

INVIVO THERAPEUTICS HOLDINGS CORP.

Form 10-K/A

July 18, 2011

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A

(Amendment No. 3)

x ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES

EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2010

.. TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES

EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM _____ TO _____

COMMISSION FILE NUMBER 000-52089

INVIVO THERAPEUTICS HOLDINGS CORP.

(Exact Name of Registrant as specified in its charter)

Nevada	36-4528166
(State or other jurisdiction of	(I.R.S. Employer
incorporation or organization)	Identification No.)
One Broadway, 14 th Floor	
Cambridge, Massachusetts	02142
(Address of principal executive	

offices) (Zip Code)

Registrant's telephone number, including area code: (617) 475-1520

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:

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Title of each class

Name of each exchange on which registered

Common Stock, par value \$0.00001 per share

Over-the-Counter Bulletin Board

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a
smaller reporting company)

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

Our common stock began being quoted on the OTC Bulletin Board under the symbol NVIV effective October 29, 2010. The approximate aggregate market value of the voting and non-voting common equity held by non-affiliates of the issuer on October 29, 2010 was \$58,547,354 based on a closing price of \$2.70 of our common stock on that date.

As of March 21, 2011, the number of shares outstanding of the registrant's common stock, \$0.00001 par value per share, was 51,674,712.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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EXPLANATORY NOTE

This Amendment No. 3 (this Amendment) of InVivo Therapeutics Holdings Corp. (the Company) amends the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2010, originally filed March 24, 2011 and amended on April 29, 2011 and June 30, 2011 (the Form 10-K). This Amendment is being filed in order to amend and restate the Company's consolidated financial statements and accompanying footnotes as of and for the year ended December 31, 2010 (the 2010 Financials).

The Company previously restated its 2010 financials on June 30, 2011. This Amendment is being filed to clarify disclosure relating to the accounting for derivative liabilities in Note 18 to the consolidated financial statements.

For purposes of this Amendment, and in accordance with Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the Exchange Act), the following item in the Form 10-K has been amended and restated in its entirety:

Part II, Item 8 Financial Statements and Supplemental Data.

Additionally, Part IV, Item 15 has been amended to include the Company's currently dated certifications of the Company's principal executive officer and principal financial officer as required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002. Other than the items outlined above, there are no changes to the Form 10-K. No attempt has been made in this Form 10-K/A to modify or update the disclosures presented in the Form 10-K, including the exhibits to the Form 10-K, except as required to reflect the effects of the restatement of the 2010 Financials. Information not affected by the restatement is unchanged and reflects the disclosures made at the time of the original filing of the Form 10-K on March 24, 2011 and as amended on April 29, 2011 and June 30, 2011. Except as otherwise specifically noted, all information contained herein is as of December 31, 2010 and does not reflect any events or changes that have occurred subsequent to that date. Accordingly, this Form 10-K/A should be read in conjunction with our filings made with the SEC subsequent to the filing of the Form 10-K, including any amendments to those filings, if any.

The Company is not required to and has not updated any forward-looking statements previously included in the Form 10-K. Our previously issued consolidated financial statements as of and for the year ended December 31, 2010, which were filed with the 10-K, should no longer be relied upon.

As used herein, we, us, our or the Company means InVivo Therapeutics Holdings Corp., together with its consolidated subsidiaries where applicable.

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INVIVO THERAPEUTICS HOLDINGS CORP.
ANNUAL REPORT ON FORM 10-K/A
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Part II

Item 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Report of Independent Registered Public Accounting Firm

To the Board of Directors of InVivo Therapeutics Holdings Corp.:

We have audited the accompanying consolidated balance sheets of InVivo Therapeutics Holdings Corp. as of December 31, 2010 and 2009, and the related consolidated statements of operations, changes in stockholders' deficit and cash flows for the years then ended and for the period from November 28, 2005 (inception) to December 31, 2010. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended and for the period from November 28, 2005 (inception) to the December 31, 2010, in conformity with accounting principles generally accepted in the United States of America.

/s/ Wolf & Company, P.C.

Boston, Massachusetts

March 24, 2011, except for Notes 9, 11, 12 and 18

as to which the date is June 29, 2011

Table of Contents**InVivo Therapeutics Holdings Corp.**

(A Development Stage Company)

Consolidated Balance Sheets

	December 31,	
	2010 (Restated)	2009
ASSETS:		
Current assets:		
Cash and cash equivalents	\$ 8,964,194	\$ 226,667
Prepaid expenses	81,166	10,898
Total current assets	9,045,360	237,565
Property and equipment, net	280,181	173,797
Other assets	53,639	58,639
Total assets	\$ 9,379,180	\$ 470,001
LIABILITIES AND STOCKHOLDERS DEFICIT:		
Current liabilities:		
Accounts payable	\$ 336,945	\$ 81,175
Accrued interest payable	-	283,608
Derivative warrant liability	10,647,190	-
Accrued expenses	247,547	293,584
Total current liabilities	11,231,682	658,367
Loans payable	-	590,985
Convertible notes payable	-	2,840,000
Total liabilities	11,231,682	4,089,352
Commitments and contingencies		
Stockholders' deficit:		
Common stock, \$0.00001 par value; authorized 100,000,000 shares, issued and outstanding 51,647,171 and 26,259,515 shares outstanding at December 31, 2010 and 2009, respectively	516	263
Additional paid-in capital	11,235,829	1,558,283
Deficit accumulated during the development stage	(13,088,847)	(5,177,897)
Total stockholders' deficit	(1,852,502)	(3,619,351)
Total liabilities and stockholders' deficit	\$ 9,379,180	\$ 470,001

See notes to the consolidated financial statements.

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InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Consolidated Statements of Operations

	Years Ended December 31,		Period from November 28, 2005 (inception) to December 31, 2010 (Restated)
	2010 (Restated)	2009	2010 (Restated)
Operating expenses:			
Research and development	\$ 1,673,202	\$ 1,807,908	\$ 4,780,987
General and administrative	1,724,102	835,515	3,695,665
Total operating expenses	3,397,304	2,643,423	8,476,652
Operating loss	(3,397,304)	(2,643,423)	(8,476,652)
Other income (expense):			
Other income	-	383,000	383,000
Interest income	3,379	282	11,290
Interest expense	(564,443)	(255,737)	(1,053,655)
Derivatives losses	(3,952,582)	-	(3,952,582)
Other income (expense), net	(4,513,646)	127,545	(4,611,947)
Net loss	\$ (7,910,950)	\$ (2,515,878)	\$ (13,088,599)
Net loss per share, basic and diluted	\$ (0.24)	\$ (0.10)	\$ (0.49)
Weighted average number of common shares outstanding, basic and diluted	33,367,239	25,496,366	26,591,576

See notes to the consolidated financial statements.

Table of Contents**InVivo Therapeutics Holdings Corp.**

(A Development Stage Company)

Consolidated Statements of Changes in Stockholders Deficit

	Common Stock		Additional Paid-in Capital	Deficit Accumulated During the Development Stage	Total Stockholders Deficit
	Shares	Amount			
Balance on inception date, November 28, 2005	-	\$ -	\$ -	\$ -	\$ -
Issuance of founders stock	24,787,080	248	-	(248)	-
Share-based compensation expense	-	-	18,347	-	18,347
Net loss	-	-	-	(1,097,702)	(1,097,702)
Balance as of December 31, 2007	24,787,080	248	18,347	(1,097,950)	(1,079,355)
Share-based compensation expense	-	-	24,526	-	24,526
Net loss	-	-	-	(1,564,069)	(1,564,069)
Balance as of December 31, 2008	24,787,080	248	42,873	(2,662,019)	(2,618,898)
Share-based compensation expense	-	-	171,059	-	171,059
Conversion of convertible notes payable and accrued interest	1,472,435	15	1,344,351	-	1,344,366
Net loss	-	-	-	(2,515,878)	(2,515,878)
Balance as of December 31, 2009	26,259,515	263	1,558,283	(5,177,897)	(3,619,351)
Share-based compensation expense	-	-	664,908	-	664,908
Issuance of common stock in March 2010	1,095,258	10	999,990	-	1,000,000
Conversion of convertible notes payable and accrued interest	3,792,417	38	3,328,090	-	3,328,128
Issuance of common stock in reverse merger	6,999,981	70	(70)	-	-
Beneficial conversion feature on notes payable	-	-	272,762	-	272,762
Issuance of common stock in private placement, net of stock issuance costs of \$2,072,117 and non-cash stock issuance costs of \$5,369,570	12,995,403	130	3,907,274	-	3,907,404
Conversion of convertible bridge notes in conjunction with the private placement	504,597	5	504,592	-	504,597
Net loss	-	-	-	(7,910,950)	(7,910,950)
Balance as of December 31, 2010 (Restated)	51,647,171	\$ 516	\$ 11,235,829	\$ (13,088,847)	\$ (1,852,502)

See notes to the consolidated financial statements.

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InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Consolidated Statements of Cash Flows

	Years Ended		Period from
	December 31,		November 28,
	2010	2009	(inception) to
	(Restated)		December 31,
			2010
			(Restated)
Cash flows from operating activities:			
Net loss	\$ (7,910,950)	\$ (2,515,878)	\$ (13,088,599)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization expense	44,878	32,084	92,965
Non-cash derivatives loss	3,952,582	-	3,952,582
Non-cash interest expense	528,535	221,899	962,834
Share-based compensation expense	664,908	171,059	878,840
Changes in operating assets and liabilities:			
Prepaid expenses	(70,268)	2,036	(81,166)
Other assets	-	-	(75,000)
Accounts payable	255,770	(23,248)	336,945
Accrued interest payable	(67,931)	33,598	(15,256)
Accrued expenses	(46,037)	179,426	247,547
Net cash used in operating activities	(2,648,513)	(1,899,024)	(6,788,308)
Cash flows from investing activities:			
Purchases of property and equipment	(146,262)	(174,898)	(351,785)
Net cash used in investing activities	(146,262)	(174,898)	(351,785)
Cash flows from financing activities:			
Proceeds from issuance of convertible notes payable	200,000	1,580,000	4,181,000
Proceeds from convertible bridge notes	500,000	-	500,000
(Repayment of) proceeds from loans payable	(590,985)	513,800	-
Proceeds from issuance of common stock and warrants	11,423,287	-	11,423,287
Net cash provided by financing activities	11,532,302	2,093,800	16,104,287
Increase in cash and cash equivalents	8,737,527	19,878	8,964,194
Cash and cash equivalents at beginning of period	226,667	206,789	-
Cash and cash equivalents at end of period	\$ 8,964,194	\$ 226,667	\$ 8,964,194

(continued)

See notes to the consolidated financial statements.

Table of Contents**InVivo Therapeutics Holdings Corp.**

(A Development Stage Company)

Consolidated Statements of Cash Flows (Concluded)

	Years Ended December 31,		Period from November 28, 2005 (inception) to December 31, 2010
	2010	2009	
Supplemental disclosure of cash flow information and non-cash transactions:			
Cash paid for interest	\$ (34,204)	\$ -	\$ (34,204)
Conversion of convertible notes payable and accrued interest into common stock	\$ 3,328,128	\$ 1,344,366	\$ 4,672,484
Conversion of convertible bridge note payable and accrued interest into common stock	\$ 504,597	\$ -	\$ 504,597
Beneficial conversion feature on convertible and bridge notes payable	\$ 272,762	\$ -	\$ 134,410
Fair value of warrants issued in connection with bridge notes payable	\$ 178,726	\$ -	\$ 178,726
Issuance of founders shares	\$ -	\$ -	\$ 248

See notes to the consolidated financial statements.

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InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements

Years Ended December 31, 2010 and 2009, and the Period from

November 28, 2005 (Inception) through December 31, 2010

1. NATURE OF OPERATIONS

Business

InVivo Therapeutics Corporation (InVivo) was incorporated on November 28, 2005 under the laws of the State of Delaware. InVivo is developing and commercializing biopolymer scaffolding devices for the treatment of spinal cord injuries. The biopolymer devices are designed to protect the damaged spinal cord from further secondary injury and promote neuroplasticity, a process where functional recovery can occur through the rerouting of signaling pathways to the spared healthy tissue.

Since its inception, InVivo has devoted substantially all of its efforts to business planning, research and development, recruiting management and technical staff, acquiring operating assets and raising capital. Accordingly, InVivo is considered to be in the development stage.

Reverse Merger

On October 26, 2010, InVivo completed a reverse merger transaction (the Merger) with InVivo Therapeutics Holdings Corporation (formerly Design Source, Inc.) (ITHC), a publicly traded company incorporated under the laws of the State of Nevada. InVivo became a wholly owned subsidiary of ITHC, which continues to operate the business of InVivo. As part of the Merger, ITHC issued 31,147,190 shares of its Common Stock to the holders of InVivo common stock on October 26, 2010 in exchange for the 2,261,862 outstanding common shares of InVivo and also issued 500,000 shares to its legal counsel in consideration for legal services provided. All share and per share amounts presented in these consolidated financial statements have been retroactively restated to reflect the 13.7706 exchange ratio of InVivo shares for ITHC shares in the Merger. Immediately prior to the Merger, ITHC had 6,999,981 shares of Common Stock outstanding.

The Merger was accounted for as a reverse merger, and InVivo is deemed to be the accounting acquirer. The Merger was recorded as a reverse recapitalization, equivalent to the issuance of common stock by InVivo for the net monetary assets of ITHC accompanied by a recapitalization. At the date of the Merger, the 6,999,981 outstanding ITHC shares are reflected as an issuance of InVivo common stock to the prior shareholders of ITHC. ITHC had no net monetary assets as of the Merger so this issuance was recorded as a reclassification between additional paid-in capital and par value of Common Stock.

The historical consolidated financial statements are those of InVivo as the accounting acquirer. The post-merger combination of ITHC and InVivo is referred to throughout these notes to consolidated financial statements as the Company. Subsequent to the Merger, the Company completed three closings as part of a private placement (see Note 11).

On October 26, 2010, in connection with the Merger described above, ITHC transferred all of its operating assets and liabilities to its wholly-owned subsidiary, D Source Split Corp., a company organized under the laws of Nevada (DSSC). DSSC was then split-off from ITHC through the sale of all outstanding shares of DSSC (the Split-Off). The assets and liabilities of ITHC were transferred to the Split-Off Shareholders in the Split-Off. ITHC executed a split off agreement with the Split-Off Shareholders which obligates the Split-Off Shareholders to assume all prior liabilities associated with Design Source, Inc. and all DSSC liabilities. In conjunction with the Split-Off, certain shareholders of

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InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

NATURE OF OPERATIONS (concluded)

ITHC surrendered for cancellation shares of ITHC Common Stock for no additional consideration. The purpose of the Split-Off was to make ITHC a shell company with no assets or liabilities in order to facilitate the Merger. Although all transactions related to the Merger occurred simultaneously, the Split-Off, including the cancellation of shares, was considered to have occurred immediately prior to the Merger for accounting purposes. As the accounting acquiree in a reverse merger with a shell company, the historical financial statements of ITHC are not presented and these ITHC transactions are not reflected in the Company's accompanying consolidated financial statements.

2. SIGNIFICANT ACCOUNTING POLICIES

A summary of the significant accounting policies followed by the Company in the preparation of the financial statements is as follows:

Use of estimates

The process of preparing financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of assets and liabilities at the date of financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates and changes in estimates may occur.

Principles of Consolidation

The consolidated financial statements include the accounts of InVivo Therapeutics Holdings Corp. and its wholly-owned subsidiary, InVivo Therapeutics Corporation. All significant intercompany balances and transactions have been eliminated in consolidation.

Cash and cash equivalents

The Company considers all highly liquid investments with maturities of three months or less at the date of purchase to be cash equivalents.

Property and equipment

Property and equipment are carried at cost. Depreciation expense is provided over the estimated useful lives of the assets using the straight-line method. A summary of the estimated useful lives is as follows:

Classification	Estimated Useful Life
Computer hardware	5 years
Software	3 years
Research and lab equipment	5 years

Depreciation expense for the years ended December 31, 2010 and 2009 was \$39,878 and \$27,084, respectively. Maintenance and repairs are charged to expense as incurred, while any additions or improvements are capitalized.

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InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

SIGNIFICANT ACCOUNTING POLICIES (continued)

Research and development expenses

Costs incurred for research and development are expensed as incurred. During 2010, the Company applied for a grant under the IRS Qualifying Therapeutic Discovery Project (QTDP) program. The application was approved and the Company received a grant for \$244,500 under the program. This amount has been recorded as a reduction in research and development expenses.

Concentrations of credit risk

The Company has no significant off-balance-sheet concentration of credit risk such as foreign exchange contracts, option contracts or other hedging arrangements. The Company may from time to time have cash in banks in excess of FDIC insurance limits.

Segment Information

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision maker, or decision making group, in making decisions regarding resource allocation and assessing performance. To date, the Company has viewed its operations and manages its business as principally one operating segment, which is developing and commercializing biopolymer scaffolding devices for the treatment of spinal cord injuries. As of December 31, 2010 and 2009, all of the Company's assets were located in the United States.

Income taxes

For federal and state income taxes, deferred tax assets and liabilities are recognized based upon temporary differences between the financial statement and the tax basis of assets and liabilities. Deferred income taxes are based upon prescribed rates and enacted laws applicable to periods in which differences are expected to reverse. A valuation allowance is recorded when it is more likely than not that some portion or all of the deferred tax assets will not be realized. Accordingly, the Company provides a valuation allowance, if necessary, to reduce deferred tax assets to amounts that are realizable. Tax positions taken or expected to be taken in the course of preparing the Company's tax returns are required to be evaluated to determine whether the tax positions are more-likely-than-not of being sustained by the applicable tax authority. Tax positions not deemed to meet a more-likely-than-not threshold would be recorded as a tax expense in the current year. There were no uncertain tax positions that require accrual or disclosure to the financial statements as of December 31, 2010 or December 31, 2009.

Impairment of long-lived assets

The Company continually monitors events and changes in circumstances that could indicate that carrying amounts of long-lived assets may not be recoverable. An impairment loss is recognized when expected cash flows are less than an asset's carrying value. Accordingly, when indicators of impairment are present, the Company evaluates the carrying value of such assets in relation to the operating performance and future undiscounted cash flows of the underlying assets. The Company's policy is to record an impairment loss when it is determined that the carrying value of the asset may not be recoverable. No impairment charges were recorded for the years ended December 31, 2010 and 2009.

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InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

SIGNIFICANT ACCOUNTING POLICIES (continued)

Share-based payments

The Company recognizes compensation costs resulting from the issuance of stock-based awards to employees, non-employees and directors as an expense in the statement of operations over the service period based on a measurement of fair value for each stock-based award. The fair value of each option grant is estimated as of the date of grant using the Black-Scholes option-pricing model. The fair value is amortized as compensation cost on a straight-line basis over the requisite service period of the awards, which is generally the vesting period. Due to its limited operating history, limited number of sales of its Common Stock and limited history of its shares being publicly traded, the Company estimates its volatility in consideration of a number of factors including the volatility of comparable public companies.

Derivative Instruments

The Company generally does not use derivative instruments to hedge exposures to cash-flow or market risks; however, certain warrants to purchase Common Stock that do not meet the requirements for classification as equity are classified as liabilities. In such instances, net-cash settlement is assumed for financial reporting purposes, even when the terms of the underlying contracts do not provide for a net-cash settlement. Such financial instruments are initially recorded at fair value with subsequent changes in fair value charged (credited) to operations in each reporting period. If these instruments subsequently meet the requirements for classification as equity, the Company reclassifies the fair value to equity.

Net Loss per Common Share

Basic and diluted net loss per share of Common Stock has been computed by dividing the net loss in each period by the weighted average number of shares of Common Stock outstanding during such period. For the periods presented, options, warrants and convertible securities were anti-dilutive and therefore excluded from diluted loss per share calculations.

Registration Payment Arrangements

At each reporting date, the Company assesses the probability of it transferring consideration under its registration payment arrangements. If at any time it determines that such an event is probable and the amount can be reasonably estimated, the amount of such an obligation is recognized as a liability with a charge to earnings. Future changes in that liability will also be charged (credited) to earnings. At the date the Registration Rights Agreement (see Note 11) was entered into and at December 31, 2010, the Company did not conclude that it was probable that they will be obligated to transfer any consideration under the terms of this Registration Rights Agreement.

Recent Accounting Pronouncements

In October 2009, the Financial Accounting Standards Board (FASB) issued two related accounting pronouncements, Accounting Standards Update (ASU) 2009-13 and ASU 2009-14, relating to revenue recognition. One pronouncement provides guidance on allocating the consideration in a multiple-deliverable revenue arrangement and requires additional disclosure, while the other pronouncement provides guidance specific to revenue arrangements that include software elements. Both of these pronouncements are effective prospectively for revenue arrangements entered into or materially modified

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(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

SIGNIFICANT ACCOUNTING POLICIES (concluded)

in fiscal years beginning on or after June 15, 2010 and both must be adopted together. The Company does not expect the adoption of these pronouncements to have a material impact on its consolidated financial statements.

In January 2010, the FASB issued ASU 2010-06, Fair Value Measurements and Disclosures (Topic 820), Improving Disclosures about Fair Value Measurements. This Update requires new disclosures and clarifies existing disclosures regarding recurring and nonrecurring fair value measurements to provide increased transparency to users of the financial statements. The new disclosures and clarification of existing disclosures are effective for interim and annual periods beginning after December 15, 2009, except for the disclosures pertaining to the roll forward of activity for Level 3 fair value measurements, which are effective for fiscal years beginning after December 15, 2010, and for interim periods within those fiscal years. The adoption of this Update on January 1, 2010 did not have a material impact on the Company's consolidated financial statements.

In April 2010, the FASB issued ASU 2010-17, Revenue Recognition – Milestone Method. ASU 2010-17 provides guidance in applying the milestone method of revenue recognition to research or development arrangements. Under this guidance, management may recognize revenue contingent upon the achievement of a milestone in its entirety, in the period in which the milestone is achieved, only if the milestone meets all the criteria within the guidance to be considered substantive. This ASU is effective on a prospective basis for research and development milestones achieved in fiscal years, beginning on or after June 15, 2010. Early adoption is permitted; however, the Company has elected to implement ASU 2010-17 prospectively, and as a result, the effect of this guidance will be limited to future transactions. The Company does not expect the adoption of this pronouncement to have a material impact on its consolidated financial statements.

3. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following:

	December 31,	
	2010	2009
Computer software and hardware	\$ 91,057	\$ 47,668
Research and lab equipment	260,728	157,855
Less accumulated depreciation	(71,604)	(31,726)
	\$ 280,181	\$ 173,797

4. OTHER ASSETS

Other assets consist of a patent licensing fee paid to license intellectual property (see Note 16). The Company is amortizing the license fee to research and development over its 15-year term.

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	December 31,	
	2010	2009
Patent licensing fee	\$ 75,000	\$ 75,000
Accumulated amortization	(21,361)	(16,361)
	\$ 53,639	\$ 58,639

Amortization expense was \$5,000 in each of the years ended December 31, 2010 and 2009.

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(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

5. ACCRUED EXPENSES

Accrued expenses consisted of the following:

	December 31,	
	2010	2009
Other accrued expenses	\$ 45,053	\$ 138,750
Accrued payroll	179,629	18,969
Accrued vacation	22,865	15,865
Deferred compensation	-	120,000
	\$ 247,547	\$ 293,584

Deferred compensation represented amounts owed to the Chief Executive Officer (CEO) with respect to annual bonuses granted but not paid. All deferred compensation was paid in the year ended December 31, 2010.

6. FAIR VALUES OF ASSETS AND LIABILITIES

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

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

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

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

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

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(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

FAIR VALUES OF ASSETS AND LIABILITIES (concluded)

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

	December 31, 2010			
	Level 1	Level 2	Level 3	Fair Value
Liabilities:				
Derivative warrant liability	\$ -	\$ 10,647,190	-	\$ 10,647,190

	December 31, 2009			
	Level 1	Level 2	Level 3	Fair Value
Liabilities:				
Derivative warrant liability	\$ -	\$ -	-	\$ -

7. LOANS PAYABLE

Loans payable consisted of the following:

	December 31,	
	2010	2009
Advances from related party	\$ -	\$ 90,985
Note payable-Massachusetts Life Science Center	-	500,000
	\$ -	\$ 590,985

Advances from related party represent cash advances received from CEO and majority shareholder which permitted the Company to continue to fund its operations until it raised additional capital. Interest accrued on these advances at an annual rate of 8%. Interest expense related to Advances from related party was \$3,227 and \$8,437 in the years ended December 31, 2010 and 2009, respectively.

The Company issued a \$500,000 Note Payable in June 2009 to the Massachusetts Life Science Center, an independent public agency of the State of Massachusetts. The Company received the \$500,000 of funding from the Massachusetts Life Science Accelerator Program which was established for the purpose of providing seed capital to promising early stage life science companies. The terms of the Note Payable called for full repayment upon the earlier of five years, the sale of the Company or a financing that raises minimum net proceeds of \$5,000,000. Interest accrued on the Note Payable at an annual rate of 10% and is payable at maturity. Interest expense related to the Note Payable was \$42,726, and \$25,205 for the years ended December 31, 2010 and 2009, respectively. In October 2010, the \$500,000 loan was repaid together with accrued interest of \$67,931.

8. CONVERTIBLE NOTES PAYABLE

Since inception, the Company issued Convertible Notes Payable to investors totaling \$4,181,000. In the years ended December 31, 2010 and 2009, these notes provided cash proceeds of \$200,000 and \$1,580,000, respectively. The terms of the Convertible Notes Payable include interest at 8% and stipulated

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InVivo Therapeutics Holdings Corp.

(A Development Stage Company)

Notes to Consolidated Financial Statements (Continued)

CONVERTIBLE NOTES PAYABLE (concluded)

that the notes convert into shares of Common Stock upon the earlier of maturity of the notes or the completion of a Financing Round, a single financing or a series of related financings that raised a minimum of \$4,000,000 or \$5,000,000 depending on the terms of the individual notes. The notes convert at the offering price of such financing.

Certain of the notes entitled the holders to receive either a 10% or 20% discount on the conversion price if the notes were convert