

CYTRX CORP
Form 10-Q
November 09, 2009

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

Form 10-Q

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

For the quarterly period ended September 30, 2009

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 0-15327

CytRx Corporation
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or
organization)

58-1642740
(I.R.S. Employer Identification No.)

11726 San Vicente Blvd., Suite 650
Los Angeles, CA
(Address of principal executive offices)

90049
(Zip Code)

(310) 826-5648
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the Registrant: (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

R No

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

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

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

Number of shares of CytRx Corporation common stock, \$.001 par value, outstanding as of November 5, 2009: 108,855,005 exclusive of treasury shares.

CYTRX CORPORATION

FORM 10-Q

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PART I — FINANCIAL INFORMATION

Item 1. — Financial Statements

CYTRX CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS

(Unaudited)

	September 30, 2009	December 31, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	\$7,766,783	\$25,041,772
Short term investments	27,750,000	—
Assets held for sale	149,063	—
Interest receivable	114,874	—
Income taxes recoverable	313,619	215,623
Prepaid expense and other current assets	387,046	613,889
Total current assets	36,481,385	25,871,284
Equipment and furnishings, net	185,560	1,835,052
Molecular library, net	—	103,882
Goodwill	183,780	183,780
Other assets	323,690	330,032
Total assets	\$37,174,415	\$28,324,030
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$561,154	\$668,422
Accrued expenses and other current liabilities	3,018,072	2,556,904
Warrant liability	3,483,566	—
Deferred revenue, current portion	—	1,817,600
Total current liabilities	7,062,792	5,042,926
Deferred revenue, non-current portion	—	7,582,797
Total liabilities	7,062,792	12,625,723
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$.01 par value, 5,000,000 shares authorized, including 15,000 shares of Series A Junior Participating Preferred Stock; no shares issued and outstanding	—	—
Common stock, \$.001 par value, 175,000,000 shares authorized; 109,488,821 and 93,978,448 shares issued and outstanding at September 30, 2009 and December 31, 2008, respectively.	109,489	93,978
Additional paid-in capital	226,741,556	210,007,468
Treasury stock, at cost (633,816 shares held at September 30, 2009 and December 31, 2008)	(2,279,238)	(2,279,238)
Accumulated deficit	(194,460,184)	(192,123,901)

Total stockholders' equity	30,111,623	15,698,307
Total liabilities and stockholders' equity	\$37,174,415	\$28,324,030

The accompanying notes are an integral part of these condensed consolidated financial statements.

CYTRX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Revenue:				
Service revenue	\$6,678,903	\$917,473	\$9,125,397	\$4,838,923
License revenue	275,000	—	275,000	—
	6,953,903	917,473	9,400,397	4,838,923
Expenses:				
Research and development	1,227,495	2,005,813	5,640,041	7,723,184
General and administrative	2,576,187	1,600,986	6,987,313	9,266,218
In-process research and development (See Note 13)	—	8,012,154	—	8,012,154
Impairment loss on fixed assets	1,187,305	—	1,187,305	—
	4,990,987	11,618,953	13,814,659	25,001,556
Income (loss) before other income	1,962,916	(10,701,480)	(4,414,262)	(20,162,633)
Other income:				
Interest income	102,348	215,345	242,311	1,023,921
Other income, net	28,316	—	66,677	219,229
Gain on warrant derivative liability	544,040	—	544,040	—
Equity in loss of unconsolidated subsidiary	—	(1,344,372)	—	(3,857,227)
Gain on sale of unconsolidated subsidiary shares	1,224,951	—	1,224,951	—
Minority interest in losses of subsidiary	—	—	—	88,374
Net income (loss) before income taxes	3,862,571	(11,830,507)	(2,336,283)	(22,688,336)
Provision (benefit) for income taxes	—	(485,000)	—	(827,000)
Net income (loss)	3,862,571	(12,315,507)	(2,336,283)	(23,515,336)
Deemed dividend for anti-dilution adjustment made to stock warrants	—	—	—	(756,954)
Net income (loss) applicable to common stockholders	\$3,862,571	\$(12,315,507)	\$(2,336,283)	\$(24,272,290)
Basic net income (loss) per share	\$0.04	\$(0.14)	\$(0.02)	\$(0.27)
Weighted average shares outstanding	104,118,353	91,106,215	96,977,544	90,719,685
Diluted net income (loss) per share	\$0.04	\$(0.14)	\$(0.02)	\$(0.27)
Diluted weighted average shares outstanding	105,766,094	91,106,215	96,977,544	90,719,685

The accompanying notes are an integral part of these condensed consolidated financial statements.

CYTRX CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Nine Months Ended September 30,	
	2009	2008
Cash flows from operating activities:		
Net loss	\$ (2,336,283)	\$ (23,515,336)
Adjustments to reconcile net loss to cash used in operating activities:		
Depreciation and amortization	451,383	442,282
Impairment loss on fixed assets	1,187,305	—
Fair value adjustment on warrant liability	(544,040)	—
Equity in loss of unconsolidated subsidiary	—	3,857,227
Minority interest in loss of subsidiary	—	(88,374)
RXi common stock transferred for services	—	244,860
Gain on sale of shares of unconsolidated subsidiary	(1,224,951)	
Non-cash earned on short-term investments	—	(48,452)
Non-cash gain on transfer of RXi common stock	—	(226,579)
Non-cash expense for in-process research and development acquired	—	8,012,154
Expense related to employee and non-employee stock options	2,210,553	1,605,776
Net change in operating assets and liabilities	(8,926,632)	(5,831,894)
Total adjustments	(6,846,382)	7,967,000
Net cash used in operating activities	(9,182,665)	(15,548,336)
Cash flows from investing activities:		
Purchase of short-term investments	(27,750,000)	—
Purchases of equipment and furnishings	(178,426)	(963,999)
Cash paid related to acquisition of Innovive	—	(3,689,769)
Deconsolidation of subsidiary	—	(10,359,278)
Proceeds from sale of shares of unconsolidated subsidiary	1,224,951	
Proceeds from sale of fixed assets	44,500	10,000,000
Net cash used in investing activities	(26,658,975)	(5,013,046)

Cash flows from financing activities:		
Proceeds from exercise of stock options and warrants	293,083	976,808
Common stock issued in accordance with the registered direct offering	18,273,568	—
Net cash provided by financing activities	18,566,651	976,808
Net decrease in cash and cash equivalents		
	(17,274,989)	(19,584,574)
Cash and cash equivalents at beginning of period	25,041,772	50,498,261
Cash and cash equivalents at end of period	\$ 7,766,783	\$ 30,913,687
Supplemental disclosure of cash flow information:		
Cash received during the period as interest income	\$ 113,372	\$ 1,023,921
Cash paid during the period for income taxes	\$ —	\$ 195,000

The accompanying notes are an integral part of these condensed consolidated financial statements. See supplemental information on the following page.

Supplemental schedule of non-cash investing and financing activities:

On September 19, 2008, CytRx Corporation (the “Company”) acquired Innovive Pharmaceuticals, Inc. in a merger transaction accounted for as an asset acquisition. See Note 13 below. The fair value of Innovive’s assets and liabilities at September 19, 2008, in millions of dollars, are presented below:

In-process research and development	\$8.0
Leasehold interests	.1
Prepaid expenses	.3
Accounts payable	(6.1)
Net assets acquired through issuance of common stock	\$2.3

As a result of the March 11, 2008 distribution by the Company to its stockholders of approximately 36% of the outstanding shares of RXi Pharmaceuticals Corporation, the Company deconsolidated that previously majority-owned subsidiary. As part of the transaction, the Company deconsolidated \$3.7 million of total assets and \$4.6 million of total liabilities of RXi.

In connection with applicable antidilution adjustments to the price of certain outstanding warrants, the Company recorded a deemed dividend of approximately \$0.8 million in the nine months ended September 30, 2008. The deemed dividend was recorded as a charge to accumulated deficit and a corresponding credit to additional paid-in capital.

CYTRX CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

September 30, 2009
(Unaudited)

1. Description of Company and Basis of Presentation

CytRx Corporation (“CytRx” or the “Company”) is a biopharmaceutical research and development company engaged in the development of high-value human therapeutics. CytRx’s drug development pipeline includes three product candidates in current or planned clinical development for cancer indications, including studies of tamibarotene for the treatment of acute promyelocytic leukemia, or APL. In addition to its core oncology programs, the Company is developing treatments for neurodegenerative and other disorders based upon its small-molecule molecular chaperone amplification technology. Apart from its drug development programs, CytRx currently holds a 36% equity interest in RXi Pharmaceuticals Corporation, or RXi (NASDAQ: RXII).

On September 19, 2008, CytRx completed its merger acquisition of Innovive Pharmaceuticals, Inc., or Innovive, and its clinical-stage oncology product candidates, including tamibarotene. As a result of the merger, Innovive became a wholly owned subsidiary of CytRx. On December 30, 2008, CytRx merged the former Innovive subsidiary into CytRx. Prior to its acquisition of Innovive, CytRx was focused on developing human therapeutics based primarily upon its small-molecule molecular chaperone amplification technology, including arimoclomol for amyotrophic lateral sclerosis, which is commonly known as ALS or Lou Gehrig’s Disease, and for stroke recovery, and iroxanadine for diabetic foot ulcers and other potential indications. After acquiring Innovive, CytRx redirected its efforts to developing Innovive’s former lead oncology product candidates, tamibarotene for APL, INNO-206 for small cell lung cancer (“SCLC”), and other solid tumor cancers, and bafetinib, which the Company believes hold greater near-term revenue potential. CytRx’s current business strategy is to enter the next stage of clinical development with arimoclomol for ALS, while seeking one or more strategic partnerships for the further development of arimoclomol and iroxanadine.

To date, the Company has relied primarily upon sales of its equity securities and upon proceeds received upon the exercise of options and warrants and, to a much lesser extent, upon payments from its strategic partners and licensees, to generate funds needed to finance its business and operations. See Note 8 below.

In August 2006, the Company received approximately \$24.3 million in proceeds from the privately-funded ALS Charitable Remainder Trust (“ALSCRT”) in exchange for the commitment to continue research and development of arimoclomol and other potential treatments for ALS and a one percent royalty in the worldwide sales of arimoclomol. Under the arrangement, the Company retains the rights to any developments funded by the arrangement and the proceeds of the transaction are non-refundable. The ALSCRT has no obligation to provide any further funding to the Company. Management has concluded that due to the research and development components of the transaction that it is properly accounted for under ASC 730-20 (previously SFAS No. 68, Research and Development Arrangements (“SFAS No. 68”). Accordingly, the Company has recorded the value received under the arrangement as deferred revenue and will recognize service revenue using the proportional performance method of revenue recognition, meaning that service revenue is recognized on a dollar-for-dollar basis for each dollar of expense incurred for the research and development of arimoclomol and other potential ALS treatments. Pursuant to an amendment signed between the Company and the beneficiary of the ALSCRT on August 6, 2009, the Company was released from all restrictions on the use of any proceeds previously paid to the Company in connection with the arrangement. As a result, the Company recognized \$6.7 million as service revenue in the third quarter of 2009, which represents the remaining deferred revenue or the previously un-recognized portion of the value received.

The accompanying condensed consolidated financial statements at September 30, 2009 and for the three-month and nine-month periods ended September 30, 2009 and 2008 are unaudited, but include all adjustments, consisting of normal recurring entries, that management believes to be necessary for a fair presentation of the periods presented. Prior period figures have been reclassified, wherever necessary, to conform to current presentation. Interim results are not necessarily indicative of results for a full year. Balance sheet amounts as of December 31, 2008 have been derived from the Company's audited financial statements as of that date.

The consolidated financial statements included herein have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations. The financial statements should be read in conjunction with the Company's audited consolidated financial statements in its Annual Report on Form 10-K for the year ended December 31, 2008. The Company's operating results will fluctuate for the foreseeable future. Therefore, period-to-period comparisons should not be relied upon as predictive of the results in future periods.

2. Recent Accounting Pronouncements

In December 2007, the FASB issued guidance which is now part of ASC 810-10, Noncontrolling Interests in Consolidated Financial Statements, an Amendment of Accounting Research Bulletin No. 51 ” (formerly Statement of Financial Accounting Standards (SFAS) 160, Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51). This guidance establishes accounting and reporting standards for ownership interests in subsidiaries held by parties other than the parent, changes in a parent’s ownership of a noncontrolling interest, calculation and disclosure of the consolidated net income attributable to the parent and the noncontrolling interest, changes in a parent’s ownership interest while the parent retains its controlling financial interest and fair value measurement of any retained noncontrolling equity investment. The new guidance is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. Early adoption is prohibited. We adopted this guidance on January 1, 2009, the beginning of our fiscal year 2009, which had no impact on our consolidated financial statements.

In March 2008, the FASB issued guidance ASC 815-10 (formerly Statement of Financial Accounting Standards No. 161, Disclosures about Derivative Instruments and Hedging Activities (“SFAS No. 161”). The new standard amends Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities (“SFAS 133”), and seeks to enhance disclosure about how and why a company uses derivatives; how derivative instruments are accounted for under SFAS 133 (and the interpretations of that standard); and how derivatives affect a company’s financial position, financial performance and cash flows. SFAS 161 will be effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. Early application of the standard is encouraged, as well as comparative disclosures for earlier periods at initial adoption. The adoption of SFAS No. 161 did not have a material impact on our consolidated financial statements.

In April 2008, the FASB issued revised guidance on determining the useful life of intangible assets. The revised guidance, which is now part of ASC 350-30 General Intangibles Other than Goodwill (previously Staff Position No. FAS 142-3, Determination of the Useful Life of Intangible Asset)s, amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under FASB Statement No. 142, Goodwill and Other Intangible Assets. The Position will be effective for fiscal years beginning after December 15, 2008 and will only apply prospectively to intangible assets acquired after the effective date. Early adoption is not permitted. The adoption of SFAS No. 142-3 did not have a material impact on our consolidated financial statements.

In May 2008, the FASB issued revised guidance on Convertible Debt Instruments. The revised guidance which is now part of ASC 470-20 (formerly Staff Position No. Accounting Principles Board 14-1, Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement) (“FSP No. APB 14-1”). FSP No. APB 14-1 requires that the liability and equity components of convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) be separately accounted for in a manner that reflects an issuer’s nonconvertible debt borrowing rate. FSP No. APB 14-1 is effective for us as of January 1, 2009. The adoption of FSP No. APB 14-1 did not have an impact on our consolidated financial statements.

In June 2008, the FASB ratified guidance which is now part of ASC 815-40, Contracts in Entity’s Own Equity (formerly EITF (Emerging Issues Task Force) 07-05), Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity’s Own Stock. The objective of this issue is to provide guidance for determining whether an equity-linked financial instrument (or embedded feature) is indexed to an entity’s own stock. This issue applies to any freestanding financial instrument or embedded feature that has all the characteristics of a derivative instrument or an instrument which may be potentially settled in an entity’s own stock regardless of whether the instrument possess derivative characteristics. This issue provides a two-step approach to assist in making these determinations and is effective for financial statements issued for fiscal years beginning after December 15, 2008. The adoption of EITF 07-05 did not have a material impact on our consolidated financial statements for the nine months ended September

30, 2009.

In August 2008, the SEC announced that it will issue for comment a proposed roadmap regarding the potential use by U.S. issuers of financial statements prepared in accordance with International Financial Reporting Standards, or IFRS. IFRS is a comprehensive series of accounting standards published by the International Accounting Standards Board, or IASB. Under the proposed roadmap, the Company could be required in fiscal year 2014 to prepare financial statements in accordance with IFRS and the SEC will make a determination in 2011 regarding mandatory adoption of IFRS. The Company is currently assessing the impact that this potential change would have on our consolidated financial statements and will continue to monitor the development of the potential implementation of IFRS.

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In April 2009, the FASB issued guidance which is now part of ASC 825-10 Financial Instruments (formerly Financial Staff Position SFAS 107-1 and Accounting Principles Board (APB) Opinion No. 28-1, Interim Disclosures about Fair Value of Financial Instruments (SFAS 107-1 and APB 28-1). This statement amends FASB Statement No. 107, Disclosures about Fair Values of Financial Instruments, to require disclosures about fair value of financial instruments in interim financial statements as well as in annual financial statements. The statement also amends APB Opinion No. 28, "Interim Financial Reporting," to require those disclosures in all interim financial statements. This statement is effective for interim periods ending after June 15, 2009. The adoption of SFAS 107-1 and APB 28-1 did not have an impact on the Company's financial statements.

In May 2009, the FASB issued new guidance for accounting for subsequent events. The new guidance, which is now part of ASC 855-10, Subsequent Events (formerly, SFAS No. 165, Subsequent Events) is consistent with existing auditing standards in defining subsequent events as events or transactions that occur after the balance sheet date but before the financial statements are issued or are available to be issued, but it also requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for that date. The new guidance defines two types of subsequent events: "recognized subsequent events" and "non-recognized subsequent events." Recognized subsequent events provide additional evidence about conditions that existed at the balance sheet date and must be reflected in the company's financial statements. Non-recognized subsequent events provide evidence about conditions that arose after the balance sheet date and are not reflected in the financial statements of a company. Certain non-recognized subsequent events may require disclosure to prevent the financial statements from being misleading. The new guidance was effective on a prospective basis for interim or annual periods ending after June 15, 2009. We adopted the provisions of SFAS 165 as required.

In June 2009, the FASB issued Statement of Financial Accounting Standards No. 166, Accounting for Transfers of Financial Assets, an amendment to SFAS No. 140 ("SFAS 166"). SFAS 166 eliminates the concept of a "qualifying special-purpose entity," changes the requirements for derecognizing financial assets, and requires additional disclosures in order to enhance information reported to users of financial statements by providing greater transparency about transfers of financial assets, including securitization transactions, and an entity's continuing involvement in and exposure to the risks related to transferred financial assets. SFAS 166 is effective for fiscal years beginning after November 15, 2009. The Company will adopt SFAS 166 in fiscal 2010. The Company does not expect that the adoption of SFAS 166 will have a material impact on the Company's financial statements.

In June 2009, the FASB issued Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R) ("SFAS 167"). The amendments include: (1) the elimination of the exemption for qualifying special purpose entities, (2) a new approach for determining who should consolidate a variable-interest entity, and (3) changes to when it is necessary to reassess who should consolidate a variable-interest entity. SFAS 167 is effective for the first annual reporting period beginning after November 15, 2009 and for interim periods within that first annual reporting period. The Company will adopt SFAS 167 in fiscal 2010. The Company does not expect that the adoption of SFAS 167 will have a material impact on the Company's financial statements.

In June 2009, the FASB issued new guidance which is now part of ASC 105-10 (formerly Statement of Financial Accounting Standards No. 168, The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles), ("SFAS 168"). SFAS 168 replaces FASB Statement No. 162, "The Hierarchy of Generally Accepted Accounting Principles", and establishes the FASB Accounting Standards Codification as the source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with generally accepted accounting principles. SFAS 168 is effective for interim and annual periods ending after September 15, 2009. The adoption of SFAS 168 did not have a material impact on the Company's financial statements.

Fair Value Measurements—The Company adopted new guidance which is now part of ASC 820-10 (formerly Financial Accounting Standards Board Statement of Financial Accounting Standards No. 157), Fair Value Measurements ("FAS

157”), effective January 1, 2008. SFAS 157 does not require any new fair value measurements; instead it defines fair value, establishes a framework for measuring fair value in accordance with existing generally accepted accounting principles and expands disclosure about fair value measurements. The adoption of SFAS 157 for our financial assets and liabilities did not have an impact on our financial position or operating results. Beginning January 1, 2008, assets and liabilities recorded at fair value in consolidated balance sheets are categorized based upon the level of judgment associated with the inputs used to measure the fair value. Level inputs, as defined by SFAS 157, are as follows:

- Level 1 – quoted prices in active markets for identical assets or liabilities.
- Level 2 – other significant observable inputs for the assets or liabilities through corroboration with market data at the measurement date.
- Level 3 – significant unobservable inputs that reflect management’s best estimate of what market participants would use to price the assets or liabilities at the measurement date.

The following table summarizes fair value measurements by level at September 30, 2009 for assets and liabilities measured at fair value on a recurring basis:

(In thousands)	Level I	Level II	Level III	Total
Cash and cash equivalents	\$ 7,760,483	\$ —	\$ —	7,760,483
Short term investments	27,750,000	—	—	27,750,000
Warrant Liability	—	3,483,566	—	3,483,566

Liabilities measured at market value on a recurring basis include warrant liabilities resulting from recent debt and equity financing. In accordance with EITF 00-19, Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company’s Own Stock (EITF 00-19), the warrant liabilities are being marked to market each quarter-end until they are completely settled. The warrants are valued using the Black-Scholes method, using assumptions consistent with our application of ASC 718 (previously SFAS 123R). See Warrant Liabilities below.

3. Short-term Investments

The Company held \$27.75 million of short-term investments as at September 30, 2009. The Company has classified these investments as held-to-maturity. These investments are comprised of six accounts detailed as follows: \$6 million with a maturity date of October 1, 2009; \$1.75 million with a maturity date of October 1, 2009; \$5 million with a maturity date of October 29, 2009; \$5 million with a maturity date of January 28, 2010; \$5 million with a maturity date of April 1 2010; and \$5 million with a maturity date of July 29, 2010.

4. Assets Held for Sale

In May 2009, the Company substantially completed the initial phase of its new-drug discovery research at its laboratory facility in San Diego, California. The Company concluded that it will conduct its research and development activities through third parties for the foreseeable future. The Company is in the process of seeking to sublet the laboratory facility and sell the laboratory equipment. During the current quarter the fixed assets related to the San Diego lab have been re-allocated from Equipment and Furnishings to Assets Held for Sale and have been written down to their estimate net realizable value as of September 30, 2009, which resulted in a charge of \$1.2 million for the current quarter. In November 2009, the Company signed sublease agreements with two parties to sublet the facility for the remainder of the term of the lease, which expires in October, 2010. The company recognized an onerous lease accrual of \$254,000 as of September 2009.

5. Basic and Diluted Net Income (Loss) Per Common Share

Basic net income (loss) per common share has computed using the weighted-average number of common shares outstanding. Diluted net income (loss) per common share computed using the weighted-average number of common share and common share equivalents outstanding. Potentially dilutive stock options and warrants of 21.3 million and 17.6 million shares for the three month periods ending September 30, 2009 and 2008 respectively were excluded from the computation of diluted loss per share where the effect would be anti-dilutive. Potentially dilutive stock options and warrants of 23 million and 17.6 million shares for the nine month periods ended September 30, 2009 and 2008, were excluded from the computation of diluted loss per share where the effect would be anti-dilutive.

In March 2008, the Company recorded a deemed dividend of approximately \$0.8 million in connection with applicable antidilution adjustments to the terms of certain outstanding warrants to purchase common stock. The deemed dividend is reflected as an adjustment to net (loss) for the first quarter of 2008 to arrive at net (loss) applicable to common stockholders on the consolidated statements of operations and for purposes of calculating basic and diluted net income (loss) per share.

6. Warrant Liabilities

Liabilities measured at market value on a recurring basis include warrant liabilities resulting from our recent equity financing. In accordance with the guidance which is now ASC 815-40 (formerly EITF (Emerging Issues Task Force) 00-19, Accounting for Derivative Financial Instruments Indexed and Potentially Settled in a Company's Own Stock), the warrant liabilities are being marked to market each quarter-end until they are completely settled. The warrants are valued using the Black-Scholes method, using assumptions consistent with our application of ASC 718 (previously SFAS 123R). The gain or loss resulting from the marked to market calculation is shown on the Consolidated Statements of Operations as Gain on warrant derivative liability. The Company recognized a gain of \$544k during the current quarter.

7. Stock Based Compensation

CytRx Corporation

The Company has a 2000 Long-Term Incentive Plan under which an aggregate of 10 million shares of common stock were originally reserved for issuance. As of September 30, 2009, there were approximately 6.7 million shares subject to outstanding stock options and approximately 1.3 million shares available for future grant under the plan.

On July 1, 2009, the Company's stockholders adopted a new 2008 Stock Incentive Plan under which 10 million shares of common stock were reserved for issuance. As of September 30, 2009, there were 350,000 shares subject to outstanding stock options under the plan.

The Company's stock-based employee compensation plans are described in Note 12 to its financial statements contained in its Annual Report on Form 10-K filed for the year ended December 31, 2008.

The Company has adopted the provisions of ASC 718 (previously SFAS No. 123(R), Share-Based Payment ("SFAS 123(R)")), which requires the measurement and recognition of compensation expense for all stock-based awards made to employees and non-employees.

For stock options and stock warrants paid in consideration of services rendered by non-employees, the Company recognizes compensation expense in accordance with the requirements of ASC 718 (previously SFAS No. 123(R)), ASC 505-50 (previously Emerging Issues Task Force Issue No. 96-18 ("EITF 96-18")), Accounting for Equity Instruments that are Issued to other than Employees for Acquiring, or in Conjunction with Selling Goods or Services and ASC 505 (previously EITF 00-18, Accounting Recognition for Certain Transactions involving Equity Instruments Granted to Other Than Employees), as amended.

Non-employee option grants that do not vest immediately upon grant are recorded as an expense over the vesting period. At the end of each financial reporting period prior to performance, the value of these options, as calculated using the Black-Scholes option-pricing model, is determined, and compensation expense recognized or recovered during the period is adjusted accordingly. Since the fair market value of options granted to non-employees is subject to change in the future, the amount of the future compensation expense is subject to adjustment until the common stock options or warrants are fully vested.

At the 2009 Annual Meeting of Stockholders held on July 1, 2009, the Company's stockholders approved an amendment to the Company's 2000 Long-Term Incentive Plan to allow for a one-time stock option re-pricing program for employees and officers. Pursuant to the re-pricing program, 3,265,500 eligible stock options held by ten eligible employees and officers were amended to reduce the exercise prices of the options to \$1.15 per share, which was the closing sale price of CytRx's common stock as reported on the Nasdaq Capital Market on the July 1, 2009 completion

date of the re-pricing program, and to impose a new option vesting schedule. None of the amended options vested immediately. To the extent a participating employee's or officer's eligible options were vested on the amendment date, the amended options will vest, in full, on December 31, 2009, so long as the employee or officer remains in the Company's employ through that date. To the extent a participating employee's or officer's eligible options were unvested as of July 1, 2009, the original scheduled vesting will be suspended until December 31, 2009 and will resume after that date, so long as the employee or officer remains in the Company's employ through such date.

ASC 718 (previously SFAS No. 123(R)) requires the re-pricing of equity awards to be treated as the repurchase of the old award for a new award of equal or greater value, incurring additional compensation cost for any incremental value. This incremental difference in value is measured as the excess of the fair value of the modified award determined in accordance with the provisions of ASC 718 over the fair value of the original award immediately before its terms are modified, measured based on the share price and other pertinent factors at that date. ASC 718 provides that this incremental fair value, plus the remaining unrecognized compensation cost from the original measurement of the fair value of the old option, must be recognized over the remaining vesting period. The information presented below as of September 30, 2009 reflects the Company's stock option re-pricing program.

The following table sets forth the total stock-based compensation expense (recovery) resulting from stock options included in the Company's unaudited interim consolidated statements of operations:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Research and development — employee	\$136,870	\$187,000	\$504,885	\$540,000
General and administrative — employee	719,801	365,000	1,291,913	972,000
Total employee stock-based compensation	\$856,671	\$552,000	\$1,796,798	\$1,512,000
Research and development — non-employee (recovery)	\$20,575	\$—	\$39,088	\$(422,000)

During the first nine months of 2009, the Company issued stock options to purchase 450,000 shares of its common stock (excluding all re-priced options). The fair value of the stock options granted in the nine-month period listed in the table below was estimated using the Black-Scholes option-pricing model, based on the following assumptions:

	Nine Months Ended September 30,	
	2009	2008
Risk-free interest rate	1.90%	2.72%
Expected volatility	- 2.86 %	- 3.84 %
Expected lives (years)	93.3%	93.8%
Expected dividend yield	- 97.9 %	- 96.8 %
	6	6
	0.00 %	0.00 %

The Company's computation of expected volatility is based on the historical daily volatility of its publicly traded stock. For option grants issued during the nine-month periods ended September 30, 2009 and 2008, the Company used a calculated volatility for each grant. The Company's computation of expected lives was estimated using the simplified method provided for under ASC 718 (previously Staff Accounting Bulletin 107, Share-Based Payment ("SAB 107")), which averages the contractual term of the Company's options of ten years with the average vesting term of three years for an average of six years. The dividend yield assumption of zero is based upon the fact the Company has never paid cash dividends and presently has no intention of paying cash dividends. The risk-free interest rate used for each grant is equal to the U.S. Treasury rates in effect at the time of the grant for instruments with a similar expected life. Based on historical experience, for the nine-month periods ended September 30, 2009 and 2008, the Company has estimated an annualized forfeiture rate of 16% and 10%, respectively, for options granted to its employees, 3% and 1%, respectively, for options granted to senior management and 0% for each period for options granted to directors. Compensation costs will be adjusted for future changes in estimated forfeitures. The Company will record additional expense if the actual forfeitures are lower than estimated and will record a recovery of prior expense if the actual forfeiture rates are higher than estimated. No amounts relating to employee stock-based compensation have been capitalized.

At September 30, 2009, there remained approximately \$1.6 million of unrecognized compensation expense related to unvested stock options granted to current and former employees, directors and consultants, to be recognized as expense over a weighted-average period of 0.94 years. Presented below is the Company's stock option activity (excluding re-priced options):

