EMISPHERE TECHNOLOGIES INC

FORM 10-Q
(Quarterly Report)

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

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2016

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____to _____

Commission File Number 000-17758

EMISPHERE TECHNOLOGIES, INC.
(Exact name of registrant as specified in its charter)

DELAWARE	**13-3306985**
(State or jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
4 Becker Farm Road Suite 103, Roseland, New Jersey	**07068**
(Address of principal executive offices)	**(Zip Code)**

(973) 532-8000
(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 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 during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☒

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

The number of shares of the Registrant's common stock, $.01 par value, outstanding as of August 15, 2016 was 60,687,478.

EMISPHERE TECHNOLOGIES, INC.

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PART I

ITEM 1. FINANCIAL STATEMENTS

EMISPHERE TECHNOLOGIES INC.
CONDENSED BALANCE SHEETS
JUNE 30, 2016 AND DECEMBER 31, 2015
(in thousands, except share and per share data)

	June 30, 2016 (unaudited)	December 31, 2015
ASSETS		
Current assets:		
Cash and cash equivalents	$ 8,740	$ 12,898
Accounts Receivable, net	246	455
Inventories	656	1,340
Prepaid expenses and other current assets	448	1,081
Total Current Assets	10,090	15,774
Equipment and leasehold improvements, net	4	12
Security deposits	24	24
Total assets	$ 10,118	$ 15,810
LIABILITIES AND STOCKHOLDERS DEFICIT		
Current liabilities:		
Accounts payable and accrued expenses	$ 878	$ 2,121
Notes payable, related party	7,000	7,000
Deferred Revenue, current portion	677	631
Royalty payable, related party	208	208
Derivative instruments		
Related party	12,274	12,690
Others	—	205
Total current liabilities	21,037	22,855
Notes payable, related party, net of related discount	57,113	54,172
Derivative instruments, related party	37,289	35,071
Deferred revenue	55,616	55,616
Royalty payable – related party	141	—
Deferred lease liability and other liabilities	9	14
Total liabilities	171,205	167,728
COMMITMENTS AND CONTINGENCIES		
Stockholders' deficit:		
Preferred stock, $.01 par value; 4,000,000 shares authorized; none issued and outstanding	—	—
Common stock, $.01 par value; 400,000,000 shares authorized; issued 60,977,210 shares (60,687,478 outstanding) as of June 30, 2016 and December 31, 2015	610	610
Additional paid-in-capital	406,117	405,944
Accumulated deficit	(563,862)	(554,520)
Common stock held in treasury, at cost; 289,732 shares	(3,952)	(3,952)
Total stockholders' deficit	(161,087)	(151,918)
Total liabilities and stockholders' deficit	$ 10,118	$ 15,810

The accompanying notes are an integral part of the financial statements.

EMISPHERE TECHNOLOGIES, INC.
CONDENSED STATEMENT OF OPERATIONS
For the three and six months ended June 30, 2016 and 2015
(in thousands, except share and per share data)
(unaudited)

	For the three months ended June 30,		For the six months ended June 30,	
	2016	2015	2016	2015
Net revenue	$ 286	$ 88	$ 659	$ 94
Cost of goods sold	46	55	98	80
Write-off of slow moving inventory	654	—	654	—
Gross profit (loss)	(414)	33	(93)	14
Costs and expenses:				
Research and development	89	59	180	287
General and administrative expenses	1,322	1,528	2,662	2,820
Selling expenses	137	3,007	1,731	6,132
Depreciation and amortization	3	3	8	7
Total costs and expenses	1,551	4,597	4,581	9,246
Operating loss	(1,965)	(4,564)	(4,674)	(9,232)
Other non-operating income (expense):				
Other income	4	3	9	7
Change in fair value of derivative instruments				
Related party	(2,993)	13,493	456	(12,117)
Other	83	433	205	(420)
Interest expense related party	(2,642)	(2,229)	(5,338)	(4,070)
Total other non-operating income (expense)	(5,548)	11,700	(4,668)	(16,600)
Net income (loss)	$ (7,513)	$ 7,136	$ (9,342)	$ (25,832)
Net income (loss) per share, basic	$ (0.12)	$ 0.12	$ (0.15)	$ (0.43)
Net income (loss) per share, fully diluted	$ (0.12)	$ (0.04)	$ (0.15)	$ (0.43)
Weighted average shares outstanding, basic	60,687,478	60,687,478	60,687,478	60,687,478
Weighted average shares outstanding, diluted	60,687,478	123,445,160	60,687,478	60,687,478

The accompanying notes are an integral part of the financial statements.

EMISPHERE TECHNOLOGIES, INC.
CONDENSED STATEMENTS OF CASH FLOWS
For the six months ended June 30, 2016 and 2015
(in thousands)
(unaudited)

	For the six months ended June 30,	
	2016	**2015**
Cash flows from operating activities:		
Net loss	$ (9,342)	$ (25,832)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	8	7
Change in fair value of derivative instruments	(661)	12,537
Write-off of slow moving inventory	654	
Non-cash interest expense	5,200	4,017
Non-cash compensation expense	173	130
Changes in assets and liabilities excluding non-cash transactions:		
Decrease (Increase) in accounts receivable	209	(130)
Decrease (Increase) in inventories	30	(734)
Decrease (Increase) in prepaid expenses and other current assets	633	(932)
Increase in deferred revenue	46	174
Increase in royalty payable	141	53
(Decrease) Increase in accounts payable and accrued expenses	(1,244)	278
Decrease in deferred lease liability	(5)	(4)
Total Adjustments	5,184	15,396
Net cash used in operating activities	(4,158)	(10,436)
Cash flows from financing activities:		
Loan proceeds	—	10,000
Net cash from financing activities	—	10,000
Net decrease in cash and cash equivalents	(4,158)	(436)
Cash and cash equivalents, beginning of period	12,898	3,683
Cash and cash equivalents, end of period	$ 8,740	$ 3,247
Schedule of non-cash financing activities:		
Conversion of accrued interest to notes payable	$ 4,830	$ 3,928
Increase in debt discount for new derivatives	$ 2,256	$ 2,349

The accompanying notes are an integral part of the financial statements.

EMISPHERE TECHNOLOGIES, INC.
NOTES TO CONDENSED FINANCIAL STATEMENTS

1. Nature of Operations and Liquidity

Nature of Operations.

Emisphere Technologies, Inc. ("Emisphere," "the Company," "our," "us," or "we") is a commercial stage pharmaceutical and drug delivery company. We are in partnership with global pharmaceutical companies to develop new formulations of existing products, as well as new chemical entities, using our Eligen ® Technology. We launched our first prescription medical food product, oral Eligen B12 in the U.S. in March 2015, and we are currently engaged in strategic discussions to optimize its economic value in the U.S. and global markets. Beyond Eligen B12, we utilize our proprietary Eligen ® Technology to create new oral formulations of therapeutic agents. Our product pipeline includes prescription drug and medical food product candidates that are being developed in partnership or internally.

Our core business strategy is to build new, high-value partnerships and expand upon our existing partnerships, to enter into strategic transactions or alliances to realize the full economic potential of the oral Eligen B12 product, evaluate commercial opportunities for new prescription medical foods, and promote new uses for our Eligen ® Technology, a broad based proprietary oral drug delivery platform which makes it possible to avoid injections for drug administration through the use of delivery agents, or carriers, which facilitate or enable transport of therapeutic molecules, including large peptides and proteins, across biological membranes such as those of the gastrointestinal tract.

Liquidity and Capital Resources

Since our inception in 1986, we have generated significant losses from operations and we anticipate that we will continue to generate significant losses from operations for the foreseeable future, and that in order to continue as a going concern, our business will require substantial additional investment that we have not yet secured.

As of June 30, 2016, our accumulated deficit was approximately $563.9 million; our stockholder's deficit was $161.1 million. Net loss was $7.5 million compared to a net income of $7.1 million for the three months ended June 30, 2016 and 2015, respectively; our net loss was $9.3 million and $25.8 million for the six months ended June 30, 2016 and 2015, respectively. On June 30, 2016 we had approximately $8.7 million in cash. We have limited capital resources and operations to date have been funded with the proceeds from private and public debt and equity financings, collaborative research agreements and income earned on investments.

As of June 30, 2016, our financial obligations included approximately $49.7 million (face value) under our Second Amended and Restated Convertible Notes (the "Convertible Notes"), approximately $24.3 million (face value) under a loan agreement entered into on August 20, 2014 (the "Loan Agreement"), approximately $0.8 million (face value) under our Second Amended and Restated Reimbursement Notes (the "Reimbursement Notes"), and approximately $2.3 million (face value) under our Second Amended and Restated Bridge Notes (the "Bridge Notes"). The Convertible Notes and the Loan Agreement are subject to annual net sales performance targets.

Under the terms of the Loan Agreement, described in Note 9 to the Financial Statements, we borrowed an aggregate of $20.0 million to finance the development, manufacturing, marketing and sales of our oral Eligen B12 Rx Product. The loan facility will mature on December 31, 2019 and bears interest at a rate of 13% per year. In the event that we do not satisfy annual net sales targets of Eligen B12 by December 31 for each fiscal year beginning 2015 through 2019, we will be in default under the Loan Agreement, provided that we are not granted a waiver of the event of default resulting from the failure to satisfy the net sales target. On November 10, 2015, the creditor under our Loan Agreement and Convertible Notes agreed to waive any event of default resulting from our failure to satisfy the net sales milestones for the Eligen B12 product for the 2015 fiscal year specified in our Loan Agreement and Convertible Notes.

On October 26, 2015, we received a total payment of $14 million from Novo Nordisk pursuant to, and consisting of, $5 million as payment for entry into the Expansion License Agreement and $9 million as prepayment of a product development milestone and in exchange for a reduction in certain future royalty payments that may have become due and payable under the terms of our GLP-1 Development License Agreement with Novo Nordisk.

Under the terms of our loan agreements, we are obligated to pre-pay certain loans and notes using 50% of any extraordinary receipts, such as the $14 million received from Novo Nordisk. The creditor under our Loan Agreement and Reimbursement Notes has agreed to extend the date by which we are required to use 50% of the $14 million received from Novo Nordisk to pre-pay certain loans and notes until August 16, 2016. Because the Loan Prepayment deadline has not been extended beyond one year from June 30, 2016, we have classified $7.0 million of the loans and notes as a current liability as of June 30, 2016.

We believe that our current cash balance will provide sufficient capital to continue operations through September 2016. However, if the pre-payment obligation is further extended or waived, the Company will have sufficient cash to operate through approximately September 2017. The Company's future capital requirements beyond September 2016 (or September 2017, in the event the pre-payment obligation is further extended or waived) and our financial success depend largely on our ability to raise additional capital, including by leveraging existing and securing new partnering opportunities for Eligen B12 and the Eligen ® Technology.

While our plan is to raise capital from commercial operations and/or product partnering opportunities to address our capital deficiencies and meet our operating cash requirements, there is no assurance that our plans will be successful. If we fail to generate sufficient capital from commercial operations or partnerships, we will need to seek capital from other sources and risk default under the terms of our existing loans. We cannot assure you that financing will be available on favorable terms or at all. If we fail to generate sufficient additional capital from sales of oral Eligen B12 or to obtain substantial cash inflows from existing or new partners or other sources prior to September 2016 (or September 2017, in the event the prepayment obligations is further extended or waived), we could be forced to cease operations. Additionally, if additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities would result in dilution to our existing stockholders. These conditions raise substantial doubt about our ability to continue as a going concern. Consequently, the audit reports prepared by our independent registered public accounting firm relating to our financial statements for the years ended December 31, 2015, 2014 and 2013 include an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern. Furthermore, despite our optimism regarding the Eligen ® Technology, even in the event that the Company is adequately funded, there is no guarantee that any of our products or product candidates will perform as hoped or that such products can be successfully commercialized.

2. Basis of Presentation

The condensed balance sheet at December 31, 2015 was derived from audited financial statements but does not include all disclosures required by accounting principles generally accepted in the United States of America. The other information in these condensed financial statements is unaudited but, in the opinion of management, reflects all adjustments necessary for a fair presentation of the results for the periods covered. All such adjustments are of a normal recurring nature unless disclosed otherwise. These condensed financial statements, including notes, have been prepared in accordance with the applicable rules of the Securities and Exchange Commission (the "SEC") and do not include all of the information and disclosures required by accounting principles generally accepted in the United States of America for complete financial statements. These condensed financial statements should be read in conjunction with the financial statements and additional information as contained in our Annual Report on Form 10-K for the year ended December 31, 2015. Results of operations for the six-month period ended June 30, 2016 are not necessarily indicative of the operating results that may be expected for the year ending December 31, 2016.

Certain prior period amounts have been reclassified to conform to current period presentation.

3. Revenue Recognition

Oral Eligen B12™ Rx Product

We sell our oral Eligen B12™ Rx product through drug wholesalers and retail pharmacies. We recognize revenue from prescription product sales, net of sales discounts, chargebacks, and rebates. We accept returns of unsalable product from customers within a return period of six months prior to and 12 months following product expiration. Our oral Eligen B12™ Rx product currently has a shelf life of 24 months from the date of manufacture. Given the limited history of our oral Eligen B12™ Rx product, we currently cannot reliably estimate expected returns of the prescription products at the time of shipment. Accordingly, we will defer recognition of revenue on prescription products until the right of return no longer exists, which occurs at the earlier of the time the oral Eligen B12™ Rx product is dispensed through patient prescriptions or expiration of the right of return.

Collaborative Agreements and Feasibility Studies

Revenue earned from collaborative agreements and feasibility studies is comprised of reimbursed research and development costs, as well as upfront and research and development milestone payments. Deferred revenue represents payments received which are related to future performance. Revenue from feasibility studies, which are typically short term in nature, is recognized upon delivery of the study, provided that all other revenue recognition criteria are met.

Revenue from collaboration agreements are recognized using the proportional performance method provided that we can reasonably estimate the level of effort required to complete our performance obligations under an arrangement and such performance obligations are provided on a best effort basis and based on "expected payments." Under the proportional performance method, periodic revenue related to nonrefundable cash payments is recognized as the percentage of actual effort expended to date as of that period to the total effort expected for all of our performance obligations under the arrangement. Actual effort is generally determined based upon actual hours incurred and include research and development ("R&D") activities performed by us and time spent for Joint Steering Committee ("JSC") activities. Total expected effort is generally based upon the total R&D and JSC hours incorporated into the project plan that is agreed to by both parties to the collaboration. Significant management

judgments and estimates are required in determining the level of effort required under an arrangement and the period over which we expect to complete the related performance obligations. Estimates of the total expected effort included in each project plan are based on historical experience of similar efforts and expectations based on the knowledge of scientists for both the Company and its collaboration partners. The Company periodically reviews and updates the project plan for each collaborative agreement. The most recent reviews took place in January 2016. In the event that a change in estimate occurs, the change will be accounted for using the cumulative catch-up method which provides for an adjustment to revenue in the current period. Estimates of our level of effort may change in the future, resulting in a material change in the amount of revenue recognized in future periods.

Generally, under collaboration arrangements, nonrefundable payments received during the period of performance may include time- or performance-based milestones. The proportion of actual performance to total expected performance is applied to the "expected payments" in determining periodic revenue. However, revenue is limited to the sum of (i) the amount of nonrefundable cash payments received and (ii) the payments that are contractually due but have not yet been paid.

With regard to revenue recognition in connection with development and license agreements that include multiple deliverables, Emisphere's management reviews the relevant terms of the agreements and determines whether such deliverables should be accounted for as a single unit of accounting in accordance with FASB ASC 605-25, *Multiple-Element Arrangements* . If it is determined that a delivered license and Eligen ® Technology do not have stand-alone value and Emisphere does not have objective evidence of fair value of the undelivered Eligen ® Technology or the manufacturing value of all the undelivered items, then such deliverables are accounted for as a single unit of accounting and any payments received pursuant to such agreement, including any upfront or development milestone payments and any payments received for support services, will be deferred and included in deferred revenue within our balance sheet until such time as management can estimate when all of such deliverables will be delivered, if ever. Management reviews and reevaluates such conclusions as each item in the arrangement is delivered and circumstances of the development arrangement change.

4. Stock-Based Compensation Plans

On April 20, 2007, our stockholders approved the 2007 Stock Award and Incentive Plan (the "2007 Plan"). The 2007 Plan provides for grants of options, stock appreciation rights, restricted stock, deferred stock, bonus stock and awards in lieu of obligations, dividend equivalents, other stock-based awards and performance awards to our executive officers and other employees, and non-employee directors, consultants and others who provide substantial services to us. The 2007 Plan provides for the issuance of an aggregate of 9,253,876 shares. As of June 30, 2016, 3,064,416 shares are available for future grants under our active equity plans.

Total compensation expense recorded during the three and six months ended June 30, 2016 for share-based payment awards was $78 thousand and $173 thousand, respectively. At June 30, 2016, total unrecognized estimated compensation expense related to non-vested stock options granted prior to that date was $0.4 million which is expected to be recognized over a weighted-average period of approximately 1.6 years. No options were exercised in the three or six months ended June 30, 2016. No tax benefit was realized due to a continued pattern of operating losses.

During the six months ended June 30, 2016, the Company granted 40,000 options to Michael Garone, former Chief Financial Officer (valued on the grant date at $0.61 using the Black Scholes pricing model).

The following weighted-average assumptions were used for grants made under the stock option plans for the six months ended June 30, 2016:

Expected volatility	145.82%
Expected term (years)	6.79
Risk free rate	1.82%
Dividend yield	0%
Annual forfeiture rate	14.523%

5. Inventory

Inventory consists of the following:

	June 30, 2016 (unaudited)	December 31, 2015
	(In thousands)	
Raw Materials	$ 558	$ 558
Finished Goods	98	782
Total	$ 656	$ 1,340

6. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following:

	June 30, 2016 (unaudited)	December 31, 2015
	(in thousands)	
Prepaid corporate insurance	$ 83	$ 93
Deposit on inventory	184	184
Prepaid expenses and other current assets	181	804
	$ 448	$ 1,081

7. Equipment and Leasehold Improvements, Net

	Useful Lives in Years	June 30, 2016 (unaudited)	December 31, 2015
		(in thousands)	
Equipment	**3-7**	$ 601	$ 601
Leasehold improvements	**Term of lease**	27	27
		628	628
Less: accumulated depreciation and amortization		624	616
Equipment and leasehold improvements, net		$ 4	$ 12

8. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consist of the following:

	June 30, 2016 (unaudited)	December 31, 2015
	(In thousands)	
Accounts payable	$ 563	$ 1,762
Accrued legal, professional and other fees	252	304
Accrued vacation	63	55
	$ 878	$ 2,121

9. Notes Payable

Notes payable, related party, net of related discounts, consists of the following:

	June 30, 2016 (unaudited)	December 31, 2015
	(in thousands)	
Convertible Notes	$ 38,853	$ 37,450
Loan Agreement	24,342	22,801
Bridge Notes	124	166
Reimbursement Notes	794	755
	64,113	61,172
Less: Current portion	7,000	7,000
Non-current notes payable, net of related discounts	$ 57,113	$ 54,172

Loan Agreement. On August 20, 2014, the Company entered into a series of agreements (the Transaction Documents) with MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP, MHR Institutional Partners II LP, and MHR Institutional Partners IIA LP, (collectively, “MHR” or the “Lenders”), for a new loan facility (the “Loan Agreement”), an extension of the Company’s existing obligations under various promissory notes previously issued to the Lenders, and for payment by the Company of certain royalties to MHR (the “Transaction”).

The Loan Agreement provides for, among other things, a commitment (the "Commitment") of the Lenders to loan the Company up to $20 million to finance the development, manufacturing, marketing and sale of oral Eligen ® B12 (the "B12 Product"). The Company may make five borrowings (each, a "Borrowing", and collectively, the "Loan") under the Loan Agreement. The first borrowing under the Loan Agreement occurred on August 20, 2014, in an original principal amount of $5.0 million, the second occurred on November 4, 2014 in an original principal amount of $3.0 million, the third occurred on January 6, 2015 in an original principal amount of $5.0 million, the fourth occurred on April 6, 2015 in an original principal amount of $5.0 million, and the fifth and final borrowing occurred on July 1, 2015 in an original principal amount of $2.0 million. In addition, as described below, if the Company does not have sufficient cash in excess of the Minimum Cash Balance, as defined below, to pay any Royalties that become due under the Royalty Agreement, as described below, such Royalties will be paid as an additional Loan under the Loan Agreement by increasing the principal amount outstanding under the Loan Agreement (any such Loan, "Paid-In-Kind Royalties"). The "Minimum Cash Balance" generally means cash on hand (plus certain cash expenditures during such fiscal year that are unrelated to the B12 Product or related products) of at least $10 million (or $15 million, under certain circumstances beginning as early as October 1, 2015), subject to certain permitted deductions. On December 31, 2015, the Company had a $12.9 million cash balance, greater than the $10 million Minimum Cash Balance as defined under the Loan Agreement, therefore $0.2 million Royalties payable for 2015 under the Royalty Agreement was due in cash. MHR has agreed to extend the date by which we are required to make the $0.2 million Royalty payment in cash under the terms of the Royalty Agreement until August 16, 2016.

Except with respect to Paid-In-Kind Royalties incurred under the Loan Agreement after all amounts of principal and interest have previously been paid in full, the Loan will mature on the earlier of (a) December 31, 2019 and, (b) 30 days after the end of any fiscal year in which the Company's cash (plus certain cash expenditures during such fiscal year that are unrelated to the B12 Product or related products) as of the end of such fiscal year (subject to certain permitted deductions) is more than three times the principal amount of the Loan as of the end of such fiscal year. Paid-In-Kind Royalties incurred under the Loan Agreement after all amounts of principal and interest have previously been paid in full mature one year following the date of incurrence. The Loan bears interest at a rate of 13% per annum (the "Interest Rate"), compounded monthly, and will be payable in kind and in arrears on June 30 and December 31 of each year up to and including the maturity date by increasing the outstanding principal amount of the Loan by the amount of each such interest payment. So long as an event of default under the Loan Agreement (an "Event of Default") has occurred and is continuing, at the election of MHR, interest shall accrue on the Loan at a rate equal to 2% per annum above the Interest Rate ("Default Rate"). Interest at the Default Rate shall accrue from the initial date of such Event of Default until that Event of Default is cured or waived in writing and shall be payable upon demand and, if not paid when due, shall itself bear interest at the Default Rate. The Loan must be repaid from time to time prior to maturity pursuant to (a) a cash sweep of 50% of the Company's adjusted consolidated free cash flow, or 75% of the Company's adjusted consolidated free cash flow in any year in which the adjusted consolidated free cash flow exceeds $50 million, to the extent such cash sweep does not cause the Company's cash as of the end of such year to be less than the Minimum Cash Balance, (b) a cash sweep of 50% of any cash proceeds received from any third party in connection with the license, distribution or sale of any of the Company's products other than the B12 Product or related products (the "Non-B12 Products"), subject to the priority described below, and (c) a Royalty Match (as described below), to the extent such Royalty Match does not cause the Company's cash as of the end of such year to be less than the Minimum Cash Balance and subject to the priority described below. The Loan Agreement provides for certain representations and warranties, conditions precedent to the Lenders' obligation to lend, affirmative and negative covenants of the Company (including, but not limited to, certain milestones in the development of its B12 Products) and Events of Default.

In connection with the cash proceeds of $14 million from Novo Nordisk in October 2015, the Company was obligated to pre-pay $0.8 million of the Reimbursement Notes and $6.2 million of the Loans on November 26, 2015. The creditor under our Loan Agreement and Reimbursement Notes has agreed to extend the date by which we are required to pre-pay such amounts under the Loan Agreement and Reimbursement Notes until August 16, 2016. Because the Loan Prepayment deadline has not been extended beyond one year from June 30, 2016, we have classified $0.8 million of the Reimbursement Notes and $6.2 million of the Loans as a current liability as of June 30, 2016 in the accompanying condensed balance sheet.

In connection with the entry into the Loan Agreement, on August 20, 2014, the Lenders and the Company further amended and restated (i) the Convertible Notes issued by the Company to certain of the Lenders, (ii) the Bridge Notes issued by the Company to certain of the Lenders, and (iii) the Reimbursement Notes (and, together with the Convertible Notes and Bridge Notes, the "MHR Notes"). Also, in connection with the entry into the Loan Agreement and the amendment and restatement of the MHR Notes, Institutional Partners IIA and the Company have amended the Pledge and Security Agreement, dated September 26, 2005, as amended, by and between the Company and Institutional Partners IIA to, among other things, secure the Reimbursement Notes and payments due under the Loan Agreement with substantially all of the Company's assets, and secure the payments due under the Royalty Agreement and Paid-In-Kind Royalties due under the Loan Agreement with the Company's intellectual property relating to the B12 Products and related products. As of June 30, 2016, the principal balance of the Loan was $24.3 million.

Convertible Notes. On September 26, 2005, we received net proceeds of approximately $12.9 million under a $15 million secured loan agreement (the "2005 Loan Agreement") executed with MHR. Under the 2005 Loan Agreement, MHR requested, and on May 16, 2006, we effected, the exchange of the loan from MHR for the predecessor of the Convertible Notes, which were 11% senior secured convertible notes with substantially the same terms as the 2005 Loan Agreement, except that the original Convertible Notes were convertible, at the sole discretion of MHR, into shares of our common stock at a price per share of $3.78. In connection with the original Convertible Notes exchange, the Company agreed to appoint a representative of MHR (the "MHR Nominee") and another person (the "Mutual Director") to the Board. Further, the Company agreed to amend, and in January 2006 did amend, its certificate of incorporation to provide for continuity of the MHR Nominee and the Mutual Nominee on the Board so long as MHR holds at least 2% of the outstanding common stock of the Company. The original Convertible Notes were amended and restated on May 7, 2013 and as described above, amended and restated a second time on August 20, 2014.

The Convertible Notes now provide for a new maturity date of March 31, 2022 (subject to acceleration upon the occurrence of certain specified events of default, including the failure to meet certain sales, performance, and manufacturing milestones specified in the Convertible Notes). The interest rate is 13% per annum, compounded monthly, which interest will be payable in the form of additional Convertible Notes. The Convertible

Notes are collateralized by a first priority lien in favor of the Lenders on substantially all of the Company's assets. After all principal and interest under the Loan Agreement and Reimbursement Notes are repaid, the remaining Convertible Notes must be redeemed from time to time prior to maturity pursuant to a cash sweep of 50% of the Company's adjusted consolidated free cash flow (75% of the Company's adjusted consolidated free cash flow in any year in which the Company's adjusted consolidated free cash flow exceeds $50 million) to the extent such cash sweep does not cause the Company's cash as of the end of such year to be less than the Minimum Cash Balance. The Convertible Notes are convertible, at the option of the holders, at a conversion price of $1.25 per share of common stock, which conversion price is subject to adjustment upon the occurrence of specified events, including stock dividends, stock splits, certain fundamental corporate transactions, and certain issuances of common stock by the Company. The Convertible Notes must also be redeemed from time to time prior to maturity pursuant to (a) a cash sweep of 50% of any cash proceeds received from any third party in connection with the license, distribution or sale of any Non-B12 Product, subject to the priority described below and (b) a Royalty Match (as described below), to the extent such Royalty Match does not cause the Company's cash as of the end of such year to be less than the Minimum Cash Balance and subject to the priority described below. If we fail to meet our obligations under the terms of the Convertible Notes, or fail to meet any of the net sales targets included in the Convertible Notes, we would be in default under these notes, which would give MHR the option of foreclosing on substantially all of our assets. On November 10, 2015, MHR agreed to waive any event of default resulting from the failure to satisfy the December 31, 2015 net sales target specified in the Convertible Notes. As of June 30, 2016, the principal balance of the Convertible Notes was $49.7 million; and the Convertible Notes were convertible into 39,720,243 shares of our common stock.

The Company is required to satisfy annual net sales targets of Eligen B12™ by December 31 for each fiscal year beginning 2015 through 2019 pursuant to the terms of the Loan Agreement and Convertible Notes. Failure to satisfy the sales targets will result in an event of default under these instruments, provided that the Company is not granted a waiver. On November 10, 2015, the Lenders agreed to waive any event of default resulting from the failure to satisfy the net sales milestones for the Eligen B12™ product for the 2015 fiscal year specified in the Loan Agreement and Convertible Notes.

Reimbursement Notes. On June 8, 2010, the Company issued the predecessor to the Reimbursement Notes to MHR in the form of certain non-interest bearing promissory notes in the aggregate principal amount of $600,000 in reimbursement for legal expenses incurred by MHR in connection with MHR's agreement to, among other things, waive certain rights as a senior secured party of the Company and enter into a non-disturbance agreement with the Company's collaboration partner, Novartis Pharma AG, and, if necessary, to enter into a comparable agreement in connection with another potential Company transaction. The original Reimbursement Notes were amended and restated on May 7, 2013 and, as described above, amended and restated again on August 20, 2014.

The Reimbursement Notes provide for a maturity date of the earlier of (a) March 31, 2022 and (b) immediately prior to the time that any amounts outstanding under the Loan Agreement are repaid (subject to acceleration upon the occurrence of certain events of default specified in the Reimbursement Notes), and bear interest at the rate of 10% per annum, compounded monthly, which interest is payable in the form of additional Reimbursement Notes. The Reimbursement Notes are collateralized by a first priority lien in favor of the Lenders on substantially all of the Company's assets. The Reimbursement Notes are convertible, at the option of the holders, at a conversion price of $0.50 per share of common stock, which conversion price is subject to adjustment upon the occurrence of specified events, including stock dividends, stock splits, certain fundamental corporate transactions, and certain issuances of common stock by the Company. The Reimbursement Notes must also be redeemed from time to time prior to maturity pursuant to a cash sweep of 50% of any cash proceeds received from any third party in connection with the license, distribution or sale of any Non-B12 Product, subject to the priority described below. As of June 30, 2016, the principal balance of the Reimbursement Notes was $0.8 million; and the Reimbursement Notes were convertible into 1,588,682 shares of our common stock.

In connection with the cash proceeds of $14 million from Novo Nordisk in October 2015, the Company was obligate to pre-pay $0.8 million of the Reimbursement Notes and $6.2 million of the Loans on November 26, 2015. The creditor under the Reimbursement Notes and Loan Agreement has agreed to extend the date by which we are required to pre-pay such amounts under the Reimbursement Notes and Loan Agreement until August 16, 2016

Bridge Notes. On October 17, 2012, the Company issued to MHR the predecessor to the Bridge Notes in the aggregate principal amount of $1,400,000. The original Bridge Notes provided for an interest rate of 13% per annum and were payable on demand. The Bridge Notes were amended and restated on May 7, 2013 and restated again on August 20, 2014.

The Bridge Notes provide for a maturity date of March 31, 2022 (subject to acceleration upon the occurrence of certain events of default specified) and bear interest at 13% per year, compounded monthly and payable in the form of additional Bridge Notes. The Bridge Notes are collateralized by a first priority lien in favor of the Lenders on substantially all of the Company's assets. The Bridge Notes are convertible, at the option of the holders, at a conversion price of $0.50 per share of common stock, which conversion price is subject to adjustment upon the occurrence of specified events, including stock dividends, stock splits, certain fundamental corporate transactions, and certain issuances of common stock by the Company. The Bridge Notes must also be redeemed from time to time prior to maturity pursuant to (a) a cash sweep of 50% of any cash proceeds received from any third party in connection with the license, distribution or sale of any Non-B12 Product, subject to the priority described below and (b) a Royalty Match (as described below), to the extent such Royalty Match does not cause the Company's cash as of the end of such year to be less than the Minimum Cash Balance and subject to the priority described below. As of June 30, 2016, the principal balance the Bridge Notes was $2.3 million; and the Bridge Notes were convertible into 4,515,544 shares of our common stock.

The priority of the cash sweep for Non-B12 Products is as follows: (i) to redeem the Reimbursement Notes, (ii) to prepay principal and interest outstanding under the Loan Agreement; (iii) to reduce the Commitment; (iv) to redeem the Convertible Notes; and (v) to redeem the Bridge Notes.

Royalty Agreement . As a condition to MHR entering into the Loan Agreement and amending and restating the MHR Notes, the Company and MHR entered into a Royalty Agreement (the "Royalty Agreement") on August 20, 2014 pursuant to which the Company agreed to pay to MHR, subject to specified terms and conditions, royalties in perpetuity (the "Royalties"), commencing as of the date of the Royalty Agreement, in an amount equal to: twenty percent (20%) of all Net Product Sales (as defined in the Royalty Agreement) and any third party payments arising in connection with the sale of the B12 Product and related products, during any fiscal year; provided that, from and after October 1, 2015, if no amount of indebtedness is outstanding under the Loan Agreement (the "Indebtedness Repayment Condition"), such amount shall be reduced to (i) five percent (5%) of all Net Sales and third party payments commencing with the first quarter immediately following the quarter in which the Indebtedness Repayment Condition is satisfied, or (ii) two and one half percent (2.5%) of all Net Sales commencing with the quarter immediately following the quarter in which the Indebtedness Repayment Condition is satisfied, but only with respect to the Net Sales made in any country in which there was not a Valid Patent Claim (as defined in the Royalty Agreement) and where generic entry of a competitive product not by the Company or its affiliates that does not infringe a Valid Patent Claim in such country has occurred, in each case as of the last day of such Fiscal Quarter. Once the royalty rate has been reduced to 5%, the rate shall not be reinstated to 20% even if amounts become outstanding under the Loan Agreement as a result of Paid-In-Kind Royalties. Payments of Royalties shall be made in cash to the extent such Royalties do not cause the Company's cash as of the end of any year to be less than the Minimum Cash Balance, and otherwise shall be paid as Paid-In-Kind Royalties.

If any Royalties become due under the Royalty Agreement when the royalty rate is 5% or 2.5%, the amount outstanding under the Loan Agreement, Convertible Notes and Bridge Notes shall be reduced in an amount equal to such royalty payment, to the extent such payment does not cause the Company's cash as of the end of such year to be less than the Minimum Cash Balance (the "Royalty Match"), in the following priority: (i) first, to prepay the Loan; (ii) second, to redeem the Convertible Notes; and (iii) finally, to redeem the Bridge Notes. For the three and six months ended June 30, 2016, the Company recorded $56 and $141 thousand of royalty expense, respectively.

The carrying value of the MHR Notes is comprised of the following:

	June 30, 2016 (unaudited)	December 31, 2015
	(in thousands)	
Convertible Notes	$ 49,650	$ 46,542
Loan Agreement	24,342	22,801
Bridge Notes	2,258	2,115
Reimbursement Notes	794	755
Unamortized discounts	(12,931)	(11,041)
	$ 64,113	$ 61,172

10. Derivative Instruments

Derivative instruments consist of the following:

	June 30, 2016 (unaudited)	December 31, 2015
	(in thousands)	
Convertible Notes	$ 33,759	$ 30,823
Reimbursement Notes	1,242	1,118
Bridge Notes	3,530	3,130
Amended and Restated August 2009 Warrants	1,867	2,142
Amended and Restated June 2010 MHR Warrants	453	552
Amended and Restated August 2010 Warrants	1,313	1,507
Amended and Restated August 2010 MHR Waiver Warrants	488	560
Amended and Restated July 2011 Warrants	1,507	1,729
July 2011 Investor Warrants	—	205
Amended and Restated July 2011 MHR Waiver Warrants	398	456
May 2013 MHR Modification Warrants	5,006	5,744
	$ 49,563	47,966

Some of the Company's outstanding derivative instruments have an exercise price reset feature. The estimated fair value of warrants and embedded conversion features that have an exercise price reset feature is estimated using the Monte Carlo valuation model. The estimated fair value of warrants that do not contain an exercise price reset feature is measured using the Black-Scholes valuation model. Inherent in both of these models are assumptions related to expected volatility, remaining life, risk-free rate and expected dividend yield. For the Monte Carlo model, we estimate the probability and timing of potential future financing and fundamental transactions as applicable.

Embedded Conversion Feature of MHR Notes. The Convertible Notes, the Reimbursement Notes, and the Bridge Notes (collectively, the "MHR Notes") contain a provision whereby the conversion price is adjustable upon the occurrence of certain events, including the issuance by Emisphere of common stock or common stock equivalents at a price which is lower than the current conversion price of each of the MHR Notes and lower than the then-current market price. Under FASB ASC 815-40-15-5, the embedded conversion feature of the MHR Notes is not considered indexed to the Company's own stock and, therefore, does not meet the scope exception in FASB ASC 815-10-15 and thus needs to be accounted for as a derivative liability. The liabilities associated with the Convertible Notes and the Bridge Notes have been presented as a non-current liability as of June 30, 2016 and December 31, 2014, to correspond to their host contracts.

Convertible Notes . In addition to the foregoing, the adjustment provision of the Convertible Notes does not become effective unless and until the Company were to raise $10 million through the issuance of common stock or common stock equivalents during any consecutive 24 month period. The fair value of the embedded conversion feature of the Convertible Notes is estimated at the end of each quarterly reporting period using the Monte Carlo model. The assumptions used in computing the fair values as June 30, 2016 and December 31, 2015, are as follows:

	June 30, 2016	December 31, 2015
Closing stock price	$ 0.68	$ 0.68
Conversion price	$ 1.25	$ 1.25
Expected volatility	152%	143%
Remaining term (years)	5.75	6.25
Risk-free rate	1.25%	1.95%
Expected dividend yield	0%	0%

The fair value of the embedded conversion feature of the Convertible Notes increased $2.4 million and $0.8 million for the three and six months ended June 30, 2016, respectively, which has been recognized in the accompanying statements of operations. The fair value of the embedded conversion feature of the Convertible Notes decreased $11.5 million and increased $4.2 million for the three and six months ended June 30, 2015, respectively, which has been recognized in the accompanying statement of operations.

Reimbursement Notes . The fair value of the embedded conversion feature of the Reimbursement Notes is estimated at the end of each quarterly reporting period using the Monte Carlo model. The assumptions used in computing the fair value as of June 30, 2016 and December 31, 2015 are as follows:

	June 30, 2016	December 31, 2015
Closing stock price	$ 0.68	$ 0.68
Conversion price	$ 0.50	$ 0.50
Expected volatility	152%	143%
Remaining term (years)	5.75	6.25
Risk-free rate	1.25%	1.95%
Expected dividend yield	0%	0%

The fair value of the embedded conversion of the Reimbursement Notes increased $0.2 million and $0.1 million for the three and six months ended June 30, 2016, respectively, which has been recognized in the accompanying statements of operations. The fair value of the embedded conversion feature of the Reimbursement Notes decreased by $0.3 million and increased $0.3 million for the three and six months ended June 30, 2015, respectively, which has been recognized in the accompanying statement of operations.

Bridge Notes . The fair value of the embedded conversion feature of the Bridge Notes is estimated at the end of each quarterly reporting period using the Monte Carlo model. The assumptions used in computing the fair value as of June 30, 2016 and December 31, 2015 are as follows:

	June 30, 2016	December 31, 2015
Closing stock price	$ 0.68	$ 0.68
Conversion price	$ 0.50	$ 0.50
Expected volatility	152%	143%
Remaining term (years)	5.75	6.25
Risk-free rate	1.25%	1.95%
Expected dividend yield	0%	0%

The fair value of the embedded conversion feature of the Bridge Notes increased $0.4 million and $0.3 million for the three and six months ended June 30, 2016 respectively, which has been recognized in the accompanying statements of operations. The fair value of the embedded conversion feature of the Bridge Notes decreased $0.8 million and increased $0.7 million for the three and six months ended June 30, 2015, respectively, which has been recognized in the accompanying statements of operations.

Amended and Restated June 2010 Warrants. In June 2010, the Company granted MHR warrants to purchase 865,000 shares of its common stock (the "June 2010 Warrants"). In connection with the Restructuring, on May 7, 2013, the Company amended and restated the Original Warrants such that the expiration date of the Original Warrant was extended to July 8, 2019, and the exercise price was reduced to $0.50 per share (as amended and restated, the "Amended and Restated June 2010 Warrants"). The exercise price of the Amended and Restated June 2010 Warrants is adjustable upon the occurrence of certain events, including the issuance by Emisphere of common stock or common stock equivalents at a price which is lower than the current exercise price of these warrants and lower than the current market price. However, the adjustment provision does not become effective unless the Company were to raise $10 million through the issuance of common stock or common stock equivalents at a price which is lower than the current conversion price of these warrants and lower than the current market price during any consecutive 24 month period. The fair value of the Amended and Restated June 2010 Warrants is estimated at the end of each quarterly reporting period using the Monte Carlo model. The assumptions used in computing the fair value of the Amended and Restated June 2010 Warrants as of June 30, 2016 and December 31, 2015, are as follows:

	June 30, 2016	December 31, 2015
Closing stock price	$ 0.68	$ 0.68
Conversion price	$ 0.50	$ 0.50
Expected volatility	116%	136%
Remaining term (years)	3.02	3.52
Risk-free rate	0.71%	1.42%
Expected dividend yield	0%	0%

The fair value of the Amended and Restated June 2010 MHR Warrants decreased $16 thousand and $0.1 million for the three and six months ended June 30, 2016, respectively, which has been recognized in the accompanying statements of operations. The fair value of the Amended and Restated June 2010 MHR Warrants decreased $50 thousand and increased $0.2 million for the three and six months June 30, 2015, respectively, which has been recognized in the accompanying statements of operations.

Amended and Restated Warrants. Prior to the Restructuring, the Company issued to MHR warrants to purchase varying amounts of its common stocks at various times from 2009 through 2011, as described more fully below (the August 2009 Warrants, August 2010 Warrants, August 2010 MHR Waiver Warrants, July 2011 Warrants, July 2011 MHR Waiver Warrants, and collectively, the "Original Warrants"). In connection with the Restructuring, on May 7, 2013, the Company amended and restated each of the Original Warrants such that the expiration date of each Original Warrant was extended to July 8, 2019, and the exercise price was reduced to $0.50 per share (as amended and restated, the "Amended and Restated August 2009 Warrants", "Amended and Restated August 2010 Warrants", "Amended and Restated August 2010 MHR Waiver Warrants", "Amended and Restated July 2011 Warrants", "Amended and Restated July 2011 MHR Waiver Warrants", and collectively, the "Amended and Restated Warrants") . Under the terms of each of the Amended and Restated Warrants, as well as the August 2010 Investor Warrants, July 2011 Investor Warrants and 2013 Restructuring Warrants (collectively, the Investor Warrants, and together with the Original Warrants, the "Warrants"), the Company has an obligation to make a cash payment to the holders of each of the Warrants for any gain that could have been realized if such holder exercised the warrants and we subsequently failed to deliver a certificate representing the shares to be issued upon such exercise by the third trading day after the Warrants were exercised. Accordingly, the Warrants have been accounted for as a liability. The fair value of each of the Warrants is estimated, at the end of each quarterly reporting period, using the Black-Scholes model. The assumptions used in computing the fair value of the Original Warrants as of June 30, 2016 and December 31, 2015, are as follows:

	June 30, 2016	December 31, 2015
Closing stock price	$ 0.68	$ 0.68
Conversion price	$ 0.50	$ 0.50
Expected volatility	116%	141%
Remaining term (years)	3.02	3.52
Risk-free rate	0.71%	1.31%
Expected dividend yield	0%	0%

The fair value of the Original Warrants increased $25 thousand and decreased $0.8 million for the three and six months ended June 30, 2016, respectively, which has been recognized in the accompanying statements of operations. The fair value of the Original Warrants decreased $0.4 million and increased $3.5 million for the three and six months ended June 30, 2015, respectively, which has been recognized in the accompanying statements of operations.

2013 Restructuring Warrants . The Company issued to MHR warrants to purchase 10 million shares of its common stock (the "2013 Restructuring Warrants") as part of the Restructuring. The assumptions used in computing the fair value of the 2013 Restructuring Warrants as of June 30, 2016 and December 31, 2015, are as follows:

	June 30, 2016	December 31, 2015
Closing stock price	$ 0.68	$ 0.68
Conversion price	$ 0.50	$ 0.50
Expected volatility	116%	141%
Remaining term (years)	3.02	3.52
Risk-free rate	0.71%	1.31%
Expected dividend yield	0%	0%

The fair value of the 2013 Restructuring Warrants increased $22 thousand and decreased $0.7 million for the three and six months ended June 30, 2016, respectively, which has been recognized in the accompanying statements of operations. The fair value of the 2013 Restructuring Warrants decreased $0.4 million and increased $3.1 million for the three and six months ended June 30, 2015, respectively, which has been recognized in the accompanying statements of operations.

August 2010 Investor Warrants . In connection with the August 2010 Financing, Emisphere sold warrants to purchase 2.6 million shares of common stock to unrelated investors (the "August 2010 Warrants"). On July 12, 2011, one of the unrelated investors notified the Company of its intention to exercise 0.2 million warrants. On August 26, 2015, the remaining 2010 Investor Warrants expired.

The fair value of the August 2010 Investor Warrants decreased $0.3 million $14 thousand for the three and six months ended June 30, 2015, respectively, which has been recognized in the accompanying statements of operations.

July 2011 Investor Warrants . In connection with the July 2011 Financing, Emisphere sold warrants to purchase 3.01 million shares of common stock to unrelated investors (the "July 2011 Warrants"). The July 2011 Warrants are exercisable at $1.09 per share and have an expiration date of July 6, 2016. The assumptions used in computing the fair value of the July 2011 Warrants as of June 30, 2016 and December 31, 2015, are as follows:

	June 30, 2016	December 31, 2015
Closing stock price	$ 0.68	$ 0.68
Conversion price	$ 1.09	$ 1.09
Expected volatility	44%	88%
Remaining term (years)	0.01	0.51
Risk-free rate	.21%	.49%
Expected dividend yield	0%	0%

The fair value of the July 2011 Investor Warrants decreased $82 thousand and $0.2 million for the three and six months ended June 30, 2016, respectively, which has been recognized in the accompanying statements of operations. The July 2011 Investor Warrants decreased $0.1 million and increased $0.4 million for the three and six months ended June 30, 2016, respectively, which has been recognized in the accompanying statements of operations.

11. Net Income (Loss) Per Share

The following table sets forth the information needed to compute basic and diluted earnings per share:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(in thousands except per share data)		(in thousands except per share data)	
Basic net income (loss)	$ (7,513)	$ 7,136	$ (9,342)	$ (25,832)
Effect of dilutive securities on MHR convertible note assumed conversion	—	1,017	—	—
Effect of dilutive securities on change in fair value of derivatives	—	(13,493)	—	—
Numerator for diluted net income (loss) per share after assumed note conversion	$ (7,513)	$ (5,340)	$ (9,342)	$ (25,832)
Weighted average common shares outstanding:	60,687,478	60,687,478	60,687,478	60,687,478
Dilutive securities				
Options	—	893,601	—	—
Warrants	—	21,566,446	—	—
Shares underlying MHR convertible note payable	—	40,297,635	—	—
Diluted weighted average common shares outstanding and assumed conversion	60,687,478	123,445,160	60,687,478	60,687,478
Basic net income (loss) per share	$ (0.12)	$ 0.12	$ (0.15)	$ (0.43)
Diluted net income (loss) per share	$ (0.12)	$ (0.04)	$ (0.15)	$ (0.43)

For the three and six month periods ended June 30, 2016 and 2015, certain potential shares of common stock have been excluded from the calculation of diluted income per share because the exercise price was greater than the average market price of our common stock, and therefore, the effect on diluted income per share would have been anti-dilutive. In addition, incremental shares from the assumed conversion of the MHR note payable are excluded for the three month period ended June 30, 2015, and the six month period ended June 30, 2016 and 2015, as the effect of these shares is anti-dilutive in these periods. The following table sets forth the number of potential shares of common stock that have been excluded from diluted net income per share because their effect was anti-dilutive.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Options to purchase common shares	6,219,100	3,450,750	6,219,100	6,390,750
Outstanding warrants	25,008,082	5,445,952	25,008,082	27,443,727
MHR convertible notes payable	45,824,469	—	45,824,469	40,297,635
	77,051,651	8,896,702	77,051,651	74,132,112

12. Commitments and Contingencies

Commitments.

We lease office space at 4 Becker Farm Road, Roseland, New Jersey under a non-cancellable operating lease expiring in 2017.

As of June 30, 2016, future minimum rental payments are as follows:

Years Ending December 31,	(In thousands)
2016 (remaining)	$ 55
2017	74
Total	$ 129

The Company evaluates the financial consequences of legal actions periodically or as facts present themselves and records accruals to account for its best estimate of future costs accordingly.

The Company has an unconditional purchase obligation related to raw materials in the amount of approximately $0.4 million that are not reflected on the balance sheets.

Contingencies.

In the ordinary course of business, we enter into agreements with third parties that include indemnification provisions which, in our judgment, are normal and customary for companies in our industry sector. These agreements are typically with business partners, clinical sites, and suppliers. Pursuant to these agreements, we generally agree to indemnify, hold harmless, and reimburse indemnified parties for losses suffered or incurred by the indemnified parties with respect to our product candidates, use of such product candidates, or other actions taken or omitted by us. The maximum potential amount of future payments we could be required to make under these indemnification provisions is unlimited. We have not incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. As a result, the estimated fair value of liabilities relating to these provisions is minimal. Accordingly, we have no liabilities recorded for these provisions as of June 30, 2016.

In the normal course of business, we may be confronted with issues or events that may result in a contingent liability. These generally relate to lawsuits, claims, environmental actions or the action of various regulatory agencies. If necessary, management consults with counsel and other appropriate experts to assess any matters that arise. If, in our opinion, we have incurred a probable loss as set forth by accounting principles generally accepted in the U.S., an estimate is made of the loss and the appropriate accounting entries are reflected in our financial statements.

As a condition to MHR entering into the Loan Agreement and amending and restating the MHR Notes, the Company and MHR entered into a Royalty Agreement (the "Royalty Agreement") on August 20, 2014 providing for the payment by the Company to MHR of certain royalties on the terms and conditions set forth therein (see Note 9).

Under the terms of the Royalty Agreement, the Company agreed to pay to MHR, subject to the terms and conditions of the Royalty Agreement, royalties in perpetuity (the "Royalties"), commencing as of the date of the Royalty Agreement, in an amount equal to: twenty percent (20%) of all Net Product Sales (as defined in the Royalty Agreement) and any third party payments arising in connection with the sale of the B12 Product and related products, during any fiscal year; provided that, from and after October 1, 2015, if no amount of indebtedness is outstanding under the Loan Agreement (the "Indebtedness Repayment Condition"), such amount shall be reduced to (i) five percent (5%) of all Net Sales and third party payments commencing with the first quarter immediately following the quarter in which the Indebtedness Repayment Condition is satisfied, or (ii) two and one half percent (2.5%) of all Net Sales commencing with the quarter immediately following the quarter in which the Indebtedness Repayment Condition is satisfied, but only with respect to the Net Sales made in any country in which there was not a Valid Patent Claim (as defined in the Royalty Agreement) and where generic entry of a competitive product not by the Company or its affiliates that does not infringe a Valid Patent Claim in such country has occurred, in each case as of the last day of such Fiscal Quarter. Once the royalty rate has been reduced to 5%, the rate shall not be reinstated to 20% even if amounts become outstanding under the Loan Agreement as a result of Paid-In-Kind Royalties. Payments of Royalties shall be made in cash to the extent such Royalties do not cause the Company's cash as of the end of any year to be less than the Minimum Cash Balance, and otherwise shall be paid as Paid-In-Kind Royalties.

13. Income Taxes

The Company is primarily subject to United States federal and New Jersey state income tax. The Company's policy is to recognize interest and penalties related to income tax matters in income tax expense. As of December 31, 2015 and June 30, 2016, the Company had no accruals for interest or penalties related to income tax matters.

14. New Accounting Pronouncements

In July 2015, the FASB issued ASU No. 2015-11, "Simplifying the Measurement of Inventory" ("ASU 2015-11"). ASU 2015-11 requires that inventory within the scope of the guidance be measured at the lower of cost and net realizable value. Inventory measured using last-in, first-out and retail inventory method are excluded from this new guidance. This ASU replaces the concept of market with the single measurement of net realizable value and is intended to create efficiencies for preparers and more closely aligns U.S. GAAP with IFRS. This ASU is effective for public business entities in fiscal years beginning after December 15, 2016, including interim periods within those years. Prospective application is required and early adoption is permitted as of the beginning of an interim or annual reporting period. The Company is currently evaluating the impact of the new standards.

In April 2015, the FASB issued ASU 2015-03, "Interest – Imputation of Interest" ("ASU 2015-03"), which requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. The recognition and measurement guidance for debt issuance costs are not affected by the amendments in this ASU. ASU 2015-03 is effective for annual and interim periods beginning on or after December 15, 2015. The adoption of ASU 2015-03 did not have a material impact on our financial position, results of operations or cash flows.

In May 2014, the FASB issued ASU No. 2014-09, "Revenue from Contracts with Customers" ("ASU 2014-09"), which requires entities to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for those goods or services. The new guidance also requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including significant judgments and changes in judgments and assets recognized from costs incurred to obtain or fulfill a contract. In July 2015, the FASB voted to delay the effective date of ASU 2014-09 by one year to the first quarter of 2018 to provide companies sufficient time to implement the standards. Early adoption will be permitted, but not before the first quarter of 2017. Adoption can occur using one of two prescribed transition methods. In March and April 2016, the FASB issued ASU 2016-08, "Revenue from Contracts with Customers: Principal versus Agent Considerations (Reporting Revenue Gross versus Net)" and ASU 2016-10, "Revenue from Contracts with Customers: Identifying Performance Obligations and Licensing" which provide supplemental adoption guidance and clarification to ASC 2014-09. ASU 2016-08 and ASU 2016-10 must be adopted concurrently with the adoption of ASU 2014-09. The Company is currently evaluating the impact of these new standards.

In August 2014, the FASB issued ASU No. 2014-15, "Disclosure of Uncertainties About an Entity's Ability to Continue as a Going Concern" ("ASU 2014-15"), which provides guidance on management's responsibility in evaluating whether there is substantial doubt about an entity's ability to continue as a going concern and to provide related footnote disclosures. ASU 2014-15 is effective for the annual period ending after December 15, 2016, and for annual and interim periods thereafter. The adoption of ASU 2014-15 is not expected to have a material impact on our financial position, results of operations or cash flows.

During January 2016, the FASB issued ASU No. 2016-01, "Financial Instruments — Overall: Recognition and Measurement of Financial Assets and Financial Liabilities ("ASU 2016-01"). The standard addresses certain aspects of recognition, measurement, presentation, and disclosure of financial instruments. This ASU is effective for fiscal years, and interim periods within those years, beginning after December 15, 2017. Early adoption is not permitted with the exception of certain provisions related to the presentation of other comprehensive income. The adoption of ASU 2016-01 is not expected to have a material impact on our financial position, results of operations or cash flows.

During February 2016, the FASB issued ASU No. 2016-02, "Leases" ("ASU 2016-02"). The standard requires lessees to recognize a lease liability and a lease asset for all leases, including operating leases, with a term greater than 12 months on its balance sheet. The update also expands the required quantitative and qualitative disclosures surrounding leases. ASU 2016-02 is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The Company is currently evaluating the impact of the new standard.

In March 2016, the FASB issued ASU No. 2016-06, "Contingent Put and Call Option in Debt Instruments" ("ASU 2016-06"). ASU 2016-06 is intended to simplify the analysis of embedded derivatives for debt instruments that contain contingent put or call options. The amendments in ASU 2016-06 clarify that an entity is required to assess the embedded call or put options solely in accordance with the four-step decision sequence. Consequently, when a call (put) option is contingently exercisable, an entity does not have to initially assess whether the event that triggers the ability to exercise a call (put) option is related to interest rates or credit risks. The amendments in ASU 2016-06 take effect for public business entities for financial statements issued for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years. Early adoption is permitted, including adoption in an interim period. The Company does not expect the adoption of ASU 2016–01 to have a significant impact on its financial statements.

In March 2016, FASB issued ASU No. 2016-09, "Improvements to Employee Share-based Payment Accounting" ("ASU 2016-09"). ASU 2016-09 simplifies several aspects of the accounting for employee share-based payment transactions for both public and nonpublic entities, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification in the statement of cash flows. ASU 2016-09 is effective for annual periods beginning after December 15, 2017, and interim periods within annual periods beginning after December 15, 2018. Early adoption is permitted. The Company is currently evaluating the standard and the impact on its consolidated financial statements and footnote disclosures.

Management does not believe there would have been a material effect on the accompanying financial statements had any other recently issued, but not yet effective, accounting standards been adopted in the current period.

15. Fair Value

In accordance with FASB ASC 820, *"Fair Value Measurements and Disclosures,"* the following table represents the Company's fair value hierarchy for its financial assets and liabilities measured at fair value on a recurring basis as of June 30, 2016 and December 31, 2015:

June 30, 2016 (unaudited)	Level 2 (In thousands)	Level 3 (In thousands)	Total (In thousands)
Derivative Instruments	$ 10,579	$ 38,984	$ 49,563

December 31, 2015	Level 2 (In thousands)	Level 3 (In thousands)	Total (In thousands)
Derivative Instruments	$ 12,343	$ 35,623	$ 47,966

Level 3 financial instruments consist of certain common stock warrants and embedded conversion features. The fair value of these warrants and embedded conversion features that have exercise reset features are estimated using a Monte Carlo valuation model. The unobservable input used by the Company was the estimation of the likelihood of a reset occurring on the embedded conversion feature of the Amended and Restated Convertible Notes, the embedded conversion feature of the Amended and Restated Reimbursement Notes, the embedded conversion feature of the Amended and Restated Bridge Notes, and the embedded conversion feature of the Amended and Restated June 2010 Warrants. These estimates of the likelihood of completing an equity raise that would meet the criteria to trigger the reset provisions are based on numerous factors, including the remaining term of the financial instruments and the Company's overall financial condition.

The following table summarizes the changes in fair value of the Company's Level 3 financial instruments for the periods ended June 30, 2016 and December 31, 2015.

	June 30, 2016 (unaudited)	December 31, 2015
Beginning Balance	$ 35,623	$ 24,414
Derivative liability of embedded conversion feature of the Bridge Notes	143	377
Derivative liability of embedded conversion feature of the Reimbursement Notes	—	105
Derivative liability of the embedded conversion feature of the Convertible Notes	2,113	3,648
Change in fair value	1,105	7,079
Ending Balance	$ 38,984	$ 35,623

Changes in the unobservable input values would likely cause material changes in the fair value of the Company's Level 3 financial instruments. The significant unobservable input used in the fair value measurement is the estimation of the likelihood of the occurrence of a change to the contractual terms of the financial instruments. A significant increase (decrease) in this likelihood would result in a higher (lower) fair value measurement.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

SAFE HARBOR CAUTIONARY STATEMENT

Certain statements in this Management's Discussion and Analysis of Financial Conditions and Results of Operations and elsewhere in this report as well as statements made from time to time by our representatives may constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include (without limitation) statements regarding the success of our commercialization initiatives; the sufficiency of our cash position; our ability to enter into strategic partnerships; our ability, and that of our partners, to develop, manufacture and commercialize products using our Eligen ® technology; planned or expected studies and trials of oral formulations that utilize our Eligen ® Technology; the potential market size, advantages or therapeutic uses of our potential products. We do not undertake any obligation to publicly update any forward-looking statement, whether as a result of new information, future events, or otherwise, except as required by law. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any future results or achievements expressed or implied by such forward-looking statements. Such factors include the factors described under Part II, Item 1A. "Risk Factors" and other factors discussed in connection with any forward-looking statements.

General

Emisphere Technologies, Inc. is a commercial stage pharmaceutical and drug delivery company. We are in partnership with global pharmaceutical companies to develop new formulations of existing products, as well as new chemical entities, using our Eligen ® Technology. We launched our first prescription medical food product, oral Eligen B12™ in the U.S. in March 2015, and we are currently engaged in strategic discussions to optimize its economic value in the U.S. and global markets. Beyond Eligen B12™, we utilize our proprietary Eligen ® Technology to create new oral formulations of therapeutic agents. Our product pipeline includes prescription drug and medical food product candidates that are being developed in partnership or internally.

Our core business strategy is to build new, high-value partnerships and continue to expand upon existing partnerships, to enter into a strategic transaction or alliance to realize the full economic potential of the oral Eligen B12™ product, evaluate commercial opportunities for new prescription medical foods, and promote new uses for our Eligen ® Technology, a broad-based proprietary oral drug delivery platform which makes it possible to avoid injections for drug administration through the use of delivery agents, or "carriers," which facilitate or enable transport of therapeutic molecules, including large peptides and proteins, across biological membranes such as those of the gastrointestinal tract. Our product pipeline includes prescription drug and medical food product candidates that are being developed in partnership or internally.

Eligen ® Technology

The Eligen ® Technology is a broadly applicable proprietary oral drug delivery technology based on the use of proprietary synthetic chemical compounds known as Eligen ® delivery agents, or carriers. These carriers facilitate and enable the transport of therapeutic macromolecules (such as proteins, peptides, and polysaccharides) and poorly absorbed small molecules across biological membranes. The Eligen ® Technology not only facilitates absorption, but it acts rapidly in the upper sections of the gastrointestinal tract where absorption is thought to occur. Using Eligen ® Technology, most therapeutic macromolecules reach the general circulation in less than an hour post-dose, which can limit enzymatic degradation that typically affects macromolecules and may be advantageous in cases where time to onset of action is important (i.e. analgesics). The Eligen ® technology is distinguished from competitive technologies in that absorption takes place through a transcellular pathway, as opposed to passing between cells, preserving the integrity of the tight junctions within the cell walls and reducing the likelihood of inflammatory processes and autoimmune gastrointestinal diseases. Furthermore, Eligen ® Technology carriers are rapidly absorbed, distributed, metabolized and eliminated from the body, and they do not accumulate in the organs and tissues and are considered safe at anticipated doses and dosing regimens. Drugs or nutritional supplements whose bioavailability is limited by poor membrane permeability or chemical or biological degradation, and which have a moderate-to-wide therapeutic index, appear to be the best candidates for use with the Eligen ® Technology. Our carriers do not alter the chemical properties of the drug nor its biological activity. Target molecules could be currently available or under development. Such molecules are usually delivered by injection; and, in many cases, their benefits are limited due to poor bioavailability, slow on-set of action or variable absorption. In those cases, our technology may increase the benefit of the therapy by improving bioavailability or absorption or by decreasing time to onset of action. The Eligen ® Technology can be applied to the oral route of administration as well as other delivery pathways, such as buccal, rectal, inhalation, intra-vaginal or transdermal. The Eligen ® Technology makes it possible to deliver certain therapeutic molecules orally without altering their chemical form or biological activity. Eligen ® delivery agents, or "carriers", facilitate or enable the transport of therapeutic molecules across the mucous membranes of the gastrointestinal tract, to reach the tissues of the body where they can exert their intended pharmacological effect. Our development efforts are conducted internally or in collaboration with corporate development partners. Typically, the drugs that we target are at an advanced stage of development, or have already received regulatory approval, and are currently available on the market.

Eligen ® Technology License Agreements

Our most advanced collaborative partner, Novo Nordisk, is using our Eligen ® Technology in combination with its proprietary GLP-1 receptor agonists and insulins. Novo Nordisk recently began Phase III clinical development of its GLP-1 analog, oral-semaglutide, a once daily oral formulation of their long-acting GLP-1 analog for the treatment of Type 2 diabetes, using our absorption-enhancing carrier, Sodium N-[8-(2-hydroxybenzoyl) Amino] Caprylate (SNAC), which is one of our Eligen ® Technology delivery agents, or carriers. Novo Nordisk's Phase 3a program, consists of seven trials and approximately 9,300 patients with Type 2 diabetes. Novo Nordisk's decision to initiate this global phase 3a program follows encouraging results from the proof of concept Phase 2 program and consultations with regulatory authorities. The advancement of oral semaglutide into Phase 3a development represents a significant milestone for our Eligen ® Technology platform and supports our belief that products developed using our carriers have the potential to overcome bioavailability challenges commonly associated with the oral administration of peptides and certain other compounds.

In June 2008, Novo Nordisk and Emisphere entered into the GLP-1 Development and License Agreement (the GLP-1 License Agreement) under which Novo Nordisk acquired the right to develop and commercialize oral formulations of its GLP-1 analogs using the Eligen ® Technology. Under the GLP-1 License Agreement, we are eligible to receive product development and sales milestone payments, and royalties on sales in the event Novo Nordisk commercializes products developed under this agreement. In October 2015, we amended the GLP-1 License Agreement to provide for, among other things, a payment of $9.0 million to us from Novo Nordisk as prepayment of a product development milestone in exchange for a reduction in certain future royalty payments.

During October 2015, we also entered into a new Development and License Agreement with Novo Nordisk (the Expansion License Agreement) to develop and commercialize oral formulations of four classes of Novo Nordisk's investigational molecules targeting major metabolic disorders, including diabetes and obesity, using our oral Eligen ® Technology. Under the terms of the Expansion License Agreement, we licensed to Novo Nordisk the exclusive right to develop potential product candidates in three molecule classes, and the non-exclusive right to develop potential product candidates in a fourth molecule class, using the Eligen ® Technology. Pursuant to the Expansion License Agreement, we received a $5.0 million upfront licensing fee, and are eligible to receive up to $62.5 million in development and sales milestone payments for each of the three exclusively licensed molecule classes, and up to $20 million in development milestone payments for the non-exclusively licensed molecule class. Additionally, we are eligible to receive royalties on sales of each successfully commercialized product. Novo Nordisk is solely responsible for the development and commercialization of all product candidates. In addition, Emisphere granted Novo Nordisk the option to obtain exclusive and non-exclusive rights to develop and commercialize oral formulations of additional investigational molecules for the treatment of diabetes, obesity, and indications in other important therapeutic areas using the Eligen ® Technology. If Novo Nordisk exercises its option to develop and commercialize any additional investigational molecules, we would be entitled to receive an additional payment upon the exercise of each option for exclusive or non-exclusive development rights for each molecule class. We are eligible to receive up to $62.5 million in development and sales milestone payments for each additional exclusively licensed molecule class, and up to $20 million in development milestone payments for each additional non-exclusively licensed molecule class, plus royalties on sales of each commercialized product. The agreement remains in effect, on a country-by-country basis, for the longer of 10 years from the date of first sale of a licensed product in such country, or the date of expiration of the last-to-expire patent covered by the agreement in such country. Novo Nordisk may terminate this agreement with 90-days prior notice. We may terminate this agreement in the event that Novo Nordisk challenges the validity of any licensed patent under the agreement, but only with respect to the patents belonging to the patent family of the challenged patent. Either party may also terminate the agreement upon the other party's material breach, if not cured within a specified period of time. Upon a termination of the agreement by Emisphere for Novo Nordisk's breach, all intellectual property rights conveyed under the agreement shall revert back to us.

During December 2010, Novo Nordisk also licensed the right to develop and commercialize oral formulations of its insulin using our Eligen ® Technology.

We have also collaborated with Novartis AG in connection with the development and testing of oral formulations of several drug candidates. Novartis has the right to evaluate the feasibility of using our Eligen ® Technology with two new compounds to assess the potential for new product development opportunities. If Novartis chooses to develop oral formulations of these new compounds using the Eligen ® Technology, the parties will negotiate additional agreements. In that case, we could be entitled to receive development milestone and royalty payments in connection with the development and commercialization of these potentially new products. We will continue to concentrate on expanding our Eligen ® drug delivery technology business by seeking applications with prescription molecules obtained through partnerships with other pharmaceutical companies for molecules where oral absorption is difficult yet substantially beneficial if proven. We are also working to generate new interest in the Eligen ® Technology with potential partners and attempting to expand our current collaborative relationships to take advantage of the critical knowledge that others have gained by working with our technology. Finally, we continue to pursue commercialization of product candidates developed internally. We believe that these internal candidates need to be developed with reasonable investment in an acceptable time period and with a reasonable risk-benefit profile.

Oral Eligen B12™ Rx

We launched oral Eligen B12™ Rx in March 2015 to positive physician and patient reception. From the start, we have continuously evaluated the product's sales performance and uptake in light of our current commercial and financial resources, and determined that a strategic transaction or collaboration with a third party that possesses the requisite marketing power and resources is necessary for the product to reach its full market potential in the United States and internationally. Simultaneously, during the fourth quarter 2015, we were approached by several major Pharma and Consumer Healthcare Companies expressing interest in licensing or acquiring our now on-the-market Eligen B12™ product. As a result we have concluded that we should evaluate potential strategic transactions and collaborations with these potential suitors in order to

optimize shareholder value. These developments have also led to our decision to phase-out our small contract field force and re-prioritize our marketing resources towards more efficient non-field force promotion. Accordingly, we are evaluating potential strategic transactions and collaborations with third parties for oral Eligen B12™ Rx in the United States and internationally in order to optimize shareholder value.

Our other product candidates in development are in earlier or preclinical research phases, and we continue to assess them for their compatibility with our technology and market need. Our intent is to seek partnerships with pharmaceutical and biotechnology companies for certain of these products as we continue to expand our pipeline with product candidates that demonstrate significant opportunities for growth. Our focus is on molecules that meet the criteria for success based on our increased understanding of our Eligen ® Technology and prescription medical foods. Our preclinical programs focus on the development of oral formulations of potentially new treatments for diabetes and products in the areas of cardiovascular, appetite suppression and pain and on the development and potential expansion of nutritional supplement products.

To support and streamline our internal development programs, we implemented an innovative commercialization strategy for the Eligen ® Technology. Using extensive safety data available for our carrier, we obtained GRAS (Generally Recognized as Safe) status for SNAC, and then combined the Eligen ® Technology with B12, another GRAS substance where bioavailability and absorption is difficult and improving such absorption would yield substantial benefit and value. Given sufficient time and resources, we intend to apply this strategy to develop other products. Examples of GRAS substances that may be developed into additional commercial products using this strategy include vitamins such as other B Vitamins, minerals such as iron, and other supplements such as the polyphenols and catechins, among others. We hope to expand our product portfolio globally with collaborative partners in different geographic markets.

Funding required to continue developing our product pipeline may be partially paid by income generated from a strategic transaction with Eligen B12™, and from license arrangements whose value tends to increase as product candidates move from pre-clinical into clinical development. It is our intention that investments that may be required to fund our research and development will be approached incrementally in order to minimize disruption or dilution. The Company also continues to focus on improving operational efficiency. Additionally, we have accelerated the commercialization of the Eligen ® Technology in a cost effective way and gained operational efficiencies by tapping into advanced scientific processes offered by independent contractors.

Our website is www.emisphere.com . The contents of that website are not incorporated herein by reference. Investor related questions should be directed to info@emisphere.com .

Results of Operations

Three Months Ended June 30, 2016 Compared to Three Months Ended June 30, 2015:

	June 30, 2016 (unaudited) (in thousands)	June 30, 2015 (unaudited) (in thousands)	Change (in thousands)
Net revenue	$ 286	$ 88	$ 198
Cost of goods sold	46	55	(9)
Write off of slow moving inventory	654	—	654
Gross profit (loss)	(414)	33	(447)
Operating expenses	1,551	4,597	(3,046)
Operating loss	(1,965)	(4,564)	2,599
Other non-operating income (expense)	(5,548)	11,700	(17,248)
Net income (loss)	$ (7,513)	$ 7,136	$ 14,649

Net revenue increased $198 thousand due to the commercial launch of the Eligen B12™ Product during March 2015.

Gross profit (loss) was $(0.4) million due primarily to the write-off of approximately $0.7 million Eligen B12™ due to slow moving inventory.

Operating expenses decreased $3.0 million or 67% to $1.6 million for the three months ended June 30, 2016 in comparison to the same period last year due primarily to a $2.9 million reduction in sales, marketing and other commercial costs commensurate with our decision to phase out our sales field force, and reduce and reallocate marketing resources toward more efficient non-field force promotion of the oral Eligen B12 product in the U.S. during 2016. Details the changes in operating expenses are highlighted in the table below:

	(in thousands)
Decrease in human resources costs	$ (75)
Decrease in professional fees	(131)
Decrease in sales and marketing costs, excluding human resource costs	(2,668)
Increase in occupancy costs	3
Decrease in product development	(91)
Decrease in depreciation	—
Decrease in other costs	(84)
	$ (3,046)

Human resource costs decreased $75 thousand, or 11%, due primarily to a reduction in staff related to our chief medical officer and other administrative staff.

Professional fees decreased $0.1 million, or 19%, due primarily to a decrease in consulting costs including medical regulatory, regulatory and manufacturing support in connection with the introduction of oral Eligen B12 in the U.S. during March 2015.

Sales and marketing costs decreased $2.7 million, or 98%, due a reduction in sales, marketing and other commercial costs commensurate with our decision to phase out our sales field force, and reduce and reallocate marketing resources toward more efficient non-field force promotion of the oral Eligen B12 product in the U.S. during 2016.

Occupancy costs increase $3 thousand, or 7%.

Product development costs decreased $91 thousand, or 55%, due primarily to the introduction of oral Eligen B12 in the U.S. during March 2015.

Other costs decreased $84 thousand, or 29%, due primarily to a $81 thousand decrease in information technology infrastructure and other expenditures in connection with the commercial launch of Eligen B12 in the U.S. during March 2015.

Our principal operating costs include the following items as a percentage of total operating expenses:

	Three Months Ended June 30,	
	2016	2015
Human resource costs, including benefits	40%	15%
Professional fees for sales, marketing, legal, intellectual property, accounting and consulting	39%	74%
Occupancy costs	3%	1%
Product development costs	5%	4%
Depreciation and amortization	— %	— %
Other	13%	6%
	100%	100%

Other non-operating (expense) income decreased $17.2 million, to $(5.5) million for the three months ended June 30, 2016 compared to the same period during 2014, due primarily to a $16.8 million decrease in the fair value of derivative instruments from the change in the price of the Company's common stock, in addition to a $0.4 million increase in interest expense.

As a result of the above factors, we had a net loss of $7.5 million for the three months ended June 30, 2016, compared to net income of $7.1 million for the three months ended June 30, 2015.

Six Months Ended June 30, 2016 Compared to Six Months Ended June 30, 2015:

	Six Months Ended June 30, 2016	Six Months Ended June 30, 2015	Change
	(in thousands)		
Net revenue	$ 659	$ 94	$ 565
Cost of goods sold	98	80	18
Write-off of slow moving inventory	654	—	654
Gross profit (loss)	(93)	14	(107)
Operating expenses	4,581	9,246	(4,665)
Operating loss	(4,674)	(9,232)	4,558
Other non-operating expense	(4,668)	(16,600)	11,932
Net loss	$ (9,342)	$ (25,832)	$16,490

Net revenue increased $0.6 million due to the commercial launch of the Eligen B12™ Product during March 2015.

Gross profit (loss) was $0.1 million due primarily to the write-off of approximately $0.7 million Eligen B12™ due to slow moving inventory.

Operating expenses decreased $4.7 million or 50% for the six months ended June 30, 2016 in comparison to the same period last year due primarily to a $4.4 million reduction in sales, marketing and other commercial costs commensurate with our decision to phase out our sales field force, and reduce and reallocate marketing resources toward more efficient non-field force promotion of the oral Eligen B12 product in the U.S. during 2016. Details the changes in operating expenses are highlighted in the table below:

	(in thousands)
Increase in human resources costs	$ 55
Decrease in professional fees	(253)
Decrease in sales and marketing costs, excluding human resource costs	(4,288)
Increase in occupancy costs	3
Decrease in product development	(86)
Decrease in other costs	(96)
	$ 4,665

Human resource costs increased $55 thousand, or 4%, due primarily to a $43 thousand increase in non-cash stock option expense during 2016.

Professional fees decreased $0.3 million, or 18%, due primarily decrease in consulting costs including medical regulatory, regulatory and manufacturing support in connection with the introduction of oral Eligen B12 in the U.S. during March 2015.

Sales and marketing costs decreased $4.3 million, or 76%, due a reduction in sales, marketing and other commercial costs commensurate with our decision to phase out our sales field force, and reduce and reallocate marketing resources toward more efficient non-field force promotion of the oral Eligen B12 product in the U.S. during 2016.

Occupancy costs increased $3 thousand, or 4%.

Product development costs decreased $86 thousand, or 40%, due primarily to the introduction of oral Eligen B12 in the U.S. during March 2015.

Other costs decreased $96 thousand, or 18%, due primarily to a $104 thousand decrease in information technology infrastructure in connection with the commercial launch of Eligen B12 in the U.S. during March 2015.

Our principal operating costs include the following items as a percentage of total operating expenses:

	Six Months Ended June 30,	
	2016	2015
Human resource costs, including benefits	31%	15%
Professional fees for sales, marketing, legal, intellectual property, accounting and consulting	55%	76%
Occupancy costs	2%	1%
Product development costs	3%	2%
Depreciation and amortization	— %	— %
Other	9%	6%
	100%	100%

Other non-operating expense for the six months ended June 30, 2016 increased $11.9 million, or 72%, in comparison to the same period last year, due primarily to a $13.2 million increase in the fair value of derivative instruments net of a $1.3 million increase in interest expense.

As a result of the above factors, we had a net loss of $9.3 million for the six months ended June 30, 2016, compared to net loss of $25.8 million for the six months ended June 30, 2015.

Liquidity and Capital Resources

Since our inception in 1986, we have generated significant losses from operations and we anticipate that we will continue to generate significant losses from operations for the foreseeable future, and that in order to continue as a going concern, our business will require substantial additional investment that we have not yet secured.

As of June 30, 2016, our accumulated deficit was approximately $563.9 million; our stockholder's deficit was $161.1 million. Net loss was $7.5 million compared to a net income of $7.1 million for the three months ended June 30, 2016 and 2015, respectively; our net loss was $9.3 million and $25.8 million for the six months ended June 30, 2016 and 2015, respectively. On June 30, 2016 we had approximately $8.7 million in cash. We have limited capital resources and operations to date have been funded with the proceeds from private and public debt and equity financings, collaborative research agreements and income earned on investments.

As of June 30, 2016, our financial obligations included approximately $49.7 million (face value) under our Second Amended and Restated Convertible Notes (the "Convertible Notes"), approximately $24.3 million (face value) under a loan agreement entered into on August 20, 2014 (the "Loan Agreement"), approximately $0.8 million (face value) under our Second Amended and Restated Reimbursement Notes (the "Reimbursement Notes"), and approximately $2.3 million (face value) under our Second Amended and Restated Bridge Notes (the "Bridge Notes"). The Convertible Notes and the Loan Agreement are subject to annual net sales performance targets.

Under the terms of the Loan Agreement, described in Note 9 to the Financial Statements, Emisphere borrowed an aggregate of $20.0 million to finance the development, manufacturing, marketing and sales of its oral Eligen B12 Rx Product. The loan facility will mature on December 31, 2019 and bears interest at a rate of 13% per year. In the event that we do not satisfy annual net sales targets of Eligen B12 by December 31 for each fiscal year beginning 2015 through 2019, we will be in default under the Loan Agreement, provided that we are not granted a waiver of the event of default resulting from the failure to satisfy the net sales target. On November 10, 2015, the creditor under our Loan Agreement and Convertible Notes agreed to waive any event of default resulting from our failure to satisfy the net sales milestones for the Eligen B12 product for the 2015 fiscal year specified in our Loan Agreement and Convertible Notes.

On October 26, 2015, we received a total payment of $14 million from Novo Nordisk pursuant to, and consisting of, $5 million as payment for entry into the Expansion License Agreement and $9 million as prepayment of a product development milestone and in exchange for a reduction in certain future royalty payments that may have become due and payable under the terms of the GLP-1 Development License Agreement.

Under the terms of its loan agreements, we are obligated to pre-pay certain loans and notes using 50% of any extraordinary receipts, such as the $14 million received from Novo Nordisk. The creditor under our Loan Agreement and Reimbursement Notes has agreed to extend the date by which we are required to use 50% of the $14 million received from Novo Nordisk to pre-pay certain loans and notes until August 16, 2016. Because the Loan Prepayment deadline has not been extended beyond one year from June 30, 2016, we have classified $7.0 million of the loans and notes as a current liability as of June 30, 2016.

We believe that our current cash balance will provide sufficient capital to continue operations through September 2016. However, if the pre-payment obligation is further extended or waived, the Company will have sufficient cash to operate through September 2017. The Company's future capital requirements beyond September 2016 (or September 2017, in the event the pre-payment obligation is further extended or waived) and our financial success depend largely on its ability to raise additional capital, including by leverage existing and securing new partnering opportunities for Eligen B12 and for the Eligen ® Technology.

While our plan is to raise capital from commercial operations and/or product partnering opportunities to address our capital deficiencies and meet our operating cash requirements, there is no assurance that our plans will be successful. If we fail to generate sufficient capital from commercial operations or partnerships, we will need to seek capital from other sources and risk default under the terms of our existing loans. We cannot assure you that financing will be available on favorable terms or at all. If we fail to generate sufficient additional capital from sales of oral Eligen B12 or to obtain substantial cash inflows from existing or new partners or other sources prior to September 2016 (or September 2017, in the event

the prepayment obligations is further extended or waived), we could be forced to cease operations. Additionally, if additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities would result in dilution to our existing stockholders. These conditions raise substantial doubt about our ability to continue as a going concern. Consequently, the audit reports prepared by our independent registered public accounting firm relating to our financial statements for the years ended December 31, 2015, 2014 and 2013 include an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern. Furthermore, despite our optimism regarding the Eligen ® Technology, even in the event that the Company is adequately funded, there is no guarantee that any of our products or product candidates will perform as hoped or that such products can be successfully commercialized.

For further discussion, see Part II, Item **1A Risk Factors.**

Off-Balance Sheet Arrangements

As of June 30, 2016, we had no off-balance sheet arrangements.

Critical Accounting Estimates

Please refer to the Company's Annual Report on Form 10-K filed with the SEC on March 29, 2016 for detailed explanations of its critical accounting estimates, which have not changed during the period ended June 30, 2016.

New Accounting Pronouncements

For a discussion of new accounting pronouncements, see Note 14 set forth in the Notes to Condensed Financial Statements contained in Part I, Item 1 of this Report.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Fair Value of Warrants and Derivative Liabilities. As further described in Note 10 to our Financial Statements set forth in Part I, Item 1 of this Report, at June 30, 2016, the estimated fair value of derivative instruments was $49.6 million. We estimate the fair values of these instruments using the Black-Scholes option pricing model which takes into account a variety of factors, including historical stock price volatility, risk-free interest rates, remaining maturity and the closing price of our common stock. Furthermore, the estimated fair values of the conversion features embedded in our Convertible Notes, Bridge Notes, Reimbursement Notes, and June 2010 Warrants, which contain reset provisions, were measured using the Monte Carlo valuation model. In using the Monte Carlo model, we estimate the probability and timing of potential future financing and fundamental transactions as applicable. We are required to revalue this liability each quarter. We believe that the assumptions that have the greatest impact on the determination of fair value is the closing price of our common stock and historical stock price volatility. The following table illustrates the potential effect of changes in the assumptions used to calculate fair value:

	Derivatives (in thousands)
25% increase in stock price	$ 8,779
50% increase in stock price	16,414
5% increase in assumed volatility	1,990
25% decrease in stock price	(7,999)
50% decrease in stock price	(22,527)
5% decrease in assumed volatility	(1,909)

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

The Company's senior management is responsible for establishing and maintaining a system of disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934 (the "Exchange Act")) designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

The Company has evaluated the effectiveness of the design and operation of its disclosure controls and procedures under the supervision of and with the participation of management, including its Chief Executive Officer and Chief Financial Officer, as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures are effective.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting during the three month period ended June 30, 2016 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II

ITEM 1. LEGAL PROCEEDINGS

As of the date hereof, the Company is not a party to any legal proceedings, and none are known to be contemplated against the Company.

ITEM 1A. RISK FACTORS

The following risk factors should be read carefully in connection with evaluating our business and the forward-looking statements that we make in this Report and elsewhere (including oral statements) from time to time. Any of the following risks could materially and adversely affect our business, our operating results, our financial condition and the actual outcome of matters as to which forward-looking statements are made in this Report. Our business is subject to many risks, which are detailed further in our Annual Report on Form 10-K for the year ended December 31, 2015 as filed with the SEC on March 29, 2016, including the following. We have denoted with an asterisk (*) in the following discussion those risk factors that are materially revised since our Annual Report on our 2015 10-K.

Financial Risks

- We have a history of operating losses and we may never achieve profitability. Our failure to raise capital when needed or satisfy the terms of our new and existing debt arrangements as they become due would adversely affect our business, financial condition, and results of operations, and could force us to reduce or discontinue operations. The Company estimates that if we fail to raise additional capital or if we fail to complete a strategic transaction or collaboration with a third party to achieve our planned commercial targets for oral EligenB12 in the U.S., or if we fail to obtain substantial cash inflows from existing or new partners by September 2016 (or September 2017, in the event the pre-payment obligation is further extended or waived), the Company could be forced to cease operations.
- If we fail to raise sufficient capital from commercial operations or partnerships, we will need to seek capital from other sources. We cannot assure you that financing will be available on favorable terms or at all. Additionally, if additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities would result in dilution to our existing stockholders.
- If we fail to generate sufficient additional capital from operations or obtain substantial cash inflows from existing or new partners or other sources prior to September 2016 (or September 2017, in the event the pre-payment obligation is further extended or waived), we could be forced to cease operations.
- The audit opinion issued by our independent registered public accounting firm relating to our financial statements for the year ended December 31, 2015 contained a going concern explanatory paragraph.

- * We may not be able to meet covenants or financial obligations, including annual revenue targets, detailed in our Loan Agreement, Convertible Notes, Reimbursement Notes, and Bridge Notes issued to MHR in August 2014 (collectively, the "MHR Notes"), or the Royalty Agreement, which could result in an increase in the interest rate on the MHR Notes and/or accelerated maturity of the MHR Notes, which we might not be able to satisfy. The MHR Notes are secured by a first priority lien in favor of MHR on substantially all of our assets, and if we default on our obligations under the MHR Notes, MHR may elect to foreclose on such assets, in which event we would be required to cease operations.

Risks Related to our Business

- We are highly dependent upon collaborative partners to develop and commercialize compounds using our delivery agents.
- Our business will suffer if we fail or are delayed in achieving our commercial targets for our oral Eligen B12™ product.
- We are highly dependent on the clinical success of our product candidates.
- Our collaborative partners control the clinical development of certain of our drug candidates and may terminate their efforts at will.
- Our product candidates are in various stages of development, and we cannot be certain that any will be suitable for commercial purposes.
- Our collaborative partners are free to develop competing products.
- Our business will suffer if we cannot adequately protect our patent and proprietary rights.
- We may be at risk of having to obtain a license from third parties making proprietary improvements to our technology.
- We are dependent on third parties to manufacture and test our products.
- We are dependent on our key personnel and if we cannot recruit and retain leaders in our research, development, manufacturing, and commercial organizations, our business will be harmed.

Risks Related to our Industry

- Our future business success depends heavily upon regulatory approvals and compliance with regulatory requirements, which can be difficult to obtain or maintain for a variety of reasons, including cost. More specifically, the regulatory approval process for prescription and nonprescription product candidates will likely vary by the nature of the therapeutic molecule being delivered.
- We may face product liability claims related to participation in clinical trials for future products.
- We face rapid technological change and intense competition.

Other Risks

- Provisions of our corporate charter documents, Delaware law, our financing documents and our stockholder rights plan may dissuade potential acquirers or prevent the replacement or removal of our current management and members of our Board of Directors and may thereby affect the price of our common stock.
- Our stock price has been and may continue to be volatile.
- Future sales of common stock or warrants, or the prospect of future sales, may depress our stock price.

For a more complete listing and description of these and other risks that the Company faces, please see our Annual Report for the year ended December 31, 2015 on Form 10-K as filed with the SEC on March 29, 2016. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information.

None.

ITEM 6. EXHIBITS

Exhibit Number	Description of Exhibit
31.1	Certification of the President and Chief Executive Officer pursuant to Rule 13a-14(a) and 15d-14(a), as adopted pursuant to section 302 of the Sarbanes- Oxley Act of 2002 (filed herewith).
31.2	Certification of the Chief Financial Officer pursuant to Rule 13a-14(a) and 15d-14(a), as adopted pursuant to section 302 of the Sarbanes- Oxley Act of 2002 (filed herewith).
32.1	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to section 906 of the Sarbanes- Oxley Act of 2002 (furnished herewith).

101. INS	XBRL Instance Document (submitted electronically herewith).
101. SCH	XBRL Taxonomy Extension Schema Document (submitted electronically herewith).
101. CAL	XBRL Taxonomy Extension Calculation Linkbase Document (submitted electronically herewith).
101. LAB	XBRL Taxonomy Extension Label Linkbase Document (submitted electronically herewith).
101. PRE	XBRL Taxonomy Extension Presentation Linkbase Document (submitted electronically herewith).
101. DEF	XBRL Taxonomy Extension Definition Linkbase Document (submitted electronically herewith).

SIGNATURES

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

Emisphere Technologies, Inc.

Date: August 15, 2016

/s/ Alan L. Rubino
Alan L. Rubino
President and Chief Executive Officer
(Principal Executive Officer)

Date: August 15, 2016

Emisphere Technologies, Inc.

/s/ Alan L. Rubino
Acting Chief Financial Officer
(Principal Financial and Accounting Officer)

EXHIBIT INDEX

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Exhibit 31.1

CERTIFICATION PURSUANT TO
RULE 13a-14(a) AND 15d-14(a),
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Alan L. Rubino, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Emisphere Technologies, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiary, is made known to us by others within that entity, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 15, 2016

/s/ Alan L. Rubino
Alan L. Rubino
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULE 13a-14(a) AND 15d-14(a),
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Alan L. Rubino, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Emisphere Technologies, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiary, is made known to us by others within that entity, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 15, 2016

/s/ Alan L. Rubino
Acting Chief Financial Officer

Exhibit 32.1

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

In connection with the Quarterly Report of Emisphere Technologies, Inc. (the "Company") on Form 10-Q for the quarter ending June 30, 2016, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Alan L. Rubino, as Chief Executive Officer and Chief Financial Officer of the Company certify, pursuant to and for the purpose of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 15, 2016

/s/ Alan L. Rubino
Alan L. Rubino
President and Chief Executive Officer

/s/ Alan L. Rubino
Acting Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to Emisphere Technologies, Inc. and will be retained by Emisphere Technologies, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.