loss by the weighted average number of common shares outstanding during the period. Diluted loss per common share is calculated to give effect to all dilutive securities, using the treasury stock method.

The following table sets forth the reconciliation of basic and diluted loss per share for the three and nine months ended September 30, 2018 and 2017 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Basic and Diluted				
Net loss	$(47,328)	$(2,061)	$(153,764)	$(39,313)
Denominator for Basic Loss Per Share	117,021	76,887	100,959	66,122
Denominator for Diluted Loss Per Share	117,021	76,888	100,959	66,122
Basic Loss Per Share	$(0.40)	$(0.03)	$(1.52)	$(0.59)
Diluted Loss Per Share	$(0.40)	$(0.03)	$(1.52)	$(0.59)

The potentially dilutive stock options that would have been excluded because the effect would have been antidilutive for the nine months ended September 30, 2018 and 2017 were 3.6 million and 4.1 million, respectively. The potentially dilutive warrants that would have been excluded because the effect would have been antidilutive for the nine months ended September 30, 2018 and 2017 were 5.6 million and 5.2 million, respectively.

Basic and diluted per share amounts are computed independently in the consolidated statements of operations. Therefore, the sum of per share components may not equal the per share amounts presented.

18. Subsequent Events

Term Loan Agreement

On November 7, 2018, the Company and certain of its domestic subsidiaries (the “Guarantors”) entered into a Term Loan Agreement (the “Loan Agreement”) with certain funds and accounts managed by Oaktree Capital Management, L.P. (collectively, the “Lenders”) and Oaktree Fund Administration, LLC, as administrative and collateral agent, for an initial term loan of $100.0 million (the “Initial Loan”) and a second tranche of $50.0 million, subject to the achievement of certain commercial and financial milestones between August 7, 2019 and November 7, 2019, and the satisfaction of certain customary conditions (the “Conditional Loan”). The Initial Loan was funded on November 7, 2018. The net proceeds of the Initial Loan are expected to be approximately $91.3 million, after deducting estimated loan costs, commissions, fees and expenses, and will be used for general corporate purposes. In connection with the Loan Agreement, on November 7, 2018, the Company issued to the Lenders warrants to purchase 6,288,985 shares of the Company’s common stock (the “Initial Warrants”). The Initial Warrants have an exercise price per share of $3.28, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will be exercisable from May 7, 2018 through May 7, 2029 and will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Initial Warrants (the “Initial Warrant Shares”), in which case the Initial Warrants shall also be exercisable on a cashless exercise basis. In connection with the Loan Agreement, on November 7, 2018, the Company and the Lenders entered into a Registration Rights Agreement (the “Registration Rights Agreement”) pursuant to which, among other things, the Company agreed to file one or more registration statements with the Securities and Exchange Commission (the “SEC”) for the purpose of registering for resale the Initial Warrant Shares and the shares of common stock issuable upon exercise of warrants that may be issued in connection with the Conditional Loan (the “Conditional Warrants”). Under the Registration Rights Agreement, the Company agreed to file a registration statement with the SEC registering all of the Initial Warrant Shares and the shares of common stock issuable upon exercise of the Conditional Warrants for resale by no later than the 45th day following the issuance of the Initial Warrants and the Conditional Warrants, respectively.

Amendments to June 2018 Warrants

On November 7, 2018, the Company entered into an Agreement and Consent (the “Agreement and Consent”) with the holders of warrants (the “Purchasers”) to purchase an aggregate of 2,698,662 shares of the Company’s common stock (the “Warrants”) that the Company issued on June 13, 2018 pursuant to the Securities Purchase Agreement, dated March 26, 2018, as amended, by and among the Company and the Purchasers (the “March 2018 Securities Purchase Agreement”). Pursuant to the March 2018 Securities Purchase Agreement, the Company issued to the Purchasers convertible promissory notes in an aggregate principal amount of $37,848,750 (the “Notes”) and the Warrants. Pursuant

to the Agreement and Consent, in consideration for certain of the Purchasers, in their capacity as holders of the Notes, providing a waiver and consent on behalf of all holders of the Notes, pursuant to which the Warrant Holders provided the Company with certain waivers of their rights and certain of the Company's covenants under the March 2018 Securities Purchase Agreement with respect to the Loan Agreement and the transactions contemplated thereby, the Company and the Purchasers agreed to amend the Warrants to reduce the exercise price per share of the Company's common stock thereunder from $8.77 to $3.28.

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

This Quarterly Report on Form 10-Q contains "forward-looking statements" about our expectations, beliefs or intentions regarding our potential product offerings, business, financial condition, results of operations, strategies or prospects. You can identify forward-looking statements by the fact that these statements do not relate strictly to historical or current matters. Rather, forward-looking statements relate to anticipated or expected events, activities, trends or results as of the date they are made and are often identified by the use of words such as "assumes," "plans," "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "might," or "will," and similar expressions or variations forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements. These factors include those described under the caption "Risk Factors" included elsewhere in this Quarterly Report on Form 10-Q and in our other filings with the Securities and Exchange Commission (the "SEC"). Furthermore, such forward-looking statements speak only as of the date of this report. We undertake no obligation to update any forward-looking statements to reflect events or circumstances occurring after the date of such statements.

Overview

We are a clinical stage biotechnology company focused on delivering clinically meaningful therapies to patients and their families, globally. Our primary focus is to transform cancer into a treatable or chronically manageable disease. We also have programs assessing the use of our technologies and products in auto-immune, inflammatory, neurodegenerative and infectious diseases and pain indications with high unmet medical needs.

At our core, we are an antibody-centric company and leverage our proprietary G-MAB™ library and targeted delivery modalities to generate the next generation of cancer therapeutics. Our validated fully human antibodies include PD-1, PD-L1, CD38, CD123, CD47, c-MET, VEGFR2, CCR2, OX40, TIGIT and CD137 among others. Our vision is to leverage these antibodies in conjunction with proprietary targeted delivery modalities to generate the next generation of cancer therapeutics. These modalities include proprietary antibody drug conjugates ("ADCs"), bispecific approaches, as well as TCR-like antibodies. With LA Cell, Inc. ("LA Cell"), our joint venture with City of Hope, our objective is to become the global leader in the development of antibodies against intracellular targets such as STAT3, mutant KRAS, MYC, p53 and TAU. Additionally, we have acquired and are assessing the regulatory and strategic path forward for our portfolio of late stage biosimilar/biobetter antibodies based on Erbitux®, Remicade®, Xolair®, and Simulect® as these may represent nearer term commercial opportunities.

Although we intend to retain ownership and control of product candidates by advancing their development, we regularly also consider, (i) partnerships with pharmaceutical or biopharmaceutical companies and (ii) license or sale of certain products in each case, in order to balance the risks and costs associated with drug discovery, development and commercialization with efforts to maximize our stockholders' returns. Our partnering objectives include generating revenue through license fees, milestone-related development fees and royalties as well as profit shares or joint ventures to generate potential returns from our product candidates and technologies.

Recent Developments

Acquisition of Virttu Biologics Limited

On April 27, 2017, we entered into a Share Purchase Agreement (the "Virttu Purchase Agreement") with TNK Therapeutics, Inc., our majority-owned subsidiary ("TNK"), Virttu Biologics Limited ("Virttu"), the shareholders of Virttu (the "Virttu Shareholders") and Dayspring Ventures Limited, as the representative of the Virttu Shareholders, pursuant to which, among other things, TNK acquired from the Virttu Shareholders 100% of the outstanding ordinary shares of Virttu (the "Virttu Acquisition").

Virttu focuses on the development of oncolytic viruses that infect and selectively multiply in and destroy tumor cells without damaging healthy tissue. Its lead oncolytic virus candidate, Seprehvir, infects and replicates in cancer cells

selectively, leaving normal cells unharmed.

Under the Virttu Purchase Agreement, the total amount of the consideration payable to the Virttu Shareholders in the Virttu Acquisition is equal to $25 million, less Virttu's net debt (the "Virttu Base Consideration"). An additional $10 million contingent consideration is payable upon the achievement of certain regulatory milestones (as described below) (the "Regulatory Approval Consideration").

At the closing of the Virttu Acquisition (the "Virttu Closing"), we issued to the Virttu Shareholders consideration valued at approximately $2.2 million, which consisted primarily of an aggregate of 797,081 shares (the "Virttu Closing Shares") and approximately $557,000 in cash (the "Cash Consideration"). The issuance of the Virttu Closing Shares and the payment of the Cash Consideration satisfied TNK's obligation to pay 20% of the Virttu Base Consideration at the Virttu Closing. Under the terms of the Virttu Purchase Agreement, we agreed to provide additional consideration to the Virttu Shareholders, as follows:

(1) Upon a financing resulting in gross proceeds (individually or in the aggregate) to TNK of at least $50.0 million (a "Qualified Financing"), TNK would have issued to the Virttu Shareholders an aggregate number of shares of its capital stock ("TNK Capital Stock") as is equal to the quotient obtained by dividing 80% of the Virttu Base Consideration by the lowest per share price paid by investors in the Qualified Financing (the "TNK Financing Consideration"); provided, however, that 20% of the TNK Financing Consideration was held in escrow until April 27, 2018 (the "Financing Due Date"), to be used to, among other things, satisfy the indemnification obligations of the Virttu Shareholders. In the event that a Qualified Financing did not occur, then on the Financing Due Date, we would issue to the Virttu Shareholders an aggregate number of shares of our common stock as is equal to the quotient obtained by dividing 80% of the Virttu Base Consideration, by $5.55 (as adjusted, as appropriate, to reflect any stock splits or similar events affecting our common stock after the Virttu Closing).

(2) Within 45 business days after Virttu becomes aware that certain governmental bodies in the United States, the European Union, the United Kingdom or Japan have approved for commercialization, on or before October 26, 2024, Seprehvir (or any enhancement, combination or derivative thereof) as a monotherapy or in combination with one or more other active components (each of the first two such approvals by a governmental body being a "Regulatory Approval"), TNK shall pay half of the Regulatory Approval Consideration to the Virttu Shareholders, in a combination of (a) up to $5.0 million in cash (the "Regulatory Approval Cash") and/or (b) (i) such number of shares of our common stock as is equal to the quotient obtained by dividing $5.0 million less the Regulatory Approval Cash (the "Regulatory Approval Share Value") by the 30 Day VWAP (as defined below) of one share of our common stock; (ii) if TNK has completed its first public offering of TNK Capital Stock, the number of shares of TNK Capital Stock as is equal to the quotient obtained by dividing the Regulatory Approval Share Value by the 30 Day VWAP of one share of TNK Capital Stock; or (iii) such number of shares of common stock of a publicly traded company as is equal to the quotient obtained by dividing the Regulatory Approval Share Value by the volume weighted average price of the relevant security, as reported on the Nasdaq Capital Market (or other principal stock exchange or securities market on which the shares are then listed or quoted) for the thirty trading days immediately following the receipt of Regulatory Approval (the "30 Day VWAP"), with the composition of the Regulatory Approval Consideration to be at TNK's option. In order for a second regulatory approval to qualify as a Regulatory Approval under the Virttu Purchase Agreement, the second approval must be granted by a different governmental body in a different jurisdiction than that which granted the first Regulatory Approval.

TNK did not complete a Qualified Financing prior to the Financing Due Date and on April 27, 2018. Us, TNK and Dayspring entered into the Amendment, pursuant to which, among other things, we agreed that the acquisition consideration, otherwise payable on April 27, 2018 to the Virttu Shareholders, shall be as follows: (1) an issuance of 1,795,011 shares of our common stock to the Virttu Shareholders and (2) $9.9 million payable in cash.

We issued an aggregate of 1,795,011 shares of our common stock to the Virttu Shareholders on April 27, 2018 for a value of $11.3 million. The approximately $9.9 million payable in cash has not been paid as of the date of this filing.

Celularity Transaction

On November 1, 2016, we loaned $5.0 million to Celularity Inc., a research and development company ("Celularity"), pursuant to a promissory note issued by us to Celularity, as amended (as so amended, the "Celularity Note"), in connection with the entry into a nonbinding term sheet by us, TNK and Celularity. Pursuant to the terms of the Celularity Note, the loan will be due and payable in full on the earlier of November 1, 2017 and the occurrence of an

event of default under the Celularity Note (the "Celularity Maturity Date"). Under the terms of the Celularity Note, in the event that Celularity met certain minimum financing conditions prior to the Maturity Date, all outstanding amounts under the Celularity Note would be forgiven and converted to equity. On May 31, 2017, we loaned an additional $2.0 million to Celularity pursuant to the terms of the Celularity Note. On June 14, 2017, we loaned an additional $1.0 million to Celularity. Additionally, on July 7, 2017, we loaned an additional $2.0 million to Celularity. The loan amounts were forgiven and converted to additional equity investment in Celularity as part of the closing of the Contribution Agreement (as defined below) on June 12, 2017.

On June 12, 2017, we entered into a Contribution Agreement (the “Contribution Agreement”) with TNK and Celularity, pursuant to which, among other things, we and TNK agreed to contribute certain intellectual property rights related to our proprietary chimeric antigen receptor (“CAR”) constructs and related CARs to Celularity in exchange for shares of Celularity’s Series A Preferred Stock equal to 25% of Celularity’s outstanding shares of capital stock, calculated on a fully-diluted basis (the "Celularity Shares").

On August 15, 2017, the transactions contemplated by the Contribution Agreement closed, the loan amounts were forgiven, and, on such date, among other things, (a) Celularity issued the Celularity Shares to TNK, and (b) we, TNK and Celularity entered into a License and Transfer Agreement (the "License Agreement"). Pursuant to the License Agreement (i) TNK and we agreed to provide to Celularity (1) our CAR constructs and related CARs for use worldwide in combination with placenta-derived cells and/or cord blood-derived cells for the treatment of any disease or disorder except that anti-CD38 CAR constructs and related CARs may also be used in adult cells for the treatment of multiple myeloma unless TNK exercises its termination rights, and (2) our know-how relating to the foregoing, (ii) TNK and we granted to Celularity a limited, perpetual, transferable and sublicensable license and covenant not to sue with respect to certain of their patents and other intellectual property rights, which license is exclusive for a subset of such patents, and (iii) Celularity agreed to pay to TNK 50% of the first $200 million and 20% thereafter of any upfront and milestone payments that Celularity receives in connection with any sublicense of a combination of anti-CD38 CAR constructs and either placenta-driven cells and/or cord blood–derived cells or adult cells.

On April 5, 2018, we issued a press release announcing that we and Celularity have started screening patients for our leading CD 38 CAR T cell therapy drug development program, following the U.S. Food and Drug Administration's (the "FDA") review allowing clinical trial initiation.

Scilex Pharmaceuticals: ZTlido™ (lidocaine topical system 1.8%)

ZTlido™ (lidocaine topical system 1.8%) is based on a novel and proprietary technology that contains only 36 mg of lidocaine versus Endo Pharmaceuticals, Inc.'s Lidoderm® (lidocaine patch 5%), which holds 700 mg of lidocaine per patch. In December 2016 and January 2017, Scilex Pharmaceuticals Inc. ("Scilex") reported key endpoints were met in the pivotal bioequivalence clinical trials for ZTlido™ (lidocaine topical system 1.8%). The full data package was resubmitted (the first 505(b)(2) new drug application filed in 2015 resulted in a Complete Response Letter from the FDA in May 2016, which meant that the FDA considered the drug application not ready for approval at that time) to the FDA as part of the 505(b)(2) new drug application (“NDA”) and accepted by the FDA in September 2017 (setting the Prescription Drug User Fee Act or FDA decision date on the resubmitted 505(b)(2) NDA for February 28, 2018) and filed with the Medicines and Healthcare products Regulatory Agency in the United Kingdom a hybrid Marketing Authorization Application in November 2017. On February 28, 2018, the FDA approved ZTlido™ (lidocaine topical system 1.8%) for the relief of pain associated with post-herpetic neuralgia. Scilex is currently in preparations for a commercial launch of ZTlido™ (lidocaine topical system 1.8%) and exploring potential partnerships for the product.

Sofusa™ Acquisition

On July 2, 2018, we entered into an Asset Purchase Agreement (the “Sofusa Purchase Agreement”) with Kimberly-Clark Corporation (“KCC”); Kimberly-Clark Global Sales, LLC (“KCCGS”); and Kimberly-Clark Worldwide, Inc. (“KCCW” and together with KCC and KCCGS, “Kimberly-Clark”) pursuant to which, among other things, we acquired certain of Kimberly-Clark’s assets related to microneedle drug delivery systems, including the Sofusa™ platform (the “Sofusa Assets”), and assumed certain of Kimberly-Clark’s liabilities related to the Sofusa Assets (the “Sofusa Acquisition”). The closing of the Sofusa Acquisition (the “Sofusa Closing”) occurred on July 2, 2018. At the Sofusa Closing, we paid $10 million and agreed to pay additional consideration to Kimberly-Clark upon the achievement of certain regulatory and net sales milestones, as well as a percentage in the low double-digits of any non-royalty amounts received by us in connection with any license, sale or other grant of rights by us to develop or commercialize the Sofusa Assets (all such additional consideration, the “Sofusa Contingent Consideration”). Under the Sofusa Purchase Agreement, the aggregate amount of the Sofusa Contingent Consideration payable by us will not exceed $300.0 million. We also agreed to pay Kimberly-Clark a low single-digit royalty on all net sales with respect to the first five products developed by us or our licensees that utilizes intellectual property included in the Sofusa Assets. The transaction was accounted for as an asset acquisition as the purchase primarily related to a single asset. A net charge of $9.5 million associated with acquired in-process research and development was expensed as a

component of R&D expense during the three months ended September 30, 2018.

Private Placement of Convertible Promissory Notes and Warrants

2017 Securities Purchase Agreement in Private Placement

On December 11, 2017, we entered into a Securities Purchase Agreement (the "December 2017 Securities Purchase Agreement") with certain accredited investors (collectively, the "December 2017 Purchasers"). Pursuant to the December 2017 Securities Purchase Agreement, on December 21, 2017, we issued and sold to the December 2017 Purchasers, in a private placement transaction, (1) convertible promissory notes in an aggregate principal amount of $50,000,000 (the "December 2017 Notes"), which will accrue simple interest at a rate equal to 5.0% per annum and mature upon the earlier to occur of (a) December 21, 2022, and (b) the date of the closing of a change in control (the "December 2017 Warrant Maturity Date"), and (2) warrants (the "December 2017 Warrants") to purchase an aggregate of 12,121,210 shares of our common stock.

At any time and from time to time before the December 2017 Warrant Maturity Date, each December 2017 Purchaser had the option to convert any portion of the outstanding principal amount of such December 2017 Purchaser's December 2017 Note that was equal to or greater than the lesser of: (1) $4,000,000, and (2) the then-outstanding principal amount of such December 2017 Purchaser's December 2017 Note into shares of common stock at a price per share of $2.26875, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions. Accrued but unpaid interest on the December 2017 Notes was to be paid in cash semi-annually in arrears on or prior to the 30th day of June and 31st day of December of each calendar year commencing with the year ending December 31, 2018.

Each December 2017 Warrant has an exercise price of $2.61 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, became exercisable on June 20, 2018, has a term of five and a half years and is exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the December 2017 Warrants, in which case the December 2017 Warrants shall also be exercisable on a cashless exercise basis.

On May 17, 2018, the December 2017 Purchasers converted in full the outstanding principal and accrued interest under the December 2017 Notes into 22,038,565 shares of our common stock. On May 17, 2018, the December 2017 Purchasers converted in full the outstanding principal and accrued interest under the December 2017 Notes into 22,038,565 shares of our common stock.

2018 Securities Purchase Agreement in Private Placement

On March 26, 2018, we entered into a Securities Purchase Agreement (the "March 2018 Securities Purchase Agreement") with certain accredited investors (collectively, the "Purchasers"). Pursuant to the March 2018 Securities Purchase Agreement, we agreed to issue and sell to the Purchasers, in a private placement transaction (the "Private Placement"), (1) convertible promissory notes in an aggregate principal amount of $120,500,000 (the "Notes"), which would accrue simple interest at a rate equal to 5.0% per annum and mature upon the earlier to occur of (a) the date that is five years from the date of issuance, and (b) the date of the closing of a change in control, and (2) warrants to purchase 8,591,794 shares of the common stock of our common stock (the "Warrants").

On June 13, 2018, we entered into an amendment (the "Amendment") to the March 2018 Securities Purchase Agreement (as amended, the "Securities Purchase Agreement"). Under the terms of the Amendment, we and the Purchasers agreed that the aggregate principal amount of the Notes was reduced to $37,848,750 and that the aggregate number of shares of Common Stock issuable upon exercise of the Warrants was reduced to 2,698,662, and also agreed to certain other adjustments to the threshold principal amount of the Notes required to remain outstanding in order for certain rights and obligations to apply to the Notes.

On June 13, 2018, pursuant to the Securities Purchase Agreement, we issued and sold to the Purchasers, in the Private Placement (1) Notes in an aggregate principal amount of $37,848,750, and (2) Warrants to purchase an aggregate of 2,698,662 shares of Common Stock.

At any time and from time to time before the Maturity Date, each Purchaser shall have the option to convert any portion of the outstanding principal amount of such Purchaser's Note that is equal to or greater than the lesser of: (1) $4,000,000, and (2) the then-outstanding principal amount of such Purchaser's Note into shares of common stock at a price per share of $7.0125, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar

transactions. Accrued but unpaid interest on the Notes shall be paid in cash semi-annually in arrears on or prior to the 30th day of June and 31st day of December of each calendar year commencing with December 31, 2018. If a Purchaser elects to convert any of the principal amount of their Note, then all accrued but unpaid interest on such portion of the principal amount shall become due and payable in cash. The Notes contain restrictive covenants and event of default provisions that are customary for transactions of this type.

Each Warrant has an exercise price of $8.77 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will become exercisable on December 11, 2018, has a term of five and a half years from the date of issuance and will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Warrants, in which case the Warrants shall also be exercisable on a cashless exercise basis.

2018 Purchase Agreements and Indenture for Scilex

On September 7, 2018, Scilex, our majority-owned subsidiary, entered into Purchase Agreements (the "2018 Purchase Agreements") with certain investors (collectively, the "Purchasers") and us. Pursuant to the 2018 Purchase Agreements, on September 7, 2018, Scilex, among other things, issued and sold to the Purchasers senior secured notes due 2026 in an aggregate principal amount of $224,000,000 (the "Scilex Notes") for an aggregate purchase price of $140,000,000 (the "Offering"). In connection with the Offering, Scilex also entered into an indenture (the "Indenture") governing the Scilex Notes with U.S. Bank National Association, a national banking association, as trustee (the "Trustee") and collateral agent (the "Collateral Agent"), and us. Pursuant to the Indenture, we agreed to irrevocably and unconditionally guarantee, on a senior unsecured basis, the punctual performance and payment when due of all obligations of Scilex under the Indenture (the "Guarantee").

The net proceeds of the Offering were approximately $89.3 million, after deducting the Offering expenses payable by Scilex and funding a segregated reserve account with $20.0 million (the "Reserve Account") and a segregated collateral account with $25.0 million (the "Collateral Account") pursuant to the terms of the Indenture. The net proceeds of the Offering will be used by Scilex to support the commercialization of ZTlido™ (lidocaine topical system 1.8%), for working capital and general corporate purposes in respect of the commercialization of ZTlido™ (lidocaine topical system 1.8%). Funds in the Reserve Account will be released to Scilex upon receipt by the Trustee of an officer's certificate under the Indenture from Scilex confirming receipt of a marketing approval letter from the United States Food and Drug Administration with respect to ZTlido™ (lidocaine topical system 5.4%) or a similar product with a concentration of not less than 5% (the "Marketing Approval Letter") on or prior to July 1, 2023. Funds in the Collateral Account will be released upon receipt of a written consent authorizing such release from the holders of a majority in principal amount of the Scilex Notes issued.

The holders of the Scilex Notes will be entitled to receive quarterly payments of principal of the Scilex Notes equal to a percentage, in the range of 10% to 20%, of the net sales of ZTlido™ (lidocaine topical system 1.8%) for the prior fiscal quarter, beginning on February 15, 2019. If Scilex has not received the Marketing Approval Letter by March 31, 2021, the percentage of net sales payable shall be increased to be in the range of 15% to 25%. If actual cumulative net sales of ZTlido™ (lidocaine topical system 1.8%) from October 1, 2022 through September 30, 2023 are less than 60% of a predetermined target sales threshold for such period, then Scilex will be obligated to pay an additional installment of principal of the Scilex Notes each quarter in an amount equal to an amount to be determined by reference to the amount of such deficiency.

The aggregate principal amount due under the Scilex Notes shall be increased by $28,000,000 on February 15, 2022 if actual cumulative net sales of ZTlido™ (lidocaine topical system 1.8%) from the issue date of the Scilex Notes through December 31, 2021 do not equal or exceed 95% of a predetermined target sales threshold for such period. If actual cumulative net sales of ZTlido™ (lidocaine topical system 1.8%) October 1, 2022 through September 30, 2023 do not equal or exceed 80% of a predetermined target sales threshold for such period, the aggregate principal amount shall also be increased on November 15, 2023 by an amount equal to an amount to be determined by reference to the amount of such deficiency.

The final maturity date of the Scilex Notes will be August 15, 2026. The Scilex Notes may be redeemed in whole at any time upon 30 days' written notice at Scilex's option prior to August 15, 2026 at a redemption price equal to 100% of the then-outstanding principal amount of the Scilex Notes. In addition, upon a change of control of Scilex (as defined in the Indenture), each holder of a Scilex Note shall have the right to require Scilex to repurchase all or any part of such Scilex Note holder's Scilex Note at a repurchase price in cash equal to 101% of the then-outstanding principal amount thereof.

The 2018 Purchase Agreements include the terms and conditions of the offer and sale of the Scilex Notes, representations and warranties of the parties, indemnification and contribution obligations and other terms and

conditions customary in agreements of this type.

The Indenture governing the Scilex Notes contains customary events of default with respect to the Scilex Notes (including a failure to make any payment of principal on the Scilex Notes when due and payable), and, upon certain events of default occurring and continuing, the Trustee by notice to Scilex, or the holders of at least 25% in principal amount of the outstanding Scilex Notes by notice to Scilex and the Trustee, may (subject to the provisions of the Indenture) declare 100% of the then-outstanding principal amount of the Scilex Notes to be due and payable. Upon such a declaration of acceleration, such principal will be due and payable immediately. In the case of certain events, including bankruptcy, insolvency or reorganization involving us or Scilex, the Scilex Notes will automatically become due and payable.

Pursuant to the Indenture, we and Scilex must also comply with certain covenants with respect to the commercialization of ZTlido™ (lidocaine topical system 1.8%), as well as customary additional affirmative covenants, such as furnishing financial statements to the holders of the Scilex Notes, minimum cash requirements and net sales reports; and negative covenants, including limitations on the following: the incurrence of debt; the payment of dividends, the repurchase of shares and under certain conditions making certain other restricted payments; the prepayment, redemption or repurchase of subordinated debt; a merger, amalgamation or consolidation involving Scilex; engaging in certain transactions with affiliates; and the making of investments other than those permitted by the Indenture.

The Scilex Notes and related Guarantee have not been, and will not be, registered under the Securities Act of 1933, as amended, or the securities laws of any other jurisdiction and may not be offered or sold in the United States without registration or an applicable exemption from registration requirements. The holders of the Scilex Notes do not have any registration rights.

Pursuant to a Collateral Agreement by and among Scilex, the Trustee and the Collateral Agent (the "Collateral Agreement"), the Scilex Notes will be secured by ZTlido™ (lidocaine topical system 1.8%) and all of the existing and future property and assets of Scilex necessary for, or otherwise relevant to, now or in the future, the manufacture and sale of ZTlido™ (lidocaine topical system 1.8%), on a worldwide basis (exclusive of Japan), including, but not limited to, the intellectual property related to ZTlido™ (lidocaine topical system 1.8%), the marketing or similar regulatory approvals related to ZTlido™ (lidocaine topical system 1.8%), any licenses, agreements and other contracts related to ZTlido™ (lidocaine topical system 1.8%), and the current assets related to ZTlido™ (lidocaine topical system 1.8%) such as inventory, accounts receivable and cash and any and all future iterations, improvements or modifications of such product made, developed or licensed (or sub-licensed) by Scilex or any of its affiliates or licensees (or sub-licensees) (including ZTlido™ (lidocaine topical system 5.4%)).

Pursuant to the terms of the Indenture, we issued an irrevocable standby letter of credit to Scilex (the "Letter of Credit"), which provides that, in the event that (1) Scilex does not hold at least $35,000,000 in unrestricted cash as of the end of any calendar month during the term of the Scilex Notes, (2) actual cumulative net sales of ZTlido™ (lidocaine topical system 1.8%) from the issue date of the Scilex Notes through December 31, 2021 are less than a specified sales threshold for such period, or (3) actual cumulative net sales of ZTlido™ (lidocaine topical system 1.8%) for any calendar year during the term of the Scilex Notes, beginning with the 2022 calendar year, are less than a specified sales threshold for such calendar year, Scilex, as beneficiary of the Letter of Credit, will draw, and we will pay to Scilex, $35,000,000 in a single lump-sum amount as a subordinated loan. The Letter of Credit will terminate upon the earliest to occur of: (a) the repayment of the Scilex Notes in full, (b) the actual net sales of ZTlido™ (lidocaine topical system 1.8%) for any calendar year during the term of the Scilex Notes exceeding a certain threshold, (c) the consummation of an initial public offering on a major international stock exchange by Scilex that satisfies certain valuation thresholds, and (d) the replacement of the Letter of Credit with another letter of credit in form and substance, including as to the identity and creditworthiness of issuer, reasonably acceptable to the holders of at least 80% in principal amount of outstanding Scilex Notes.

Critical Accounting Policies and Estimates

Management's discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements which are prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities, related disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. We continually evaluate our estimates and judgments, the most critical of which are those related to debt with detachable warrants, acquisition consideration payable, income taxes and stock-based compensation. We base our estimates and judgments on historical experience and other factors that we believe to be reasonable under the circumstances. Materially different results can occur as circumstances change and additional information becomes known.

During the quarter ended September 30, 2018, there were no significant changes to the items that we disclosed as our critical accounting policies and estimates in Note 4 to our consolidated financial statements for the year ended December 31, 2017 contained in our Annual Report on Form 10-K for the year ended December 31, 2017, as

amended, as filed with the SEC.

Results of Operations

The following describes certain line items set forth in our condensed consolidated statements of operations.

Comparison of the Three Months Ended September 30, 2018 and 2017

Revenues. Revenues were $4.1 million for the three months ended September 30, 2018, as compared to $121.9 million for the three months ended September 30, 2017. The net decrease of $117.8 million is primarily due to a decrease of $118.5

million in our royalty and license revenue associated with higher revenue from the completion of the Celularity transaction in the prior year..

In June 2014, the National Institute of Allergy and Infectious Diseases, a division of the National Institutes of Health (the "NIH") awarded us a Phase II STTR grant to support the advanced preclinical development of human bispecific antibody therapeutics to prevent and treat Staphylococcus aureus ("S. aureus" or "Staph") infections (the “Staph Grant III award”). The project period for this Phase II grant covered a two-year period which commenced in June 2014, which was subsequently extended by one year, with total funds available of approximately $1.0 million per year. During the three months ended September 30, 2018 and 2017, we recorded $0 and $11 thousand of revenue, respectively, associated with the Staph Grant III award.

We expect that any revenue we generate will fluctuate from quarter to quarter as a result of the unpredictability of the demand for products and services offered as well as the timing and amount of grant awards, research and development reimbursements and other payments received under any strategic collaborations, if any.

Cost of revenues. Cost of revenues for the three months ended September 30, 2018 and 2017 were $2.2 million and $1.1 million, respectively, and relate to the sale of customized reagents and providing contract development services. The costs generally include employee-related expenses including salary and benefits, direct materials and overhead costs including rent, depreciation, utilities, facility maintenance and insurance. The increase of $1.1 million is primarily attributable to indirect costs associated with the higher sales and service revenues for next generation homogenous antibody drug conjugate development.

Research and Development Expenses. Research and development expenses for the three months ended September 30, 2018 and 2017 were $19.6 million and $16.6 million, respectively. Research and development expenses include the costs to advance our Chimeric Antigen Receptor T-Cell ("CAR-T") programs for solid tumors, our resiniferatoxin ("RTX") program towards entering into future clinical trials, our biosimilar/biobetter antibodies development, costs to identify, isolate and advance human antibody drug candidates derived from our libraries as well as advancing our antibody drug conjugate ("ADC") preclinical drug candidates, preclinical testing expenses and the expenses associated with fulfilling our development obligations related to the NIH grant awards, collectively the NIH Grants. Such expenses consist primarily of salaries and personnel related expenses, stock-based compensation expense, clinical development expenses, preclinical testing, lab supplies, consulting costs, depreciation and other expenses.

The increase of $3.0 million is primarily attributable to the increase in payroll expense for research and development, facilities costs and an increase in R&D program costs in areas such as CAR-T and RTX. We expect research and development expenses to increase in absolute dollars as we: (i) advance our CAR-T programs, (ii) advance RTX into clinical trials and pursue other potential indications, the cost of acquiring, developing and manufacturing clinical trial materials, and other regulatory operating activities, (iii) advance our biosimilar/biobetter antibodies clinical development program, (iv) incur incremental expenses associated with our efforts to further advance a number of potential product candidates into preclinical development activities, (v) continue to identify and advance a number of fully human therapeutic antibody and ADC preclinical product candidates, (vi) incur higher salary, lab supply and infrastructure costs incurred in connection with supporting all of our programs, and (vii) invest in our JVs or other third party agreements.

Acquired In-process Research and Development Expenses. There was $9.5 million of expense related to acquired in-process research and development associated with the Sofusa Purchase Agreement for the three months ended September 30, 2018 and $902 thousand of expense related to acquired in-process research and development for the three months ended September 30, 2017.

General and Administrative Expenses. General and administrative expenses for the three months ended September 30, 2018 and 2017 were $20.1 million and $10.2 million, respectively. General and administrative expenses consist primarily of salaries and personnel related expenses for executive, finance and administrative personnel, stock-based compensation expense, professional fees, infrastructure expenses, legal and accounting expenses, product launch expenses related to ZTlido™, and other general corporate expenses. The increase of $9.9 million is primarily attributable to expenses related to the preparation of the commercial launch of ZTlido™, increased personnel costs and increased outside legal costs as compared to the prior year.

We expect general and administrative expenses to increase in absolute dollars as we: (i) incur incremental expenses associated with expanded operations and development efforts, (ii) increase sales and marketing efforts to support our commercial launch of ZTlido™, (iii) continue our efforts to monitor and ensure compliance with our public reporting obligations, (iv) incur increased infrastructure costs, and (v) invest in our JVs or other third party agreements.

Intangible Amortization. Intangible amortization for the three months ended September 30, 2018 and 2017 was $655 thousand and $656 thousand, respectively.

Contingent Liabilities and Acquisition Consideration Payable. Changes in acquisition consideration payable for the three months ended September 30, 2018 and 2017 resulted in a loss of $33 thousand and a gain of $4,468 thousand, respectively. The change in acquisition consideration payable for the three months ended September 30, 2018 as compared to the prior year relates primarily to contingent consideration for the Virttu acquisitions from the prior year which was settled in 2018.

Interest Expense. Interest expense for the three months ended September 30, 2018 and 2017 was $2.7 million and $1.2 million, respectively. The increase in interest expense of $1.5 million resulted primarily from the Notes associated with the 2018 Securities Purchase Agreement and the 2018 Purchase Agreements and Indenture for Scilex which was entered into during the three months ended September 30, 2018.

Interest Income. Interest income for the three months ended September 30, 2018 and 2017 was $219 thousand and $(265) thousand, respectively. We expect that continued low interest rates will significantly limit our interest income in the near term.

Income Tax Expense (Benefit). Income tax benefit for the three months ended September 30, 2018 was $(0.8) million and income tax expense for the three months ended September 30, 2017 was $57.5 million. The decrease in income tax expense resulted mainly from deferred tax expense recorded related to the intangibles transferred to Celularity as a result of the closing of Contribution Agreement in the prior year.

Loss on equity method investments. Loss on equity method investments for the three months ended September 30, 2018 and 2017 was $0.9 million and $36.5 million, respectively. (See Note 9 of the accompanying notes to the condensed consolidated financial statements for additional information.)

Net Income (Loss). Net loss for the three months ended September 30, 2018 and 2017 was $50.5 million and net income of $1.5 million, respectively.

Comparison of the Nine Months Ended September 30, 2018 and 2017

Revenues. Revenues were $14.3 million for the nine months ended September 30, 2018, as compared to $131.4 million for the nine months ended September 30, 2017. The net decrease of $117.1 million is primarily due to a decrease of $123.1 million in our royalty and license revenues resulting primarily from higher licensing revenue associated with collaboration arrangements in the prior year.

In June 2014, the NIH awarded us the Staph Grant III award. The project period for this Phase II grant covered a two-year period which commenced in June 2014, which was subsequently extended by one year, with total funds available of approximately $1.0 million per year. During the nine months ended September 30, 2018 and 2017, we recorded $0 and $206 thousand of revenue, respectively, associated with the Staph Grant III award.

We expect that any revenue we generate will fluctuate from quarter to quarter as a result of the unpredictability of the demand for products and services offered as well as the timing and amount of grant awards, research and development reimbursements and other payments received under any strategic collaborations, if any.

Cost of revenues. Cost of revenues for the nine months ended September 30, 2018 and 2017 were $4.7 million and $3.0 million, respectively, and relate to the sale of customized reagents and providing contract development services. The costs generally include employee-related expenses including salary and benefits, direct materials and overhead costs including rent, depreciation, utilities, facility maintenance and insurance. The increase of $1.7 million is primarily attributable to increased indirect costs associated with the higher sales and service revenues for next generation homogenous antibody drug conjugate development.

Research and Development Expenses. Research and development expenses for the nine months ended September 30, 2018 and 2017 were $52.1 million and $42.7 million, respectively. Research and development expenses include the costs to advance our CAR-T programs for solid tumors, our RTX program towards entering into future clinical trials, our biosimilar/biobetter antibodies development, costs to identify, isolate and advance human antibody drug candidates derived from our libraries as well as advancing our ADC preclinical drug candidates, preclinical testing expenses and the expenses associated with fulfilling our development obligations related to the NIH grant awards, collectively the NIH Grants. Such expenses consist primarily of salaries and personnel related expenses, stock-based compensation expense, clinical development expenses, preclinical testing, lab supplies, consulting costs, depreciation and other expenses.

The increase of $9.5 million is primarily attributable to an increase in payroll expense for research and development, facilities costs and an increase in R&D program costs in areas such as CAR-T and RTX. We expect research and development expenses to increase in absolute dollars as we: (i) advance our CAR-T programs, (ii) advance RTX into clinical trials and

pursue other potential indications, the cost of acquiring, developing and manufacturing clinical trial materials, and other regulatory operating activities, (iii) advance our biosimilar/biobetter antibodies clinical development program, (iv) incur incremental expenses associated with our efforts to further advance a number of potential product candidates into preclinical development activities, (v) continue to identify and advance a number of fully human therapeutic antibody and ADC preclinical product candidates, (vi) incur higher salary, lab supply and infrastructure costs incurred in connection with supporting all of our programs, and (vii) invest in our JVs or other third party agreements.

Acquired In-process Research and Development Expenses. Acquired in-process research and development expenses for the nine months ended September 30, 2018 and 2017 were $9.5 million and $1.1 million, respectively. The increase was due to expense related to acquired in-process research and development associated with the Sofusa Purchase Agreement for the three months ended September 30, 2018.

General and Administrative Expenses. General and administrative expenses for the nine months ended September 30, 2018 and 2017 were $41.1 million and $31.2 million, respectively. General and administrative expenses consist primarily of salaries and personnel related expenses for executive, finance and administrative personnel, stock-based compensation expense, professional fees, infrastructure expenses, legal and accounting expenses, product launch expenses related to ZTlido™, and other general corporate expenses. The increase of $9.9 million is primarily attributable to expenses related to the preparation of the commercial launch of ZTlido™, increased personnel costs and increased outside legal costs compared to prior year.

We expect general and administrative expenses to increase in absolute dollars as we: (i) incur incremental expenses associated with expanded operations and development efforts, (ii) increase sales and marketing efforts to support our commercial launch of ZTlido™, (iii) continue our efforts to monitor and ensure compliance with our public reporting obligations, (iv) incur increased infrastructure costs, and (v) invest in our JVs or other third party agreements.

Intangible Amortization. Intangible amortization for the nine months ended September 30, 2018 and 2017 was $2.0 million and $1.9 million, respectively.

Contingent Liabilities and Acquisition Consideration Payable. Changes in acquisition consideration payable for the nine months ended September 30, 2018 and 2017 resulted in a loss of $13.7 million and a gain of $8.6 million, respectively.

The loss resulting from the change in acquisition consideration payable for the nine months ended September 30, 2018 relates primarily to changes in the fair value of contingent consideration from the Scilex and Virttu acquisitions of $6.0 million and $6.4 million, respectively.

In advance of our settlement of the Scilex contingent consideration on February 28, 2018 for $38.2 million, the fair value of the obligation increased by $6.0 million from December 31, 2017 primarily due to an increase in the probability of achieving the clinical development milestone triggering the settlement of the contingent consideration from 95% to 100%. Additionally, a portion of the consideration was payable in shares of our common stock, which increased in value during the same period.

Virttu contingent consideration was settled in part by issuing shares of our common stock on April 27, 2018. The increase in the fair value of the contingent consideration related to Virttu of $6.4 million during the nine months ended September 30, 2018 is primarily related to an increase in the value of our common stock during the same period.

Interest Expense. Interest expense for the nine months ended September 30, 2018 and 2017 was $48.7 million and $4.0 million, respectively. The increase in interest expense resulted primarily from the conversion of the December 2017 Notes during the nine months ended September 30, 2018. The unamortized discount remaining at the date of conversion of $44.3 million was recognized as interest expense in the nine months ended September 30, 2018.

Interest Income. Interest income for the nine months ended September 30, 2018 and 2017 was $229 thousand and $192 thousand, respectively. We expect that continued low interest rates will significantly limit our interest income in the near term.

Income Tax (Benefit) Expense. Income tax benefit and income tax expense for the nine months ended September 30, 2018 and 2017 was $(3.2) million and income tax expense of $54.4 million, respectively. The decrease in income tax expense resulted mainly from deferred tax expense recorded related to the intangibles transferred to Celularity as a result of the closing of Contribution Agreement in the prior year.

Loss on Equity Investments. Loss on equity investments for the nine months ended September 30, 2018 and 2017 was $3.9 million and $38.6 million, respectively. (See Note 9 of the accompanying notes to the condensed consolidated financial statements for additional information.)

Net Loss. Net loss for the nine months ended September 30, 2018 and 2017 was $158.8 million and $37.1 million, respectively.

Liquidity and Capital Resources

As of September 30, 2018, we had $135.4 million in cash and cash equivalents. Restricted cash in our condensed consolidated balance sheet as of September 30, 2018, included approximately $45.0 million of restricted cash related to the Scilex Notes in the form of both a reserve and collateral account.

On March 26, 2018, we entered into the Securities Purchase Agreement with the Purchasers. Pursuant to the Securities Purchase Agreement, we agreed to issue and sell to the Purchasers, in the Private Placement, the Notes in an aggregate principal amount of $120,500,000 and Warrants to purchase an aggregate of 8,591,794 shares.

On June 13, 2018, we entered into the Amendment, pursuant to which we and the Purchasers agreed that the aggregate principal amount of the Notes was reduced to $37,848,750 and that the aggregate number of shares of Common Stock issuable upon exercise of the Warrants was reduced to 2,698,662, and also agreed to certain other adjustments to the threshold principal amount of the Notes required to remain outstanding in order for certain rights and obligations to apply to the Notes.

On June 13, 2018, pursuant to the Securities Purchase Agreement, we issued and sold to the Purchasers, in the Private Placement (1) Notes in an aggregate principal amount of $37,848,750, and (2) Warrants to purchase an aggregate of 2,698,662 shares of our common stock.

On September 7, 2018, Scilex entered into the 2018 Purchase Agreements with the Purchasers and us. Pursuant to the 2018 Purchase Agreements, on September 7, 2018, Scilex, among other things, issued and sold to the Purchasers the Notes with an aggregate principal of $224.0 million for an aggregate purchase price of $140.0 million. In connection with the Offering, Scilex also entered into the Indenture governing the Notes with the Trustee and Collateral Agent and us. Pursuant to the Indenture, we agreed to the Guarantee.

We cannot be certain that additional funding will be available on acceptable terms, or at all. If we issue additional equity securities to raise funds, the ownership percentage of existing stockholders would be reduced. New investors may demand rights, preferences or privileges senior to those of existing holders of common stock. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our product candidates. We may also seek collaborators for one or more of our current or future product candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available. These factors raise substantial doubt about our ability to continue as a going concern. Our condensed consolidated financial statements and related notes thereto included elsewhere in this Quarterly Report on Form 10-Q do not include any adjustments that might result from the outcome of this uncertainty.

Cash Flows from Operating Activities. Net cash used for operating activities was $66.8 million for the nine months ended September 30, 2018 as compared to $54.3 million for the nine months ended September 30, 2017. Cash used for operating activities increased by approximately $12.5 million and is primarily attributable to an increase in cash used for acquisition consideration for Scilex, sales and marketing expense for the preparation of the commercial launch of ZTlido™ rent expenses related to the relocation of our corporate offices, expenses resulting from non-compete agreements, and other operating activities.

We expect to continue to incur substantial and increasing losses and negative net cash flows from operating activities as we seek to expand and support our clinical and pre-clinical development and research activities, support the commercial launch of ZTlido™ and fund our joint ventures, collaborations, and other third party agreements.

Cash Flows from Investing Activities. Net cash used for investing activities was $15.7 million for the nine months ended September 30, 2018 as compared to $14.9 million for the nine months ended September 30, 2017. Cash used for investing activities included $10.0 million cash paid for the Sofusa acquisition.

We expect to increase our investment in equipment as we seek to expand and progress our research and development capabilities.

Cash Flows from Financing Activities. Net cash provided by financing activities was $242.7 million for the nine months ended September 30, 2018 as compared to net cash provided by financing of $25.2 million for the nine months

ended September 30, 2017. Cash provided by financing activities increased by approximately $217.5 million primarily due to sales of shares under the ATM Facility (as defined below) of approximately $71.5 million, the issuance of convertible notes of approximately $37.8 million in the current year, the Scilex debt financing of approximately $134.3 million, and the partial

repayment of the amended loan and security agreement of approximately $21.5 million in the prior year, partially offset by the payments associated with the Scilex earn-out settlement of approximately $22.5 million for the nine months ended September 30, 2018.

Future Liquidity Needs. We have principally financed our operations through underwritten public offerings and private equity financings with aggregate net proceeds of approximately $273.3 million since inception, as we have not generated any product related revenue to date from our principal operations of commercializing our intellectual property assets focused on delivering clinically meaningful therapies, as well as the out-licensing of our technologies, and do not expect to generate significant revenue for several years, if ever. We will need to raise additional capital before we exhaust our current cash resources in order to continue to fund our research and development, including our plans for clinical and preclinical trials and new product development and commercialization, as well as to fund operations generally. As and if necessary, we will seek to raise additional funds through various potential sources, such as equity and debt financings, or through corporate collaboration and license agreements. We can give no assurances that we will be able to secure such additional sources of funds to support our operations, or, if such funds are available to us, that such additional financing will be sufficient to meet our needs.

We anticipate that we will continue to incur net losses into the foreseeable future as we: (i) advance RTX and other product candidates into clinical trials and potentially pursue other development, (ii) continue to identify and advance a number of potential mAb and ADC product candidates into preclinical development activities, (iii) continue our development of, and seek regulatory approvals for, our product candidates, (iv) expand our corporate infrastructure, including the costs associated with being a Nasdaq listed public company, and (v) incur our share of joint venture and collaboration costs for our products and technologies.

We plan to continue to fund our operating losses and capital funding needs through public or private equity or debt financings, strategic collaborations, licensing arrangements, asset sales, government grants or other arrangements.

In November 2014, we filed a universal shelf registration statement on Form S-3 with the SEC, which was declared effective by the SEC in December 2014 (the "2014 Shelf Registration"). The 2014 Shelf Registration Statement provided us with the ability to offer up to $250 million of securities, including equity and other securities as described in the registration statement. Included in the November 2014 shelf registration was a sales agreement prospectus covering the offering, issuance and sale by us of up to a maximum aggregate offering price of $50.0 million of our common stock that may be issued and sold under a sales agreement with MLV & Co. LLC. On April 19, 2017, we completed the offering of $47.5 million of common stock pursuant to the 2014 Shelf Registration Statement and received net proceeds of approximately $43.5 million. On November 9, 2017, we filed a universal shelf registration statement on Form S-3 with the SEC (the "2017 Shelf Registration Statement") to replace the 2014 Shelf Registration Statement. The 2014 Shelf Registration Statement expired in December 2017. Included in the 2017 Shelf Registration Statement is a sales agreement prospectus covering the offering, issuance and sale by us of up to a maximum aggregate offering price of $100.0 million of our Common Stock that may be issued and sold under a sales agreement with B. Riley FBR, Inc. (the "ATM Facility"). During the twelve months ended December 31, 2017 and the nine months ended September 30, 2018, we sold approximately $0.9 million and approximately $60.7 million in shares of common stock under the ATM Facility, respectively. We have the ability to offer up to approximately $39.3 million of additional shares of common stock under the ATM Facility, subject to certain limitations.

Pursuant to the 2017 Shelf Registration Statement, we may offer additional securities from time to time and through one or more methods of distribution, subject to market conditions and our capital needs. Specific terms and prices will be determined at the time of each offering under a separate prospectus supplement, which will be filed with the SEC at the time of any offering.

On April 13, 2017, we entered into an underwriting agreement (the "Underwriting Agreement") with underwriters (the "Underwriters"), relating to the offering of 23,625,084 shares of our common stock (the "Offering"). The public offering price was $2.00 per share of our common stock and the Underwriters agreed to purchase the shares of common stock pursuant to the Underwriting Agreement at a price of $1.8571 per share. Under the terms of the Underwriting Agreement, we also granted to the Underwriters an option, exercisable in whole or in part at any time for a period of 30 days from the date of the closing of the Offering, to purchase up to an additional 3,543,763 shares of our common stock at the public offering price.

On April 19, 2017, the Offering was completed and resulted in net proceeds of approximately $43.1 million (excluding any sale of shares of common stock pursuant to the option granted to the Underwriters), after deducting underwriting discounts and commissions and estimated Offering expenses payable by us.

On December 11, 2017, we entered into the Securities Purchase Agreement with the Purchasers. Pursuant to the Securities Purchase Agreement, on December 21, 2017, we issued and sold to the Purchasers, in the Private Placement, (1) the Notes, which will accrue simple interest at a rate equal to 5.0% per annum and mature upon the Maturity Date, and (2) the

Warrants to purchase an aggregate of 12,121,210 shares of our common stock. (See Note 12 of the accompanying notes to the condensed consolidated financial statements for additional information.)

On May 17, 2018, the December 2017 Purchasers converted in full the outstanding principal and accrued interest under the December 2017 Notes into 22,038,565 shares of our common stock, and we paid to the December 2017 Purchasers cash in an aggregate amount of $1.0 million in accrued but unpaid interest. The unamortized discount remaining at the date of conversion of $44.3 million was recognized immediately at that date as interest expense.

If we raise additional funds by issuing equity securities, substantial dilution to existing stockholders would result. If we raise additional funds by incurring debt financing, the terms of the debt may involve significant cash payment obligations as well as covenants and specific financial ratios that may restrict our ability to operate our business.

Uses of Cash. We have and plan to expand our business and intellectual property portfolio through the acquisition of new businesses and technologies as well as entering into licensing arrangements.

Acquisition of Virttu Biologics Limited

On April 27, 2017, we entered into the Virttu Purchase Agreement with TNK, Virttu, the Virttu Shareholders and Dayspring Ventures Limited, as the representative of the Virttu Shareholders.

At the Virttu Closing, we issued to the Virttu Shareholders consideration valued at approximately $2.2 million, which consisted primarily of the Virttu Closing Shares and the Cash Consideration. The issuance of the Virttu Closing Shares and the payment of the Cash Consideration satisfied TNK’s obligation to pay 20% of the Virttu Base Consideration at the Virttu Closing. Under the terms of the Virttu Purchase Agreement, we agreed to provide additional consideration to the Virttu Shareholders, as follows:

(1) Upon a Qualified Financing, TNK would have issued to the Virttu Shareholders the TNK Financing Consideration; provided, however, that 20% of the TNK Financing Consideration was held in escrow until the Financing Due Date, to be used to, among other things, satisfy the indemnification obligations of the Virttu Shareholders. In the event that a Qualified Financing did not occur, then on the Financing Due Date, we would issue to the Virttu Shareholders an aggregate number of shares of our common stock as is equal to the quotient obtained by dividing 80% of the Virttu Base Consideration, by $5.55 (as adjusted, as appropriate, to reflect any stock splits or similar events affecting our common stock after the Virttu Closing).

(2) Within 45 business days after Virttu becomes aware of a Regulatory Approval, TNK shall pay half of the Regulatory Approval Consideration to the Virttu Shareholders, in a combination of (a) the Regulatory Approval Cash and/or (b) (i) such number of shares of our common stock as is equal to the quotient obtained by dividing the Regulatory Approval Share Value by the 30 Day VWAP (as defined below) of one share of our common stock; (ii) if TNK has completed its first public offering of TNK Capital Stock, the number of shares of TNK Capital Stock as is equal to the quotient obtained by dividing the Regulatory Approval Share Value by the 30 Day VWAP of one share of TNK Capital Stock; or (iii) such number of shares of common stock of a publicly traded company as is equal to the quotient obtained by dividing the Regulatory Approval Share Value by the 30 Day VWAP, with the composition of the Regulatory Approval Consideration to be at TNK’s option. In order for a second regulatory approval to qualify as a Regulatory Approval under the Purchase Agreement, the second approval must be granted by a different governmental body in a different jurisdiction than that which granted the first Regulatory Approval.

In connection with the Virttu transaction, we recorded acquisition costs of approximately $0.9 million in general and administrative expenses for the twelve months ended December 31, 2017, for legal and related costs. No acquisition costs in connection with the Virttu transaction were recorded for the three or nine months ended September 30, 2018. Acquisition costs are expensed as incurred.

TNK did not complete a Qualified Financing prior to the Financing Due Date and on April 27, 2018. Us, TNK and Dayspring entered into the Amendment, pursuant to which, among other things, we agreed that the acquisition consideration, otherwise payable on April 27, 2018 to the Virttu Shareholders, shall be as follows: (1) an issuance of 1,795,011 shares of our common stock to the Virttu Shareholders and (2) $9.9 million payable in cash.

We issued an aggregate of 1,795,011 shares of our common stock to the Virttu Shareholders on April 27, 2018 for a value of $11.3 million. The approximately $9.9 million payable in cash has not been paid as of the date of this filing.

Acquisition of Scilex Pharmaceuticals Inc.

On November 8, 2016, we entered into a Stock Purchase Agreement (the “Scilex Purchase Agreement”) with Scilex and a majority of the stockholders of Scilex (the “Scilex Stockholders”) pursuant to which, on November 8, 2016, we acquired

from the Scilex Stockholders, and the Scilex Stockholders sold to us, approximately 72% of the outstanding capital stock of Scilex (the “Scilex Acquisition”). The remainder of the outstanding capital stock of Scilex represents a noncontrolling interest of which approximately 23% continues to be held by ITOCHU CHEMICAL FRONTIER Corporation following the Scilex Acquisition.

Under the terms of the Scilex Purchase Agreement, upon receipt of notice from the U.S. Food and Drug Administration (the "FDA") that the FDA has approved Scilex's new drug application for ZTlido™ (lidocaine topical system 1.8%) for the treatment of postherpetic neuralgia (the "NDA") for commercialization, we were obligated to deliver to the Scilex Stockholders cash and shares of its common stock in such proportion to be determined in our sole discretion as a milestone payment. On February 28, 2018, we received notice from the FDA that the FDA had approved the NDA. As a result, we issued to the Scilex Stockholders consideration valued at approximately $38.2 million, which included an aggregate of 1,381,346 shares of common stock of approximately $13.7 million, cash payment of approximately $24.5 million, including a bridge loan of approximately $20.0 million with B. Riley FBR and resulted in a change in fair value of $6.0 million since December 31, 2017, for the contingent consideration upon settlement.

License Agreement with Mabtech Limited

In August 2015, we entered into an exclusive licensing agreement to develop and commercialize multiple prespecified biosimilar and biobetter antibodies from Mabtech Limited. Under the terms of the agreement, we will develop and market four mAbs for the North American, European and Japanese markets. We made an initial license payment of $10.0 million and in February 2016, paid an additional $10.0 million license payment, both of which were recognized as acquired in-process research and development expense in the condensed consolidated statements of operations as we determined there was no alternative future use for the license.

In June 2016, we agreed to accelerate and pay a $30.0 million milestone license payment which has been recognized as acquired in-process research and development expense in the condensed consolidated statements of operations, in exchange for the purchase by Mabtech Limited in June 2016, of $10.0 million of shares of common stock and warrants.

In December 2017, we agreed to accelerate and, as a result, paid a $25.0 million milestone license payment, which has been recognized as acquired in-process research and development expense in the consolidated statements of operations for the year ended December 31, 2017. The amended agreement includes additional milestone payments totaling $125.0 million payable following the completion of the technology transfer from Mabtech Limited and for payables to extend the license agreement. The remaining anniversary payments are due on December 31, 2018 and 2019. We are not obligated to extend the license agreement. Accordingly, the additional future milestone payments have not yet been accrued as of September 30, 2018.

Sofusa™ Acquisition

On July 2, 2018, we entered into the Sofusa Purchase Agreement with Kimberly-Clark pursuant to which, among other things, we acquired the Sofusa Assets. The Sofusa Closing occurred on July 2, 2018. At the Sofusa Closing, we paid $10 million and agreed to pay the Sofusa Contingent Consideration. Under the Sofusa Purchase Agreement, the aggregate amount of the Contingent Consideration payable by us will not exceed $300.0 million. We also agreed to pay Kimberly-Clark a low single-digit royalty on all net sales with respect to the first five products developed by us or our licensees that utilizes intellectual property included in the Sofusa Assets.

Off-Balance Sheet Arrangements

Since our inception through September 30, 2018, we have not engaged in any off-balance sheet arrangements as defined in Item 303(a)(4) of Regulation S-K.

New Accounting Pronouncements

Refer to Note 3, “Significant Accounting Policies,” in the accompanying notes to the condensed consolidated financial statements for a discussion of recent accounting pronouncements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Interest Rate Risk. Our exposure to market risk is confined to our cash and cash equivalents. We have cash and cash equivalents and invest primarily in high-quality money market funds, which we believe are subject to limited credit risk. Due to the low risk profile of our investments, an immediate 10% change in interest rates would not have a

material effect on the fair

market value of our portfolio. We do not believe that we have any material exposure to interest rate risk arising from our investments.

Capital Market Risk. We currently do not have significant revenues from grants or sales and services and we have no product revenues from our planned principal operations of commercializing our intellectual property assets focused on delivering clinically meaningful therapies, as well as the out-licensing of our technologies, and therefore depend on funds raised through other sources. One source of funding is through future debt or equity offerings. Our ability to raise funds in this manner depends upon, among other things, capital market forces affecting our stock price.

Item 4. Controls and Procedures.

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized and reported within the time periods specified in the SEC's regulations, rules and forms and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow for timely decisions regarding required disclosure.

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, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. As required by Rule 13a-15(b) promulgated by the SEC under the Exchange Act, we carried out an evaluation, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on the foregoing, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were not effective as of the end of the period covered by this Quarterly Report on Form 10-Q as a result of the material weaknesses described below.

In March 2017, in connection with the preparation of our 2016 financial statements, we identified certain purchase agreements which contained terms for contingent consideration that were not identified timely and accounted for in our historical financial statements on a timely basis. Further, certain other purchase agreements containing terms for contingent consideration were identified timely, but we failed to adjust the liabilities for changes in fair value at each subsequent reporting period. Accordingly, we did not appropriately account for liabilities for contingent consideration payable and the related adjustments to earnings.

Based on these findings and the criteria discussed above, our management identified a material weakness in our review controls over unusual or non-recurring and significant transactions. Specifically, our controls were not properly designed to provide reasonable assurance that we (1) timely identify and assess the accounting implications of terms in unusual or non-recurring agreements and (2) reassess the valuation of associated assets or liabilities at the end of each reporting period.

As a result of the material weakness, we have initiated and will continue to implement remediation measures including, but not limited to, improving centralized documentation control, improving the internal communication procedures between senior executive management, accounting personnel, and related business owners, leveraging external accounting experts as appropriate, and strengthening policies and procedures related to the transferring of responsibilities and the handoff of personnel duties. We believe that our remediation measures, when implemented, will ensure that we timely identify terms in agreements that could have material accounting implications, assesses the accounting and disclosures implications of the terms, and accounts for such items in the financial statements appropriately. Any failure to implement these improvements to our internal control over financial reporting may render our future assertions as ineffective and potentially impact our ability to produce reliable financial reports, effectively manage the company or prevent fraud, and could potentially harm our business and our performance.

As a result of the restatement of the condensed consolidated financial statements for the three and nine months ended September 30, 2017 for the impairment discussed in Note 9 to the financial statements, our management identified a material weakness in our review controls with respect to our equity method investments. Specifically, our review controls to assess and monitor the appropriateness of the financial information provided by our equity method investees were not operating effectively beginning in the quarter ended September 30, 2017, to provide reasonable

assurance that we timely identify and assess the accounting implications of transactions and events occurring at our equity method investees and properly report such investee financial information in our financial statements. Accordingly, our principal executive officer and principal financial officer concluded that, at September 30, 2017, our internal control over financial reporting was not effective.

As a result of the material weakness, we have initiated and will continue to implement remediation measures including, but not limited to, establishing procedures to ensure that our existing controls to assess and monitor the appropriateness of the financial information provided by our equity method investees operate as designed. We believe that our remediation measures, when implemented, will provide reasonable assurance that we timely identify transactions and events occurring at our equity method investments that could have material accounting implications, assess the accounting and disclosures implications of the transactions and events, and account for such items in the financial statements appropriately in the time period in which such transactions and events occur. Any failure to implement these improvements to our internal control over financial reporting may render our future assertions as ineffective and potentially impact our ability to produce reliable financial reports, effectively manage the company or prevent fraud, and could potentially harm our business and our performance.

Changes in Internal Control Over Financial Reporting

There has been no change in our internal control over financial reporting during the quarter ended September 30, 2018 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. Our plans for remediating such material weaknesses, as identified above, are still in progress and would constitute changes in our internal control over financial reporting prospectively once implemented.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings.

To the best of our knowledge, we (the "Company") are not a party to any legal proceedings that, individually or in the aggregate, are deemed to be material to our financial condition or results of operations.

In the normal course of business, we may be named as a defendant in one or more lawsuits. We are not a party to any outstanding material litigation and management is currently not aware of any legal proceedings that, individually or in the aggregate, are deemed to be material to our financial condition or results of operations.

Immunomedics Litigation

On June 26, 2015, Immunomedics, Inc. ("Immunomedics") filed a complaint in the United States District Court for the District of New Jersey (the "New Jersey Case") against the Board of Directors of Roger Williams Medical Center, Dr. Richard P. Junghans, Dr. Steven C. Katz, the Office of the Board of Advisors of Tufts University School of Medicine, and one or more individuals or entities to be identified later. This complaint (the "Initial Complaint") alleged, among other things: (1) breach of contract; (2) breach of covenant of good faith and fair dealing; (3) tortious interference with prospective economic gain; (4) tortious interference with contracts; (5) misappropriation; (6) conversion; (7) bailment; (8) negligence; (9) vicarious liability; and (10) patent infringement. Overall, the allegations in the Initial Complaint were generally directed to an alleged material transfer agreement dated December 2008 and Immunomedics' alleged request for the return of certain alleged research material, as well as the alleged improper use and conversion of such research materials outside the scope of the material transfer agreement.

On October 22, 2015, Immunomedics filed an amended complaint (the "First Amended Complaint"), which, among other things, no longer named the Board of Directors of Roger Williams Medical Center and The Office of the Board of Advisors of Tufts University School of Medicine as defendants. Roger Williams Medical Center and Tufts Medical Center were added as new defendants. On January 14, 2016, Immunomedics filed a second amended complaint (the "Second Amended Complaint"), which, among other things, no longer named Tufts Medical Center as a defendant. In addition, the Second Amended Complaint contained allegations directed to two additional alleged material transfer agreements dated September 1993 and May 2010, respectively, and also added an allegation of unjust enrichment. The Second Amended Complaint also no longer asserted claims for (1) breach of covenant of good faith and fair dealing; (2) misappropriation; (3) bailment; (4) negligence; and (5) vicarious liability.

On October 12, 2016, Immunomedics filed a third amended complaint (the "Third Amended Complaint"), which added the Company, TNK, BDL and CARgenix as defendants. TNK is a subsidiary of the Company and purchased BDL and CARgenix in August 2015. The Third Amended Complaint included, among other things, allegations against the Company, TNK, BDL and CARgenix regarding (1) conversion; (2) tortious interference; and (3) unjust enrichment.

On December 2, 2016, the Company, TNK, BDL, and CARgenix filed a motion to dismiss Immunomedics' complaint against them for lack of personal jurisdiction. On January 25, 2017, the District of New Jersey granted this motion, and the Company, TNK, BDL and CARgenix were dismissed as defendants from the New Jersey Case. Under various agreements, TNK has certain indemnification obligations to Roger Williams Medical Center, Dr. Richard P. Junghans and Dr. Steven C. Katz that may be implicated by the New Jersey Case. The New Jersey Case remains pending against defendants Roger Williams Medical Center ("RWMC"), Dr. Junghans, and Dr. Katz.

On April 27, 2018, Immunomedics filed a complaint against the Company and TNK in Superior Court, Case No. 37-2018-00021006-CU-NP-CTL (the "San Diego Case"). The complaint includes, among other things, allegations against the Company and TNK regarding: (1) conversion; (2) tortious interference; and (3) inducing breach of contract.

On October 25, 2018, the parties to the New Jersey Case and the San Diego Case entered into a Mutual General Release and Settlement Agreement resolving both matters. Pursuant to the terms of the settlement, among other things, both the New Jersey Case and San Diego Case will be dismissed with prejudice upon payment by the Company to Immunomedics of $2.35 million, which payment was paid in full on October 31, 2018.

Cantor Fitzgerald & Co. Litigation

On May 25, 2018, Cantor Fitzgerald & Co. (“CF&Co.”) filed a complaint against the Company in the Supreme Court of the State of New York, County of New York, Index No. 652633/2018. The complaint includes, among other things,

allegations against the Company for breach of contract arising out of a letter agreement whereby CF&Co. was to supply certain services to the Company in exchange for a fee (the “CF & Co. Litigation”). The Company has filed an Answer and Counterclaim for breach of contract against CF&Co claiming that CF&Co. did not perform under the letter agreement. The Company believes CF&Co.’s claims against the Company are without merit and will vigorously defend itself in the litigation. At this point in time, the Company is unable to determine whether any loss will occur with respect to the CF&Co. Litigation or to estimate the range of such potential loss; therefore, no amount of loss has been accrued by the Company as of the date of filing of this Quarterly Report on Form 10-Q.

Item 1A. Risk Factors.

Our Annual Report on Form 10-K for the year ended December 31, 2017, Part I –Item 1A, Risk Factors, describes important risk factors that could cause our business, financial condition, results of operations and growth prospects to differ materially from those indicated or suggested by forward-looking statements made in this Quarterly Report on Form 10-Q or presented elsewhere by management from time to time. Except as set forth below, there have been no material changes in our risk factors since the filing of our Annual Report on Form 10-K for the year ended December 31, 2017. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially and adversely affect our business.

Risks Related to Our Business and Industry

We have incurred significant losses since inception and anticipate that we will incur continued losses for the foreseeable future.

As of September 30, 2018 and December 31, 2017, we had an accumulated deficit of $318.0 million and $165.1 million, respectively. We continue to incur significant research and development and other expenses related to our ongoing operations. We have incurred operating losses since our inception, expect to continue to incur significant operating losses for the foreseeable future, and we expect these losses to increase as we: (i) advance resiniferatoxin ("RTX") and our other product candidates into clinical trials and pursue other development, acquire, develop and manufacture clinical trial materials and increase other regulatory operating activities, (ii) incur incremental expenses associated with our efforts to further advance a number of potential product candidates into preclinical development activities, (iii) continue to identify and advance a number of fully human therapeutic antibody and antibody drug conjugate ("ADC") preclinical product candidates, (iv) incur higher salary, lab supply and infrastructure costs incurred in connection with supporting all of our programs, (v) invest in our joint ventures, collaborations or other third party agreements, (vi) incur expenses in conjunction with defending and enforcing our rights in various litigation matters, (vii) expand our corporate, development and manufacturing infrastructure, and (viii) support our subsidiaries, such as Scilex Pharmaceuticals Inc. (“Scilex”), in their commercialization efforts. As such, we are subject to all risks incidental to the development of new biopharmaceutical products and related companion diagnostics, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors that may adversely affect our business. Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our stockholders’ equity and working capital.

We do not have many products that are approved for commercial sale and therefore do not expect to generate significant revenues from product sales from most of our product candidates in the foreseeable future, if ever.

We have not generated significant product related revenues to date, and, with the exception of our ZTlido™ (lidocaine topical system 1.8%), do not expect to generate any such revenues for at least the next several years, if at all. To obtain revenues from sales of our product candidates, we must succeed, either alone or with third parties, in developing, obtaining regulatory approval for, manufacturing and marketing products with commercial potential. We may never succeed in these activities, and we may not generate sufficient revenues to continue our business operations or achieve profitability.

We are heavily dependent on the success of our technologies and product candidates, and we cannot give any assurance that our product candidates will receive regulatory approval, which is necessary before they can be commercialized.

To date, we have invested a significant portion of our efforts and financial resources in the acquisition and development of our product candidates. We have not demonstrated our ability to perform the functions necessary for the successful acquisition, development or commercialization of the technologies we are seeking to develop. As an early stage company, we have limited experience and have not yet demonstrated an ability to successfully overcome many of the risks and uncertainties frequently encountered by companies in new and rapidly evolving fields,

particularly in the biopharmaceutical area. Our future success is substantially dependent on our ability to successfully develop, obtain regulatory approval for, and then successfully commercialize such product candidates. Other than ZTlido™ (lidocaine topical system 1.8%), our product candidates are currently in preclinical development or in clinical trials. Our business depends entirely on the successful development and commercialization of our product candidates, which may never occur. We currently do not generate significant revenues from sales of any products, and we may never be able to develop or commercialize a marketable product.

The successful development, and any commercialization, of our technologies and any product candidates would require us to successfully perform a variety of functions, including:

• developing our technology platform;
• seeking and obtaining intellectual property and/or proprietary rights to our technology and/or the technology of others;
• identifying, developing, manufacturing and commercializing product candidates;
• entering into successful licensing and other arrangements with product development partners;
• participating in regulatory approval processes;
• formulating and manufacturing products; and
• conducting sales and marketing activities.

Our operations have been limited to organizing our company, acquiring, developing and securing our proprietary technology and identifying and obtaining early preclinical data or clinical data for various product candidates. These operations provide a limited basis for you to assess our ability to continue to develop our technology, identify product candidates, develop and commercialize any product candidates we are able to identify and enter into successful collaborative arrangements with other companies, as well as for you to assess the advisability of investing in our securities. Each of these requirements will require substantial time, effort and financial resources.

Each of our product candidates will require additional preclinical or clinical development, management of preclinical, clinical and manufacturing activities, regulatory approval in multiple jurisdictions, obtaining manufacturing supply, building of a commercial organization, and significant marketing efforts before we generate any revenues from product sales. We are not permitted to market or promote any of our product candidates before we receive regulatory approval from the U.S. Food and Drug Administration (the "FDA"), the United Kingdom's Medicines and Healthcare Products Regulatory Agency (the "MHRA"), the European Medicines Agency ("EMA") or comparable foreign regulatory authorities, and we may never receive such regulatory approval for any of our product candidates. In addition, our product development programs contemplate the development of companion diagnostics by our third-party collaborators. Companion diagnostics are subject to regulation as medical devices and must themselves be approved for marketing by the FDA, the MHRA, the EMA or certain other foreign regulatory agencies before we may commercialize our product candidates.

If we fail to comply with manufacturing regulations, our financial results and financial condition will be adversely affected.

We currently manufacture our preclinical and clinical materials in-house. However, we only recently began manufacturing such materials and do not have significant prior experience manufacturing preclinical or clinical materials or product candidates. Before we can begin commercial manufacture of our product candidates, regulatory authorities must approve marketing applications that identify manufacturing facilities operated by us or our contract manufacturers that have passed regulatory inspection and manufacturing processes that are acceptable to the regulatory authorities. In addition, our pharmaceutical manufacturing facilities are continuously subject to scheduled and unannounced inspection by the FDA and international regulatory authorities, before and after product approval, to monitor and ensure compliance with cGMP and other regulations. Additionally, we may use contract manufacturers for the manufacture of our product candidates from time to time based on capacity needs. Although we are not involved in the day-to-day operations of our contract manufacturers, we are ultimately responsible for ensuring that our products are manufactured in accordance with cGMP regulations.

Due to the complexity of the processes used to manufacture our product candidates, we may be unable to continue to pass or initially pass federal or international regulatory inspections in a cost-effective manner. For the same reason, any potential third-party manufacturer of our product candidates may be unable to comply with cGMP regulations in a cost-effective manner and may be unable to initially or continue to pass a federal or international regulatory inspection.

If we, or third-party manufacturers with whom we contract, are unable to comply with manufacturing regulations, we may be subject to delay of approval of our product candidates, warning or untitled letters, fines, unanticipated compliance expenses, recall or seizure of our products, total or partial suspension of production and/or enforcement actions, including injunctions, and criminal or civil prosecution. These possible sanctions would adversely affect our financial results and financial condition.

We may not be able to manufacture our products and product candidates in commercial quantities, which would prevent us from commercializing our product candidates.

We are largely dependent on our third party manufacturers to conduct process development and scale-up work necessary to support greater clinical development and commercialization requirements for our products and product candidates. Carrying out these activities in a timely manner, and on commercially reasonable terms, is critical to the successful development and commercialization of our products and product candidates. We expect our third-party manufacturers are capable of providing sufficient quantities of our products and product candidates to meet anticipated clinical and full-scale commercial demands, however if third parties with whom we currently work are unable to meet our supply requirements, we will need to secure alternate suppliers or face potential delays or shortages. While we believe that there are other contract manufacturers with the technical capabilities to manufacture our products and product candidates, we cannot be certain that identifying and establishing relationships with such sources would not result in significant delay or material additional costs.

We currently have no sales and marketing organization. If we are unable to establish a direct sales force in the U.S. to promote our products, the commercial opportunity for our products may be diminished.

With the exception of Scilex (which commercially launched ZTlido™ (lidocaine topical system 1.8%) in October 2018 and utilizes a contract sales organization to conduct its primary sales activities), we currently have no sales and marketing organization. If any of our product candidates are approved by the FDA, we intend to market that product through our own sales force. We will incur significant additional expenses and commit significant additional management resources to establish our sales force. We may not be able to establish these capabilities despite these additional expenditures. We will also have to compete with other pharmaceutical and biotechnology companies to recruit, hire and train sales and marketing personnel. If we elect to rely on third parties to sell our product candidates in the U.S., we may receive less revenue than if we sold our products directly. In addition, although we would intend to use due diligence in monitoring their activities, we may have little or no control over the sales efforts of those third parties. In the event we are unable to develop our own sales force or collaborate with a third party to sell our product candidates, we may not be able to commercialize our product candidates which would negatively impact our ability to generate revenue.

Specifically relating to Scilex, Scilex only has a limited commercial infrastructure and has limited experience in the commercialization, sale, marketing or distribution of pharmaceutical products, like ZTlido™ (lidocaine topical system 1.8%). Scilex's commercialization efforts for ZTlido™ (lidocaine topical system 1.8%) have been primarily focused in the United States. Commercialization of ZTlido™ (lidocaine topical system 1.8%) and other future product candidates outside of the United States, to the extent pursued, is likely to require collaboration with one or more third parties.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our product candidates.

We face an inherent risk of product liability as a result of the clinical testing of our product candidates and will face an even greater risk for the commercialization of any products, including ZTlido™ (lidocaine topical system 1.8%), which is marketed and sold through our subsidiary, Scilex. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability, and a breach of warranties. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our product candidates, if approved. Even successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

• decreased demand for our product candidates or products that we may develop;
• injury to our reputation;
• withdrawal of clinical trial participants;
• initiation of investigations by regulators;
• restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market or voluntary or mandatory product recalls;
• costs to defend the related litigation;
• a diversion of management's time and our resources;

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• substantial monetary awards to trial participants or patients;
• product recalls, withdrawals or labeling, marketing or promotional restrictions;
• loss of revenues from product sales; and
• the inability to commercialize our product candidates.

Our inability to obtain and retain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of products we develop.

We will need to increase the size of our company and may not effectively manage our growth.

Our success will depend upon growing our business and our employee base. Over the next 12 months, we plan to add additional employees to assist us with research and development and in Scilex with commercialization efforts. Our future growth, if any, may cause a significant strain on our management, and our operational, financial and other resources. Our ability to manage our growth effectively will require us to implement and improve our operational, financial and management systems and to expand, train, manage and motivate our employees. These demands may require the hiring of additional management personnel and the development of additional expertise by management. Any increase in resources devoted to research and product development without a corresponding increase in our operational, financial and management systems could have a material adverse effect on our business, financial condition, and results of operations.

Drug development involves a lengthy and expensive process with an uncertain outcome, and results of earlier studies and trials may not be predictive of future trial results.

Clinical testing is expensive and can take many years to complete, and its outcome is risky and uncertain. Failure can occur at any time during the clinical trial process. The results of preclinical studies and early clinical trials of our product candidates may not be predictive of the results of later-stage clinical trials. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical studies and initial clinical trials. It is not uncommon for companies in the pharmaceutical industry to suffer significant setbacks in advanced clinical trials due to lack of efficacy or adverse safety profiles, notwithstanding promising results in earlier trials. Our future clinical trial results may not be successful.

This drug candidate development risk is heightened by any changes in the planned clinical trials compared to the completed clinical trials. As product candidates are developed through preclinical to early and late stage clinical trials towards approval and commercialization, it is customary that various aspects of the development program, such as manufacturing and methods of administration, are altered along the way in an effort to optimize processes and results. While these types of changes are common and are intended to optimize the product candidates for late stage clinical trials, approval and commercialization, such changes do carry the risk that they will not achieve these intended objectives.

Other than with respect to ZTlido™ (lidocaine topical system 1.8%), we have not previously initiated or completed a corporate-sponsored clinical trial. Consequently, we may not have the necessary capabilities, including adequate staffing, to successfully manage the execution and completion of any clinical trials we initiate, including our planned clinical trials of RTX, clinical trials of CAR-T including targeting CD38 using a CAR-T cell therapy, our biosimilar/biobetters antibodies and other product candidates, in a way that leads to our obtaining marketing approval for our product candidates in a timely manner, or at all.

In the event we are able to conduct a pivotal clinical trial of a product candidate, the results of such trial may not be adequate to support marketing approval. Because our product candidates are intended for use in life-threatening diseases, in some cases we ultimately intend to seek marketing approval for each product candidate based on the results of a single pivotal clinical trial. As a result, these trials may receive enhanced scrutiny from the U.S. Food and Drug Administration ("FDA"). For any such pivotal trial, if the FDA disagrees with our choice of primary endpoint or the results for the primary endpoint are not robust or significant relative to control, are subject to confounding factors,

or are not adequately supported by other study endpoints, including possibly overall survival or complete response rate, the FDA may refuse to approve a New Drug Application, Biologics License Application or other application for marketing based on such pivotal trial. The FDA may require additional clinical trials as a condition for approving our product candidates.

The terms of our outstanding convertible promissory notes place restrictions on our operating and financial flexibility. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.

On June 13, 2018, we issued and sold convertible promissory notes in an aggregate principal amount of $37.8 million (the "Convertible Notes") to certain accredited investors pursuant to a Securities Purchase Agreement, as amended (the "Securities Purchase Agreement"). The Convertible Notes accrue interest at a rate equal to 5.0% per annum and mature upon the earlier to occur of June 13, 2023 and the date of the closing of a change of control (the "Maturity Date"). At any time and from time to time before the Maturity Date, the holders of the Convertible Notes have the option to convert any portion of the outstanding principal amount of the Convertible Notes that is equal to or greater than the lesser of: (1) $4,000,000, and (2) the then-outstanding principal amount of the Convertible Note being converted into shares of common stock at a price per share of $7.0125, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions. Any conversion of the Convertible Notes could result in material dilution to the Company's existing stockholders. Accrued but unpaid interest on the Convertible Notes shall be paid in cash semi-annually in arrears on or prior to the 30th day of June and 31st day of December of each calendar year commencing with the year ending December 31, 2018. If a holder elects to convert any of the principal amount of their Convertible Note, then all accrued but unpaid interest on such portion of the principal amount shall become due and payable in cash. The Securities Purchase Agreement and the Convertible Notes contain customary restrictive covenants, which will remain in effect so long as the aggregate outstanding principal amount of the Convertible Notes is at least $18.8 million, including significant limitations on incurring additional indebtedness, liens, declaring cash dividends or making cash distributions and dispositions of our assets, in each case subject to customary exceptions. The breach of such covenants or the occurrence of certain other events would result in the occurrence of an event of default. Upon the occurrence of an event of default and following any applicable cure periods, the interest rate under the Convertible Notes will automatically increase to 12.0% per annum, effective until the day after such default is cured, and the holders of the Convertible Notes may declare all outstanding obligations immediately due and payable and take such other actions as set forth in the Convertible Notes, potentially requiring us to renegotiate our agreement on terms less favorable to us or to immediately cease operations. Any declaration by the holders of the Convertible Notes of an event of default could significantly harm our business and prospects and could cause the price of our common stock to decline.

On September 7, 2018, Scilex issued and sold senior secured notes due 2026 in an aggregate principal amount of $224,000,000 (the "Scilex Notes") for an aggregate purchase price of $140,000,000 (the "Scilex Offering"). In connection with the Scilex Offering, Scilex also entered into an indenture (the "Scilex Indenture") governing the Scilex Notes with U.S. Bank National Association, a national banking association, as trustee (the "Trustee") and collateral agent (the "Collateral Agent"), and us. Pursuant to the Indenture, we agreed to irrevocably and unconditionally guarantee, on a senior unsecured basis, the punctual performance and payment when due of all obligations of Scilex under the Scilex Indenture (the "Guarantee").

The Scilex Indenture governing the Scilex Notes contains customary events of default with respect to the Scilex Notes (including a failure to make any payment of principal on the Scilex Notes when due and payable), and, upon certain events of default occurring and continuing, the Trustee by notice to Scilex, or the holders of at least 25% in principal amount of the outstanding Scilex Notes by notice to Scilex and the Trustee, may (subject to the provisions of the Scilex Indenture) declare 100% of the then-outstanding principal amount of the Scilex Notes to be due and payable. Upon such a declaration of acceleration, such principal will be due and payable immediately. In the case of certain events, including bankruptcy, insolvency or reorganization involving us or Scilex, the Scilex Notes will automatically become due and payable.

Pursuant to the Scilex Indenture, we and Scilex must also comply with certain covenants with respect to the commercialization of ZTlido™ (lidocaine topical system 1.8%), as well as customary additional affirmative covenants, such as furnishing financial statements to the holders of the Scilex Notes, minimum cash requirements and net sales

reports; and negative covenants, including limitations on the following: the incurrence of debt; the payment of dividends, the repurchase of shares and under certain conditions making certain other restricted payments; the prepayment, redemption or repurchase of subordinated debt; a merger, amalgamation or consolidation involving Scilex; engaging in certain transactions with affiliates; and the making of investments other than those permitted by the Indenture.

If we raise any additional debt financing, the terms of such additional debt could further restrict our operating and financial flexibility.

Our operations in China subject us to risks and uncertainties relating to the laws and regulations of China.

Certain of our operations are currently based in China. Under its current leadership, the government of China has been pursuing economic reform policies, including by encouraging foreign trade and investment. However, there is no assurance that the Chinese government will continue to pursue such policies, that such policies will be successfully implemented, that

such policies will not be significantly altered, or that such policies will be beneficial to our operations in China. China's system of laws can be unpredictable, especially with respect to foreign investment and foreign trade. The promulgation of new laws and regulations and changes to existing laws and regulations may adversely affect foreign investors and foreign entities with operations in China. For example, the U.S. government has called for substantial changes to foreign trade policy with China and has recently raised, and has proposed to further raise in the future, tariffs on several Chinese goods. China has retaliated with increased tariffs on U.S. goods, which we anticipate will increase our cost of doing business in China. Any further changes in U.S. trade policy could trigger retaliatory actions by affected countries, including China, resulting in trade wars and in increased costs for goods imported into the United States and our ability to sell goods and services in the affected countries, which may reduce customer demand for our products and services, especially if the parties having to pay those tariffs increase their prices, or in trading partners limiting their trade with the United States. If these consequences are realized, this may materially and adversely affect our sales and our business.

Additionally, the biopharmaceutical industry in particular in China is strictly regulated by the Chinese government. Changes to Chinese regulations affecting biopharmaceutical companies are unpredictable and may have a material adverse effect on our Chinese operations and on our business and financial condition.

Risks Related to Our Intellectual Property

We may become involved in lawsuits to protect or enforce our patents or other intellectual property, which could be expensive, time consuming and unsuccessful.

Competitors may infringe our patents, trademarks, copyrights or other intellectual property. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time consuming and divert the time and attention of our management and scientific personnel. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their patents, in addition to counterclaims asserting that our patents are invalid or unenforceable, or both. In any patent infringement proceeding, there is a risk that a court will decide that a patent of ours is invalid or unenforceable, in whole or in part, and that we do not have the right to stop the other party from using the invention at issue. There is also a risk that, even if the validity of such patents is upheld, the court will construe the patent's claims narrowly or decide that we do not have the right to stop the other party from using the invention at issue on the grounds that our patent claims do not cover the invention. An adverse outcome in a litigation or proceeding involving our patents could limit our ability to assert our patents against those parties or other competitors, and may curtail or preclude our ability to exclude third parties from making and selling similar or competitive products. Any of these occurrences could adversely affect our competitive business position, business prospects and financial condition. Similarly, if we assert trademark infringement claims, a court may determine that the marks we have asserted are invalid or unenforceable, or that the party against whom we have asserted trademark infringement has superior rights to the marks in question. In this case, we could ultimately be forced to cease use of such trademarks.

Even if we establish infringement, the court may decide not to grant an injunction against further infringing activity and instead award only monetary damages, which may or may not be an adequate remedy. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation. There could also be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of shares of our common stock. Moreover, there can be no assurance that we will have sufficient financial or other resources to file and pursue such infringement claims, which typically last for years before they are concluded. Even if we ultimately prevail in such claims, the monetary cost of such litigation and the diversion of the attention of our management and scientific personnel could outweigh any benefit we receive as a result of the proceedings.

Risks Related to Ownership of Our Common Stock

We have not paid cash dividends in the past and do not expect to pay cash dividends in the foreseeable future. Any return on investment may be limited to the value of our common stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future. Pursuant to our outstanding convertible notes issued in June 2018, so long as the outstanding principal amount under all such notes is at least $18,845,851, we are prohibited from paying any dividends without the prior written consent of the holders of such notes. The payment of dividends on our capital stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as the board of directors may consider

relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if the common stock price appreciates.

These risks and others as described in our Annual Report on Form 10-K for the year ended December 31, 2017 may have a material adverse effect on our global operations and on our business and financial condition.

Item 5. Other Information.

Term Loan Agreement

On November 7, 2018, we and certain of our domestic subsidiaries (the "Guarantors") entered into a Term Loan Agreement (the "Loan Agreement") with certain funds and accounts managed by Oaktree Capital Management, L.P. (collectively, the "Lenders") and Oaktree Fund Administration, LLC, as administrative and collateral agent (the "Agent"), for an initial term loan of $100.0 million (the "Initial Loan") and a second tranche of $50.0 million, subject to the achievement of certain commercial and financial milestones between August 7, 2019 and November 7, 2019, and the satisfaction of certain customary conditions (the "Conditional Loan" and, together with the Initial Loan, the "Term Loan"). The Initial Loan was funded on November 7, 2018. The net proceeds of the Initial Loan are expected to be approximately $91.3 million, after deducting estimated loan costs, commissions, fees and expenses, and will be used for general corporate purposes.

In connection with the Loan Agreement, we and the Guarantors entered into a Collateral Agreement with the Agent (the "Collateral Agreement"). The Collateral Agreement provides that the Term Loan is secured by substantially all of our and the Guarantors' assets, and a pledge of 100% of the equity interests in other entities each of us and the Guarantors holds (subject to certain exceptions and other than equity interests held by us or a Guarantor in certain foreign subsidiaries, which is limited to 65% of such voting equity interests). The Term Loan accrues interest per annum at 7.00% plus the applicable LIBOR rate, as set forth in the Loan Agreement. The Term Loan will mature on November 7, 2023, but may be prepaid by us, in whole or in part at any time, subject to a prepayment fee, including on the Conditional Loan even if not drawn. We will also be required to prepay the Term Loan in certain circumstances, including in connection with certain asset sales and dispositions, and any such prepayments will also be subject to a prepayment fee.

The Loan Agreement contains customary affirmative and restrictive covenants and representations and warranties, including financial reporting obligations and minimum liquidity requirements and limitations on indebtedness, liens, negative pledges, certain restricted payments, subsidiary distributions, investments, fundamental transactions, dispositions of assets and transactions with affiliates. The Loan Agreement also contains other customary provisions, such as expense reimbursement and confidentiality obligations, as well as indemnification rights for the benefit of the Lenders.

The Loan Agreement provides for customary events of default, including, among other things, nonpayment of principal, interest and other amounts, inaccuracies in representations and warranties, failure to comply with covenants, defaults on other material indebtedness, bankruptcy or insolvency, judgments, changes of control or impairments of the security interests granted in in connection with the Loan Agreement. Upon the occurrence of a default, a default interest rate of an additional 2.00% may be applied to outstanding obligations under the Loan Agreement, and, upon the occurrence of an event of default and following any applicable cure periods, if any, the Lenders may declare all outstanding obligations immediately due and payable and take such other actions as set forth in the Loan Agreement.

In connection with the Loan Agreement, on November 7, 2018, we issued to the Lenders warrants to purchase an aggregate of 6,288,985 shares of our common stock (the "Initial Warrants"). The Initial Warrants have an exercise price per share of $3.28, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will be exercisable from May 7, 2018 through May 7, 2029 and will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Initial Warrants (the "Initial Warrant Shares"), in which case the Initial Warrants shall also be exercisable on a cashless exercise basis.

Further, if the Conditional Loan is funded, we will issue to the Lenders additional warrants to purchase such number of shares of our common stock as is equal to 2% of our fully-diluted shares on the date the Conditional Loan is funded (the "Conditional Warrants"). The Conditional Warrants will have an exercise price per share equal to the average

volume-weighted average price of one share of our common stock for the ten trading days immediately preceding the date the Conditional Loan is funded, will be exercisable from the date that is six months following the date of issuance through the ten year anniversary of the date of issuance and will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Conditional Warrants (the "Conditional Warrant Shares"), in which case the Conditional Warrants shall also be exercisable on a cashless exercise basis.

In connection with the Loan Agreement, on November 7, 2018, we and the Lenders entered into a Registration Rights Agreement (the "Registration Rights Agreement" and, together with the Loan Agreement, the Collateral Agreement, the Initial Warrants and the Conditional Warrants, the "Transaction Documents") pursuant to which, among other things, we agreed to file one or more registration statements with the Securities and Exchange Commission (the "SEC") for the purpose of registering for resale the Initial Warrant Shares and the Conditional Warrant Shares. Under the Registration Rights Agreement, we agreed to file a registration statement with the SEC registering all of the Initial Warrant Shares and the Conditional Warrant Shares for resale by no later than the 45th day following the issuance of the Initial Warrants and the Conditional Warrants, respectively.

The representations, warranties and covenants contained in the Transaction Documents were made only for purposes of such agreements and as of specific dates, were solely for the benefit of the parties to the Transaction Documents, and may be subject to limitations agreed upon by the contracting parties. Accordingly, the Transaction Documents are incorporated herein by reference only to provide investors with information regarding the terms of the Transaction Documents, and not to provide investors with any other factual information regarding us or our business, and should be read in conjunction with the disclosures in our periodic reports and other filings with the SEC.

The foregoing descriptions of the Loan Agreement, the Initial Warrants, the Conditional Warrants and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the Loan Agreement, the form of warrant and the Registration Rights Agreement, respectively. Copies of the Loan Agreement, the form of Initial Warrant and the Registration Rights Agreement are filed as Exhibits 10.5, 4.1 and 4.2, respectively. Certain terms of the Loan Agreement have been omitted from this Quarterly Report on Form 10-Q and have been omitted from the version of the Loan Agreement filed as Exhibit 10.5 to this Quarterly Report on Form 10-Q pursuant to a Confidential Treatment Request that we are submitting to the SEC concurrently with the filing of this Quarterly Report on Form 10-Q.

We issued to the Lenders the Initial Warrants and will issue to the Lenders the Conditional Warrants, if applicable, in reliance on the exemption from registration provided for under Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"). We relied on this exemption from registration for private placements based in part on the representations made by the Lenders, including the representations with respect to each of the Lender's status as an accredited investor, as such term is defined in Rule 501(a) of the Securities Act, and such Lender's investment intent.

Amendments to June 2018 Warrants

On November 7, 2018, we entered into an Agreement and Consent (the "Agreement and Consent") with the holders of warrants (the "Purchasers") to purchase an aggregate of 2,698,662 shares of our common stock (the "Warrants") that we issued on June 13, 2018 pursuant to the Securities Purchase Agreement, dated March 26, 2018, as amended, by and among us and the Purchasers (the "March 2018 Securities Purchase Agreement"). Pursuant to the March 2018 Securities Purchase Agreement, we issued to the Purchasers convertible promissory notes in an aggregate principal amount of $37,848,750 (the "Notes") and the Warrants. Pursuant to the Agreement and Consent, in consideration for certain of the Purchasers, in their capacity as holders of the Notes, providing a waiver and consent on behalf of all holders of the Notes, pursuant to which the Warrant Holders provided us with certain waivers of their rights and certain of our covenants under the March 2018 Securities Purchase Agreement with respect to the Loan Agreement and the transactions contemplated thereby, we and the Purchasers agreed to amend the Warrants to reduce the exercise price per share of our common stock pursuant to the Warrants from $8.77 to $3.28.

Item 6. Exhibits.

EXHIBIT INDEX

4.1	Form of Warrant, dated November 7, 2018, issued by Sorrento Therapeutics, Inc.
4.2	Registration Rights Agreement, dated November 7, 2018, by and among Sorrento Therapeutics, Inc. and the parties identified on Schedule A thereto.
10.1†	Indenture and form of Note issued thereunder, dated as of September 7, 2018, by and among Scilex Pharmaceuticals Inc., as issuer, Sorrento Therapeutics, Inc., as parent guarantor, and U.S. Bank National Association, as trustee and collateral agent.
10.2	Form of Purchase Agreement, dated as of September 7, 2018, by and among Scilex Pharmaceuticals Inc., Sorrento Therapeutics, Inc. and the purchasers party thereto.
10.3	Collateral Agreement, dated as of September 7, 2018, by and between Scilex Pharmaceuticals Inc. and U.S. Bank National Association, as trustee and collateral agent
10.4†	Irrevocable Standby Letter of Credit, dated September 7, 2018, issued by Sorrento Therapeutics, Inc.
10.5†	Term Loan Agreement, dated November 7, 2018, by and among Sorrento Therapeutics, Inc., certain subsidiaries of Sorrento Therapeutics, Inc., the lenders party thereto and Oaktree Fund Administration, LLC, as administrative and collateral agent.
10.6	Agreement and Consent, dated November 7, 2018, by and among Sorrento Therapeutics, Inc. and the Warrant Holders party thereto.
31.1	Certification of Henry Ji, Ph.D., Principal Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended.
31.2	Certification of Jiong Shao, Principal Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended.
32.1	Certification of Henry Ji, Ph.D., Principal Executive Officer and Jiong Shao, Principal Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

† The Registrant has requested confidential treatment with respect to certain portions of the exhibit. Omitted portions have been filed separately with the SEC.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Sorrento Therapeutics, Inc.

Date: November 9, 2018 By: /s/ Henry Ji, Ph.D.
Henry Ji, Ph.D.
Chairman of the Board of Directors, Chief Executive Officer & President
(Principal Executive Officer)

Date: November 9, 2018 By: /s/ Jiong Shao
Jiong Shao

Executive Vice President & Chief Financial Officer
(Principal Financial Officer)