

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 September 30, 2017

OR

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

For the transition period from _____ to _____

Commission file number: 001-34951

XTANT MEDICAL HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation or organization)

20-5313323

(I.R.S. Employer
Identification No.)

664 CRUISER LANE

BELGRADE, MONTANA 59714

(Address of principal executive offices) (Zip code)

(406) 388-0480

(Registrant's telephone number, including area code)

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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

Non-accelerated filer

(Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

Emerging growth company

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

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

Number of shares of common stock, \$0.000001 par value, of registrant outstanding at November 21, 2017: 18,173,007.

XTANT MEDICAL HOLDINGS, INC.
FORM 10-Q

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PART I - FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**XTANT MEDICAL HOLDINGS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS**

	As of September 30, 2017 (unaudited)	As of December 31, 2016
ASSETS		
Current Assets:		
Cash and cash equivalents	\$ 2,069,088	\$ 2,578,267
Trade accounts receivable, net of allowance for doubtful accounts of \$2,109,155 and \$1,653,385 respectively	13,909,090	18,991,872
Current inventories, net	24,038,913	26,266,457
Prepaid and other current assets	664,581	1,149,615
Total current assets	40,681,672	48,986,211
Non-current inventories, net	717,817	971,854
Property and equipment, net	11,450,837	15,840,730
Goodwill	41,534,626	41,534,626
Intangible assets, net	32,548,102	35,940,810
Other assets	1,523,430	827,374
Total Assets	\$ 128,456,484	\$ 144,101,605
LIABILITIES & STOCKHOLDERS' DEFICIT		
Current Liabilities:		
Accounts payable	\$ 7,350,313	\$ 10,471,944
Accounts payable - related party (note 13)	344,150	640,442
Revolving line of credit	-	10,448,283
Accrued liabilities	13,425,741	8,982,187
Warrant derivative liability	196,929	333,613
Current portion of capital lease obligations	319,095	244,847
Debt, less issuance costs	65,609,693	-
Total current liabilities	87,245,921	31,121,316
Long-term Liabilities:		
Capital lease obligation, less current portion	658,011	832,152
Long-term convertible debt, less issuance costs	70,781,212	68,937,247
Long-term debt, less issuance costs	-	50,284,187
Total Liabilities	158,685,144	151,174,902
Commitments and Contingencies (note 10)		
Stockholders' Deficit:		
Preferred stock, \$0.000001 par value; 5,000,000 shares authorized; no shares issued and Outstanding	-	-
Common stock, \$0.000001 par value; 95,000,000 shares authorized; 18,173,007 shares issued and outstanding as of September 30, 2017 and 17,249,315 shares issued and outstanding as of December 31, 2016	18	17
Additional paid-in capital	86,297,517	85,461,210
Accumulated deficit	(116,526,195)	(92,534,524)
Total Stockholders' Deficit	(30,228,660)	(7,073,297)
Total Liabilities & Stockholders' Deficit	\$ 128,456,484	\$ 144,101,605

See notes to unaudited condensed consolidated financial statements.

XTANT MEDICAL HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue				
Orthopedic product sales	\$ 19,618,192	\$ 22,907,717	\$ 62,985,537	\$ 65,025,908
Other revenue	170,891	186,423	294,375	505,971
Total Revenue	19,789,083	23,094,140	63,279,912	65,531,879
Cost of sales				
	8,416,239	7,114,041	23,472,107	20,749,381
Gross Profit	11,372,844	15,980,099	39,807,805	44,782,498
Operating Expenses				
General and administrative	3,330,230	3,773,236	11,985,041	11,216,112
Sales and marketing	8,903,777	11,242,820	31,037,878	32,115,763
Research and development	504,227	928,930	1,842,907	2,612,402
Depreciation and amortization	1,353,997	1,265,490	4,104,565	3,690,519
Acquisition and integration related expenses	-	517,083	-	1,269,613
Separation related expenses	791,538	-	1,396,457	-
Non-cash consulting expense	(20,000)	156,129	216,581	266,721
Total Operating Expenses	14,863,769	17,883,688	50,583,429	51,171,130
Loss from Operations	(3,490,925)	(1,903,589)	(10,775,624)	(6,388,632)
Other Income (Expense)				
Interest expense	(3,809,771)	(3,163,534)	(10,538,422)	(8,974,895)
Change in warrant derivative liability	(19,549)	220,409	136,684	716,738
Other income (expense)	(1,194,041)	(51,350)	(2,814,309)	(309,924)
Total Other Income (Expense)	(5,023,361)	(2,994,475)	(13,216,047)	(8,568,081)
Net Loss from Operations	\$ (8,514,286)	\$ (4,898,064)	\$ (23,991,671)	\$ (14,956,713)
Net loss per share:				
Basic	\$ (0.47)	\$ (0.40)	\$ (1.33)	\$ (1.24)
Dilutive	\$ (0.47)	\$ (0.40)	\$ (1.33)	\$ (1.24)
Shares used in the computation:				
Basic	18,169,511	12,193,970	18,065,911	12,064,782
Dilutive	18,169,511	12,193,970	18,065,911	12,064,782

See notes to unaudited condensed consolidated financial statements.

XTANT MEDICAL HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Nine Months Ended September 30,	
	2017	2016
Operating activities:		
Net loss	\$ (23,991,671)	\$ (14,956,713)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	7,432,544	5,551,854
Non-cash interest	9,966,139	4,477,148
Loss on impairment and disposal of fixed assets	1,909,385	-
Non-cash consulting expense/stock option expense	592,888	522,987
(Gain) loss on sale of fixed assets	-	(14,149)
Provision for losses on accounts receivable and inventory	1,710,746	898,285
Change in derivative warrant liability	(136,684)	(716,738)
Changes in operating assets and liabilities:		
Accounts receivable	4,135,353	(859,026)
Inventories	1,718,264	(3,958,050)
Prepaid and other assets	(211,022)	(1,482,561)
Accounts payable	(3,417,923)	3,155,962
Accrued liabilities	(896,788)	(3,813,998)
Net cash used by operating activities	<u>(1,188,769)</u>	<u>(11,194,999)</u>
Investing activities:		
Purchases of property and equipment and intangible assets	(1,455,845)	(5,566,569)
Proceeds from sale of fixed assets	-	16,400
Net cash used by investing activities	<u>(1,455,845)</u>	<u>(5,550,169)</u>
Financing activities:		
Proceeds from long-term debt	12,787,094	-
Payments on capital leases	(203,376)	(80,071)
Proceeds from the issuance of long-term debt	-	1,000,000
Proceeds from the issuance of convertible debt	-	2,212,718
Proceeds from revolving line of credit	-	8,353,113
Payments on revolving line of credit	(10,448,283)	-
Net proceeds from issuance of stock	-	300,000
Net cash provided by financing activities	<u>2,135,435</u>	<u>11,785,760</u>
Net change in cash and cash equivalents	(509,179)	(4,959,408)
Cash and cash equivalents at beginning of period	2,578,267	6,368,016
Cash and cash equivalents at end of period	<u>\$ 2,069,088</u>	<u>\$ 1,408,608</u>

See notes to unaudited condensed consolidated financial statements.

Notes to Unaudited Condensed Consolidated Financial Statements

(1) Business Description and Summary of Significant Accounting Policies

Business Description

The accompanying condensed consolidated financial statements include the accounts of Xtant Medical Holdings, Inc. (“Xtant”), formerly known as Bacterin International Holdings, Inc., a Delaware corporation, and its wholly owned subsidiaries, Xtant Medical, Inc. (“Xtant Medical”), a Delaware corporation, Bacterin International, Inc., (“Bacterin”) a Nevada corporation and X-Spine Systems, Inc. (“X-spine”), an Ohio corporation, (Xtant, Xtant Medical, Bacterin and X-spine are jointly referred to herein as the “Company”). All intercompany balances and transactions have been eliminated in consolidation. Xtant develops, manufactures and markets regenerative orthopedic products for domestic and international markets and fixation devices. Xtant products serve the combined specialized needs of orthopedic and neurological surgeons, including orthobiologics for the promotion of bone healing, implants and instrumentation for the treatment of spinal disease, tissue grafts for the treatment of orthopedic disorders to promote healing following spine, cranial and foot surgeries and the development, manufacturing and sale of medical devices for use in orthopedic spinal surgeries.

The markets in which the Company competes are highly competitive and rapidly changing. Significant technological advances, changes in customer requirements, or the emergence of competitive products with new capabilities or technologies could adversely affect the Company’s operating results. The Company’s business could be harmed by a decline in demand for, or in the prices of, its products or as a result of, among other factors, any change in pricing or distribution methods, increased price competition, changes in government regulations or a failure by the Company to keep up with technological change. Further, a decline in available donors could have an adverse impact on our business.

The accompanying interim condensed consolidated financial statements of Xtant for the three and nine months ended September 30, 2017 and 2016 are unaudited and are prepared in accordance with accounting principles generally accepted in the United States of America. They do not include all disclosures required by generally accepted accounting principles for annual consolidated financial statements, but in the opinion of management, include all adjustments, consisting only of normal recurring items, necessary for a fair presentation. Interim results are not necessarily indicative of results which may be achieved in the future for the full year ending December 31, 2017.

These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto which are included in Xtant’s Annual Report on Form 10-K for the year ended December 31, 2016. The accounting policies set forth in those annual consolidated financial statements are the same as the accounting policies utilized in the preparation of these condensed consolidated financial statements, except as modified for appropriate interim consolidated financial statement presentation.

Going Concern

The Company has incurred losses since its inception. The terms, conditions and amounts outstanding under the Company’s debt agreements (See Note 7, “Debt” below) raise substantial doubt about the Company’s ability to continue as a going concern. The Company has established a special committee of its board of directors to evaluate restructuring alternatives assist in related negotiations with the Company’s lenders and consider alternatives for raising new capital. The Company also is evaluating various cost-reduction and cash flow improvement measures. However, there can be no assurance that the Company will be successful in these efforts.

The accompanying condensed consolidated financial statements have been prepared assuming that the Company will continue as a going concern; however, the above conditions raise substantial doubt about the Company’s ability to do so. The condensed consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result should the Company be unable to continue as a going concern.

CRO Agreement

On May 8, 2017, the Company entered into an agreement (the “CRO Agreement”) with Aurora Management Partners Inc. (“Aurora”). Pursuant to the CRO Agreement, David Baker serves as Chief Restructuring Officer of the Company (the “CRO”). The CRO and Aurora personnel, referred to as Deputy Restructuring officers, assisting on this engagement report to the special restructuring committee of the board of directors of the Company and provide periodic updates on progress made in fulfilling the scope of services. The term of the agreement will continue until the engagement is completed or earlier if the engagement is terminated by either party. Aurora is paid the hourly rates set forth on Schedule A to the CRO Agreement and is reimbursed for its expenses actually incurred in providing the services. The CRO Agreement may be terminated by either party, in its sole discretion, for any reason and the termination is effective immediately upon the other party’s receipt of written notice of the termination.

Concentrations and Credit Risk

The Company's accounts receivable are due from a variety of health care organizations and distributors throughout the world. No single customer accounted for more than 10% of revenue or accounts receivable for the comparable periods. The Company provides for uncollectible amounts when specific credit issues arise. Management's estimates for uncollectible amounts have been adequate during prior periods, and management believes that all significant credit risks have been identified at September 30, 2017.

In the nine months ended September 30, 2017, Xtant purchased from Norwood Medical less than 10% of its operating products (See Note 13, "Related Party Transactions" below) and approximately 12% for the same period in 2016.

Use of Estimates

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amount of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the period. Significant estimates include the carrying amount of property and equipment, goodwill, and intangible assets and liabilities; valuation allowances for trade receivables, inventory, and deferred income tax assets and liabilities; valuation of the warrant derivative liability, inventory, and estimates for the fair value of stock options grants and other equity awards upon which the Company determines stock-based compensation expense. Actual results could differ from those estimates.

Long-Lived Assets

Long-lived assets, including intangible assets, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the estimated fair value of the assets.

Goodwill

Goodwill represents the excess of costs over fair value of assets of businesses acquired. Goodwill and intangible assets acquired in a purchase business combination and determined to have indefinite useful lives are not amortized, instead they are tested for impairment at least annually and whenever events or circumstances indicate the carrying amount of such asset may not be recoverable. In its evaluation of goodwill, the Company performs an assessment of qualitative factors to determine if it is more-likely-than-not that goodwill might be impaired and whether it is necessary to perform the two-step goodwill impairment test. The Company conducts its annual impairment test on December 31 of each year.

Revenue Recognition

Revenue is recognized when all of the following criteria are met: a) the Company has entered into a legally binding agreement with the customer; b) the products or services have been delivered; c) the Company's fee for providing the products and services is fixed or determinable; and d) collection of the Company's fee is probable.

The Company's policy is to record revenue net of any applicable sales, use, or excise taxes. If an arrangement includes a right of acceptance or a right to cancel, revenue is recognized when acceptance is received or the right to cancel has expired.

The Company ships to certain customers under consignment arrangements whereby the Company's product is stored by the customer. The customer is required to report the use to the Company and upon such notice, the Company invoices the customer and revenue is recognized when the above criteria have been met.

Research and Development

Research and development costs, which are principally related to internal costs for the development of new devices and biologics and processes are expensed as incurred.

Other Income (Expense)

Other income (expense) primarily consists of non-recurring items that are outside of the normal Company's operations such as other related legal expenses, gain or loss on the sale of fixed assets, restructuring costs.

Net Loss Per Share

Basic net income (loss) per share is computed by dividing net income (loss) by the weighted average number of common shares outstanding. Shares issued during the period and shares reacquired during the period are weighted for the portion of the period that they were outstanding. Diluted net income (loss) per share is computed in a manner consistent with that of basic earnings per share while giving effect to all potentially dilutive common shares outstanding during the period, which include the assumed exercise of stock options and warrants using the treasury stock method. Diluted net loss per share was the same as basic net loss per share for the three and nine months ended September 30, 2017 and 2016, as shares issuable upon the exercise of stock options and warrants were anti-dilutive as a result of the net losses incurred for those periods. Dilutive earnings per share are not reported as their effects of including 7,231,286 and 1,794,792 outstanding stock options and warrants for the three and nine months ended September 30, 2017 and 2016, respectively, are anti-dilutive.

Fair Value of Financial Instruments

The carrying values of financial instruments, including trade accounts receivable, accounts payable, other accrued expenses and long-term debt, approximate their fair values based on terms and related interest rates.

The Company follows a framework for measuring fair value. The framework provides a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). The three levels of the fair value hierarchy are described below:

Level 1: Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets.

Level 2: Inputs to the valuation methodology include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.

Level 3: Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. During the nine months ended September 30, 2017 and 2016, there was no reclassification in financial assets or liabilities between Level 1, 2 or 3 categories.

The following table sets forth by level, within the fair value hierarchy, our liabilities that are measured at fair value on a recurring basis:

Warrant derivative liability

	As of September 30, 2017	As of December 31, 2016
Level 1	-	-
Level 2	-	-
Level 3	\$ 196,929	\$ 333,613

The valuation technique used to measure fair value of the warrant liability is based on a lattice valuation model and significant assumptions and inputs determined by us (See Note 9, "Warrants" below).

Level 3 Changes

The following is a reconciliation of the beginning and ending balances for liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) during the nine months ended September 30, 2017:

Warrant derivative liability

Balance at January 1, 2017	\$	333,613
Gain recognized in earnings in first six months of 2017		(156,233)
Balance at June 30, 2017	\$	177,380
Loss recognized in earnings in third quarter of 2017		19,549
Balance at September 30, 2017	\$	<u>196,929</u>

During the nine months ended September 30, 2017, the Company did not change any of the valuation techniques used to measure its liabilities at fair value.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update No. 2014-09, Revenue from Contracts with Customers. The new standard was originally effective for reporting periods beginning after December 15, 2016 and early adoption was not permitted. On August 12, 2015, the FASB approved a one year delay of the effective date to reporting periods beginning after December 15, 2017, while permitting companies to voluntarily adopt the new standard as of the original effective date. The comprehensive new standard will supersede existing revenue recognition guidance and require revenue to be recognized when promised goods or services are transferred to customers in amounts that reflect the consideration to which the company expects to be entitled in exchange for those goods or services. Adoption of the new rules could affect the timing of revenue recognition for certain transactions. The guidance permits two implementation approaches, one requiring retrospective application of the new standard with restatement of prior years and one requiring prospective application of the new standard with disclosure of results under old standards. The Company is currently evaluating the impacts of adoption and the implementation approach to be used.

In February 2016, the FASB issued Accounting Standards Update No. 2016-02, *Leases (Topic 842)*. The new standard establishes a right-of-use (“ROU”) model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. The new standard is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the consolidated financial statements, with certain practical expedients available. While we are still evaluating the impact of our pending adoption of the new standard on our consolidated financial statements, we expect that upon adoption we will recognize ROU assets and lease liabilities and that the amounts could be material.

(2) Equity

In connection with the offering of units pursuant to the subscription rights, referred to as the “Rights Offering,” the Company distributed to holders of its common stock and to holders of its convertible notes, at no charge, non-transferable subscription rights to purchase units. Each unit consisted of one share of common stock and one tradeable warrant representing the right to purchase one share of common stock (“Tradeable Warrants”). On October 31, 2016, the Company entered into a dealer-manager agreement (the “Dealer-Manager Agreement”) with Maxim Group LLC (“Maxim”), to engage Maxim as dealer-manager for the Rights Offering.

In the Rights Offering, holders received two subscription rights for each share of common stock, for each share of common stock underlying our convertible notes owned on the record date, October 21, 2016. Subscribers whose subscriptions otherwise would have resulted in their beneficial ownership of more than 4.99% of the Company’s common stock could elect to receive, in lieu of shares of common stock in excess of that threshold, pre-funded warrants to purchase the same number of shares of common stock for \$0.01 (“Pre-Funded Warrants”), and the subscription price per unit consisting of a Pre-Funded Warrant in lieu of a share of common stock was reduced by the \$0.01 exercise price. No Pre-Funded Warrants were sold in the Rights Offering.

The Rights Offering closed on November 14, 2016. The units were priced at \$0.75 per unit with gross proceeds from the Rights Offering of approximately \$3.8 million and the net proceeds from the Rights Offering of approximately \$2.5 million after deducting fees and expenses payable, and after deducting other expenses payable by us and excluding any proceeds received upon exercise of any Tradeable Warrants issued in the offering. Each Tradeable Warrant is exercisable for a period of five years for one share of common stock at an exercise price of \$0.90 per share. The Tradeable Warrants associated with the equity raised were subject to an analysis that resulted in the Tradeable Warrants being recorded as equity and a component of stockholder’s equity. After the one-year anniversary of issuance, we may redeem the Tradeable Warrants for \$0.01 per Tradeable Warrant if the volume weighted average price of our common stock is above \$2.25 for each of 10 consecutive trading days.

In connection with the Rights Offering, the Company paid to Maxim a cash fee equal to 7% of the gross proceeds received by us directly from exercises of Subscription Rights. We also reimbursed Maxim \$75,000 for expenses incurred in connection with the Rights Offering.

(3) Inventories, Net

Inventories consist of the following:

	September 30, 2017	December 31, 2016
Current inventories:		
Raw materials	\$ 4,236,912	\$ 4,833,403
Work in process	1,397,524	1,891,380
Finished goods	23,627,961	23,878,040
Gross current inventories	29,262,397	30,602,823
Reserve for obsolescence	(5,223,484)	(4,336,366)
Current inventories, net	24,038,913	26,266,457
Non-current inventories:		
Finished goods	1,130,980	1,385,017
Reserve for obsolescence	(413,163)	(413,163)
Non-current inventories, net	717,817	971,854
Total inventories, net	<u>\$ 24,756,730</u>	<u>\$ 27,238,311</u>

The Company provides implants and biologic inventory on consignment through its various sales channels to logistically place the inventory near the anticipated surgical location. Consigned inventory was approximately \$12.3 million and \$11.2 million at September 30, 2017 and December 31, 2016, respectively.

(4) Property and Equipment, Net

Property and equipment, net are as follows:

	September 30, 2017	December 31, 2016
Equipment	\$ 4,501,118	\$ 4,629,754
Computer equipment	451,177	416,233
Computer software	523,526	529,726
Furniture and fixtures	214,770	181,566
Leasehold improvements	4,030,010	4,053,837
Vehicles	10,000	10,000
Surgical instruments	13,292,141	13,876,757
Total cost	23,022,742	23,697,873
Less: accumulated depreciation	(11,571,905)	(7,857,143)
Property and equipment, net	<u>\$ 11,450,837</u>	<u>\$ 15,840,730</u>

The Company deploys certain surgical instruments through its various sales channels for use with implant and biologic inventory to be utilized during surgical procedures. The instruments are classified as non-current assets within property and equipment and depreciated using the straight-line method over a five-year useful life. The net book value of consigned surgical instruments was approximately \$6.7 million and \$8.2 million at September 30, 2017 and December 31, 2016, respectively. Instruments are recorded at cost and are carried at Net book value (cost less accumulated depreciation).

Depreciation expense related to property and equipment, including property under capital lease, for the first nine months of 2017 and 2016 was \$3,946,352 and \$2,181,541, respectively.

The Company leases certain equipment under capital leases. For financial reporting purposes, minimum lease payments relating to the assets have been capitalized. As of September 30, 2017, the Company has recorded \$1,552,366 gross assets in Equipment, and \$493,331 of accumulated depreciation relating to assets under capital leases.

(5) Intangible Assets

Intangible assets consist of various patents with regard to processes for its products and intangible assets associated with the acquisition of X-spine.

The following table sets forth information regarding intangible assets:

	September 30, 2017	December 31, 2016
Patents	840,733	747,249
Acquisition related intangibles:		
Technology	28,698,700	28,698,700
Customer relationships	9,911,000	9,911,000
Tradenname	4,543,300	4,543,300
Non-compete	40,500	40,500
Accumulated amortization	(11,486,131)	(7,999,939)
Intangible assets, net	<u>\$ 32,548,102</u>	<u>\$ 35,940,810</u>
Aggregate amortization expense:	<u>\$ 3,486,192</u>	<u>\$ 4,479,010</u>

The following is a summary of estimated future amortization expense for intangible assets as of September 30, 2017:

Remainder of 2017	\$ 1,166,392
2018	4,664,156
2019	4,554,596
2020	4,471,961
2021	4,214,615
Thereafter	13,476,382
Total	<u>\$ 32,548,102</u>

(6) Accrued Liabilities

Accrued liabilities consist of the following:

	September 30, 2017	December 31, 2016
Accrued stock compensation	\$ 270,338	\$ 213,758
Wages/commissions payable	2,467,437	3,330,578
Accrued integration expense	-	73,510
Accrued interest payable	8,194,347	3,090,585
Other accrued expenses	2,493,619	2,273,756
Accrued liabilities	<u>\$ 13,425,741</u>	<u>\$ 8,982,187</u>

(7) Debt

Convertible Note Indenture

On July 31, 2015, we completed an offering of \$65 million aggregate principal amount of 6.00% convertible senior unsecured notes due 2021 (the "Notes") in a private offering to qualified institutional buyers, as defined in Rule 144A under the Securities Act of 1933, as amended, when we entered into an Indenture with Wilmington Trust, National Association (the "Indenture"). ROS Acquisition Offshore LP ("ROS") and OrbiMed Royalty Opportunities II, LP ("Royalty Opportunities") purchased \$52 million aggregate principal amount of the Notes directly from the Company in the offering. On August 10, 2015, the initial purchaser exercised its option with respect to an additional \$3 million aggregate principal amount of Notes.

At any time prior to the close of business on the second business day immediately preceding the maturity date, holders may convert their Notes into shares of Xtant common stock (together with cash in lieu of fractional shares) at an initial conversion rate of 257.5163 shares per \$1,000 principal amount of Notes (which represents an initial conversion price of approximately \$3.88 per share). However, a Note will not be convertible to the extent that such convertibility or conversion would result in the holder of that Note or any of its affiliates being deemed to beneficially own in excess of 9.99% of the then-outstanding shares of Xtant common stock. The conversion rate will be subject to an adjustment as described in the Indenture upon the occurrence of certain events.

We will not adjust the conversion rate for other events, such as for an issuance of our common stock for cash or in connection with an acquisition that may dilute our common stock thereby adversely affecting its market price. In addition, Xtant will, in certain circumstances, increase the conversion rate for holders who convert their Notes in connection with a “make-whole fundamental change” (as defined in the Indenture). No sinking fund is provided for the Notes. Xtant may not redeem the Notes at its option prior to their maturity. If a “fundamental change” (as defined in the Indenture) occurs, holders will have the right, at their option, to require us to repurchase their Notes at a cash price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date, subject to the right of holders of Notes on a record date to receive accrued and unpaid interest.

The Notes are Xtant’s senior, unsecured obligations, rank equal in right of payment with its existing and future unsecured indebtedness that is not junior to the Notes, are senior in right of payment to any of its existing and future indebtedness that is expressly subordinated to the Notes, and are effectively subordinated to its existing and future secured indebtedness to the extent of the value of the collateral securing such indebtedness. The Notes are structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent Xtant is not a holder thereof) preferred equity, if any, of its subsidiaries.

On April 14, 2016, we issued \$2,238,166 aggregate principal amount of convertible senior unsecured notes “Additional Notes” in a private placement to ROS and Royalty Opportunities when we entered into a securities purchase agreement (the “Additional Notes Purchase Agreement”). The proceeds were utilized to pay interest due for both the Notes and the New Facility (described below) on April 15, 2016.

Both the Additional Notes and the Notes bear interest at a rate equal to 6.00% per year. Following the first interest payment date for the Notes, which was April 15, 2016 and July 15, 2016 for the Additional Notes, interest on the Notes will be payable semiannually in arrears on January 15 and July 15 of each year. Interest accrues on the Notes from the last date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from July 31, 2015 for the Notes, and April 14, 2016 for the Additional Notes. Unless earlier converted or repurchased, the Notes and Additional Notes will mature on July 15, 2021.

The Additional Notes may be converted into shares of our common stock (together with cash in lieu of fractional shares) at an initial conversion rate of 344.8276 shares per \$1,000 principal amount of Notes (which represents an initial conversion price of approximately \$2.90 per share).

On January 17, 2017, the Company entered into securities purchase agreements with Bruce Fund, Inc., Park West Partners International, Limited, Park West Investors Master Fund, Limited, and Telemetry Securities, L.L.C., to satisfy interest obligations that we owed to such parties under \$16,000,000 of Notes issued to them under the Indenture. Pursuant to such agreement, the parties agreed to purchase from the Company a total of 843,289 shares of the Company’s common stock at a price of \$0.5692 per share.

On January 17, 2017, the Company entered into a securities purchase agreement and certain related documents with ROS and Royalty Opportunities, to satisfy interest obligations that the Company owed to them pursuant to \$52,000,000 of Notes issued to them under the Indenture. Pursuant to such agreement, ROS and Royalty Opportunities agreed to purchase from the Company a new series of 6% Convertible Senior Notes Due 2021 in the aggregate original principal amount of up to \$1,560,000 (the “Indenture Notes”). The Indenture Notes are convertible into our common stock at a conversion price of \$0.7589 per share, and mature on July 15, 2021.

On January 17, 2017, the Company also entered into a securities purchase agreement and certain related documents with ROS and Royalty Opportunities, to satisfy interest obligations that the Company owed to them pursuant to \$2,238,166 of Additional Notes issued under the Additional Notes Purchase Agreement. Pursuant to such agreement, ROS and Royalty Opportunities agreed to purchase from the Company a new series of 6% convertible senior notes due 2021 in the aggregate original principal amount of up to \$67,145 (collectively, the “PIK Notes”). The PIK Notes are convertible into our common stock at a conversion price of \$0.7589 per share, and mature on July 15, 2021.

Effective March 31, 2017, the Company, ROS and Royalty Opportunities entered into a waiver letter (the “Indenture Waiver”) of the Indenture. Under the Indenture Waiver, ROS and Royalty Opportunities waived any non-compliance with the covenant set forth in Section 6.01(a)(vii) of the Indenture due to the going concern qualification included in the Company’s audit report for the year ended December 31, 2016.

ROS and Royalty Opportunities also entered into a waiver (the “Notes Waiver”) for defaults that occurred under multiple convertible promissory notes (including the Notes, the Additional Notes, the Indenture Notes and the PIK Notes). Under the Notes Waiver, ROS and Royalty Opportunities waived any non-compliance with the covenants set forth in Section 6.01(a)(vii) of their respective notes due to the going concern qualification included in the Company’s audit report for the year ended December 31, 2016.

Effective July 15, 2017, ROS, Royalty Opportunities, Bruce Fund Inc. (“Bruce Fund”), Park West Partners International, Limited (“PWPI ”), Park West Investors Master Fund, Limited (“PWIMF”) and Telemetry Securities, L.L.C (“Telemetry ” and, together with ROS, Royalty Opportunities, Bruce Fund, PWPI and PWIMF, collectively, the “Holders”) entered into an Omnibus Waiver which deferred interest accrued on the Holders’ convertible promissory notes. The Holders are registered holders of the Notes.

Under the Omnibus Waiver and pursuant to Section 9.02 of the Indenture and Section 10.13 of the Notes, the interest due July 15, 2017 on the Notes was deferred until August 15, 2017, to be paid in cash together with interest accrued on such interest from July 15, 2017 to the date of the payment thereof at a rate equal to 6.00% per annum plus 100 basis points. Also under the Omnibus Waiver, the Holders waived any event of default that has occurred under the Indenture or the Notes as a result of the Company’s failure to pay interest accrued on the Notes on July 15, 2017. The convertible interest due on July 15, 2017 under the Company’s various convertible promissory notes was deferred by the holders of such notes until August 15, 2017.

Effective August 15, 2017 and September 29, 2017, the Company, ROS and Royalty Opportunities entered into the Amendment and Waiver, and the Second Amendment and Waiver, respectively, which amended the certain Notes by moving the payment date of interest accrued on the Notes from July 15, 2017 to October 31, 2017. The amendments also waived any event of default that may have occurred as a result of the non-payment of interest on July 15, 2017. The interest payment due will include interest accrued on such interest from July 15, 2017 to the date of payment thereof at a rate equal to 6.00% per annum plus 100 basis points.

Effective August 16, 2017, the Company and Wilmington Trust, National Association, entered into the Amendment Number 1 to Indenture, which amended the existing Indenture. The amendment amended the Indenture by moving the payment date of interest accrued on notes issued under the Indenture from July 15, 2017 to September 30, 2017. The amendment also set the record date for the September 30 interest payment at June 30, 2017 and waived any event of default that may have occurred as a result of the non-payment of interest on July 15, 2017. The interest payment due on September 30, 2017 will include interest accrued on such interest from July 11, 2017 to the date of payment thereof at a rate equal to 6.00% per annum plus 100 basis points.

On July 31, 2015 the Company recorded \$42 million of principal debt pursuant to an Amended and Restated Credit Agreement (the “New Facility”) with ROS Acquisition Offshore LP (“ROS”) and OrbiMed Royalty Opportunities II, LP (“Royalty Opportunities”) with a maturity date (the “Maturity Date”) of July 31, 2020. Interest under the New Facility is bifurcated into a “cash pay” portion and a “payment-in-kind” (“PIK”) portion. Until June 30, 2018 (the “First Period”), interest on loans outstanding under the New Facility will accrue at a rate equal to the sum of (a) 9% per annum, which portion of interest will be payable in cash, plus (b) additional interest (“PIK Interest”) in an amount equal to (i) the sum of 14% per annum, plus the higher of (x) the LIBO Rate and (y) 1% per annum, minus (ii) 9% per annum, which portion of interest will be payable “in kind”. On or after June 30, 2018 until the New Facility is repaid in full (the “Second Period”), interest on loans outstanding under the New Facility will accrue at a rate equal to the sum of (a) 12% per annum, which portion of interest will be payable in cash, plus (b) PIK Interest in an amount equal to the difference of (i) the sum of 14% per annum, plus the higher of (x) the LIBO Rate and (y) 1% per annum, minus (ii) 12% per annum, which portion of interest will be payable “in kind.” In both the First Period and the Second Period, the portion of accrued interest constituting PIK Interest will not be payable in cash but will instead be added to the principal amount outstanding under the New Facility. However, at our option, we may choose to make any “payment-in-kind” interest payment in cash. Until the third anniversary of the closing date of the New Facility, we will not be allowed to voluntarily prepay the New Facility. Whenever loans outstanding under the New Facility are prepaid or paid, whether voluntarily, involuntarily or on the Maturity Date, a fee of 7.5% on the amount paid will be due and payable. The New Facility contains financial and other covenant requirements, including, but not limited to, financial covenants that require the Company to maintain revenue and liquidity at levels set forth in the New Facility and ensure that the Company’s senior consolidated leverage ratio does not exceed levels set forth in the New Facility. The New Facility also restricts us from making any payment or distribution with respect to, or purchasing, redeeming, defeasing, retiring or acquiring, the Notes other than payments of scheduled interest on the Notes, issuance of shares of our common stock upon conversion of the Notes, and payment of cash in lieu of fractional shares. The loans under the New Facility are guaranteed by Xtant and its current and future subsidiaries and are secured by substantially all of the current and future assets of Xtant and its subsidiaries.

Approximately \$4.9 million of expenses were incurred in conjunction with the acquisition, the issuance of convertible debt and the amendment and restatement of our credit facility with ROS and Royalty Opportunities. Of that amount, approximately \$4.7 million of debt issuance costs was capitalized and is being amortized over the life of the debt.

We have entered into several amendments to the New Facility, and the material provisions of such amendments that have been subsequently modified or restated are summarized below.

On July 29, 2016 we entered into the fourth amendment to the New Facility which provided for an additional “Tranche A Commitment” in an amount up to \$1,000,000 from the OrbiMed Purchasers, which was made available to us on July 29, 2016 for a total of \$43 million loan payable to ROS and Royalty Opportunities.

On September 27, 2016, we entered into the sixth amendment to the New Facility which increased the fee on any amounts paid under the New Facility from 7.5% to 9.0%. Under the sixth amendment, regular interest will not accrue during the period from July 1, 2016 to September 30, 2016; however, during such period, PIK Interest will accrue at a rate per annum equal to 9.00%, and such PIK Interest will be added to the outstanding principal amount of the loans at September 30, 2016. The sixth amendment also modifies the negative covenants of the New Facility by increasing the amount of purchase money indebtedness and capitalized lease liabilities allowed to be incurred by us and lowering the minimum revenue base for the quarters ending September 30, 2016 and December 31, 2016.

The seventh amendment (effective December 31, 2016), eighth amendment (effective January 13, 2017), ninth amendment (effective January 31, 2017), tenth amendment (effective February 14, 2017), eleventh amendment (effective February 28, 2017), twelfth amendment (effective March 31, 2017), thirteenth amendment (effective April 30, 2017), fourteenth amendment (effective May 11, 2017), fifteenth amendment (effective June 30, 2017), sixteenth amendment (effective July 15, 2017), seventeenth amendment (effective August 11, 2017) and eighteenth amendment (effective September 29, 2017) deferred our accrued interest payment date for the fiscal quarter ended December 31, 2016, until October 31, 2017. The interest due on July 15, 2017 was \$1,147,329.47, plus interest accrued on such interest from January 2, 2017 until paid at a rate equal to 14% plus the higher of the LIBO Rate (as defined in the New Facility) for the fiscal quarter ended on December 31, 2016, or 1%.

The seventh amendment also made several other modifications, all of which were restated by the twelfth amendment described below. In addition to the December 31, 2016 deferral, the twelfth amendment, thirteenth amendment, fourteenth amendment, fifteenth amendment, sixteenth amendment, seventeenth amendment and eighteenth amendment deferred our accrued interest payment date for the fiscal quarter ended on March 31, 2017 until October 31, 2017. The interest due on July 15, 2017 for the fiscal quarter ended on March 31, 2017 was \$1,139,597, plus interest accrued on such interest from April 1, 2017 until paid at a rate equal to 14% plus the higher of the LIBO Rate for the fiscal quarter ended on March 31, 2017, or 1%. The fifteenth amendment, sixteenth amendment, seventeenth amendment and eighteenth amendment deferred our accrued interest payment date for the fiscal quarter ended on June 30, 2017 until October 31, 2017. The interest due on July 15, 2017 for the fiscal quarter ended on June 30, 2017 was \$1,169,544, plus interest accrued on such interest from July 1, 2017 until paid at a rate equal to 14% plus the higher of the LIBO Rate for the fiscal quarter ended on June 30, 2017, or 1%. Finally, the eighteenth amendment deferred our accrued interest payment date for the fiscal quarter ended on September 30, 2017 until October 31, 2017. The interest due on October 31, 2017 for the fiscal quarter ended on September 30, 2017 will be \$1,482,406, plus interest accrued on such interest from October 2, 2017 until paid at a rate equal to 14% plus the higher of the LIBO Rate for the fiscal quarter ended on June 30, 2017, or 1%.

The twelfth amendment waived any non-compliance with the covenant set forth in Section 7.1(c) of the New Facility due to the going concern qualification included in the Company's audit report for the year ended December 31, 2016.

Effective May 11, 2017, the parties entered into the fourteenth amendment to the New Facility and the amended guarantors were Xtant, X-Spine and Xtant Medical Inc., collectively. X-Spine was defined as the Additional Delayed Draw Borrower of new term loans. The fourteenth amendment allowed for X-Spine to make additional term loans with ROS and Royalty Opportunities in an aggregate amount of up to \$15,000,000. The amount of each loan draw made by X-Spine is subject to the Company's production of a thirteen-week cash flow forecast that is approved by ROS and Royalty Opportunities. The funding of each Additional Delayed Draw Loan by ROS and Royalty Opportunities is subject to the satisfaction (or waiver in writing by each lender) of conditions precedent, including closing certificate, delivery of budget, the hiring of a CRO, a payoff letter from the Bank (see below), and other satisfactory documents.

The seventeenth amendment modified the minimum revenue base covenant for the quarters ending June 30, 2017, and September 30, 2017. The eighteenth amendment modified the minimum liquidity financial covenant of the New Facility by allowing the Company and its subsidiaries to maintain a liquidity amount of not less than \$500,000 until October 31, 2017. At all times after October 31, 2017, the liquidity of the Company and its subsidiaries must not be less than \$5,000,000. The New Facility Amendment also modified the consolidated senior leverage ratio financial covenant of the New Facility by moving the commencement date of the covenant from the most recent four fiscal quarters ended September 30, 2017, to the most recent four fiscal quarters ended December 31, 2017.

Revolving Credit Line Loan and Security Agreement

On May 25, 2016, we entered into a Loan and Security Agreement (the "LSA") with Silicon Valley Bank, a California corporation (the "Bank"), pursuant to which the Bank agreed to provide us with a revolving line of credit in the aggregate principal amount of \$6,000,000.

On August 12, 2016, we entered into a First Loan Modification Agreement (the "Modification Agreement") with the Bank, which amended certain provisions of the LSA. Pursuant to the terms of the Modification Agreement, the Bank increased the aggregate principal amount of the revolving line of credit to \$11,000,000.

On May 12, 2017, the Company paid off all obligations under the LSA with funds from the above New Facility.

Long-term debt consists of the following:

	September 30, 2017	December 31, 2016
Loan payable to ROS and Royalty Opportunities (See details above)	\$ 55,787,095	\$ 43,000,000
PIK Interest payable to ROS and Royalty Opportunities	10,109,062	7,648,776
6% convertible senior unsecured notes due 2021 (See details above)	71,865,311	70,238,166
Gross long-term debt	137,761,468	120,886,942
Less: debt classified as a current liability, less issuance costs	(65,609,693)	-
Less: total debt issuance costs	(1,370,563)	(1,665,508)
Long-term debt, less issuance costs	<u>\$ 70,781,212</u>	<u>\$ 119,221,434</u>

The loan payable and PIK interest payable to ROS and Royalty Opportunities ("lenders") includes a minimum revenue covenant requiring the Company to achieve minimum revenue benchmarks on a calendar quarter basis. A waiver was obtained from the lenders for not achieving the minimum revenue covenant for the third quarter ended September 30, 2017. The minimum revenue covenant is \$27.5 million for the fourth quarter ended December 31, 2017. The Company does not anticipate achieving this minimum revenue covenant and it is not assured the lenders will provide a waiver of this anticipated covenant violation at this future date. The Company has classified this debt as a current liability in its September 30, 2017 balance sheet.

The following is a summary of maturities due on the debt as of September 30, 2017:

Remainder of 2017	\$ -
2018	-
2019	-
2020	65,896,157
2021	71,865,311
Thereafter	-
Total	<u>\$ 137,761,468</u>

(8) Stock-Based Compensation

The Amended and Restated Xtant Medical Equity Incentive Plan (the “Plan”) provides for stock awards, including options and performance stock awards, to be granted to employees, consultants, independent contractors, officers and directors. The purpose of the Plan is to enable us to attract, retain and motivate key employees, directors and, on occasion, independent consultants, by providing them with stock options and restricted stock grants. Stock options granted under the Plan may be either incentive stock options to employees, as defined in Section 422A of the Internal Revenue Code of 1986, or non-qualified stock options. The Plan is administered by the compensation committee of our board of directors. Stock options granted under the Plan are generally not transferable, vest in installments over the requisite service period and are exercisable during the stated contractual term of the option only by such optionee. Executives may be awarded an option to purchase common stock outside of the Plan (collectively the “Non-Plan Grants”), as described below. The exercise price of all incentive stock options granted under the Plan must be at least equal to the fair market value of the shares of common stock on the date of the grant. 1,900,000 shares are currently authorized under the Plan and at September 30, 2017, we had approximately 960,000 shares available for issuance which are authorized, but unissued or reacquired shares.

Stock compensation expense recognized in the condensed consolidated statements of operations for the nine months ended September 30, 2017 and 2016 is based on awards ultimately expected to vest and reflects an estimate of awards that will be forfeited. ASC 718 requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. No stock options were issued in the first nine months of 2017 or 2016.

Stock option activity, including options granted under the Plan and the Non-Plan Grants, was as follows:

	2017			2016		
	Shares	Weighted Average Exercise Price	Weighted Average Fair Value at Grant Date	Shares	Weighted Average Exercise Price	Weighted Average Fair Value at Grant Date
Outstanding at January 1	1,205,913	\$ 5.21	\$ 2.82	664,081	\$ 10.64	\$ 5.32
Cancelled or expired	(265,958)	3.40	1.90	(105,275)	9.48	4.50
Outstanding at September 30	939,955	\$ 5.73	\$ 3.08	558,806	\$ 10.85	\$ 5.42
Exercisable at September 30	382,996	\$ 11.44	\$ 5.68	409,179	\$ 12.67	\$ 6.15

The aggregate intrinsic value of options outstanding as of September 30, 2017 was zero because the closing price of the stock at September 30, 2017 was less than the strike price of all options outstanding. As of September 30, 2017, there were 556,959 unvested options with a weighted average fair value at the grant date of \$1.80 per option. As of September 30, 2017, we had approximately \$376,778 in compensation expense related to unvested awards not yet recognized.

Total share based compensation recognized for employees, directors and consultants was \$412,888 and \$479,888 for the nine months ended September 30, 2017 and 2016, respectively.

On July 5, 2016, the Company granted 130,804 restricted stock units and options to our six independent Directors of the Company (Messrs. Lopach, Swanson, Deedrick, Buckman, Mazzocchi and Timko). This group of annual awards valued at approximately \$40,000 per director vested on July 5, 2017 and were granted when the stock price was \$1.99 per share. The total expense is being recognized ratably over the period as Non-cash consulting expense. In the nine months ended September 30, 2017, \$50,444 was expensed.

On July 25, 2017, the Company granted 311,688 restricted stock units to the independent Directors of the Company. These restricted shares will be vested on July 25, 2018 and were granted when the stock price was \$0.77 per share. The total expense of \$240,000 will be recognized ratably over the period as Non-cash consulting expense. In the nine months ended September 30, 2017 \$60,000 was expensed.

Effective January 21, 2017, Daniel Goldberger resigned as Chief Executive Officer and a director of the Company and Carl O’Connell was appointed as Interim Chief Executive Officer of the Company. Mr. Goldberger’s Non-plan Grant option to purchase 200,000 shares of our common stock at \$6.00 was cancelled. In connection with his departure, the Company entered into a Separation Agreement and General Release (the “Separation Agreement”) on January 21, 2017, with Mr. Goldberger. The Separation Agreement provides that, among other things, Mr. Goldberger will provide transitional consulting services to the Company for a period of up to three (3) months from the date of the Separation Agreement at the request of the Company’s board. Mr. Goldberger did receive an additional \$130,000 in compensation payable in equal monthly installments of \$43,333 beginning April 21, 2017 and ending June 21, 2017. Further, the Company determined that Mr. Goldberger earned a partial bonus for 2016 and such bonus was paid in accordance with the applicable Company policies.

Effective February 17, 2017, our board of directors appointed Carl O’Connell to serve as the Chief Executive Officer and a director of the Company after serving as Interim Chief Executive Officer of the Company since January 21, 2017. Mr. O’Connell serves as a Class I Director until the 2018 Annual Meeting of Stockholders and until his successor has been duly elected and qualified. As Mr. O’Connell is an officer of the Company, he does not qualify as an independent director and does not serve on any committees of the Board. On October 6, 2016, we issued an option to purchase 300,000 shares of our common stock as Non-Plan Grants at \$1.11 per share to Carl O’Connell which remain outstanding and the related expense recognized in the nine months ended September 30, 2017 was \$22,921.

(9) Warrants

The following table summarizes our warrant activities for the nine months ended September 30, 2017:

	Common Stock Warrants	Weighted Average Exercise Price
Outstanding as of January 1, 2016	1,278,566	\$ 8.45
Issued	5,055,345	0.90
Expired	(42,580)	31.73
Outstanding at January 1, 2017	6,291,331	\$ 2.23
Issued	-	-
Expired	-	-
Outstanding at September 30, 2017	6,291,331	\$ 2.23

We utilize a lattice valuation model to determine the fair market value of the warrants accounted for as liabilities. The lattice valuation model accommodates the probability of exercise price adjustment features as outlined in the warrant agreements. We recorded an unrealized gain of \$136,684 resulting from the change in the fair value of the warrant derivative liability for the first nine months of 2017. Under the terms of some of our warrant agreements, at any time while the warrant is outstanding, the exercise price per share can be reduced to the price per share of future subsequent equity sales of our common stock or a common stock equivalent that is lower than the exercise price per share as stated in the warrant agreement.

The estimated fair value was derived using a valuation model with the following weighted-average assumptions:

	Quarter Ended September 30,	
	2017	2016
Value of underlying common stock (per share)	\$ 0.72	\$ 1.13
Risk free interest rate	1.87%	2.21%
Expected term	4.9 years	3.25 years
Volatility	98%	79%
Dividend yield	0%	0%

The following table summarizes our activities related to warrants accounted for as a derivative liability for the nine months ended September 30, 2017 and 2016:

	2017	2016
Balance at January 1,	1,125,119	1,125,119
Derivative warrants issued, exercised and expired	-	-
Balance at September 30,	1,125,119	1,125,119

(10) Commitments and Contingencies

Operating Leases

We lease five office facilities under non-cancelable operating lease agreements with expiration dates between 2019 and 2025. We have the option to extend the five leases for up to another ten-year term and for one facility, we have the right of first refusal on any sale.

Future minimum payments for the next five years and thereafter as of September 30, 2017, under these leases, are as follows:

Remainder of 2017	\$	199,491
2018		806,747
2019		668,807
2020		396,263
2021		375,289
Thereafter		1,038,416
Total	\$	<u>3,485,013</u>

Rent expense was \$593,660 and \$661,219 for the nine months ended September 30, 2017 and 2016, respectively. Rent expense is determined using the straight-line method of the minimum expected rent paid over the term of the agreement. We have no contingent rent agreements.

Capital Leases

Future minimum payments for the next five years and thereafter as of September 30, 2017, under capital leases for equipment, are as follows:

Remainder of 2017	\$	123,634
2018		494,535
2019		462,544
2020		181,714
2021		-
Thereafter		-
Total minimum lease payments		1,262,427
Less amount representing interest		(285,321)
Present value of obligations under capital leases		977,106
Less current portion		(319,095)
Long-term capital lease obligations	\$	<u>658,011</u>

Litigation

On August 10, 2017, a civil suit complaint was filed against Xtant in the United States District Court, District of Nevada by Axis Spine NV, LLC ("Axis"), Case No. 2:17-CV-02147-APG-VCF. The complaint alleges breach of contract, breach of the implied covenant of good faith and fair dealing, and tortious interference with prospective economic advantage with respect to an alleged medical device distribution relationship between the parties. Specifically, Axis alleges that Xtant owes payments to Axis for its medical device distributions. Axis seeks relief in the form of damages in an amount in excess of \$972,283. Xtant filed a motion to dismiss on September 15, 2017, and is awaiting the court's ruling. The Company recorded reserves for outstanding net receivables due from Axis and consigned assets in Axis' possession totaling \$1,342,049 in the third quarter ended September 30, 2017.

Indemnifications

Our arrangements generally include limited warranties and certain provisions for indemnifying customers against liabilities if our products or services infringe a third-party's intellectual property rights. To date, we have not incurred any material costs as a result of such warranties or indemnification provisions and have not accrued any liabilities related to such obligations in the accompanying condensed consolidated financial statements.

We have also agreed to indemnify our directors and executive officers for costs associated with any fees, expenses, judgments, fines and settlement amounts incurred by any of these persons in any action or proceeding to which any of those persons is, or is threatened to be, made a party by reason of the person's service as a director or officer, including any action by us, arising out of that person's services as our director or officer or that person's services provided to any other company or enterprise at our request.

(11) Income Taxes

In evaluating the realizability of the net deferred tax assets, we take into account a number of factors, primarily relating to the ability to generate taxable income. Where it is determined that it is likely that we will be unable to realize deferred tax assets, a valuation allowance is established against the portion of the deferred tax asset. Because it cannot be accurately determined when or if we will become profitable, a valuation allowance was provided against the entire deferred income tax asset balance.

The Company did not recognize any interest or penalties related to income taxes for the nine months ended September 30, 2017 and 2016.

(12) Supplemental Disclosure of Cash Flow Information

Supplemental cash flow information is as follows:

	Nine Months Ended September 30,	
	2017	2016
Supplemental disclosure of cash flow information		
<i>Cash paid during the period for:</i>		
Interest	\$ 448,999	\$ 4,530,170
<i>Non-cash activity:</i>		
Issuance of capital leases	\$ 103,483	\$ 967,221
Issuance of shares associated with legal settlement	\$ -	\$ 225,000
Interest converted into common stock	\$ 480,000	\$ -

(13) Related Party Transactions

Darrel Holmes, our former Chief Operating Officer of our Bacterin subsidiary, serves on the board of American Donor Services Inc. (“ADS”). Mr. Holmes receives \$5,000 per year for his service to ADS. ADS recovers tissue from donors and we reimburse ADS for its recovery fees, which are comprised primarily of labor costs. The approximate aggregate amount of all transactions with ADS for the nine months ended September 30, 2017 and 2016 was \$906,216 and \$844,643, respectively. Our relationship with ADS has benefited us, as ADS provides us with current donors and a pipeline for future donors, which is necessary to our success.

Certain of X-spine’s former shareholders own over 10% of our common stock in conjunction with the acquisition, and have owned a controlling interest of X-spine’s largest supplier, Norwood Tool Company d/b/a Norwood Medical. In the first nine months of 2017, Xtant purchased from Norwood Medical less than 10% of its operating products and approximately 12% for the same period in 2016.

Unless delegated to the Compensation Committee by the board of directors, the Audit Committee or the disinterested members of the full board of directors reviews and approves all related party transactions.

(14) Segment and Geographic Information

The Company’s management reviews financial results and manages the business on an aggregate basis. Therefore, financial results are reported in a single operating segment: the development, manufacture and marketing of orthopedic medical products and devices.

The Company attributes revenues to geographic areas based on the location of the customer. Approximately 97% and 95% of sales were in the United States, respectively, for the nine months ended September 30, 2017 and 2016. Total revenue by major geographic area is as follows:

	Nine Months Ended September 30,	
	2017	2016
United States	\$ 61,442,431	\$ 62,253,220
Rest of world	1,837,481	3,278,659
Total revenue	\$ 63,279,912	\$ 65,531,879

(15) Subsequent Events

Amendment Number 2 to Indenture

Effective October 2, 2017, the Company and Wilmington Trust, National Association, entered into the Amendment Number 2 to Indenture, which amended the Indenture by moving the payment date of interest accrued on notes issued under the Indenture from September 30, 2017 to October 31, 2017. The amendment also set the record date for the October 31 interest payment at June 30, 2017 and waived any event of default that may have occurred as a result of the non-payment of interest on July 15, 2017. The interest payment due on October 31, 2017 includes interest accrued on such interest from July 15, 2017 to the date of payment thereof at a rate equal to 6.00% per annum plus 100 basis points.

Consolidation of Fixation Operations to Montana and Closure of Dayton Facility

On October 6, 2017, the Company announced the closure of its Dayton, Ohio facility and the transitioning of its fixation operations to the Company's headquarters in Belgrade, Montana. The Dayton, Ohio facility employs approximately 55 employees in various quality assurance, regulatory, inventory management, finance, engineering, and distribution positions. Many of these functions will ultimately transition to our Montana facility. Once the transition is completed, annualized cost savings are anticipated to be in excess of \$2 million, resulting from right-sizing the organization and reduction in facilities. The one-time cost for executing this change is estimated to be \$1.5 million will be recorded through March 31, 2018. The Company will file the Worker Adjustment and Retraining Notification with the State of Ohio and the Department of Job and Family Services.

Nineteenth Amendment to Amended and Restated Credit Agreement

Effective October 31, 2017, Bacterin, the Company, X-Spine, and Xtant Medical, Inc., collectively as the guarantors, and ROS and Royalty Opportunities, entered into the Nineteenth Amendment to Amended and Restated Credit Agreement, which amended the New Facility. The amendment further deferred Bacterin's accrued interest payment date for the fiscal quarters ended on December 31, 2016, March 31, 2017, June 30, 2017 and September 30, 2017 until November 30, 2017.

The interest due on November 30, 2017 for the fiscal quarter ended on December 31, 2016 will be \$1,147,329, plus interest accrued on such interest from January 2, 2017 until paid at a rate equal to 14% plus the higher of the LIBO Rate for the fiscal quarter ended on December 31, 2016, or 1%. The interest due on November 30, 2017 for the fiscal quarter ended on March 31, 2017 will be \$1,139,597, plus interest accrued on such interest from April 1, 2017 until paid at a rate equal to 14% plus the higher of the LIBO Rate for the fiscal quarter ended on March 31, 2017, or 1%. The interest due on November 30, 2017 for the fiscal quarter ended on June 30, 2017 will be \$1,303,936, plus interest accrued on such interest from July 1, 2017 until paid at a rate equal to 14% plus the higher of the LIBO Rate for the fiscal quarter ended on June 30, 2017, or 1%. The interest due on November 30, 2017 for the fiscal quarter ended on September 30, 2017 will be \$1,482,406, plus interest accrued on such interest from October 2, 2017 until paid at a rate equal to 14% plus the higher of the LIBO Rate for the fiscal quarter ended on June 30, 2017, or 1%.

The amendment also modified the minimum liquidity financial covenant of the New Facility by allowing the Company and its subsidiaries to maintain a liquidity amount of not less than \$500,000 until November 30, 2017. At all times after November 30, 2017, the liquidity of the Company and its subsidiaries must not be less than \$5,000,000.

Amendment Number 3 to Indenture

Effective October 31, 2017, the Company and Wilmington Trust, National Association, entered into the Amendment Number 3 to Indenture, which amended the Indenture by moving the payment date of interest accrued on notes issued under the Indenture from October 31, 2017 to November 30, 2017. The amendment also set the record date for the November 30 interest payment at June 30, 2017 and waived any event of default that may have occurred as a result of the non-payment of interest on July 15, 2017. The interest payment due on November 30, 2017 will include interest accrued on such interest from July 15, 2017 to the date of payment thereof at a rate equal to 6.00% per annum plus 100 basis points.

Third Amendment and Waiver to Convertible Promissory Notes

Effective October 31, 2017, the Company, ROS and Royalty Opportunities entered into the Third Amendment and Waiver, which amended certain Notes held by ROS and Royalty Opportunities. The amendment amended the Notes by moving the payment date of interest accrued on the Notes from October 31, 2017 to November 30, 2017. The amendment also waived any event of default that may have occurred as a result of the non-payment of interest on July 15, 2017. The interest payment due on November 30, 2017 will include interest accrued on such interest from July 15, 2017 to the date of payment thereof at a rate equal to 6.00% per annum plus 100 basis points.

Waiver to Amended and Restated Credit Agreement

Effective November 14, 2017, Bacterin, the Company, X-Spine, Xtant Medical, ROS and Royalty Opportunities, entered into a Waiver to Amended and Restated Credit Agreement, which waived any non-compliance with the minimum revenue base covenant for the quarter ending September 30, 2017.

Restatement of Financial Statements

On November 20, 2017, the Company filed a Current Report on Form 8-K that stated the Company's unaudited financial statements for the quarters ended March 31, 2017 and June 30, 2017 should no longer be relied upon because of an error in the quarter ended March 31, 2017, pertaining to accumulated depreciation on surgical instruments as of that date. Correcting the error requires a decrease in property and equipment, net, in the amount of \$618,000 and a related increase in cost of goods sold. All such corrections have been properly accounted for in this Form 10-Q and the Company plans to restate the applicable quarterly reports as soon as reasonable practicable.

Our principal executive and principal financial officers reevaluated the effectiveness of our disclosure controls and procedures as of March 31, 2017 and June 30, 2017, as to whether the errors identified were the result of a material weakness in our internal control over financial reporting. The Company reconsidered whether our existing disclosure controls and procedures around the presentation and disclosure of property and equipment and accumulated depreciation are effective. Based on this assessment, our Chief Executive Officer and Deputy Restructuring Officer concluded that controls over property and

equipment and accumulated depreciation were not effective as of March 31, 2017 and June 30, 2017, and that therefore our disclosure controls and procedures were not effective.

To remediate the material weakness surrounding the presentation and disclosure of the recognition of property and equipment and related accumulated depreciation, the Company has reviewed internal controls, changed supervisory personnel and improved the accounting review processes in this financial reporting area. Additional review and oversight is being exercised in the recording of property and equipment activity.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operation

Safe Harbor Declaration

The statements contained in this Form 10-Q that are not purely historical are forward-looking statements within the meaning of applicable securities laws. Our forward-looking statements include, but are not limited to, statements regarding our “expectations,” “hopes,” “beliefs,” “intentions,” or “strategies” regarding the future. In addition, any statements that refer to projections, forecasts, or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should” and “would,” as well as similar expressions, may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward looking. Forward-looking statements in this Form 10-Q may include, for example, statements about:

- our ability to comply with the covenants in our senior credit facility and to make all upcoming and deferred interest payments;
- our ability to maintain sufficient liquidity to fund our operations;
- our ability to remain listed on the NYSE American;
- our ability to obtain financing on reasonable terms;
- our ability to increase revenue;
- our ability to continue as a going concern;
- our ability to maintain sufficient liquidity to fund our operations;
- the ability of our sales force to achieve expected results;
- our ability to remain competitive;
- government regulations;
- our ability to innovate and develop new products;
- our ability to obtain donor cadavers for our products;
- our ability to engage and retain qualified technical personnel and members of our management team;
- the availability of our facilities;
- government and third-party coverage and reimbursement for our products;
- our ability to obtain regulatory approvals;
- our ability to successfully integrate recent and future business combinations or acquisitions;
- our ability to use our net operating loss carry-forwards to offset future taxable income;
- our ability to deduct all or a portion of the interest payments on the notes for U.S. federal income tax purposes;
- our ability to service our debt;
- product liability claims and other litigation to which we may be subjected;
- product recalls and defects;
- timing and results of clinical studies;
- our ability to obtain and protect our intellectual property and proprietary rights;

- infringement and ownership of intellectual property;
- our ability to remain accredited with the American Association of Tissue Banks.
- influence by our management;
- our ability to pay dividends; and
- our ability to issue preferred stock.

The forward-looking statements contained in this Form 10-Q are based on our current expectations and beliefs concerning future developments and their potential effects on us. There can be no assurance that future developments affecting us will be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties, or assumptions, many of which are beyond our control, which may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described in the “Risk Factors” sections of our Annual Report on Form 10-K for the year ended December 31, 2016. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise, except as may be required under applicable securities laws.

Results of Operation

Going Concern

The Company has incurred losses since its inception. The terms, conditions and amounts outstanding under the Company’s debt agreements (See Note 7, “Debt” above) raise substantial doubt about the Company’s ability to continue as a going concern. The Company has established a special committee of its board of directors to evaluate restructuring alternatives, assist in related negotiations with the Company’s lenders and consider alternatives for raising new capital. The Company also is evaluating various cost-reduction and cash flow improvement measures. However, there can be no assurance that the Company will be successful in these efforts.

The accompanying condensed consolidated financial statements have been prepared assuming that the Company will continue as a going concern; however, the above conditions raise substantial doubt about the Company’s ability to do so. The consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result should the Company be unable to continue as a going concern.

Comparison of Quarters Ended September 30, 2017 and September 30, 2016

Revenue

Total revenue for the quarter ended September 30, 2017 of \$19,789,083 decreased 14.3% compared to \$23,094,140 in the same quarter of the prior year. Two percent of the decline is attributed to one less selling day this quarter versus 2016.

The decline in revenue this quarter was a result of management's strategy to focus on reducing unprofitable sales channel arrangements, particularly in our fixation business, and positioning the Company for long-term success. We moved away from some reseller distribution channels that have deep discounting activities in an effort to avoid end-user customer pricing conflict and help us with price optimization. We are also moving away from distribution partners with higher than normal commission rates which compress operating margins. In addition, the Company was private labeling a pedicle screw system for a few select customers which, upon assessment, was not profitable and the Company has moved away from this product line. These changes in strategy allow us to move towards profitability and reinvestment in marketing and development activities for the future.

Cost of sales

Costs of sales consist primarily of manufacturing and inventory purchase costs as well as depreciation of surgical trays. Costs of sales increased by 18.3% or \$1,302,198 to \$8,416,239 for the quarter ended September 30, 2017 from \$7,114,041 for the quarter ended September 30, 2016. Cost of sales as a percent of total sales was 42.5% of revenues for the quarter ended September 30, 2017, compared to 30.8% in the third quarter ended 2016. The increase is due to a shift in product mix to biologics which has a lower margin than fixation products. In addition, cost of sales includes an increase in inventory reserves and surgical instrument reserves in the quarter ended September 30, 2017 of \$927,875 related to litigation with a distributor. In addition, inventory and surgical instruments reserves were increased \$1,129,616 in the third quarter of 2017 over the prior year based on current estimates of missing or damaged parts, primarily on consignment.

Operating Expenses

Operating expenses include general and administrative expenses, sales and marketing expenses, depreciation, research and development expenses, and compensation costs, including incentive compensation. Operating expenses decreased 16.9%, or \$3,019,919 for the quarter ended September 30, 2017, compared to the quarter ended September 30, 2016, primarily due to the reasons set forth below.

The reduction in expenses is primarily attributable to lower commission expense as a direct result of the Company moving away from unprofitable sales distributor arrangements with high commission rates. In addition, the Company has continued to execute on its cost reduction initiatives and realizing merger synergies in its 2015 acquisition of X-spine, resulting in lower payroll and related expenses such as benefits and travel costs, and lower overall operating expenses.

General and Administrative

General and administrative expenses consist principally of corporate personnel and related benefits, cash based and stock option compensation related costs and corporate expenses for legal, accounting and other professional fees as well as occupancy costs. General and administrative expenses decreased 11.7%, or \$443,006, to \$3,330,230 for the quarter ended September 30, 2017, compared to the same period of 2016. The decrease is primarily due to reduction in payroll expense of \$1,257,326, reduction in occupancy of \$585,672, offset by lower manufacturing overhead absorption of \$217,496, write-offs related to litigation with a distributor of \$414,174, increases in legal expenses of \$315,435, and an increase of \$452,887 in insurance, bad debts, finance costs and other expenses.

Sales and Marketing

Sales and marketing expenses primarily consist of expenses related to sales and marketing personnel, sales commissions, costs for trade shows, sales conventions and meetings, travel expenses, advertising and other sales and marketing related costs. Sales and marketing expenses decreased 20.8%, or \$2,339,043, to \$8,903,777 for the quarter ended September 30, 2017, compared to \$11,242,820 for the same period of 2016. As a percentage of revenue, sales and marketing expenses decreased to 45.0% in the third quarter of 2017 from 48.7% in the prior year third quarter. Changes made to the commission rate structure for sales distributors, a reduction of \$1,608,598, and a reduction in sales and marketing personnel of \$1,047,912, offset by an increase in other net marketing expenses of \$317,467, resulted in lower sales and marketing expense in the quarter.

Research and Development

Research and development expenses consist primarily of internal costs for the development of new technologies and processes for our orthopedic product lines. Research and development expenses decreased \$424,703 or 45.7% from \$928,930 for the quarter ended September 30, 2016 to \$504,227 for the same period of 2017. The decrease is primarily due to reduction in research and development personnel of \$196,424, research costs of \$162,350 and royalty costs of \$65,879.

Depreciation and Amortization

Depreciation and amortization expense consists of depreciation and amortization of long-lived intangible assets, patents, leasehold improvements and equipment. Depreciation and amortization expense increased \$88,507 to \$1,353,997 for the quarter ended September 30, 2017, from \$1,265,490 for the same period in 2016. The increase is due in part to an increase in the purchase of surgical trays in the latter part of 2016.

Acquisition and Integration Related Expenses

No acquisition and integration related expenses were incurred during the quarter ended September 30, 2017. Expense of \$517,083 was incurred in the same period in 2016. Acquisition related expenses consisted of investment banking, accounting, consulting, legal fees and miscellaneous expenses associated with the due diligence and execution of the 2015 X-spine acquisition. Integration related expenses consist of samples, travel, retention bonuses and software expenses incurred as part of that acquisition.

Separation Related Expenses

Separation related expenses are \$791,536 for the quarter ended September 30, 2017 and zero for the same period in 2016. The expense consists of severance and related benefit expenses for personnel reductions. As previously noted, the reduction in personnel relates to restructuring the Company for profitable operations, and is a key factor in the reduction of operating expenses for the third quarter and year to date.

Non-cash Consulting Expense

Non-cash consulting expense consists of non-cash expense associated with granting restricted stock and stock to directors and consultants. Non-cash consulting expense decreased \$176,129 to (\$20,000) for the quarter ended September 30, 2017, from \$156,129 for the same period in the prior year based on changes in the Company's stock price used in the valuation of restricted stock and stock options.

Interest Expense

Interest expense is related to interest incurred from our debt instruments. Interest expense for the quarter ended September 30, 2017 increased \$646,237 to \$3,809,771 as compared to \$3,163,534 in the third quarter ended 2016. The increase in interest expense is due to increased long term and convertible debt.

Change in Warrant Derivative Liability

For the quarter ended September 30, 2017, the Company recorded a loss in its non-cash warrant derivative liability of \$19,549 which was primarily driven by the change in the closing price of the Company's common stock at September 30, 2017. The liability is associated with the issuance of warrants as part of the Company's prior convertible debt financing, the Company's 2010 financing and the Company's 2014 equity financing which contains certain provisions requiring the Company to record a change in the fair value of the warrant derivative liability from period to period.

Other Income (Expense)

Other expense for the third quarter of 2017 was \$1,194,041 as compared to other expense of \$51,350 for the same period in 2016. Other expense is comprised primarily of restructuring charges for legal and professional fees related to the Company's turnaround strategy.

Results of Operation

Comparison of Nine Months Ended September 30, 2017 and September 30, 2016

Revenue

Total revenue for the nine months ended September 30, 2017 decreased approximately 3.4% to \$63,279,912 compared to \$65,531,879 in the prior year. The decrease of \$2,251,967 is mostly due to the impact of lower revenue in fixation sales as a result of changes to our sales channels to eliminate unprofitable distributor relationships and distributor agreements with high commission rate structures.

Cost of sales

Costs of sales consist primarily of manufacturing costs and depreciation of surgical trays. Cost of sales increased by 13.1% or \$2,722,746 to \$23,472,107 for the nine months ended September 30, 2017 from \$20,749,381 for the nine months ended September 30, 2016. Cost of sales as a percent of total sales was 37.1% of revenues for the nine months ended September 30, 2017, compared to 31.7% in the first nine months 2016. The increase is due to a shift in product mix from higher margin fixation revenue to lower margin biologics. In addition, cost of sales includes an increase in inventory reserves and surgical instrument reserves for estimated missing and damaged parts of \$2,281,891 and \$480,171 in the nine months ended September 30, 2017 and prior year, respectively, which includes additional inventory reserves and surgical instrument reserves of \$927,875 related to litigation with a distributor.

Operating Expenses

Operating expenses include general and administrative expenses, sales and marketing expenses, depreciation, research and development expenses, and compensation costs, including incentive compensation. Operating expenses decreased 1.1%, or \$587,701 for the nine months ended September 30, 2017, compared to the nine months ended September 30, 2016, primarily due to the reasons set forth below.

General and Administrative

General and administrative expenses consist principally of corporate personnel and related benefits, cash based and stock option compensation related costs and corporate expenses for legal, accounting and other professional fees as well as occupancy costs. General and administrative expenses increased 6.7%, or \$768,929 to \$11,985,041 for the nine months ended September 30, 2017, compared to the same period of 2016. The increase was primarily related to \$732,123 lower inventory absorption of overhead costs in the nine months ended September 30, 2017. Higher legal fees, finance charges, bad debts, insurance and other expenses resulted in increased expense of \$979,602 over the nine months ended September 30, 2016. The Company also recorded in operating expenses write-offs related to litigation with a distributor, totaling \$414,174 in the nine months ended September 30, 2017. These costs were offset by a reduction of \$1,347,970 in rent and office expenses as the Company relocated and closed one office location.

Sales and Marketing

Sales and marketing expenses primarily consist of costs for sales and marketing personnel, sales commissions, costs for trade shows, sales conventions and meetings, travel expenses, advertising and other sales and marketing related costs. Sales and marketing expenses decreased 3.4%, or \$1,077,885, to \$31,037,878 for the nine months ended September 30, 2017, compared to \$32,115,763 for the same period of 2016. As a percentage of revenue, sales and marketing expenses remained the same at 49.0% in the first nine months of 2017 as the 49.0% in the prior year first nine months. Reductions in personnel and related travel costs were \$2,329,380 offset by an increase in commission expense of \$1,153,781 and other marketing costs of \$97,712.

Research and Development

Research and development expenses consist primarily of internal costs for the development of new technologies and processes for our orthopedic product lines. Research and development expenses decreased \$769,495 or 29.5% from \$2,612,402 for the nine months ended September 30, 2016 to \$1,842,907 for the same period of 2017. The decrease is primarily due to a reduction in royalty expense of \$220,663, reduction in personnel of \$137,714 and other research related costs of \$411,118.

Depreciation and Amortization

Depreciation and amortization expense consists of depreciation and amortization of long-lived intangible assets, patents, leasehold improvements and equipment. Depreciation and amortization expense increased \$414,046 to \$4,104,565 for the nine months ended September 30, 2017, from \$3,690,519 for the same period in 2016. The increase is due in part to an increase in the purchase of surgical trays in the latter part of 2016.

Acquisition and Integration Related Expenses

There were no acquisition and integration related expenses for the nine months ended September 30, 2017 and \$1,269,613 for the same period in 2016. Acquisition related expenses consisted of investment banking, accounting, consulting, legal fees and miscellaneous expenses associated with the due diligence and execution of the 2015 X-spine acquisition. 2016 integration related expenses consist of samples, travel, retention bonuses and software.

Separation Related Expenses

Separation related expenses are \$1,396,457 for the nine months ended September 30, 2017 with no expense incurred during the same period in 2016. The expense consists of those items related to reductions in personnel as part of the restructuring of the Company.

Non-cash Consulting Expense

Non-cash consulting expense consists of non-cash expense associated with granting restricted stock and stock to directors and consultants. Non-cash consulting expense decreased \$50,140 to \$216,581 for the nine months ended September 30, 2017, from \$266,721 for the same period in the prior year.

Interest Expense

Interest expense is related to interest incurred from our debt instruments. Interest expense for the nine months ended September 30, 2017 increased \$1,563,527 to \$10,538,422 as compared to \$8,974,895 in the first nine months ended 2016. The increase in interest expense is due to increased long term and convertible debt.

Change in Warrant Derivative Liability

For the nine months ended September 30, 2017, the Company recorded a gain in its non-cash warrant derivative liability of \$136,684 which was primarily driven by change in the closing price of the Company's common stock at September 30, 2017. The liability is associated with the issuance of warrants as part of the Company's prior convertible debt financing, the Company's 2010 financing and the Company's 2014 equity financing which contains certain provisions requiring the Company to record a change in the fair value of the warrant derivative liability from period to period.

Other Income (Expense)

Other expense for the first nine months of 2017 was \$2,814,309 as compared to other expense of \$309,924 for the same period in 2016. Other expense includes professional fees associated with the Company's restructuring which began in 2017.

Liquidity and Capital Resources

Since our inception, we have historically financed our operations through operating cash flows, as well as the private placement of equity securities and convertible debt, an equity credit facility, a common stock rights offering and other debt transactions. At September 30, 2017, we had \$2.1 million of cash and cash equivalents; \$13.9 million of net accounts receivable and \$24.8 million of inventory. The Company also had approximately \$2.1 million of funds available to draw down on its delayed draw term loan.

Xtant has reduced its accounts payable from \$11.1 million at December 31, 2016, to \$7.7 million as of September 30, 2017. Accrued liabilities of \$13.4 million at September 30th, rose from \$9.0 million at December 31, 2016 primarily due to the accumulation of accrued interest on long-term debt, the payment of which has been delayed as noted in recent amendments of the Company's long-term debt agreements. Total liabilities include approximately \$70.8 million of convertible debt and \$65.6 million of long term debt due to Orbimed Advisors' affiliates.

Net cash used by operating activities for the nine months ended September 30, 2017 was \$1,188,769 from various operating activities. For the comparable period of 2016, net cash used by operating activities was \$11,194,999. The improvement in cash used for operating activities is the result of restructuring efforts in 2017 to improve liquidity, reduce inventory, convert receivables to cash and reduce payables and accrued liabilities. The amendments to the Company's debt agreements to allow for the non-payment of interest currently due has increased non-cash interest accrued by \$5,488,991 in the nine months ended September 30, 2017.

Net cash used by investing activities for the nine months ended September 30, 2017 was \$1,455,845 due to purchase of property and equipment.

Net cash provided by financing activities was \$2,135,435 for the first nine months of 2017 due to proceeds from new debt less payments on capital leases and the revolving line of credit.

Off Balance Sheet Arrangements

We do not have any off balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity or capital expenditures or capital resources that are material to an investor in our shares.

Cash Requirements

We believe that our September 30, 2017 cash on hand and accounts receivable balance of \$15,978,178 along with anticipated operating cash receipts from sales expected from operations and limited term loan capacity may not be sufficient to meet our anticipated cash requirements through September 30, 2018. We do not anticipate that we will have sufficient cash funds to service current interest obligations under our senior credit facility and convertible debt.

The Company has incurred losses since its inception. The terms, conditions and amounts outstanding under the Company's debt agreements (See Note 7, "Debt" above) raise substantial doubt about the Company's ability to continue as a going concern. The Company has established a special committee of its board of directors to evaluate restructuring alternatives assist in related negotiations with the Company's lenders and consider alternatives for raising new capital. The Company also is evaluating various cost-reduction and cash flow improvement measures. However, there can be no assurance that the Company will be successful in these efforts.

The accompanying condensed consolidated financial statements have been prepared assuming that the Company will continue as a going concern; however, the above conditions raise substantial doubt about the Company's ability to do so. The consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result should the Company be unable to continue as a going concern.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As a smaller reporting company, we are not required to provide the information required by this Item.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management with the participation of our chief executive officer and chief financial officer evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) as of September 30, 2017. Based upon that evaluation, our chief executive officer and chief financial officer concluded that as of September 30, 2017, our disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

During the quarter ended September 30, 2017, we implemented the following changes in our internal control over financial reporting to enhance our overall financial control environment and to address the reported material weakness related to internal control on property and equipment from the quarters ended March 31, 2017 and June 30, 2017:

- The Company has changed supervisory personnel and improved the accounting review processes in connection with the presentation and disclosure of the recognition of property and equipment and related accumulated depreciation.
- The Company has also exercised additional review and oversight in the recording of property and equipment activity.

Except as described above, there were no changes in the Company's internal control over financial reporting during the quarter ended September 30, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

On August 10, 2017, a civil suit complaint was filed against Xtant in the United States District Court, District of Nevada by Axis Spine NV, LLC ("Axis"), Case No. 2:17-CV-02147-APG-VCF. The complaint alleges breach of contract, breach of the implied covenant of good faith and fair dealing, and tortious interference with prospective economic advantage with respect to an alleged medical device distribution relationship between the parties. Specifically, Axis alleges that Xtant owes payments to Axis for its medical device distributions. Axis seeks relief in the form of damages in an amount in excess of \$972,283. Xtant filed a motion to dismiss on September 15, 2017, and is awaiting the court's ruling.

Item 1A. Risk Factors

Our business faces many risks. Any of the risks discussed in this Quarterly Report or our other SEC filings could have a material impact on our business, financial position or results of operations. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also impair our business operations. For a detailed discussion of the risk factors that should be understood by any investor contemplating investment in our securities, please refer to Part I, Item 1A, Risk Factors, in our 2016 Annual Report on Form 10-K. There have been no material changes to the risk factors set forth in our 2016 Annual Report on Form 10-K, except for the following:

A substantial amount of our implant and biologic inventory and surgical instruments are consigned to our distributors and customers outside of our physical control.

We ship inventory and surgical instruments through our distribution channels on a consigned basis in order to have our product readily available for surgical use. The failure or inability of third party consignment sellers to record sales of our consigned products, and to appropriately account for, and pay us for, such recorded sales may adversely affect our business, results of operations and financial condition.

The security of our inventory and surgical instruments at consigned locations is dependent on third parties in our distribution channels to exercise proper controls and security measures, which is not assured. While our consigned products are physically stored with third parties, including third party consignment sellers, we do not have custody or control of such products, and the consigned products are subject to damage or loss, including, but not limited to, theft. There can be no assurance that third parties, including third party consignment sellers, will appropriately handle, monitor, secure or protect our consigned products, and any failure or inability to do so may adversely affect our business, results of operations and financial condition.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

Not Applicable.

Item 4. Mine Safety Disclosures

Not Applicable.

Item 5. Other Information

The Company previously reported that it would hold its annual meeting of shareholders on June 21, 2017. The Company has set a record date of December 5, 2017 in anticipation of holding an annual meeting of shareholders on December 29, 2017. Because the date of the annual meeting will be more than 30 days from the date of the anniversary of the Company's previous annual meeting, in accordance with Rule 14a-5(f) under the Exchange Act, the Company is informing stockholders of the change.

Item 6. Exhibits

- [10.1](#) [Seventeenth Amendment and Waiver to Amended and Restated Credit Agreement, dated as of August 11, 2017, by and among Bacterin International, Inc., Xtant Medical Holdings, Inc., X-Spine Systems, Inc., Xtant Medical, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP \(filed as Exhibit 10.1 to Form 8-K filed August 17, 2017 and incorporated by reference herein\).](#)
- [10.2](#) [Amendment Number 1 to Indenture, dated as of August 16, 2017, by and between Xtant Medical Holdings, Inc. and Wilmington Trust, National Association \(filed as Exhibit 10.2 to Form 8-K filed August 17, 2017 and incorporated by reference herein\).](#)
- [10.3](#) [Amendment and Waiver, dated as of August 15, 2017, by and among Xtant Medical Holdings, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP \(filed as Exhibit 10.3 to Form 8-K filed August 17, 2017 and incorporated by reference herein\).](#)
- [10.4](#) [Eighteenth Amendment to Amended and Restated Credit Agreement, dated as of September 29, 2017, by and among Bacterin International, Inc., Xtant Medical Holdings, Inc., X-Spine Systems, Inc., Xtant Medical, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP \(filed as Exhibit 10.1 to Form 8-K filed October 3, 2017 and incorporated by reference herein\).](#)
- [10.5](#) [Second Amendment and Waiver, dated as of September 29, 2017, by and among Xtant Medical Holdings, Inc., ROS Acquisition Offshore LP and OrbiMed Royalty Opportunities II, LP \(filed as Exhibit 10.3 to Form 8-K filed October 3, 2017 and incorporated by reference herein\).](#)
- [10.6](#) * [Form of Indemnification Agreement for directors.](#)
- [31.1](#) * [Rule 13a-14\(a\)/15d-14\(a\) Certification of Chief Executive Officer](#)
- [31.2](#) * [Rule 13a-14\(a\)/15d-14\(a\) Certification of Chief Financial Officer](#)
- [32.1](#) ** [Section 1350 Certification of Chief Executive Officer](#)
- [32.2](#) ** [Section 1350 Certification of Chief Financial Officer](#)
- 101.INS * XBRL INSTANCE DOCUMENT
- 101.SCH * XBRL TAXONOMY EXTENSION SCHEMA
- 101.CAL * XBRL TAXONOMY EXTENSION CALCULATION LINKBASE
- 101.DEF * XBRL TAXONOMY EXTENSION DEFINITION LINKBASE
- 101.LAB * XBRL TAXONOMY EXTENSION LABEL LINKBASE
- 101.PRE * XBRL TAXONOMY EXTENSION PRESENTATION LINKBASE

* Filed herewith

** Furnished herewith

SIGNATURES

Pursuant to the requirements 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.

XTANT MEDICAL HOLDINGS, INC.

Date: November 21, 2017

By: /s/ Laura Kendall
Name: Laura Kendall
Title: Deputy CRO

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of _____, 2017 by and between Xtant Medical Holdings Inc., a Delaware corporation (the “Company”), and _____, a resident of the State of _____ (“Indemnitee”). This Agreement supplements any and all previous Agreements between the Company and Indemnitee covering the subject matter of this Agreement. Any conflict between this and any other agreement shall be construed in favor of indemnification.

RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors and officers unless they are provided with adequate protection through insurance or adequate indemnification or both against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the “Board”) has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The By-laws of the Company (the “Bylaws”) require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the “DGCL”). The By-laws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the By-laws, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he or she be so indemnified; and

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Survival. This Agreement shall continue in force after Indemnitee has ceased to serve as an officer or director of the Company, as provided in Section 14 hereof.

Section 2. Definitions. As used in this Agreement:

(a) References to “agent” shall mean any person who is or was a director, officer, or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) A “Change in Control” shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing thirty-three percent (33%) or more of the combined voting power of the Company’s then outstanding securities unless the change in relative Beneficial Ownership of the Company’s securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. Change in Board of Directors. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv)) whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 51% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

iv. Insolvency. The approval by the stockholders of the Company of a restructuring pursuant to title 11 of the United States Code, a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

v. Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 2(b), the following terms shall have the following meanings:

(A) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(B) "Person" shall have the meaning as set forth in Sections 11(d) and 13(d) of the Exchange Act; provided, however, that Person shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(C) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner shall exclude any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger or other transaction of the Company with another entity.

(c) "Corporate Status" describes the status of a person who is or was a director, officer, employee or agent of the Company or of any other corporation, limited liability company, partnership or joint venture, trust or other enterprise which such person is or was serving at the request of the Company.

(d) "Disinterested Director" shall mean a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" shall mean the Company and any other corporation, limited liability company, partnership, joint venture, trust or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, employee, agent or fiduciary.

(f) “Expenses” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 12(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise. The parties agree that for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee’s counsel as being reasonable shall be presumed conclusively to be reasonable. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “Independent Counsel” shall mean a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than as Independent Counsel with respect to other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(h) The term “Proceeding” shall include any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) while acting pursuant to Indemnitee’s Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this paragraph.

(i) Reference to “other enterprise” shall include employee benefit plans; references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Company” shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in manner “not opposed to the best interests of the Company” as referred to in this Agreement.

Section 3. Indemnity of Indemnitee. The Company agrees to hold harmless and indemnify the Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Indemnity in Third-Party Proceedings. The Company shall hold harmless and indemnify Indemnitee in accordance with the provisions of this Section 3(a) if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3(a), Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding had no reasonable cause to believe that his or her conduct was unlawful. The parties hereto intend that this Agreement shall provide to the fullest extent permitted by law for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided by the Certificate of Incorporation, the By-laws, vote of its stockholders or disinterested directors or applicable law.

(b) Indemnity in Proceedings by or in the Right of the Company. The Company shall hold harmless and indemnify Indemnitee in accordance with the provisions of this Section 3(b) if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor, including but not limited to derivative claims asserted by creditors or shareholders of the Company or asserted by others. Pursuant to this Section 3(b), Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by him or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 3(b) in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that the Delaware Court (as hereinafter defined) or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 4. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of his Corporate Status, a witness or otherwise asked to participate in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

Section 5. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 6. Additional Indemnification.

(a) Notwithstanding any limitation in Section 3, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

(b) For purposes of Section 6(a), the meaning of the phrase "to the fullest extent permitted by applicable law" shall include, but not be limited to:

i. to the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL, and

ii. to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. Exclusions. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification payment in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, or (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (as amended, the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act); or

(c) except as provided in Section 12(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 8. Advances of Expenses. Notwithstanding any provision of this Agreement to the contrary (other than Section 12(d)), the Company shall advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee, and such advancement shall be made within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. In accordance with Section 12(d), advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. The Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which shall constitute an undertaking providing that the Indemnitee undertakes to repay the amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 7.

Section 9. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. The written notification to the Company shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. The omission by Indemnitee to notify the Company hereunder will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement, unless, and only to the extent that, the Company did not otherwise learn of such action or request, as the case may be, and such failure results in forfeiture by the Company of substantial defenses, rights or insurance. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) The Company will be entitled to participate in the Proceeding at its own expense, provided that Indemnitee provides signed, written consent to such participation, which shall not be unreasonably withheld.

(c) Except as otherwise provided below, the Company may, at its option and jointly with any other indemnifying party similarly notified and electing to assume such defense, assume defense of the Proceeding, with counsel reasonably satisfactory to Indemnitee, provided that Indemnitee provides signed, written consent to such assumption, which shall not be unreasonably withheld. Upon the Company delivering to Indemnitee written notice of its election to assume such defense, and Indemnitee providing signed, written consent thereto, the Company will not be liable to Indemnitee under this Agreement for any legal or other expenses subsequently incurred by Indemnitee in connection with the defense thereof, except as provided in subsections 9(c)(i)-(iv) below. Indemnitee shall have the right to employ separate counsel in such Proceeding but the fees and expenses of such counsel incurred after notice from the Company of its assumption of the defense thereof, and Indemnitee's signed, written consent thereto, shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Company, (ii) it is reasonably determined at any time before or during the course of the Proceeding that the use of counsel chosen by the Company to represent Indemnitee would present or presents, as the case may be, such counsel with an actual or potential conflict, (iii) it is reasonably determined at any time before or during the course of the Proceeding that the use of counsel chosen by the Company to represent Indemnitee would be or is, as the case may be, precluded under the applicable standards of professional conduct then prevailing, or (iv) the Company shall not in fact have employed counsel to assume the defense of such Proceeding, or fails to continue to retain such counsel to assume the defense of such Proceeding, in each of which cases the fees and expenses of Indemnitee's separate counsel shall be at the expense of the Company.

(d) The Company shall not be liable to indemnify Indemnitee under this Agreement for any amounts paid in settlement of any action or claim effected without its prior written consent, which shall not be unreasonably withheld. The Company shall be permitted to settle any action except that it shall not settle any action or claim in any manner that would impose any expenses, losses, liabilities, judgments, fines, or penalties (whether civil or criminal,) on Indemnitee, including without limitation a prohibition against Indemnitee serving as an officer or a director of a listed company, without Indemnitee's prior written consent.

Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case: (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Board, by the stockholders of the Company; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a) hereof, the Independent Counsel shall be selected as provided in this Section 10(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Delaware Court has determined that such objection is without merit. If, within twenty (20) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 9(a) hereof and the final disposition of the Proceeding, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by such court or by such other person as such court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 10(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(e), if the person, persons or entity empowered or selected under Section 10 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, or if the determination is to be made by Independent Counsel pursuant to Section 10(a) of this Agreement, within sixty (60) days after (i) the Independent Counsel shall have been selected and not objected to or (ii) all objections to the appointment of a selected Independent Counsel have been resolved by the Delaware Court or agreement between the Company and Indemnitee, or (iii) the Independent Counsel has been appointed by the Delaware Court or a person designated to do so by the Delaware Court, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 11(b) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 10(a) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination the Board has resolved to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 11(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(e), in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 3, or Section 5 or the last sentence of Section 10(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) payment of indemnification pursuant to Section 3 or 6 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by the Delaware Court of his entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association and in such event the Company and Indemnitee agree to fully and finally resolve by such arbitration the matter subject to the demand for arbitration, and the award of the arbitrator shall be final and binding on both parties and may be enforced in any court having jurisdiction over the parties hereto. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 12(a); provided, however, that the immediately preceding clause in this sentence shall not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 3(c) of this Agreement. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12 the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall, to the fullest extent not prohibited by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation, arbitration or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company shall, to the fullest extent permitted by law, indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefor) advance, to the extent not prohibited by law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company if, in the case of indemnification, Indemnitee is wholly successful on the underlying claims; if Indemnitee is not wholly successful on the underlying claims, then such indemnification shall be only to the extent Indemnitee is successful on such underlying claims or otherwise as permitted by law, whichever is greater.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

Section 13. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the By-laws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Nothing in this Section 13 shall be construed to permit the Company to delay advancement of Expenses or payment of amounts in indemnification, to which Indemnitee is otherwise entitled under this Agreement, because such insurance coverage is in place and a claim has been made and is pending under such policies of insurance.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, fiduciary, employee or agent of any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such other corporation, limited liability company, partnership, joint venture, trust or other enterprise.

Section 14. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is a director, officer, employee or agent of the Company and thereafter so long as Indemnitee shall be subject to any possible Proceeding or any possible action to interpret, enforce or defend Indemnitee's rights under this Agreement by litigation, arbitration or otherwise. The indemnification and advancement of Expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise, and shall inure to the benefit of Indemnitee and his or her spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 15. Injunctive Relief. The Company, and the Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause the Indemnitee and the Company irreparable harm. Accordingly, the parties hereto agree that the parties may enforce this Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, they shall not be precluded from seeking or obtaining any other relief to which they may be entitled. The Company and the Indemnitee further agree that they shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection herewith. The Company and the Indemnitee acknowledge that in the absence of a waiver, a bond or undertaking may be required by the Chancery Court of the State of Delaware, and they hereby waive any such requirement of such a bond or undertaking.

Section 16. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 17. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the By-laws and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 18. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless expressed in writing stating the express intent to amend, modify or supplement this Agreement and executed by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

Section 19. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise, unless, and only to the extent that, the Company did not otherwise learn of such action or request, as the case may be, and such failure results in forfeiture by the Company of substantial defenses, rights or insurance.

Section 20. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, on the date so delivered and receipted for, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) dispatched by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed, on the date receipted for or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received, on the date of such transmission:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide to the Company.

(b) If to the Company to

Xtant Medical Holdings Inc.
Attn: Carl O'Connell, CEO
664 Cruiser Lane
Belgrade, MT 59714

or to any other address as may have been furnished to Indemnitee by the Company.

Section 21. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 22. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations between the parties hereto shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules, except the provisions of Section 14(a) providing for arbitration of disputes which shall be governed by, and construed and enforced in accordance with, the Federal Arbitration Act. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, irrevocably Corporate Service Company, 251 Little Falls Drive, Wilmington DE 19808 as its agent in the State of Delaware for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum. The parties hereto, for purposes only of enforcement of any arbitration award resulting from arbitration under the provisions of Section 12(a), (a) consent to the personal jurisdiction of the state and federal courts sitting in the State of Delaware, provided such court then also would have subject matter jurisdiction over such enforcement action, (b) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, irrevocably Corporate Service Company, 251 Little Falls Drive, Wilmington DE 19808 as its agent in the State of Delaware for acceptance of legal process in connection with any such action to enforce such arbitration award with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in any such federal or Delaware state court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in any such federal or Delaware state court has been brought in an improper or inconvenient forum.

Section 23. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 24. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

Xtant Medical Holdings Inc.

Indemnitee:

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: _____

Certification of Chief Executive Officer

I, Carl O'Connell, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Xtant Medical Holdings, 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 consolidated 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(s) 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 subsidiaries, is made known to us by others within those entities, 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 consolidated 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(s) 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: November 21, 2017

/s/ Carl O'Connell

Carl O'Connell
Chief Executive Officer

Certification of Chief Financial Officer

I, Laura Kendall, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Xtant Medical Holdings, 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 consolidated 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(s) 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 subsidiaries, is made known to us by others within those entities, 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 consolidated 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(s) 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: November 21, 2017

/s/ Laura Kendall

Laura Kendall

Deputy CRO

Section 1350 Certification of Chief Executive Officer

In connection with the Quarterly Report on Form 10-Q of Xtant Medical Holdings, Inc. (the "Company") for the quarterly period ended September 30, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Carl O'Connell, Chief Executive Officer of the Company, certify, to the best of my knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 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 (15 U.S.C. 78m(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Carl O'Connell

Carl O'Connell

Chief Executive Officer

Date: November 21, 2017

Section 1350 Certification of Chief Financial Officer

In connection with the Quarterly Report on Form 10-Q of Xtant Medical Holdings, Inc. (the "Company") for the quarterly period ended September 30, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Laura Kendall, Deputy CRO of the Company, certify, to the best of my knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 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 (15 U.S.C. 78m(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Laura Kendall

Laura Kendall

Deputy CRO

Date: November 21, 2017
