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

FORM 10-Q

(Mark One)

☒ **Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
For the quarterly period ended June 30, 2013

OR

☐ **Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
For transition period from to

Commission File Number: 000-19756

PDL BIOPHARMA, INC.

(Exact name of registrant as specified in its charter)

Delaware	**94-3023969**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**

932 Southwood Boulevard
Incline Village, Nevada 89451
(Address of principal executive offices and Zip Code)

(775) 832-8500
(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.

Large accelerated filer x	*Accelerated filer ☐*	*Non-accelerated filer ☐*	*Smaller reporting company ☐*

(Do not check if a smaller reporting company)

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

As of July 30, 2013, there were 140,044,781 shares of the Registrant's Common Stock outstanding.

PDL BIOPHARMA, INC.
2013 Form 10-Q
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GLOSSARY OF TERMS AND ABBREVIATIONS

Abbreviation/term	Definition
'216B Patent	European Patent No. 0 451 216B
'761 Patent	U.S. Patent No. 5,693,761
2012 Notes	2.0% Convertible Senior Notes due February 15, 2012, fully retired at June 30, 2011
ASC	Accounting Standards Codification
ASU	Accounting Standards Update
Avinger	Avinger, Inc.
AxoGen	AxoGen, Inc.
Biogen Idec	Biogen Idec, Inc.
Chugai	Chugai Pharmaceutical Co., Ltd.
Elan	Elan Corporation, PLC
ex-U.S.-based Manufacturing and Sales	Products that are both manufactured and sold outside of the United States
ex-U.S.-based Sales	Products that are manufactured in the United States and sold outside of the United States
EBITDA	Earnings before interest, taxes, depreciation and amortization
EMA	European Medicines Agency
Facet	Facet Biotech Corporation. In April 2010, Abbott Laboratories acquired Facet and later renamed the company Abbott Biotherapeutics Corp., and in January 2013, Abbott Biotherapeutics Corp. was renamed AbbVie Biotherapeutics, Inc. and spun off from Abbott Laboratories as a subsidiary of AbbVie Inc.
FASB	Financial Accounting Standards Board
FDA	U.S. Food and Drug Administration
February 2015 Notes	2.875% Convertible Senior Notes due February 15, 2015
GAAP	U.S. Generally Accepted Accounting Principles
Genentech	Genentech, Inc.
Genentech Products	Avastin®, Herceptin®, Lucentis®, Xolair®, Perjeta®, Kadcyla®
KMPG	KPMG, LLP
Lilly	Eli Lilly and Company
May 2015 Notes	3.75% Senior Convertible Notes due May 2015
Merus Labs	Merus Labs International, Inc.
Non-Recourse Notes	QHP PhaRMA℠ Senior Secured Notes due March 15, 2015, issued through our wholly-owned subsidiary, QHP Royalty Sub LLC, in November 2009, fully repaid in September 2012
Novartis	Novartis AG
OCI	Other Comprehensive Income (Loss)
PDL, we, us, our, the Company	PDL BioPharma, Inc.
Queen et al. patents	PDL's patents in the United States and elsewhere covering the humanization of antibodies
Roche	F. Hoffman LaRoche, Ltd.
Royalty Agreement	Revenue Interests Purchase Agreement between PDL and AxoGen.
SEC	Securities and Exchange Commission
Series 2012 Notes	2.875% Series 2012 Convertible Senior Notes due February 15, 2015
SPCs	Supplementary Protection Certificates
SPC Products	Avastin®, Herceptin®, Lucentis®, Xolair® and Tysabri®
Spin-Off	The spin-off by PDL of Facet
U.S.-based Sales	Products sold in the United States or manufactured in the United States and used or sold anywhere in the world
VWAP	Volume weighted average share price
Wellstat Diagnostics	Wellstat Diagnostics, LLC

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(Unaudited)
(In thousands, except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2013	**2012**	**2013**	**2012**
Revenues				
Royalties	$ 143,617	$ 125,904	$ 235,464	$ 203,248
Total revenues	143,617	125,904	235,464	203,248
Operating expenses				
General and administrative	6,783	5,145	13,969	12,090
Operating income	136,834	120,759	221,495	191,158
Non-operating expense, net				
Interest and other income, net	4,963	428	8,801	518
Interest expense	(6,051)	(7,872)	(12,051)	(16,573)
Total non-operating expense, net	(1,088)	(7,444)	(3,250)	(16,055)
Income before income taxes	135,746	113,315	218,245	175,103
Income tax expense	42,004	39,813	71,032	61,417
Net income	$ 93,742	$ 73,502	$ 147,213	$ 113,686
Net income per share				
Basic	$ 0.67	$ 0.53	$ 1.05	$ 0.81
Diluted	$ 0.62	$ 0.52	$ 0.96	$ 0.80
Weighted average shares outstanding				
Basic	139,825	139,683	139,821	139,681
Diluted	152,224	142,213	152,784	142,890
Cash dividends declared per common share	$ —	$ —	$ 0.60	$ 0.60

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)
(In thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2013	**2012**	**2013**	**2012**
Net income	$ 93,742	$ 73,502	$ 147,213	$ 113,686
Other comprehensive income (loss), net of tax				
Unrealized gains (losses) on investments in available-for-sale securities[(a)]	(3)	(16)	(6)	13
Unrealized gains (losses) on cash flow hedges[(b)]	(1,533)	8,950	3,281	2,273
Total other comprehensive income (loss), net of tax	(1,536)	8,934	3,275	2,286
Comprehensive income	$ 92,206	$ 82,436	$ 150,488	$ 115,972

[(a)] Net of tax of ($2) and ($9) for the three months ended June 30, 2013 and 2012, respectively, and $(3) and $7 for the six months ended June 30, 2013 and 2012, respectively.
[(b)] Net of tax of ($825) and $4,819 for the three months ended June 30, 2013 and 2012, respectively, and $1,767 and $1,224 for the six months ended June 30, 2013 and 2012, respectively.

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except per share amounts)

	June 30, 2013	December 31, 2012
	(unaudited)	(Note 1)
Assets		
Current assets:		
Cash and cash equivalents	$ 251,473	$ 131,212
Restricted investment	20,000	20,000
Short-term investments	7,377	17,477
Receivables from licensees	—	366
Deferred tax assets	1,437	1,613
Notes receivable	40	7,504
Prepaid and other current assets	3,630	4,813
Total current assets	283,957	182,985
Property and equipment, net	53	59
Notes and other receivables, long-term	110,593	85,704
Long-term deferred tax assets	3,525	4,552
Other assets	3,296	6,666
Total assets	$ 401,424	$ 279,966
Liabilities and Stockholders' Deficit		
Current liabilities:		
Accounts payable	$ 115	$ 1,074
Accrued liabilities	48,837	9,400
Accrued income taxes	18,753	—
Convertible notes payable	169,521	—
Total current liabilities	237,226	10,474
Convertible notes payable	145,799	309,952
Other long-term liabilities	19,660	27,662
Total liabilities	402,685	348,088
Commitments and contingencies (Note 8)		
Stockholders' deficit:		
Preferred stock, par value $0.01 per share, 10,000 shares authorized; no shares issued and outstanding	—	—
Common stock, par value $0.01 per share, 350,000 shares authorized; 139,848 and 139,816 shares issued and outstanding at June 30, 2013, and December 31, 2012, respectively	1,399	1,398
Additional paid-in capital	(233,681)	(234,066)
Accumulated other comprehensive loss	(1,813)	(5,088)
Retained earnings	232,834	169,634
Total stockholders' deficit	(1,261)	(68,122)
Total liabilities and stockholders' deficit	$ 401,424	$ 279,966

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	Six Months Ended June 30,	
	2013	**2012**
Cash flows from operating activities		
Net income	$ 147,213	$ 113,686
Adjustments to reconcile net income to net cash provided by operating activities:		
Amortization of convertible notes offering costs	6,552	7,221
Other amortization and depreciation	(214)	586
Hedge ineffectiveness on foreign exchange contracts	(5)	—
Stock-based compensation expense	373	436
Tax expense from stock-based compensation arrangements	(13)	(7)
Deferred taxes	(548)	4,543
Changes in assets and liabilities:		
Receivables from licensees	366	600
Prepaid and other current assets	1,183	6,580
Accrued interest on notes receivable	(5,366)	—
Other assets	2,080	(1,167)
Accounts payable	(959)	(373)
Accrued legal settlement	—	(27,500)
Accrued liabilities	(290)	1,098
Accrued income taxes	18,753	18,588
Other long-term liabilities	(5,271)	(1,498)
Net cash provided by operating activities	163,854	122,793
Cash flows from investing activities		
Purchases of investments	(6,375)	(5,993)
Maturities of investments	16,405	20,000
Issuance of notes receivable	(27,304)	(7,425)
Repayment of notes receivable	15,634	—
Acquisition of property and equipment	(2)	(19)
Net cash provided by/(used in) investing activities	(1,642)	6,563
Cash flows from financing activities		
Repayment of non-recourse notes	—	(70,632)
Payment of debt issuance costs	—	(845)
Cash dividends paid	(41,964)	(41,924)
Excess tax benefit from stock-based compensation	13	7
Net cash used in financing activities	(41,951)	(113,394)
Net increase in cash and cash equivalents	120,261	15,962
Cash and cash equivalents at beginning of the year	131,212	168,544
Cash and cash equivalents at end of period	$ 251,473	$ 184,506
Supplemental cash flow information		
Cash paid for income taxes	$ 55,000	$ 30,000
Cash paid for interest	$ 5,498	$ 9,673

See accompanying notes.

1. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with GAAP for interim financial information. The financial statements include all adjustments (consisting only of normal recurring adjustments) that management of PDL believes are necessary for a fair presentation of the periods presented. These interim financial results are not necessarily indicative of results expected for the full fiscal year or for any subsequent interim period.

The accompanying Condensed Consolidated Financial Statements and related financial information should be read in conjunction with the audited Consolidated Financial Statements and the related notes thereto for the year ended December 31, 2012, included in our Annual Report on Form 10-K filed with the SEC. The Condensed Consolidated Balance Sheet at December 31, 2012, has been derived from the audited Consolidated Financial Statements at that date.

Principles of Consolidation

The Condensed Consolidated Financial Statements include the accounts of PDL and its wholly-owned subsidiaries. All material intercompany balances and transactions have been eliminated in consolidation. Our condensed consolidated financial statements are prepared in accordance with GAAP and the rules and regulations of the SEC.

Notes Receivable and Other Long-Term Receivables

We account for our notes receivable at amortized cost, net of unamortized origination fees, if any. Related fees and costs are recorded net of any amounts reimbursed. Interest is accreted or accrued to interest income using the interest method.

Customer Concentration

The percentage of total revenue earned from our licensees' net product sales, which individually accounted for ten percent or more of our total revenues, was:

		Three Months Ended June 30,		Six Months Ended June 30,	
Licensee	**Product Name**	**2013**	**2012**	**2013**	**2012**
Genentech	*Avastin*®	33%	33%	34%	32%
	Herceptin®	33%	35%	33%	35%
	Lucentis®	21%	22%	18%	19%
Biogen Idec[1]	*Tysabri*®	9%	10%	11%	12%

[1] In April, 2013, Biogen Idec completed its purchase of Elan's interest in Tysabri. Prior to this our licensee for Tysabri was identified as Elan.

Foreign Currency Hedging

We enter into foreign currency hedges to manage exposures arising in the normal course of business and not for speculative purposes.

We hedge certain Euro-denominated currency exposures related to royalties associated with our licensees' product sales with Euro forward contracts. In general, these contracts are intended to offset the underlying Euro market risk in our royalty revenues. These contracts extend through the fourth quarter of 2014. We designate foreign currency exchange contracts used to hedge royalty revenues based on underlying Euro-denominated sales as cash flow hedges.

At the inception of the hedging relationship and on a quarterly basis, we assess hedge effectiveness. The fair value of the Euro contracts is estimated using pricing models with readily observable inputs from actively quoted markets and is disclosed on a gross basis. The aggregate unrealized gain or loss, net of tax, on the effective component of the hedge is recorded in stockholders' deficit as accumulated other comprehensive income (loss). Gains or losses on cash flow hedges are recognized as an adjustment to royalty revenue in the same period that the hedged transaction impacts earnings as royalty revenue. Any gain or loss on the ineffective portions is reported in other income in the period the ineffectiveness occurs.

Comprehensive Income

In the first quarter of 2012, we adopted FASB ASU 2011-05, and have presented the components of other comprehensive income (loss) in the Condensed Consolidated Statements of Comprehensive Income. Also in accordance with this ASU, we have applied this guidance retrospectively to all periods presented. The adoption of the guidance was a change to the presentation of other comprehensive income (loss) and had no effect on our condensed consolidated financial statements. See Note 14 for our discussion of accumulated other comprehensive income (loss).

New Accounting Pronouncements

In January 2013, we adopted the provisions of ASU 2013-01, issued by the FASB, which requires new asset and liability offsetting disclosures for derivatives, repurchase agreements and security lending transactions to the extent that they are: (1) offset in the financial statements or (2) subject to an enforceable master netting arrangement or similar agreement. We do not have any repurchase agreements and do not participate in securities lending transactions. Our derivative instruments are not offset in the financial statements and are not subject to any right of offset provisions with our counterparties. Accordingly, this amendment did not have a material impact on our Condensed Consolidated Financial Statements. Additional information about derivative instruments can be found in Note 5.

In February 2013, FASB amended ASC 220, "Comprehensive Income." This amendment requires companies to report, in one place, information about reclassifications (by component) out of accumulated other comprehensive income (loss). In addition, this amendment requires companies to present the related line item effect of significant reclassifications on the statement where income is presented. We adopted the provisions of this amendment during the first quarter of 2013, which affects only the display of information and does not change existing recognition and measurement requirements in our Condensed Consolidated Financial Statements.

2. Net Income per Share

Net Income per Basic and Diluted Share:	Three Months Ended June 30, 2013	Three Months Ended June 30, 2012	Six Months Ended June 30, 2013	Six Months Ended June 30, 2012
(in thousands except per share amounts)				
Numerator				
Net income used to compute net income per basic share	$ 93,742	$ 73,502	$ 147,213	$ 113,686
Add back interest expense for convertible notes, net of estimated tax of approximately $3 for each of the three months ended June 30, 2013 and 2012, and $7 and $18 for the six months ended June 30, 2013 and 2012, respectively (see Note 9)	6	6	13	33
Net income used to compute net income per diluted share	$ 93,748	$ 73,508	$ 147,226	$ 113,719
Denominator				
Total weighted-average shares used to compute net income per basic share	139,825	139,683	139,821	139,681
Restricted stock outstanding	75	100	71	84
Effect of dilutive stock options	19	15	19	15
Assumed conversion of Series 2012 Notes	8,304	2,252	8,693	2,189
Assumed conversion of May 2015 Notes	3,825	—	4,004	—
Assumed conversion of February 2015 Notes	176	163	176	921
Weighted-average shares used to compute net income per diluted share	152,224	142,213	152,784	142,890
Net income per basic share	$ 0.67	$ 0.53	$ 1.05	$ 0.81
Net income per diluted share	$ 0.62	$ 0.52	$ 0.96	$ 0.80

We compute net income per basic share using the weighted-average number of shares of common stock outstanding during the period less the weighted-average number of restricted stock shares that are subject to repurchase.

We compute net income per diluted share using the sum of the weighted-average number of common and common equivalent shares outstanding. Common equivalent shares used in the computation of net income per diluted share include shares that may be issued under our stock options and restricted stock awards, our February 2015 Notes, our Series 2012 Notes and our May 2015 Notes on a weighted average basis for the period that the notes were outstanding, including the effect of adding back interest expense and the underlying shares using the if-converted method. In the first quarter of 2012, $179.0 million aggregate principal of our February 2015 Notes was exchanged for our Series 2012 Notes.

In May 2011, we issued our May 2015 Notes, and in January and February 2012, we issued our Series 2012 Notes. The Series 2012 Notes and May 2015 Notes are net share settled, with the principal amount settled in cash and the excess settled in our common stock. The weighted average share adjustments related to our Series 2012 Notes and May 2015 Notes include the shares issuable in respect of such excess.

We excluded 20.4 million and 18.8 million shares for our warrants for the three months ended June 30, 2013 and 2012, respectively, and 20.4 million and 18.8 million shares for the six months ended June 30, 2013 and 2012, respectively, for warrants issued in 2011, because the exercise price of the warrants exceeded the VWAP of our common stock and thus, for the periods presented, no stock was issuable upon conversion. These securities could be dilutive in future periods. Our purchased call options, issued in 2011, will always be anti-dilutive and therefore 24.0 million and 22.1 million shares were excluded for the three months ended June 30, 2013 and 2012, respectively, and 24.0 million and 22.1 million shares were excluded for the six months ended June 30, 2013 and 2012, respectively, because they have no effect on diluted net income per share under GAAP. For information related to the conversion rates on our convertible debt, see Note 9.

For the three months ended June 30, 2013, we excluded approximately 139,000 and 28,000 shares underlying outstanding stock options and restricted stock awards, respectively, and 139,000 and 8,000 shares underlying outstanding stock options and

restricted stock awards, respectively, were excluded for the six months ended June 30, 2013, calculated on a weighted average basis, from our net income per diluted share calculations because their effect was anti-dilutive.

For the three and six months ended June 30, 2012, we excluded approximately 174,000 shares underlying outstanding stock options, calculated on a weighted average basis, from our net income per diluted share calculations because their effect was anti-dilutive.

3. Fair Value Measurements

The fair value of our financial instruments are estimates of the amounts that would be received if we were to sell an asset or pay to transfer a liability in an orderly transaction between market participants at the measurement date or exit price. The assets and liabilities are categorized and disclosed in one of the following three categories:

Level 1 – based on quoted market prices in active markets for identical assets and liabilities;

Level 2 – based on quoted market prices for similar assets and liabilities, using observable market based inputs or unobservable market based inputs corroborated by market data; and

Level 3 – based on unobservable inputs using management's best estimate and assumptions when inputs are unavailable.

The following tables present the fair value of our financial instruments measured at fair value on a recurring basis by level within the valuation hierarchy.

	June 30, 2013			December 31, 2012		
	Level 1	Level 2	Total	Level 1	Level 2	Total
(In thousands)						
Financial assets:						
Money market funds	$ 240,256	$ —	$ 240,256	$ 121,095	$ —	$ 121,095
Certificates of deposit	—	26,375	26,375	—	26,128	26,128
Corporate debt securities	—	1,002	1,002	—	13,572	13,572
Total	$ 240,256	$ 27,377	$ 267,633	$ 121,095	$ 39,700	$ 160,795
Financial liabilities:						
Foreign currency hedge contracts	$ —	$ 2,410	$ 2,410	$ —	$ 7,581	$ 7,581

The fair value of the certificates of deposit is determined using quoted market prices for similar instruments and non-binding market prices that are corroborated by observable market data. The certificates of deposit include a $20.0 million certificate of deposit that is restricted as it was purchased to collateralize the line of credit for Merus Labs; see Note 6.

The fair value of the foreign currency hedging contracts is estimated based on pricing models using readily observable inputs from actively quoted markets and are disclosed on a gross basis.

Corporate debt securities consist primarily of U.S. corporate bonds. The fair value of corporate debt securities is estimated using recently executed transactions or market quoted prices, where observable. Independent pricing sources are also used for valuation.

There have been no transfers between levels during the three and six months ended June 30, 2013, and December 31, 2012. The Company recognizes transfers between levels on the date of the event or change in circumstances that caused the transfer.

The following tables present the fair value of assets and liabilities not subject to fair value recognition by level within the valuation hierarchy:

	June 30, 2013			December 31, 2012		
	Carrying Value	Fair Value Level 2	Fair Value Level 3	Carrying Value	Fair Value Level 2	Fair Value Level 3
(In thousands)						
Assets:						
Wellstat Diagnostics note receivable	$ 43,585	$ —	$ 43,585	$ 41,098	$ —	$ 41,098
Merus Labs note receivable	22,500	22,500	—	30,000	30,000	—
AxoGen note receivable and embedded derivative	24,380	—	24,380	22,110	—	22,110
Avinger note receivable	20,168	—	20,168	—	—	—
Total	$ 110,633	$ 22,500	$ 88,133	$ 93,208	$ 30,000	$ 63,208
Liabilities:						
Series 2012 Notes	$ 168,528	$ 246,322	$ —	$ 165,528	$ 227,187	$ —
May 2015 Notes	145,799	192,254	—	143,433	182,031	—
February 2015 Notes	993	1,376	—	991	1,269	—
Total	$ 315,320	$ 439,952	$ —	$ 309,952	$ 410,487	$ —

As of June 30, 2013 the fair value of our Avinger note receivable, and as of June 30, 2013, and December 31, 2012, the fair values of our Wellstat Diagnostics note receivable, Merus Labs note receivable and AxoGen note receivable and derivative were determined using one or more discounted cash flow models, incorporating expected principal payments and the interest rate extended for notes with fixed interest rates and incorporating expected payments for notes with a variable rate of return.

On June 30, 2013, and December 31, 2012, the carrying value of the AxoGen note and derivative approximates its fair value. We determined this note to be a Level 3 asset, as our valuation utilized significant unobservable inputs, including estimates of AxoGen's future revenues, expectations about settlement and required yield. To provide support for the estimated fair value measurement, we considered forward looking performance related to AxoGen, current measures associated with high yield indices, and reviewed the terms and yields of notes placed by specialty finance and venture firms both across industries and in a similar sector. Additionally, we reviewed market yield indices for changes since the issuance of the note. We observed no material events with AxoGen or in the market in which it participates since the placement. The carrying value and estimated fair value of the AxoGen note include the value of a change of control embedded derivative valued at $1.0 million and $0.6 million at June 30, 2013, and December 31, 2012, respectively. We utilized discounted cash flows and probability analysis to determine the fair value of the embedded derivative.

On June 30, 2013, and December 31, 2012, the carrying value of the note receivable from Wellstat Diagnostics approximates its fair value. Due to the breach of the credit agreement as of December 31, 2012, as discussed in Note 6, we considered the fair value of the underlying collateral when estimating fair value of the note. The note is collateralized by all assets and equity interest in Wellstat Diagnostics. The fair value of the collateral was determined by using a discounted cash flow analysis related to the underlying technology included in the collateral. The discounted cash flow was based upon expected income from sales of planned products over a 15-year period. The terminal value was estimated using selected market multiples based on sales and EBITDA. Our valuation of the collateral utilized significant unobservable inputs including a discount rate of 35%, terminal value EBITDA multiple of 17.5, terminal value sales multiple of 3.0 and future revenue and expenses related to commercialization of the borrower's technology.

On June 30, 2013, the carrying value of the Avinger note approximates its fair value. We determined this note to be a Level 3 asset, as our valuation utilized significant unobservable inputs, including a discount rate of 18.5%, estimates of Avinger's future revenues, expectations about settlement and required yield. To provide support for the fair value measurement, we considered forward looking performance related to Avinger, current measures associated with high yield and Standard & Poor's Leveraged Commentary & Data indices, and reviewed the terms and yields of notes placed by specialty finance and venture firms both across industries and in a similar sector.

The fair values of our convertible notes were determined using quoted market pricing or dealer quotes.

4. Cash Equivalents and Investments

As of June 30, 2013, and December 31, 2012, we had invested our excess cash balances primarily in money market funds, certificates of deposit and corporate debt securities. Our securities are classified as available-for-sale and are carried at estimated fair value, with unrealized gains and losses reported in accumulated other comprehensive income (loss) in stockholders' deficit, net of estimated taxes. The cost of securities sold is based on the specific identification method. To date, we have not experienced credit losses on investments in these instruments and we do not require collateral for our investment activities.

Summary of Cash and Available-For-Sale Securities	Adjusted Cost	Unrealized Gains	Unrealized Losses	Estimated Fair Value	Cash and Cash Equivalents	Restricted Investment	Short-Term Marketable Securities
(In thousands)							
June 30, 2013							
Cash	$ 11,217	$ —	$ —	$ 11,217	$ 11,217	$ —	$ —
Money market funds	240,256	—	—	240,256	240,256	—	—
Certificates of deposit	26,375	—	—	26,375	—	$ 20,000	6,375
Corporate debt securities	1,001	1	—	1,002	—	—	1,002
Total	$ 278,849	$ 1	$ —	$ 278,850	$ 251,473	$ 20,000	$ 7,377
December 31, 2012							
Cash	$ 7,894	$ —	$ —	$ 7,894	$ 7,894	$ —	$ —
Money market funds	121,095	—	—	121,095	121,095	—	—
Certificates of deposit	26,128	—	—	26,128	2,223	20,000	3,905
Corporate debt securities	13,562	10	—	13,572	—	—	13,572
Total	$ 168,679	$ 10	$ —	$ 168,689	$ 131,212	20,000	$ 17,477

No gains or losses on sales of available-for-sale securities were recognized for the three and six months ended June 30, 2013 and 2012.

Cash and Available-For-Sale Securities by Contractual Maturity	June 30, 2013		December 31, 2012	
(In thousands)	Amortized Cost	Fair Value	Amortized Cost	Fair Value
Less than one year	$ 278,849	$ 278,850	$ 168,679	$ 168,689
Greater than one year but less than five years	—	—	—	—
Total	$ 278,849	$ 278,850	$ 168,679	$ 168,689

No significant facts or circumstances have arisen to indicate that there has been any deterioration in the creditworthiness of the issuers of these securities. Based on our review of these securities, we believe that we had no other-than-temporary impairments on these securities as of June 30, 2013, and December 31, 2012.

5. Foreign Currency Hedging

We designate the foreign currency exchange contracts used to hedge our royalty revenues based on underlying Euro-denominated sales as cash flow hedges. Euro forward contracts are presented on a net basis on our Condensed Consolidated Balance Sheets as we have entered into a netting arrangement with the counterparty. As of June 30, 2013, and December 31, 2012, all outstanding Euro forward contracts and option contracts were classified as cash flow hedges.

In January 2012, we modified our existing Euro forward and option contracts related to our licensees' sales through December 2012 into Euro forward contracts with more favorable rates. Additionally, we entered into a series of Euro forward contracts covering the quarters in which our licensees' sales occur through December 2013.

During the third quarter of 2012, we reduced our forecasted exposure to the Euro for 2013 royalties. We de-designated and terminated certain forward contracts, due to our determination that certain cash flows under the de-designated contracts were probable to not occur, and recorded a gain of approximately $391,000 to interest and other income, net, which was reclassified from other comprehensive income (loss) net of tax effects. The termination of these contracts was effected through a reduction in the notional amount of the original hedge contracts.

The notional amounts, Euro exchange rates and fair values of our Euro forward contracts designated as cash flow hedges were as follows:

Euro Forward Contracts			**June 30, 2013**		**December 31, 2012**	
			(In thousands)		***(In thousands)***	
Currency	**Settlement Price ($ per Euro)**	**Type**	**Notional Amount**	**Fair Value**	**Notional Amount**	**Fair Value**
Euro	1.230	Sell Euro	$ —	$ —	$ 27,553	$ (2,036)
Euro	1.240	Sell Euro	10,850	(534)	10,850	(726)
Euro	1.270	Sell Euro	44,450	(1,136)	44,450	(1,950)
Euro	1.281	Sell Euro	36,814	(651)	36,814	(1,331)
Euro	1.300	Sell Euro	57,200	(89)	91,000	(1,538)
Total			$ 149,314	$ (2,410)	$ 210,667	$ (7,581)

The location and fair values of our Euro contracts in our Condensed Consolidated Balance Sheets were:

Cash Flow Hedge	**Location**	**June 30, 2013**	**December 31, 2012**
(In thousands)			
Euro contracts	Accrued liabilities	$ 1,136	$ 3,574
Euro contracts	Other long-term liabilities	$ 1,274	$ 4,007

The effect of our derivative instruments in our Condensed Consolidated Statements of Income and our Condensed Consolidated Statements of Comprehensive Income was:

	Three Months Ended June 30,		**Six Months Ended June 30,**	
	2013	**2012**	**2013**	**2012**
(In thousands)				
Net gain (loss) recognized in OCI, net of tax [1]	$ (1,265)	$ 7,086	$ 2,303	$ 1,603
Gain (loss) reclassified from accumulated OCI into royalty revenue, net of tax [2]	$ 268	$ (1,864)	$ (979)	$ (670)
Net gain (loss) recognized in interest and other income, net -- cash flow hedges [3]	$ 2	$ 57	$ 5	$ (27)
Amount excluded from effectiveness testing	$ —	$ —	$ —	$ —

(1) Net change in the fair value of the effective portion of cash flow hedges classified in OCI.

(2) Effective portion classified as royalty revenue.

(3) Ineffectiveness from excess hedge was approximately ($3) and ($57) for the three months ended June 30, 2013 and 2012, respectively, and ($5) and zero for the six months ended June 30, 2013 and 2012, respectively. Net loss from restructuring hedges was approximately zero for the three months ended June 30, 2013 and 2012, respectively, and zero and $27 for the six months ended June 30, 2013 and 2012, respectively.

6. Notes Receivable and Other Long-term Receivables

Notes receivable and other long-term receivables included the following significant agreements:

Wellstat Diagnostics Note Receivable and Credit Agreement

In March 2012, the Company executed a $7.5 million two-year senior secured note receivable with the holders of the equity interests in Wellstat Diagnostics. In addition to bearing interest at 10%, the note gave PDL certain rights to negotiate for certain future financing transactions. In August 2012, PDL and the borrowers amended the note receivable, providing a senior secured note receivable of $10.0 million, bearing interest at 12% per annum, to replace the original $7.5 million note. This $10.0 million note was repaid on November 2, 2012.

On November 2, 2012, the Company and Wellstat Diagnostics entered into a $40.0 million credit agreement pursuant to which the Company is to accrue quarterly interest payments at the rate of 5% per annum (payable in cash or in kind). In addition, PDL will receive quarterly royalty payments based on a low double digit royalty rate of Wellstat Diagnostics' net revenues, generated by the sale, distribution or other use of Wellstat Diagnostics' products, if any, commencing upon the commercialization of its products.

Under the credit agreement, Wellstat Diagnostics may prepay the credit agreement at a price that, together with interest and royalty payments already made to the Company, would generate a specified internal rate of return to the Company. In the event of a change of control, bankruptcy or certain other customary events of defaults, or Wellstat Diagnostics' failure to achieve a specified annual revenue threshold in 2017, Wellstat Diagnostics will be required to prepay the credit agreement at a price that, together with interest and royalty payments already made to the Company, would generate a specified internal rate of return to the Company. The credit agreement is secured by a pledge of all of the assets of Wellstat Diagnostics and a pledge of all of Wellstat Diagnostics’ equity interests by the holders thereof.

In January 2013, the Company was informed that, as of December 31, 2012, Wellstat Diagnostics had used funds contrary to the terms of the credit agreement and breached Sections 2.1.2 and 7 of the credit agreement. PDL sent Wellstat Diagnostics a notice of default on January 22, 2013, and accelerated the amounts owed under the credit agreement. In connection with the notice of default, PDL exercised one of its available remedies and transferred approximately $8.1 million of available cash from a bank account of Wellstat Diagnostics to PDL and applied the funds to amounts due under the credit agreement. On February 28, 2013, the parties entered into a forbearance agreement whereby PDL has agreed to refrain from exercising additional remedies for 120 days while Wellstat Diagnostics raised funds to capitalize the business and the parties attempt to negotiate a revised credit agreement. PDL has agreed to provide up to $7.9 million to Wellstat Diagnostics to fund the business for the 120-day forbearance period under the terms of the credit agreement. During the six months ended June 30, 2013, approximately $7.3 million was advanced pursuant to the forbearance agreement. Following the conclusion of the June 28 forbearance period, the Company agreed to forbear in its exercise of remedies for additional periods of time to allow the owners and affiliates of Wellstat Diagnostics to complete a pending financing transaction. During such forbearance period, the Company provided approximately $1.3 million to Wellstat Diagnostics to fund ongoing operations of the business. We believe the close of the pending financing transaction will occur in the near future. In the event that the owners and affiliates of Wellstat Diagnostics are successful in completing the financing transaction, PDL expects to enter into an amended and restated credit agreement with Wellstat Diagnostics.

At June 30, 2013 and December 31, 2012, the carrying value of the note was included in non-current assets.

As of June 30, 2013, the Company determined that its interest in Wellstat Diagnostics represented a variable interest in a Variable Interest Entity since Wellstat Diagnostics' equity was not sufficient to finance its operations without amounts advanced under the note and forbearance agreement. However, the Company does not have the power to unilaterally direct operational activities of Wellstat Diagnostics and is not the primary beneficiary of Wellstat Diagnostics; therefore, Wellstat Diagnostics is not subject to consolidation.

As of June 30, 2013, the carrying value of all amounts advanced to Wellstat Diagnostics was $44.7 million, of which $43.6 million was recorded in notes receivable and $1.1 million was recorded in other assets. The Company estimates it has additional exposure of $2.1 million for amounts expected to be advanced to Wellstat Diagnostics after June 30, 2013 and for accrued interest on all amounts through the forbearance period. This increases our loss maximum exposure to $46.8 million.

Amounts outstanding are collateralized by all assets and equity interests in Wellstat Diagnostics. The Company believes the fair value of the collateral is not less than $76.6 million.

Merus Labs Note Receivable and Credit Agreement

In July 2012, PDL loaned $35.0 million to Merus Labs in connection with its acquisition of a commercial-stage pharmaceutical product and related assets. In addition, PDL agreed to provide a $20.0 million letter of credit on behalf of Merus Labs for the seller of the assets to draw upon to satisfy the remaining $20.0 million purchase price obligation. The seller made this draw on the letter of credit in July 2013 and an additional loan to Merus Labs for $20.0 million was recorded. Outstanding borrowings under the July 2012 loan bear interest at the rate of 13.5% per annum and outstanding borrowings as a result of the draw on the letter of credit will bear interest at the rate of 14.0% per annum. Merus Labs is required to make four periodic principal payments in respect of the July 2012 loan, with repayment of the remaining principal balance of all loans due on March 31, 2015. The borrowings are subject to mandatory prepayments upon certain asset dispositions or debt issuances as set forth in the credit agreement. Merus Labs made the first of these payments in December 2012 in the amount of $5.0 million and the second payment was made in June 2013 in the amount of $7.5 million.

The credit agreement provides for a number of standard events of default, including payment, bankruptcy, covenant, judgment and cross-defaults.

AxoGen Note Receivable and Royalty Agreement

In October 2012, PDL entered into the Royalty Agreement with AxoGen pursuant to which the Company will receive specified royalties on AxoGen’s net revenues (as defined in the Royalty Agreement) generated by the sale, distribution or other use of AxoGen’s products. The Royalty Agreement has an eight years term and provides PDL with royalties of 9.95% based on AxoGen Net Revenues, subject to agreed-upon guaranteed quarterly minimum payments of approximately $1.3 to $2.3 million beginning in the fourth quarter of 2014, and the right to require AxoGen to repurchase the Royalty Agreement at the end of the fourth year. AxoGen has been granted certain rights to call the contract in years five through eight. The total consideration PDL paid to AxoGen for the royalty rights was $20.8 million, including the termination of an interim funding of $1.8 million in August 2012. AxoGen was required to use a portion of the proceeds from the Royalty Agreement to pay the outstanding balance under its existing credit facility. AxoGen plans to use the remainder of the proceeds to support the business plan for its products. The royalty rights are secured by the cash and accounts receivable of AxoGen.

Under the Royalty Agreement, beginning on October 1, 2016, or in the event of the occurrence of a material adverse event or AxoGen's bankruptcy or material breach of the Royalty Agreement, the Company may require AxoGen to repurchase the royalty rights at a price that, together with payments already made by AxoGen, would generate a specified internal rate of return to the Company. The Company has concluded that the repurchase option is an embedded derivative which should be bifurcated and separately accounted for at fair value.

In the event of a change of control of AxoGen, it must repurchase the assigned interests from the Company for a repurchase price equal to an amount that, together with payments already made by AxoGen, would generate a 32.5% internal rate of return to the Company. The Company has concluded that the change of control provision is an embedded derivative which should be bifurcated and separately recorded at its estimated fair value. The fair value of the change of control provision was approximately $1.0 million and $0.6 million as of June 30, 2013, and December 31, 2012, respectively. The value of this embedded derivative is included in the carrying value of the AxoGen Note Receivable. The Company recognized approximately $0.4 million in income related to this embedded derivative during the three and six month period ended June 30, 2013.

In addition, at any time after September 30, 2016, AxoGen, at its option, can repurchase the assigned interests under the Royalty Agreement for a price applicable in a change of control.

During the term of the Royalty Agreement, the Company is entitled to designate an individual to be a member of AxoGen's board of directors. The Company has exercised this right and on October 5, 2012, upon close of the transaction, the Company's President and Chief Executive Officer was elected to AxoGen's board of directors.

Avinger Note Receivable and Royalty Agreement

On April 18, 2013, PDL entered into a credit agreement with Avinger, under which we made available to Avinger up to $40.0 million to be used by Avinger in connection with the commercialization of its currently marketed lumivascular catheter devices and in the development of Avinger's lumivascular atherectomy device. Of the $40.0 million available to Avinger, we funded an initial $20.0 million, net of fees, at close of the transaction. Upon the attainment of certain revenue milestones to be accomplished no later than the end of the first half of 2014, we will fund Avinger an additional amount between $10.0 million and $20.0 million (net of fees) at Avinger's election. Outstanding borrowings under the initial loan bear interest at a stated rate

of 12% per annum, and any future outstanding borrowings as a result of additional amounts funded upon reaching the revenue milestones will bear interest at the rate of 14% per annum.

Avinger is required to make quarterly interest and principal payments. Principal repayment will commence on: (i) the eleventh interest payment date if the revenue milestones are not achieved or (ii) the thirteenth interest payment date if the revenue milestones are achieved. The principal amount outstanding at commencement of repayment, after taking into account any payment-in-kind, will be repaid in equal installments until final maturity of the loans. The loans will mature in April 2018.

In connection with entering into the credit agreement, the Company will receive a low, single-digit royalty on Avinger's net revenues through April 2018. Avinger may prepay the outstanding principal and accrued interest on the notes receivable at any time. If Avinger repays the notes receivable prior to April 2018, the royalty on Avinger's net revenues will be reduced by 50% and will be subject to certain minimum payments from the prepayment date through April 2018.

The obligations under the credit agreement are secured by a pledge of substantially all of the assets of Avinger and any of its subsidiaries (other than controlled foreign corporations, if any). The credit agreement provides for a number of standard events of default, including payment, bankruptcy, covenant, representation and warranty and judgment defaults.

For carrying value and fair value information related to our notes receivable and other long-term receivables, see Note 3.

7. Accrued Liabilities

	June 30, 2013	December 31, 2012
(In thousands)		
Compensation	$ 1,381	$ 594
Interest	2,925	2,925
Foreign currency hedge	1,136	3,574
Dividend payable	42,101	53
Legal	969	2,020
Other	325	234
Total	$ 48,837	$ 9,400

8. Commitments and Contingencies

Legal Proceedings

Genentech / Roche Matter

Communications with Genentech regarding European SPCs

In August 2010, we received a letter from Genentech, sent on behalf of Roche and Novartis, asserting that the Avastin, Herceptin, Lucentis and Xolair do not infringe the SPCs granted to PDL by various countries in Europe for covering those products and seeking a response from PDL to these assertions. Genentech did not state what actions, if any, it intends to take with respect to its assertions. PDL's SPCs were granted by the relevant national patent offices in Europe and specifically cover Avastin, Herceptin, Lucentis and Xolair. The SPCs covering the Avastin, Herceptin, Lucentis and Xolair effectively extend our European patent protection for the '216B Patent generally until December 2014, except that the SPCs for Herceptin will generally expire in July 2014.

Genentech's letter does not suggest that any of the Genentech Products do not infringe PDL's U.S. patents to the extent that such Genentech Products are U.S.-based Sales. Genentech's quarterly royalty payments received after receipt of the letter have included royalties generated on all worldwide sales of the Genentech Products.

If Genentech is successful in asserting this position, then under the terms of our license agreements with Genentech, it would not owe us royalties on sales of Avastin, Herceptin, Lucentis and Xolair that are both manufactured and sold outside of the United States. Royalties on sales of Avastin, Herceptin, Lucentis and Xolair that are ex-U.S.-based Manufacturing and Sales accounted for approximately 40% of our royalty revenues for the six months ended June 30, 2013.

We believe that the SPCs are enforceable, that Genentech's letter violates the terms of the 2003 settlement agreement and that Genentech owes us royalties on sales of the Genentech Products on a worldwide basis. We intend to vigorously assert our SPC-based patent rights.

Nevada Litigation with Genentech, Roche and Novartis in Nevada State Court

In August 2010, we filed a complaint in the Second Judicial District of Nevada, Washoe County, naming Genentech, Roche and Novartis as defendants. We intend to enforce our rights under our 2003 settlement agreement with Genentech and are seeking an order from the court declaring that Genentech is obligated to pay royalties to us on ex-U.S.-based Manufacturing and Sales of Avastin, Herceptin, Lucentis and Xolair.

The 2003 settlement agreement was entered into as part of a definitive agreement resolving intellectual property disputes between the two companies at that time. The agreement limits Genentech's ability to challenge infringement of our patent rights and waives Genentech's right to challenge the validity of our patent rights. Certain breaches of the 2003 settlement agreement as alleged by our complaint require Genentech to pay us liquidated and other damages of potentially greater than one billion dollars. This amount includes a retroactive royalty rate of 3.75% on past U.S.-based Sales of the Genentech Products and interest, among other items. We may also be entitled to either terminate our license agreements with Genentech or be paid a flat royalty of 3.75% on future U.S.-based Sales of the Genentech Products.

On February 25, 2011, we reached a settlement with Novartis under which, among other things, we agreed to dismiss our claims against Novartis in the action in Nevada state court against Genentech, Roche and Novartis. Genentech and Roche continue to be parties to the Nevada suit.

The parties have been engaged in discovery motion practice. On March 29, 2013, the court affirmed an order of the discovery commissioner requiring the production of certain documents in the possession of Roche and Genentech to PDL. Roche and Genentech have communicated to us that they have requested review of the court's order from the Nevada Supreme Court. The parties have agreed to a stay in the proceedings pending the decision of the Nevada Supreme Court regarding whether they will review the court's order. In the event that the Nevada Supreme Court agrees to consider Roche and Genentech's request and review the court's order, we expect a lengthy delay in the case schedule for a period that may extend up to eighteen months. Accordingly, while the court has scheduled trial to commence on October 7, 2013, the likelihood that a trial date will be pushed out to as late as mid-2014 to mid-2015 is significant. Even in the event that the Nevada Supreme Court does not accept review of Roche and Genentech's request, due to the stay of proceedings in the interim period, the possibility exists that the parties will have insufficient time to complete discovery and other pre-trial activities, necessitating a delay in the currently scheduled October 2013 trial. In that instance, it is unclear at this time whether such a delay would occur or how long such a delay would be. The outcome of this litigation is uncertain and we may not be successful in our allegations.

Arbitration with Genentech

On June 7, 2013, the Company filed a Notice of Arbitration against Genentech with the American Arbitration Association in Voorhees, New Jersey, alleging, *inter alia*, that Genentech underpaid royalties going back to at least 2007 and impeded PDL's attempts to have Genentech's books and records inspected to determine whether Genentech's past payments to PDL were accurately calculated.

In 2009, PDL retained KPMG to conduct an independent inspection and analysis of the books and records of Genentech and its sublicensees for the three year period covering January 1, 2007 to December 31, 2009, a right granted to PDL under PDL's Patent License Master Agreement and License Agreements with Genentech. KPMG reported to PDL that, due to limitations on its inspection imposed by Genentech, it was unable to assess the completeness or accuracy of Genentech's reporting of royalties. KPMG concluded that, based on the limited information it was able to review, Genentech appears to have underpaid PDL in an amount that, if substantiated, PDL believes would be material. Genentech has informed PDL that it disagrees with KPMG's conclusions and that it believes that it has correctly calculated royalties due.

In the arbitration, PDL: (i) requests a declaration of the parties' rights and obligations with respect to reporting and payment of royalties under the license agreements; (ii) alleges that Genentech has breached the license agreements due to its obstruction of KPMG's inspection and underpayment of royalties; and (iii) alleges that Genentech breached the implied covenant of good faith and fair dealing by depriving PDL of the benefits of the license agreements through its obstruction of the inspection, which we further assert concealed the nature and extent of its underpayment.

On July 3, 2013, Genentech filed its Response and Counterclaim in which Genentech requests that the arbitrator (i) reject PDL's claims that Genentech breached the license agreements by underpaying royalties owed to PDL, obstructing KPMG's

inspection, or violating the covenant of good faith and fair dealing; (ii) reject PDL's claim that Genentech owed any royalties to PDL on Herceptin, Avastin and Xolair manufactured and sold outside of the United States prior to December 27, 2009 on the ground that those products did not infringe the '216B patent prior to its expiration; (iii) offset any royalties underpaid during the audit period by the amount Genentech claims to have overpaid in royalties attributable to the sale of Herceptin, Avastin and Xolair manufactured and sold outside of the United States prior to December 27, 2009; and (iv) award damages to Genentech in the amount of $428,751, representing royalties Genentech overpaid during the audit period, as well as costs and reasonable attorney's fees. Genentech's counterclaim does not challenge whether Herceptin, Avastin and Xolair manufactured and sold outside of the United States after December 27, 2009, are Licensed Products (and subject to a royalty under PDL's SPCs issued to such products in Europe) as Genentech's ability to contest infringement of PDL's SPCs is the subject of pending litigation in Nevada.

The outcome of this arbitration is uncertain, and PDL may not be successful in its allegations.

Other Legal Proceedings

In addition, from time to time, we are subject to various other legal proceedings and claims that arise in the ordinary course of business and which we do not expect to materially impact our financial statements.

Lease Guarantee

In connection with the Spin-Off, we entered into amendments to the leases for our former facilities in Redwood City, California, under which Facet was added as a co-tenant, and a Co-Tenancy Agreement, under which Facet agreed to indemnify us for all matters related to the leases attributable to the period after the Spin-Off date. Should Facet default under its lease obligations, we could be held liable by the landlord as a co-tenant and, thus, we have in substance guaranteed the payments under the lease agreements for the Redwood City facilities. As of June 30, 2013, the total lease payments for the duration of the guarantee, which runs through December 2021, are approximately $95.1 million. If Facet were to default, we could also be responsible for lease related costs including utilities, property taxes and common area maintenance which may be as much as the actual lease payments.

We have recorded a liability of $10.7 million on our Condensed Consolidated Balance Sheets as of June 30, 2013, and December 31, 2012, related to this guarantee. In future periods, we may increase the recorded liability for this obligation if we conclude that a loss, which is larger than the amount recorded, is both probable and estimable.

9. Convertible Notes

Description	Maturity Date	Principal Balance Outstanding June 30, 2013	Carrying Value June 30, 2013	Carrying Value December 31, 2012
(In thousands)				
Convertible Notes				
Series 2012 Notes	February 15, 2015	$ 179,000	$ 168,528	$ 165,528
May 2015 Notes	May 1, 2015	$ 155,250	145,799	143,433
February 2015 Notes	February 15, 2015	$ 1,000	993	991
Total			$ 315,320	$ 309,952

As of June 30, 2013, PDL was in compliance with all applicable debt covenants, and embedded features of all debt agreements were evaluated and did not need to be accounted for separately.

Series 2012 Notes

In January 2012, we exchanged $169.0 million aggregate principal of new Series 2012 Notes for an identical principal amount of our February 2015 Notes, plus a cash payment of $5.00 for each $1,000 principal amount tendered, totaling approximately $845,000. The cash incentive payment was allocated to deferred issue costs of $765,000, additional paid-in capital of $52,000 and deferred tax assets of $28,000. The deferred issue costs will be recognized over the life of the Series 2012 Notes as interest expense. In February 2012, we entered into separate privately negotiated exchange agreements under which we exchanged an

additional $10.0 million aggregate principal amount of the new Series 2012 Notes for an identical principal amount of our February 2015 Notes. At the conclusion of these transactions, $1.0 million of our February 2015 Notes remained outstanding.

The terms of the Series 2012 Notes are governed by the indenture dated as of January 5, 2012, and include a net share settlement feature, meaning that if a conversion occurs, the principal amount will be settled in cash and the excess, if any, will be settled in the Company's common stock. The Series 2012 Notes may not be redeemed by the Company prior to their stated maturity date. Our Series 2012 Notes are due February 15, 2015, and bear interest at a rate of 2.875% per annum, payable semi-annually in arrears on February 15 and August 15 of each year. This is the same interest rate that we pay on the February 2015 Notes.

Holders may convert their Series 2012 Notes at any time prior to the close of business on the second scheduled trading day immediately preceding the stated maturity date of the Series 2012 Notes under the following circumstances:

- During any fiscal quarter commencing after the fiscal quarter ending December 31, 2011, if the closing price of the Company's common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter exceeds 130% of the conversion price for the Series 2012 Notes on the last day of such preceding fiscal quarter;
- During the five business-day period immediately after any five consecutive trading-day period in which the trading price per $1,000 principal amount of the Series 2012 Notes for each trading day of that measurement period was less than 98% of the product of the closing price of the Company's common stock and the conversion rate for the Series 2012 Notes for that trading day;
- Upon the occurrence of certain corporate transactions as provided in the indenture; or
- Anytime, at the holder's option, beginning on August 15, 2014.

Holders of our Series 2012 Notes who convert their Series 2012 Notes in connection with a fundamental change resulting in the reclassification, conversion, exchange or cancellation of our common stock may be entitled to a make-whole premium in the form of an increase in the conversion rate. Such fundamental change is generally defined to include a merger involving PDL, an acquisition of a majority of PDL's outstanding common stock and a change of a majority of PDL's board of directors without the approval of the board of directors.

We allocated $2.3 million of the remaining deferred February 2015 Notes original issue discount as of the date of the exchange to the Series 2012 Notes based on the percentage of the February 2015 Notes exchanged. In accordance with the accounting guidance for convertible debt instruments that may be settled in cash or other assets on conversion, we were required to separately account for the liability component of the instrument in a manner that reflects the market interest rate for a similar nonconvertible instrument at the date of issuance. As a result, we separated the principal balance of the Series 2012 Notes, net of the allocated original issue discount, between the fair value of the debt component and the common stock conversion feature. Using an assumed borrowing rate of 7.3%, which represents the estimated market interest rate for a similar nonconvertible instrument available to us during the period of the exchange transactions, we recorded a total debt discount of $16.8 million, allocated $10.9 million to additional paid-in capital and $5.9 million to deferred tax liability. The discount is being amortized to interest expense over the term of the Series 2012 Notes and increases interest expense during the term of the Series 2012 Notes from the 2.875% cash coupon interest rate to an effective interest rate of 7.3%. The common stock conversion feature is recorded as a component of stockholders' deficit.

The principal amount, carrying value and unamortized discount of our Series 2012 Notes were:

(In thousands)	**June 30, 2013**	**December 31, 2012**
Principal amount of the Series 2012 Notes	$ 179,000	$ 179,000
Unamortized discount of liability component	(10,472)	(13,472)
Total	$ 168,528	$ 165,528

Interest expense for our Series 2012 Notes on the Condensed Consolidated Statements of Income was:

	Three Months Ended June 30,		Six Months Ended June 30,	
(In thousands)	**2013**	**2012**	**2013**	**2012**
Contractual coupon interest	$ 1,287	$ 1,287	$ 2,573	$ 2,550
Amortization of debt issuance costs	287	277	571	548
Amortization of debt discount	1,513	1,415	3,000	2,780
Total	$ 3,087	$ 2,979	$ 6,144	$ 5,878

As of June 30, 2013, our Series 2012 Notes are convertible into 176.389 shares of the Company's common stock per $1,000 of principal amount, or approximately $5.67 per common share, subject to further adjustment upon certain events including dividend payments. As of June 30, 2013, the remaining discount amortization period was 1.6 years .

Our common stock did not exceed the conversion threshold price of $7.51 for at least 20 days during 30 consecutive trading days ended March 31, 2013; accordingly, the Series 2012 Notes were not convertible at the option of the holder during the quarter ended June 30, 2013. Our common stock price exceeded the conversion threshold price of $7.37 per common share for at least 20 days during the 30 consecutive trading days ended June 30, 2013; accordingly, the Series 2012 Notes are convertible at the option of the holder during the quarter ending September 30, 2013. As of June 30, 2013, the Series 2012 Notes have been reclassified from non-current to current as the notes will be due upon demand within one year of the quarter end June 30, 2013. At June 30, 2013, the if-converted value of our Series 2012 Notes exceeded their principal amount by approximately $64.7 million.

May 2015 Notes

On May 16, 2011, we issued $155.3 million in aggregate principal amount, at par, of our May 2015 Notes in an underwritten public offering, for net proceeds of $149.7 million. Our May 2015 Notes are due May 1, 2015, and we pay interest at 3.75% on our May 2015 Notes semiannually in arrears on May 1 and November 1 of each year, beginning November 1, 2011. Proceeds from our May 2015 Notes, net of amounts used for purchased call option transactions and provided by the warrant transactions described below, were used to redeem our 2012 Notes. Upon the occurrence of a fundamental change, as defined in the indenture, holders have the option to require PDL to repurchase their May 2015 Notes at a purchase price equal to 100% of the principal, plus accrued interest.

Our May 2015 Notes are convertible under any of the following circumstances:

- During any fiscal quarter ending after the quarter ending June 30, 2011, if the last reported sale price of our common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter exceeds 130% of the conversion price for the notes on the last day of such preceding fiscal quarter;
- During the five business-day period immediately after any five consecutive trading-day period, which we refer to as the measurement period, in which the trading price per $1,000 principal amount of notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate for the notes for each such day;
- Upon the occurrence of specified corporate events as described further in the indenture; or
- At any time on or after November 1, 2014.

In accordance with the accounting guidance for convertible debt instruments that may be settled in cash or other assets on conversion, we were required to separately account for the liability component of the instrument in a manner that reflects the market interest rate for a similar nonconvertible instrument at the date of issuance. As a result, we separated the principal balance of our May 2015 Notes between the fair value of the debt component and the fair value of the common stock conversion feature. Using an assumed borrowing rate of 7.5%, which represents the estimated market interest rate for a similar nonconvertible instrument available to us on the date of issuance, we recorded a total debt discount of $18.9 million, allocated $12.3 million to additional paid-in capital and allocated $6.6 million to deferred tax liability. The discount is being amortized to interest expense over the term of our May 2015 Notes and increases interest expense during the term of our May 2015 Notes

from the 3.75% cash coupon interest rate to an effective interest rate of 7.5%. As of June 30, 2013, the remaining discount amortization period is 1.8 years.

The carrying value and unamortized discount of our May 2015 Notes were:

(In thousands)	June 30, 2013	December 31, 2012
Principal amount of the May 2015 Notes	$ 155,250	$ 155,250
Unamortized discount of liability component	(9,451)	(11,817)
Total	$ 145,799	$ 143,433

Interest expense for our May 2015 Notes on the Condensed Consolidated Statements of Income was:

	Three Months Ended June 30,		Six Months Ended June 30,	
(In thousands)	2013	2012	2013	2012
Contractual coupon interest	$ 1,455	$ 1,455	$ 2,911	$ 2,911
Amortization of debt issuance costs	307	297	611	592
Amortization of debt discount	1,194	1,110	2,366	2,200
Total	$ 2,956	$ 2,862	$ 5,888	$ 5,703

As of June 30, 2013, our May 2015 Notes are convertible into 154.4189 shares of the Company's common stock per $1,000 of principal amount, or approximately $6.48 per common share, subject to further adjustment upon certain events including dividend payments.

Our common stock did not exceed the conversion threshold price of $8.57 for at least 20 days during 30 consecutive trading days ended March 31, 2013; accordingly, the May 2015 Notes were not convertible at the option of the holder during the quarter ended June 30, 2013. Our common stock price did not exceed the conversion threshold price of $8.42 per common share for at least 20 days during the 30 consecutive trading days ended June 30, 2013; accordingly, the May 2015 Notes are not convertible at the option of the holder during the quarter ending September 30, 2013. At June 30, 2013, the if-converted value of our May 2015 exceeded their principal amount by approximately $29.8 million.

Purchased Call Options and Warrants

In connection with the issuance of our May 2015 Notes, we entered into purchased call option transactions with two hedge counterparties. We paid an aggregate amount of $20.8 million, plus legal fees, for the purchased call options with terms substantially similar to the embedded conversion options in our May 2015 Notes. The purchased call options cover, subject to anti-dilution and certain other customary adjustments substantially similar to those in our May 2015 Notes, approximately 24.0 million shares of our common stock. We may exercise the purchased call options upon conversion of our May 2015 Notes and require the hedge counterparty to deliver shares to the Company in an amount equal to the shares required to be delivered by the Company to the note holder for the excess conversion value. The purchased call options expire on May 1, 2015, or the last day any of our May 2015 Notes remain outstanding.

In addition, we sold to the hedge counterparties warrants exercisable, on a cashless basis, for the sale of rights to receive up to 27.5 million shares of common stock underlying our May 2015 Notes. We received an aggregate amount of $10.9 million for the sale from the two counterparties. The warrant counterparties may exercise the warrants on their specified expiration dates that occur over a period of time ending on January 20, 2016. If the VWAP of our common stock, as defined in the warrants, exceeds the strike price of the warrants, we will deliver to the warrant counterparties shares equal to the spread between the VWAP on the date of exercise or expiration and the strike price. If the VWAP is less than the strike price, neither party is obligated to deliver anything to the other.

The purchased call option transactions and warrant sales effectively serve to reduce the potential dilution associated with conversion of our May 2015 Notes. The strike prices are approximately $6.48 and $7.62, subject to further adjustment upon certain events including dividend payments, for the purchased call options and warrants, respectively.

If the share price is above $6.48, but below $7.62, upon conversion of our May 2015 Notes, the purchased call options will offset the share dilution, because the Company will receive shares on exercise of the purchased call options equal to the shares that the Company must deliver to the note holders. If the share price is above $7.62, upon exercise of the warrants, the Company will deliver shares to the counterparties in an amount equal to the excess of the share price over $7.62. For example, a 10% increase in the share price above $7.62 would result in the issuance of 1.9 million incremental shares upon exercise of the warrants. As our share price continues to increase, additional dilution would occur.

While the purchased call options are expected to reduce the potential equity dilution upon conversion of our May 2015 Notes, prior to conversion or exercise, our May 2015 Notes and the warrants could have a dilutive effect on the Company's earnings per share to the extent that the price of the Company's common stock during a given measurement period exceeds the respective exercise prices of those instruments. As of June 30, 2013, and December 31, 2012, the market price condition for convertibility of our May 2015 Notes was not met and there were no related purchased call options or warrants exercised.

The purchased call options and warrants are considered indexed to PDL stock, require net-share settlement, and met all criteria for equity classification at inception and at June 30, 2013, and December 31, 2012. The purchased call options cost, including legal fees, of $20.8 million, less deferred taxes of $7.2 million, and the $10.9 million received for the warrants, was recorded as adjustments to additional paid-in capital. Subsequent changes in fair value will not be recognized as long as the purchased call options and warrants continue to meet the criteria for equity classification.

February 2015 Notes

On November 1, 2010, we completed an exchange of $92.0 million in aggregate principal of our 2012 Notes in separate, privately negotiated transactions with the note holders. In the exchange transactions, the note holders received $92.0 million in aggregate principal of our February 2015 Notes, and we recorded a net gain of $1.1 million. As part of the transaction, we placed an additional $88.0 million in aggregate principal of our February 2015 Notes. In January 2012, we completed an exchange transaction where we exchanged and subsequently retired approximately $169.0 million aggregate principal amount of our February 2015 Notes for approximately $169.0 million aggregate principal amount of new Series 2012 Notes, plus a cash payment of $5.00 for each $1,000 principal amount tendered for a total cash incentive payment of approximately $0.8 million. In February 2012, we entered into separate privately negotiated exchange agreements under which we retired an additional $10.0 million aggregate principal amount of our February 2015 Notes for $10.0 million aggregate principal amount of our Series 2012 Notes. Following settlement of the exchanges on February 2, 2012, $1.0 million of our February 2015 Notes and $179.0 million of our Series 2012 Notes were outstanding.

Our February 2015 Notes bear interest at 2.875% per annum, are due February 15, 2015, and are convertible at any time, at the holders' option, into our common stock at a conversion price of 176.389 shares of common stock per $1,000 principal amount, or $5.67 per share, subject to further adjustment in certain events including dividend payments. We pay interest on our February 2015 Notes semiannually in arrears on February 15 and August 15 of each year. Our February 2015 Notes are senior unsecured debt and are redeemable by us in whole or in part on or after August 15, 2014, at 100% of principal amount. Our February 2015 Notes are not puttable by the note holders other than in the context of a fundamental change resulting in the reclassification, conversion, exchange or cancellation of our common stock. Such repurchase event or fundamental change is generally defined to include a merger involving PDL, an acquisition of a majority of PDL's outstanding common stock and a change of a majority of PDL's board of directors without the approval of the board of directors. Our February 2015 Notes issuance was not registered under the Securities Act of 1933, as amended, in reliance on exemption from registration thereunder. As of June 30, 2013, and December 31, 2012, our February 2015 Notes aggregate principal outstanding was $1.0 million.

As of June 30, 2013, and December 31, 2012, our February 2015 Notes unamortized issuance costs, included as a component of Other Assets on the Condensed Consolidated Balance Sheets, were approximately $9,000 and $12,000, respectively. As of June 30, 2013, and December 31, 2012, the unamortized discount on our February 2015 Notes was approximately $7,000 and $9,000, respectively. The issuance cost and discount are being amortized to interest expense over the term of our February 2015 Notes, with a remaining amortization period as of June 30, 2013, of approximately 1.6 years.

10. Other Long-Term Liabilities

(In thousands)	June 30, 2013	December 31, 2012
Accrued lease liability	$ 10,700	$ 10,700
Long term incentive accrual	255	—
Uncertain tax positions	7,431	12,955
Foreign currency hedge	1,274	4,007
Total	$ 19,660	$ 27,662

11. Stock-Based Compensation

The Company grants stock options and restricted stock awards pursuant to a stockholder approved stock-based incentive plan. This incentive plan is described in further detail in Note 14, Stock-Based Compensation, of Notes to Consolidated Financial Statements in the 2012 Form 10-K.

The following table summarizes the Company's stock option and restricted stock award activity during the six months ended June 30, 2013:

		Stock Options		Restricted Stock Awards	
(In thousands except per share amounts)	Shares Available for Grant	Number of Shares Outstanding	Weighted Average Exercise Price	Number of Shares Outstanding	Weighted Average Grant-date Fair Value Per Share
Balance December 31, 2012	4,589	196	$ 16.22	120	$ 6.51
Granted	(103)	—		103	$ 7.41
Shares released	—	—		(31)	$ 6.63
Forfeited or canceled	5	—		(5)	$ 6.29
Balance at June 30, 2013	4,491	196	$ 16.22	187	$ 7.05

12. Cash Dividends

On January 23, 2013, our board of directors declared that the regular quarterly dividends to be paid to our stockholders in 2013 will be $0.15 per share of common stock, payable on March 12, June 12, September 12 and December 12 of 2013 to stockholders of record on March 5, June 5, September 5 and December 5 of 2013, the record dates for each of the dividend payments, respectively.

In connection with the June 12, 2013, dividend payment, the conversion rates for our convertible notes adjusted as follows:

Convertible Notes	Conversion Rate per $1,000 Principal Amount	Approximate Conversion Price Per Common Share	Effective Date
Series 2012 Notes	176.389	$ 5.67	June 3, 2013
May 2015 Notes	154.4189	$ 6.48	June 3, 2013
February 2015 Notes	176.389	$ 5.67	June 6, 2013

13. Income Taxes

For the three and six months ended June 30, 2013 and 2012, income tax expense was primarily derived by applying the federal statutory rate of 35% to operating income before income taxes.

During the second quarter of 2013, a release of the tax reserve against the federal tax credits taken on the 2009 income tax return, was recorded in the amount of $5.7 million. This resulted in a reduction to the tax expense for the quarter.

In general, our income tax returns are subject to examination by tax authorities for tax years 1996 forward. The California Franchise Tax Board is currently examining the Company's 2008, 2009 and 2010 tax returns. Although the timing of the resolution of income tax examinations is highly uncertain, and the amounts ultimately paid, if any, upon resolution of the issues raised by the taxing authorities may differ materially from the amounts accrued for each year, we do not anticipate any material change to the amount of our unrecognized tax benefits over the next 12 months.

14. Accumulated Other Comprehensive Income (Loss)

Comprehensive income is comprised of net income and other comprehensive income (loss). We include unrealized net gains on investments held in our available-for-sale securities and unrealized gains (losses) on our cash flow hedges in other comprehensive income (loss), and present the amounts net of tax. Our other comprehensive income (loss) is included in our Condensed Consolidated Statements of Comprehensive Income.

The balance of accumulated other comprehensive income (loss), net of tax, was as follows:

	Unrealized gains (losses) on available-for-sale securities	Unrealized gains (losses) on cash flow hedges	Total Accumulated Other Comprehensive Income (Loss)
(In thousands)			
Beginning Balance at December 31, 2012	$ 7	$ (5,095)	$ (5,088)
Activity for the six months ended June 30, 2013	(6)	3,281	3,275
Ending Balance at June 30, 2013	$ 1	$ (1,814)	$ (1,813)

15. Subsequent Events

As discussed in Note 6, in July 2013, we loaned an additional $20.0 million to Merus Labs when the seller of assets purchased by Merus Labs drew $20.0 million on the letter of credit previously provided by PDL in July 2012 to satisfy Merus Labs remaining $20.0 million purchase price obligation. Outstanding borrowings as a result of the draw on the letter of credit bear interest at the rate of 14.0% per annum. The remaining principal balance of all loans are due on March 31, 2015. The borrowings are subject to mandatory prepayments upon certain asset dispositions or debt issuances as set forth in the credit agreement.

In August 2013, the Company entered into a separate privately negotiated exchange agreement under which it has retired $1,000,000 aggregate principal amount of the Company's outstanding February 2015 Notes. Pursuant to the exchange agreement, the holder of the February 2015 Notes received $1,000,000 aggregate principal amount of the Company's Series 2012 Notes. Immediately following the exchange, there was no principal amount that remained outstanding of the February 2015 Notes and $180,000,000 principal amount of the Series 2012 Notes was outstanding.

In January 2013, the Company was informed that, as of December 31, 2012, Wellstat Diagnostics had used funds contrary to the terms of the credit agreement and breached Sections 2.1.2 and 7 of the credit agreement. PDL sent Wellstat Diagnostics a notice of default on January 22, 2013, and accelerated the amounts owed under the credit agreement. In connection with the notice of default, PDL exercised one of its available remedies and transferred approximately $8.1 million of available cash from a bank account of Wellstat Diagnostics to PDL and applied the funds to amounts due under the credit agreement. On February 28, 2013, the parties entered into a forbearance agreement whereby PDL has agreed to refrain from exercising additional remedies for 120 days while Wellstat Diagnostics raised funds to capitalize the business and the parties attempt to negotiate a revised credit agreement. PDL has agreed to provide up to $7.9 million to Wellstat Diagnostics to fund the business for the 120-day forbearance period under the terms of the credit agreement. During the six months ended June 30, 2013, approximately $7.3 million was advanced pursuant to the forbearance agreement. Following the conclusion of the June 28

forbearance period, the Company agreed to forbear in its exercise of remedies for additional periods of time to allow the owners and affiliates of Wellstat Diagnostics to complete a pending financing transaction. During such forbearance period, the Company provided approximately $1.3 million to Wellstat Diagnostics to fund ongoing operations of the business. We believe the close of the pending financing transaction will occur in the near future. In the event that the owners and affiliates of Wellstat Diagnostics are successful in completing the financing transaction, PDL expects to enter into an amended and restated credit agreement with Wellstat Diagnostics.

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

This Quarterly Report contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical facts are "forward-looking statements" for purposes of these provisions, including any projections of earnings, revenues or other financial items, any statements of the plans and objectives of management for future operations, including any statements concerning new licensing, any statements regarding future economic conditions or performance, and any statement of assumptions underlying any of the foregoing. In some cases, forward-looking statements can be identified by the use of terminology such as "may," "will," "intends," "plans," "believes," "anticipates," "expects," "estimates," "predicts," "potential," "continue" or "opportunity," or the negative thereof or other comparable terminology. Although we believe that the expectations presented in the forward-looking statements contained herein are reasonable at the time they were made, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct, and actual results could differ materially from those projected or assumed in the forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to inherent risks and uncertainties, including but not limited to the risk factors set forth below or incorporated by reference herein, and for the reasons described elsewhere in this Quarterly Report. All forward-looking statements and reasons why results may differ included in this Quarterly Report are made as of the date hereof, and we assume no obligation to update these forward-looking statements or reasons why actual results might differ.

OVERVIEW

PDL pioneered the humanization of monoclonal antibodies and, by doing so, enabled the discovery of a new generation of targeted treatments for cancer, immunologic diseases and other medical conditions. Today, PDL is focused on intellectual property asset management, investing in new income generating assets and maximizing value for its shareholders. We receive royalties based on sales of humanized antibody products marketed today and may also receive royalty payments on additional humanized antibody products that are manufactured or launched before final patent expiry in December 2014 or which are otherwise subject to a royalty for licensed know-how under our agreements. Under our licensing agreements, we are entitled to receive a flat-rate or tiered royalty based upon our licensees' net sales of covered antibodies.

We continuously evaluate alternatives to increase return for our stockholders, for example, purchasing income generating assets, buying back or redeeming our convertible notes, repurchasing our common stock, paying dividends or selling the Company. At the beginning of each fiscal year, our board of directors reviews the Company's total annual dividend payment for the prior year and determines whether to increase, maintain or decrease the quarterly dividend payments for that year. The board of directors evaluates the financial condition of the Company and considers the economic outlook, corporate cash flow, the Company's liquidity needs and the health and stability of credit markets when determining whether to maintain or change the dividend.

We were organized as a Delaware corporation in 1986 under the name Protein Design Labs, Inc. In 2006, we changed our name to PDL BioPharma, Inc. Our business previously included a biotechnology operation that was focused on the discovery and development of novel antibodies. We spun-off the operation to our stockholders as Facet in December 2008.

Recent Developments

Dividend Payment and Effect on Conversion Rates for the Convertible Notes

On January 23, 2013, our board of directors declared that the regular quarterly dividends to be paid to our stockholders in 2013 will be $0.15 per share of common stock, payable on March 12, June 12, September 12 and December 12 of 2013 to stockholders of record on March 5, June 5, September 5 and December 5 of 2013, the record dates for each of the dividend payments, respectively. On June 12, 2013, we paid the regular quarterly dividend to our stockholders totaling $21.0 million using earnings generated in the three months ended June 30, 2013.

In connection with the June 12, 2013, dividend payment, the conversion rates for our convertible notes adjusted as follows:

Convertible Notes	Conversion Rate per $1,000 Principal Amount	Approximate Conversion Price Per Common Share	Effective Date
Series 2012 Notes	176.389	$ 5.67	June 3, 2013
May 2015 Notes	154.4189	$ 6.48	June 3, 2013
February 2015 Notes	176.389	$ 5.67	June 6, 2013

The adjustments were based on the amount of the dividend and the trading price of our stock under the terms of the applicable indenture.

Avinger Note Receivable and Royalty Agreement

On April 18, 2013, PDL entered into a credit agreement with Avinger, under which we made available to Avinger up to $40.0 million to be used by Avinger in connection with the commercialization of its currently marketed lumivascular catheter devices and in the development of Avinger's lumivascular atherectomy device. Of the $40.0 million available to Avinger, we funded an initial $20.0 million, net of fees, at close of the transaction. Upon the attainment of certain revenue milestones to be accomplished no later than the end of the first half of 2014, we will fund Avinger an additional amount between $10.0 million and $20.0 million (net of fees) at Avinger's election. Outstanding borrowings under the initial loan bear interest at the rate of 12% per annum, and outstanding borrowings as a result of additional amounts funded upon reaching the revenue milestones bear interest at the rate of 14% per annum.

Avinger is required to make quarterly interest and principal payments. Principal repayment will commence on: (i) the eleventh interest payment date if the revenue milestones are not achieved or (ii) the thirteenth interest payment date if the revenue milestones are achieved. The principal amount outstanding at commencement of repayment, after taking into account any payment-in-kind, will be repaid in equal installments until final maturity of the loans. The loans will mature in April 2018.

In connection with entering into the credit agreement, the Company will receive a low, single-digit royalty on Avinger's net revenues through April 2018. Avinger may prepay the outstanding principal and accrued interest on the note receivable at any time. If Avinger repays the note receivable prior to April 2018, the royalty on Avinger's net revenues will be reduced by 50% and will be subject to certain minimum payments from the prepayment date through April 2018.

The obligations under the credit agreement are secured by a pledge of substantially all of the assets of Avinger and any of its subsidiaries (other than controlled foreign corporations, if any). The credit agreement provides for a number of standard events of default, including payment, bankruptcy, covenant, representation and warranty and judgment defaults.

Wellstat Diagnostics Forbearance Agreement

In January 2013, the Company was informed that, as of December 31, 2012, Wellstat Diagnostics had used funds contrary to the terms of the credit agreement and breached Sections 2.1.2 and 7 of the credit agreement. PDL sent Wellstat Diagnostics a notice of default on January 22, 2013, and accelerated the amounts owed under the credit agreement. In connection with the notice of default, PDL exercised one of its available remedies and transferred approximately $8.1 million of available cash from a bank account of Wellstat Diagnostics to PDL and applied the funds to amounts due under the credit agreement. On February 28, 2013, the parties entered into a forbearance agreement whereby PDL agreed to refrain from exercising additional remedies for 120 days while Wellstat Diagnostics raises funds to capitalize the business and the parties attempt to negotiate a revised credit agreement. PDL agreed to provide up to $7.9 million to Wellstat Diagnostics to fund the business for the 120-day forbearance period under the terms of the credit agreement. During the six months ended June 30, 2013, approximately $7.3 million was advanced pursuant to the forbearance agreement. Following the conclusion of the June 28 forbearance period, the Company agreed to forbear in its exercise of remedies for additional periods of time to allow the owners and affiliates of Wellstat Diagnostics to complete a pending financing transaction. During such forbearance period, the Company provided approximately $1.3 million to Wellstat Diagnostics to fund ongoing operations of the business. We believe the close of the pending financing transaction will occur in the near future. In the event that the owners and affiliates of Wellstat Diagnostics are successful in completing the financing transaction, PDL expects to enter into an amended and restated credit agreement with Wellstat Diagnostics.

As of June 30, 2013, the Company determined its interest in Wellstat Diagnostics represented a variable interest in a Variable Interest Entity since Wellstat Diagnostics' equity was not sufficient to finance its operations without amounts advanced under the note and forbearance agreement. However, the Company does not have the power to unilaterally direct operational activities of Wellstat diagnostics and is not the primary beneficiary of Wellstat Diagnostics and therefore Wellstat Diagnostics is not subject to consolidation.

As of June 30, 2013, the carrying value of amounts advanced to Wellstat Diagnostics was $44.7 million, of which $43.6 million was recorded in notes receivable and $1.1 million was recorded in prepaid and other current assets. The Company estimates it has additional exposure of $2.1 million for amounts expected to be advanced to Wellstat Diagnostics after June 30, 2013, and accrued interest on all amounts through the forbearance period. This increases our maximum exposure to loss to $46.8 million.

Amounts outstanding are collateralized by all assets and equity interests in Wellstat Diagnostics. The Company believes the fair value of the collateral is not less than $76.6 million.

Subsequent Events

As discussed in Note 6 to our interim condensed consolidated financial statements, in July 2013, we loaned an additional $20.0 million to Merus Labs when the seller of assets purchased by Merus Labs drew $20.0 million on the letter of credit previously provided by PDL in July 2012 to satisfy their remaining $20.0 million purchase price obligation. Outstanding borrowings as a result of the draw on the letter of credit bear interest at the rate of 14.0% per annum. The remaining principal balance of all loans are due on March 31, 2015. The borrowings are subject to mandatory prepayments upon certain asset dispositions or debt issuances as set forth in the credit agreement.

In August 2013, the Company entered into a separate privately negotiated exchange agreement under which it has retired $1,000,000 aggregate principal amount of the Company's outstanding February 2015 Notes. Pursuant to the exchange agreement, the holder of the February 2015 Notes received $1,000,000 aggregate principal amount of the Company's Series 2012 Notes. Immediately following the exchange, there was no principal amount that remained outstanding of the February 2015 Notes and $180,000,000 principal amount of the Series 2012 Notes was outstanding.

In January 2013, the Company was informed that, as of December 31, 2012, Wellstat Diagnostics had used funds contrary to the terms of the credit agreement and breached Sections 2.1.2 and 7 of the credit agreement. PDL sent Wellstat Diagnostics a notice of default on January 22, 2013, and accelerated the amounts owed under the credit agreement. In connection with the notice of default, PDL exercised one of its available remedies and transferred approximately $8.1 million of available cash from a bank account of Wellstat Diagnostics to PDL and applied the funds to amounts due under the credit agreement. On February 28, 2013, the parties entered into a forbearance agreement whereby PDL agreed to refrain from exercising additional remedies for 120 days while Wellstat Diagnostics raises funds to capitalize the business and the parties attempt to negotiate a revised credit agreement. PDL agreed to provide up to $7.9 million to Wellstat Diagnostics to fund the business for the 120-day forbearance period under the terms of the credit agreement. During the six months ended June 30, 2013, approximately $7.3 million was advanced pursuant to the forbearance agreement. Following the conclusion of the June 28 forbearance period, the Company agreed to forbear in its exercise of remedies for additional periods of time to allow the owners and affiliates of Wellstat Diagnostics to complete a pending financing transaction. During such forbearance period, the Company provided approximately $1.3 million to Wellstat Diagnostics to fund ongoing operations of the business. We believe the close of the pending financing transaction will occur in the near future. In the event that the owners and affiliates of Wellstat Diagnostics are successful in completing the financing transaction, PDL expects to enter into an amended and restated credit agreement with Wellstat Diagnostics.

Intellectual Property

Patents

We have been issued patents in the United States and elsewhere, covering the humanization of antibodies, which we refer to as our Queen et al. patents. Our Queen et al. patents, for which final patent expiry is in December 2014, cover, among other things, humanized antibodies, methods for humanizing antibodies, polynucleotide encoding in humanized antibodies and methods of producing humanized antibodies.

The following is a list of our U.S. patents within our Queen et al. patent portfolio:

Application Number	Filing Date	Patent Number	Issue Date	Expiration Date
08/477,728	6/7/1995	5,585,089	12/17/1996	6/25/2013
08/474,040	6/7/1995	5,693,761	12/2/1997	12/2/2014
08/487,200	6/7/1995	5,693,762	12/2/1997	6/25/2013
08/484,537	6/7/1995	6,180,370	1/30/2001	6/25/2013

Our U.S. '761 Patent, which is the last to expire of our U.S. patents, covers methods and materials used in the manufacture of humanized antibodies. In addition to covering methods and materials used in the manufacture of humanized antibodies, coverage under our ‘761 Patent will typically extend to the use or sale of compositions made with those methods and/or materials. Genentech has advised us that they believe Lucentis® is not covered by the claims of the '761 Patent. We have requested clarification from Genentech on the bases of their belief. However, Genentech may elect to stop royalty payments on Lucentis that is manufactured and sold in the United States after June 25, 2013. Genentech has not suggested that Lucentis that is manufactured in the United States prior to June 25, 2013 and sold after that date will not be subject to a royalty payment to us. In addition, our SPCs covering manufacture and/or sale of Lucentis in Europe do not expire until in December 2014.

Our '216B Patent expired in Europe in December 2009. We have been granted SPCs for the Avastin®, Herceptin®, Lucentis, Xolair® and Tysabri® products in many of the jurisdictions in the European Union in connection with the ‘216B Patent. The SPCs effectively extend our patent protection with respect to SPC Products generally until December 2014, except that the SPCs for Herceptin will generally expire in July 2014. Because SPCs are granted on a jurisdiction-by-jurisdiction basis, the duration of the extension varies slightly in certain jurisdictions. We may still be eligible for royalties notwithstanding the unavailability of SPC protection if the relevant royalty-bearing humanized antibody product is also made, used, sold or offered for sale in or imported from a jurisdiction in which we have an unexpired Queen et al. patent such as the United States.

Licensing Agreements

We have entered into licensing agreements under our Queen et al. patents with numerous entities that are independently developing or have developed humanized antibodies. We receive royalties on net sales of products that are made, used and/or sold prior to patent expiry. In general, these agreements cover antibodies targeting antigens specified in the license agreements. Under our licensing agreements, we are entitled to receive a flat-rate or tiered royalty based upon our licensees’ net sales of covered antibodies. We also expect to receive annual maintenance fees from licensees of our Queen et al. patents prior to patent expiry as well as periodic milestone payments. Total annual milestone payments in each of the last several years have been less than 1% of total revenue and we expect this trend will continue through the expiration of the Queen et al. patents.

Licensing Agreements for Marketed Products

In the six months ended June 30, 2013, we received royalties on sales of the eight humanized antibody products listed below, all of which are currently approved for use by the FDA and other regulatory agencies outside the United States.

Licensee	Product Names
Genentech	Avastin®
	Herceptin®
	Xolair®
	Lucentis®
	Perjeta®
	Kadcyla®
Biogen Idec[1]	Tysabri®
Chugai	Actemra®

[1] In April 2013, Biogen Idec completed its purchase of Elan's interest in Tysabri. Prior to this our licensee for Tysabri was identified as Elan.

For the three months ended June 30, 2013 and 2012, we received royalty revenues under license agreements of $143.6 million and $125.9 million, respectively, and for the six months ended June 30, 2013 and 2012, we received royalty revenues under license agreements of $235.5 million and $203.2 million, respectively.

On February 22, 2013, Genentech announced that the FDA approved Kadcyla® for second line treatment of HER2-positive metastatic breast cancer and first line treatment for those patients who relapse within six months following adjuvant therapy. Roche has submitted a Marketing Authorization Application to other regulatory authorities around the world, including the EMA, for Kadcyla for the treatment of people with HER2-positive metastatic breast cancer. This application is currently under review by the EMA. PDL began receiving royalties in the second quarter of 2013 for the sales that occurred in the first quarter of 2013. Because Kadcyla is an antibody drug conjugate, i.e., made up of the antibody, trastuzumab, and the chemotherapy, DM1, joined together using a stable linker, it is a “combination product” under the terms of the license agreement and PDL will not receive royalties on that portion of the sales of the drug attributable to the DM1.

Genentech

We entered into a master patent license agreement, effective September 25, 1998, under which we granted Genentech a license under our Queen et al. patents to make, use and sell certain antibody products. Our license agreement with Genentech entitles us to royalties following the expiration of our patents with respect to sales of licensed product manufactured prior to patent expiry in jurisdictions providing patent protection. Our master patent license agreement with Genentech provides for a tiered royalty structure under which the royalty rate Genentech must pay on royalty-bearing products sold in the United States or manufactured in the United States and used or sold anywhere in the world in a given calendar year decreases on incremental U.S.-based Sales above certain sales thresholds based on 95% of the underlying gross U.S.-based Sales. The net sales thresholds and the applicable royalty rates are outlined below:

Genentech Products Made or Sold in the U.S.	Royalty Rate
Net sales up to $1.5 billion	3.0%
Net sales between $1.5 billion and up to $2.5 billion	2.5%
Net sales between $2.5 billion and up to $4.0 billion	2.0%
Net sales exceeding $4.0 billion	1.0%
Genentech Products Made and Sold ex-U.S.	
Net sales	3.0%

As a result of the tiered royalty structure, Genentech’s average annual royalty rate for a given year will decline as Genentech’s U.S.-based Sales increase during that year. Because we receive royalties one quarter in arrears, the average royalty rates for the payments we receive from Genentech for U.S.-based Sales in the second calendar quarter for Genentech’s sales from the first calendar quarter have been and are expected to continue to be higher than the average royalty rates for following quarters. The

average royalty rates for payments we receive from Genentech are generally lowest in the fourth and first calendar quarters for Genentech's sales from the third and fourth calendar quarters when more of Genentech's U.S.-based Sales bear royalties at the 1% royalty rate.

With respect to ex-U.S.-based Manufacturing and Sales, the royalty rate that we receive from Genentech is a fixed rate of 3.0% based on 95% of the underlying gross sales. The mix of U.S.-based Sales and ex-U.S.-based Manufacturing and Sales has fluctuated in the past and may continue to fluctuate in future periods. The percentage of net global sales that were generated outside of the United States and the percentage of net global sales that were ex-U.S.-based Manufacturing and Sales are outlined in the following table:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2013	2012	2013	2012
Avastin				
Ex-U.S.-based Sales	56%	54%	58%	55%
Ex-U.S.-based Manufacturing and Sales	46%	20%	48%	23%
Herceptin				
Ex-U.S.-based Sales	67%	69%	68%	70%
Ex-U.S.-based Manufacturing and Sales	34%	41%	37%	38%
Kadcyla				
Ex-U.S.-based Sales	0%	0%	0%	0%
Ex-U.S.-based Manufacturing and Sales	0%	0%	0%	0%
Lucentis				
Ex-U.S.-based Sales	64%	62%	66%	61%
Ex-U.S.-based Manufacturing and Sales	0%	0%	0%	0%
Perjeta				
Ex-U.S.-based Sales	11%	0%	9%	0%
Ex-U.S.-based Manufacturing and Sales	0%	0%	0%	0%
Xolair				
Ex-U.S.-based Sales	40%	38%	40%	39%
Ex-U.S.-based Manufacturing and Sales	40%	38%	40%	39%

The information in the table above is based on information provided to us by Genentech. We were not provided the reasons for the fluctuations in the manufacturing split between U.S.-based Sales and ex-U.S.-based Manufacturing and Sales.

In the six months ended June 30, 2013 and 2012, PDL received royalties from ex-U.S. based Manufacturing and Sales of three of Genentech's licensed products: Herceptin, Avastin and Xolair. Roche, Genentech's parent company, produces Avastin and Herceptin in plants in Basel, Switzerland, and Penzberg, Germany, respectively. Roche has announced that there are new plants in Singapore for the potential production of Avastin and Lucentis.

The master patent license agreement continues until the expiration of the last to expire of our Queen et al. patents but may be terminated: (i) by Genentech prior to such expiration upon sixty days written notice, (ii) by either party upon a material breach by the other party or (iii) upon the occurrence of certain bankruptcy-related events.

On June 8, 2012, Genentech announced that the U.S. Food and Drug Administration approved Perjeta (pertuzumab). Perjeta is approved in combination with Herceptin and docetaxel chemotherapy for the treatment of people with HER2-postive metastatic breast cancer who have not received prior anti-HER2 therapy or chemotherapy for metastatic disease. PDL began receiving royalties generated from Perjeta during the quarter ended September 30, 2012.

On March 5, 2013, Genentech announced that Perjeta was approved by the EMA in combination with Herceptin and docetaxel chemotherapy for the treatment of people with HER2-postive metastatic breast cancer who have not received prior anti-HER2 therapy or chemotherapy for metastatic disease.

On February 22, 2013, Genentech announced that the FDA approved Kadcyla for second line treatment of HER2-positive metastatic breast cancer and first line treatment for those patients who relapse within six months following adjuvant therapy. Roche has submitted a Marketing Authorization Application to other regulatory authorities around the world, including the EMA, for Kadcyla for the treatment of people with HER2-positive metastatic breast cancer. This application is currently under review by the EMA. PDL began receiving royalties in the second quarter of 2013 for the sales that occurred in the first quarter of 2013. Because Kadcyla is an antibody drug conjugate, i.e., made up of the antibody, trastuzumab, and the chemotherapy, DM1, joined together using a stable linker, it is a “combination product” under the terms of the license agreement and PDL will not receive royalties on that portion of the sales of the drug attributable to the DM1.

In 2010 we initiated an audit of Genentech related to its payment of royalties for the period 2007-2009. KPMG, who Genentech and PDL agreed would be the independent auditor for this purpose, concluded that, based on the information available to it, Genentech may have underpaid royalties during the audited period. Genentech disagrees with KPMG's conclusions. Since we have been unable to resolve this matter with Genentech, we filed a Notice of Arbitration on June 7, 2013, against Genentech alleging that Genentech underpaid royalties going back to at least 2007 and impeded our attempts to have Genentech's books and records inspected to determine whether Genentech's past payments to PDL were accurately calculated. The outcome of this arbitration is uncertain, and we may not be successful in our allegations.

Biogen Idec

We entered into a patent license agreement, effective April 24, 1998, under which we granted to Elan a license under our Queen et al. patents to make, use and sell antibodies that bind to the cellular adhesion molecule α4 in patients with multiple sclerosis. Under the agreement, we are entitled to receive a flat royalty rate in the low single digits based on Elan’s net sales of the Tysabri product. Our license agreement with Elan entitles us to royalties following the expiration of our patents with respect to sales of licensed product manufactured prior to patent expiry in jurisdictions providing patent protection. The agreement continues until the expiration of the last to expire of our Queen et al. patents but may be terminated: (i) by Elan prior to such expiration upon sixty days written notice, (ii) by either party upon a material breach by the other party or (iii) upon the occurrence of certain bankruptcy-related events. In April 2013, Biogen Idec completed its purchase of Elan's interest in Tysabri. All obligations under our original patent license agreement with Elan have been assumed by Biogen Idec.

Chugai

We entered into a patent license agreement, effective May 18, 2000, with Chugai, a majority owned subsidiary of Roche, under which we granted to Chugai a license under our Queen et al. patents to make, use and sell antibodies that bind to interleukin-6 receptors to prevent inflammatory cascades involving multiple cell types for the treatment of rheumatoid arthritis. Under the agreement, we are entitled to receive a flat royalty rate in the low single digits based on net sales of the Actemra product manufactured in the U.S. prior to patent expiry. The agreement continues until the expiration of the last to expire of our Queen et al. patents but may be terminated: (i) by Chugai prior to such expiration upon sixty days written notice, (ii) by either party upon a material breach by the other party or (iii) upon the occurrence of certain bankruptcy-related events.

Licensing Agreements for Non-Marketed Products

We have also entered into licensing agreements under which we have licensed certain rights under our Queen et al. patents to make, use and sell certain products that are not currently marketed. Certain of these development-stage products are currently in Phase 3 clinical trials. With respect to these agreements, we may receive payments based on certain development milestones and annual maintenance fees. We may also receive royalty payments if the licensed products receive marketing approval and are manufactured or generate sales before the expiration of our Queen et al. patents. For example, solanezumab is the Lilly licensed antibody for the treatment of Alzheimer's disease. If Lilly’s antibody for Alzheimer’s disease is approved, we would receive royalties on sales of solanezumab manufactured before patent expiration, as well as be entitled to receive a royalty based on a "know-how" license for technology provided in the design of this antibody. Unlike the royalty for the patent license, the two percent royalty payable for "know-how" runs for 12.5 years after the product's initial commercialization.

Economic and Industry-wide Factors

Various economic and industry-wide factors are relevant to us and could affect our business, including changes to laws and interpretation of those laws that protect our intellectual property rights, our licensees ability to obtain or retain regulatory approval for products licensed under our patents, fluctuations in foreign currency exchange rates, the ability to attract, retain and integrate qualified personnel, as well as overall global economic conditions. We actively monitor economic, industry and market factors affecting our business, however, we cannot predict the impact such factors may have on our future results of

operations, liquidity and cash flows. See also the “Risk Factors” section of this quarterly report for additional factors that may impact our business and results of operations.

Critical Accounting Policies and Uses of Estimates

During the six months ended June 30, 2013, there have been no significant changes to our critical accounting policies since those presented in Part II, Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2012.

Operating Results

Three and six months ended June 30, 2013, compared to three and six months ended June 30, 2012

Revenues

	Three Months Ended June 30,		Change from Prior	Six Months Ended June 30,		Change from Prior
	2013	2012	Year %	2013	2012	Year %
(Dollars in thousands)						
Revenues						
Royalties	$ 143,617	$ 125,904	14%	$ 235,464	$ 203,248	16%
Total revenues	$ 143,617	$ 125,904	14%	$ 235,464	$ 203,248	16%

Total royalty revenues were $143.6 million and $125.9 million for the three months ended June 30, 2013 and 2012, respectively, and $235.5 million and $203.2 million for the six months ended June 30, 2013 and 2012, respectively, and consisted of royalties and maintenance fees earned on sales of products under license agreements associated with our Queen et al. patents. Royalty revenue is net of the payments made under our February 2011 settlement agreement with Novartis, which is based on a portion of the royalties that the company receives from Lucentis sales made by Novartis outside the United States. The amount paid is less than we receive in royalties on such sales.

Royalty revenues increased 14% for the three months ended June 30, 2013, when compared to the same period in 2012, and increased 16% for the six months ended June 30, 2013, when compared to the same period in 2012. The growth is primarily driven by increased royalties in the first and second quarters of 2013 of Avastin, Herceptin, Lucentis, Xolair, Perjeta, Kadcyla, Tysabri, and Actemra by our licensees. Net sales of Avastin, Herceptin, Lucentis, Xolair, Perjeta, and Kadcyla, are subject to a tiered royalty rate except in the case when the product is ex-U.S. Manufactured and Sold, in which case it is subject to a flat three percent royalty rate.

The following table summarizes the percentage of our total revenues earned from our licensees’ net product sales, which individually accounted for 10% or more of our total revenues for the three and six months ended June 30, 2013 and 2012:

		Three Months Ended June 30,		Six Months Ended June 30,	
Licensee	**Product Name**	**2013**	**2012**	**2013**	**2012**
Genentech	*Avastin*	33%	33%	34%	32%
	Herceptin	33%	35%	33%	35%
	Lucentis	21%	22%	18%	19%
Biogen Idec[1]	*Tysabri*	9%	10%	11%	12%

[1] In April, 2013, Biogen Idec completed its purchase of Elan's interest in Tysabri. Prior to this our licensee for Tysabri was identified as Elan.

Foreign currency exchange rates also impact our reported revenues. More than 50% of our licensees’ product sales are in currencies other than U.S. dollars; as such, our revenues may fluctuate due to changes in foreign currency exchange rates and are subject to foreign currency exchange risk. While foreign currency conversion terms vary by license agreement, generally

most agreements require that royalties first be calculated in the currency of sale and then converted into U.S. dollars using the average daily exchange rates for that currency for a specified period at the end of the calendar quarter. Accordingly, when the U.S. dollar weakens against other currencies, the converted amount is greater than it would have been had the U.S. dollar not weakened. For example, in a quarter in which we generate $70 million in royalty revenues, and when approximately $35 million is based on sales in currencies other than U.S. dollar, if the U.S. dollar strengthens across all currencies by ten percent during the conversion period for that quarter, when compared to the same amount of local currency royalties for the prior year, U.S. dollar converted royalties will be approximately $3.5 million less in the current quarter than in the prior year quarter. The impact on full year revenue is greatest in the second quarter when we receive the largest amount of royalties because the Genentech tiered royalties are at their highest rate for first quarter sales.

As a result of our Euro forward contracts, recognized royalty revenues increased (decreased) $0.4 million and $(2.9) million for the three months ended June 30, 2013 and 2012, respectively, and increased (decreased) $(1.5) million and $(1.0) million for the six months ended June 30, 2013 and 2012, respectively.

Operating Expenses

	Three Months Ended June 30,		Change from Prior	Six Months Ended June 30,		Change from Prior
	2013	2012	Year %	2013	2012	Year %
(In thousands)						
General and administrative	$ 6,783	$ 5,145	32%	$ 13,969	$ 12,090	16%
Percentage of total revenues	5%	4%		6%	6%	

The increase in operating expenses was a result of increased legal expenses related to litigation.

Non-operating Expense, Net

For the three months ended June 30, 2013, compared to the three months ended June 30, 2012, non-operating expense, net, decreased primarily due to a $4.5 million increase in interest income from the notes receivables entered into during 2012 and 2013 and $1.8 million lower interest expense as a result of our repayment of the principal balance of our Non-recourse Notes.

For the six months ended June 30, 2013, compared to the six months ended June 30, 2012, non-operating expense, net, decreased primarily due to a $8.3 million increase in interest income from the notes receivables entered into during 2012 and 2013 and $4.5 million lower interest expense as a result of our repayment of the principal balance of our Non-Recourse Notes.

Income Taxes

Income tax expense for the three months ended June 30, 2013 and 2012, was $42.0 million and $39.8 million, respectively, and for the six months ended June 30, 2013 and 2012, was $71.0 million and $61.4 million, respectively, which resulted primarily from applying the federal statutory income tax rate to income before income taxes.

During the second quarter of 2013, a release of the tax reserve against the federal tax credits taken on the 2009 income tax return, was recorded in the amount of $5.7 million. This resulted in a reduction to the tax expense for the quarter.

Net Income per Share

Net income per share for the three and six months ended June 30, 2013 and 2012, was:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2013	2012	2013	2012
Net income per basic share	$ 0.67	$ 0.53	$ 1.05	$ 0.81
Net income per diluted share	$ 0.62	$ 0.52	$ 0.96	$ 0.80

The increase in the net income per diluted share is due to the increase in royalty revenues and the resulting increase in net income.

Liquidity and Capital Resources

We finance our operations primarily through royalty and other license related revenues, public and private placements of debt and equity securities and interest income on invested capital. We currently have fewer than ten employees managing our intellectual property, our licensing operations and other corporate activities as well as providing for certain essential reporting and management functions of a public company.

We had cash, cash equivalents and investments in the aggregate of $258.9 million and $148.7 million, excluding restricted investments, at June 30, 2013, and December 31, 2012, respectively. The increase was primarily attributable to net cash provided by operating activities of $163.9 million and repayment of notes receivable of $15.6 million, offset in part by payment of dividends of $42.0 million and cash advanced on notes receivable of $27.3 million. We believe that cash from future royalty revenues, net of operating expenses, debt service and income taxes, plus cash on hand, will be sufficient to fund our operations over the next several years. The last of our Queen et al. patents expires in December 2014, with the obligation to pay royalties under various license agreements expiring sometime thereafter, and we do not expect to receive any meaningful revenue from the inventories produced prior to the expiration of our Queen et al. patents beyond the first quarter of 2016.

We continuously evaluate alternatives to increase return for our stockholders by, for example, purchasing income generating assets, buying back our convertible notes, repurchasing our common stock, paying dividends and selling the Company. On January 23, 2013, our board of directors declared regular quarterly dividends of $0.15 per share of common stock, payable on March 12, June 12, September 12 and December 12 of 2013 to stockholders of record on March 5, June 5, September 5 and December 5 of 2013, the record dates for each of the dividend payments, respectively.

Notes and Other Long-term Receivables

Wellstat Diagnostics Note Receivable and Credit Agreement

In March 2012, the Company executed a $7.5 million two-year senior secured note receivable with the holders of the equity interests in Wellstat Diagnostics. In addition to bearing interest at 10%, the note gave PDL certain rights to negotiate for certain future financing transactions. In August 2012, PDL and the borrowers amended the note receivable, providing a senior secured note receivable of $10.0 million to replace the original $7.5 million note, which bore interest at 12% per annum. This $10.0 million note was repaid on November 2, 2012.

On November 2, 2012, the Company and Wellstat Diagnostics entered into a $40.0 million credit agreement pursuant to which the Company is to accrue quarterly interest payments at the rate of 5% per annum (payable in cash or in kind). In addition, PDL will receive quarterly royalty payments based on a low double digit royalty rate of Wellstat Diagnostics' net revenues, generated by the sale, distribution or other use of Wellstat Diagnostics' products, if any, commencing upon the commercialization of its products.

Under the credit agreement, Wellstat Diagnostics may prepay the credit agreement at a price that, together with interest and royalty payments already made to the Company would generate a specified internal rate of return to the Company. In the event of a change of control, bankruptcy or certain other customary events of defaults, or Wellstat Diagnostics' failure to achieve specified annual revenue threshold in 2017, Wellstat Diagnostics will be required to prepay the credit agreement at a price that, together with interest and royalty payments already made to the Company, would generate a specified internal rate of return to the Company. The credit agreement is secured by a pledge of all of the assets of Wellstat Diagnostics and a pledge of all of Wellstat Diagnostics’ equity interests by the holders thereof.

In January 2013, the Company was informed that, as of December 31, 2012, Wellstat Diagnostics had used funds contrary to the terms of the credit agreement and breached Sections 2.1.2 and 7 of the credit agreement. PDL sent Wellstat Diagnostics a notice of default on January 22, 2013, and accelerated the amounts owed under the credit agreement. In connection with the notice of default, PDL exercised one of its available remedies and transferred approximately $8.1 million of available cash from a bank account of Wellstat Diagnostics to PDL and applied the funds to amounts due under the credit agreement. On February 28, 2013, the parties entered into a forbearance agreement whereby PDL agreed to refrain from exercising additional remedies for 120 days while Wellstat Diagnostics raised funds to capitalize the business and the parties attempt to negotiate a revised credit agreement. PDL agreed to provide up to $7.9 million to Wellstat Diagnostics to fund the business for the 120-day forbearance period under the terms of the credit agreement. During the six months ended June 30, 2013, approximately $7.3 million was advanced pursuant to the forbearance agreement. Following the conclusion of the June 28 forbearance period, the

Company agreed to forbear in its exercise of remedies for additional periods of time to allow the owners and affiliates of Wellstat Diagnostics to complete a pending financing transaction. During such forbearance period, the Company provided approximately $1.3 million to Wellstat Diagnostics to fund ongoing operations of the business. We believe the close of the pending financing transaction will occur in the near future. In the event that the owners and affiliates of Wellstat Diagnostics are successful in completing the financing transaction, PDL expects to enter into an amended and restated credit agreement with Wellstat Diagnostics.

At June 30, 2013, the note is subject to the forbearance agreement and the carrying value is included in non-current assets.

Merus Labs Receivable and Credit Agreement

In July 2012, PDL loaned $35.0 million to Merus Labs in connection with its acquisition of a commercial-stage pharmaceutical product and related assets. In addition, PDL agreed to provide a $20.0 million letter of credit on behalf of Merus Labs for the seller of the assets to draw upon to satisfy the remaining $20.0 million purchase price obligation. The seller made this draw on the letter of credit in July of 2013 and an additional loan to Merus Labs for $20.0 million was recorded. Outstanding borrowings under the July 2012 loan bear interest at the rate of 13.5% per annum and outstanding borrowings as a result of the draw on the letter of credit will bear interest at the rate of 14.0% per annum. Merus Labs is required to make four periodic principal payments in respect of the July 2012 loan, with repayment of the remaining principal balance of all loans due on March 31, 2015. The borrowings are subject to mandatory prepayments upon certain asset dispositions or debt issuances as set forth in the credit agreement. Merus Labs made the first of these payments in December 2012 in the amount of $5.0 million and the second payment was made in June 2013 in the amount of $7.5 million.

The credit agreement provides for a number of standard events of default, including payment, bankruptcy, covenant, judgment and cross-defaults.

AxoGen Note Receivable and Royalty Agreement

In October 2012, PDL entered into the Royalty Agreement with AxoGen pursuant to which the Company will receive specified royalties on AxoGen’s net revenues (as defined in the Royalty Agreement) generated by the sale, distribution or other use of AxoGen’s products. The Royalty Agreement has an eight year term and provides PDL with royalties of 9.95% based on AxoGen Net Revenues, subject to agreed-upon guaranteed quarterly minimum payments of approximately $1.3 to $2.3 million beginning in the fourth quarter of 2014, and the right to require AxoGen to repurchase the Royalty Agreement at the end of the fourth year. AxoGen has been granted certain rights to call the contract in years five through eight. The total consideration PDL paid to AxoGen for the royalty rights was $20.8 million, including the termination of an interim funding of $1.8 million in August 2012. AxoGen was required to use a portion of the proceeds from the Royalty Agreement to pay the outstanding balance under its existing credit facility. AxoGen plans to use the remainder of the proceeds to support the business plan for its products. The royalty rights are secured by the cash and accounts receivable of AxoGen.

Under the Royalty Agreement, beginning on October 1, 2016, or in the event of the occurrence of a material adverse event or AxoGen's bankruptcy or material breach of the Royalty Agreement, the Company may require AxoGen to repurchase the royalty rights at a price that, together with payments already made by AxoGen, would generate a specified internal rate of return to the Company. The Company has concluded that the repurchase option is an embedded derivative which should be bifurcated and separately recorded at fair value. The fair value of the repurchase option was not material on June 30, 2013.

In the event of a change of control of AxoGen, it must repurchase the assigned interests from the Company for a repurchase price equal to an amount that, together with payments already made by AxoGen, would generate a 32.5% internal rate of return to the Company. The Company has concluded that the change of control provision is an embedded derivative which should be bifurcated and separately accounted for at fair value. The fair value of the change of control provision was approximately $1.0 million on June 30, 2013.

In addition, at any time after September 30, 2016, AxoGen, at its option, can repurchase the assigned interests under the Royalty Agreement for a price applicable in a change of control.

Avinger Credit and Royalty Agreement

On April 18, 2013, PDL entered into a credit agreement with Avinger, under which we made available to Avinger up to $40.0 million to be used by Avinger in connection with the commercialization of its currently marketed lumivascular catheter devices and in the development of Avinger's lumivascular atherectomy device. Of the $40.0 million available to Avinger, we funded an initial $20.0 million, net of fees, at close of the transaction. Upon the attainment of certain revenue milestones to be

accomplished no later than the end of the first half of 2014, we will fund Avinger an additional amount between $10.0 million and $20.0 million (net of fees) at Avinger's election. Outstanding borrowings under the initial loan bear interest at the rate of 12% per annum, and outstanding borrowings as a result of additional amounts funded upon reaching the revenue milestones bear interest at the rate of 14% per annum.

Avinger is required to make quarterly interest and principal payments. Principal repayment will commence on: (i) the eleventh interest payment date if the revenue milestones are not achieved or (ii) the thirteenth interest payment date if the revenue milestones are achieved. The principal amount outstanding at commencement of repayment, after taking into account any payment-in-kind, will be repaid in equal installments until final maturity of the loans. The loans will mature in April 2018.

In connection with entering into the credit agreement, the Company will receive a low, single-digit royalty on Avinger's net revenues through April 2018. Avinger may prepay the outstanding principal and accrued interest on the note receivable at any time. If Avinger repays the note receivable prior to April 2018, the royalty on Avinger's net revenues will be reduced by 50% and will be subject to certain minimum payments from the prepayment date through April 2018.

The obligations under the credit agreement are secured by a pledge of substantially all of the assets of Avinger and any of its subsidiaries (other than controlled foreign corporations, if any). The credit agreement provides for a number of standard events of default, including payment, bankruptcy, covenant, representation and warranty and judgment defaults.

Convertible Notes

Series 2012 Notes

In January 2012, we exchanged $169.0 million aggregate principal amount of our February 2015 Notes, for an identical principal amount of new Series 2012 Notes, plus a cash payment of $5.00 for each $1,000 principal amount tendered for a total cash incentive payment of approximately $0.8 million. Additionally, in February 2012, we entered into separate privately negotiated exchange agreements under which we exchanged an additional $10.0 million aggregate principal amount of our February 2015 Notes for an identical principal amount of our new Series 2012 Notes. Our Series 2012 Notes net share settle, meaning that if a conversion occurs, the principal amount will be settled in cash and the excess, if any, will be settled in the Company’s common stock. At the time of the exchange, the effect of issuing $179.0 million aggregate principal of our Series 2012 Notes with the net share settle feature in exchange for our February 2015 Notes reduced 27.8 million shares of potential dilution to our stockholders.

Our Series 2012 Notes bear interest at a rate of 2.875% per annum, payable semiannually in arrears on February 15 and August 15 of each year, beginning on February 15, 2012, which is the same interest rate payable for the February 2015 Notes. The Series 2012 Notes mature on February 15, 2015, unless earlier repurchased or converted. The Company may not redeem the Series 2012 Notes prior to their stated maturity date. Our Series 2012 Notes are not puttable by the note holders other than in the context of a fundamental change resulting in the reclassification, conversion, exchange or cancellation of our common stock. Such repurchase event or fundamental change is generally defined to include a merger involving PDL, an acquisition of a majority of PDL’s outstanding common stock and a change of a majority of PDL’s board of directors without the approval of the board of directors.

Holders may convert their Series 2012 Notes at any time prior to the close of business on the second scheduled trading day immediately preceding the stated maturity date of the Series 2012 Notes under the following circumstances:

- During any fiscal quarter commencing after the fiscal quarter ending December 31, 2011, if the closing price of the Company’s common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter exceeds 130% of the conversion price for the Series 2012 Notes on the last day of such preceding fiscal quarter;
- During the five business-day period immediately after any five consecutive trading-day period in which the trading price per $1,000 principal amount of the Series 2012 Notes for each trading day of that measurement period was less than 98% of the product of the closing price of the Company’s common stock and the conversion rate for the Series 2012 Notes for that trading day;
- Upon the occurrence of certain corporate transactions as provided in the indenture; or
- Anytime, at the holder’s option, beginning on August 15, 2014.

Upon conversion of Series 2012 Notes, the Company will be required to pay cash and, if applicable, deliver shares of the Company's common stock. Our Series 2012 Notes are convertible into 176.389 shares of the Company's common stock per $1,000 of principal amount or approximately $5.67 per share of our common stock, subject to further adjustment upon certain events including dividend payments. As of June 30, 2013, $179.0 million of our Series 2012 Notes were outstanding and the if-converted value exceeded the principal amount by approximately $64.7 million. However, our common stock did not exceed the conversion threshold price of $7.51 for at least 20 days during the 30 consecutive trading days ended March 31, 2013; accordingly, the Series 2012 Notes were not convertible at the option of the holder during the quarter ended June 30, 2013. Our common stock did exceed the conversion threshold price of $7.37 for at least 20 days during the 30 consecutive trading days ended June 30, 2013; accordingly, the Series 2012 Notes are convertible at the option of the holder during the quarter ending September 30, 2013. In the second quarter of 2013, the Series 2012 Notes have been reclassified from non-current to current as the notes will be due upon demand within one year of the quarter end June 30, 2013.

As of August 5, 2013, we have not received notices for the conversion of the Series 2012 Notes. If we do receive any conversion notices they would be net settled in cash and the excess, if any, will be settled in the Company's common stock. We do not expect the current capital market conditions and credit environment to create incentives for note holders to convert their notes, however, there can be no assurance that our holders will not request conversion. If the full $179.0 million in aggregate convertible debt was called for conversion prior to September 30, 2013, given our current cash and cash equivalents balance, we would have sufficient unrestricted cash and cash equivalents on hand to satisfy the conversion without additional liquidity. We may also consider restructuring our obligations under the convertible debt, or raising additional cash through sales of investments, assets or common stock, or from borrowings to fund this conversion.

May 2015 Notes

Our May 2015 Notes are due May 1, 2015, and bear interest at a rate of 3.75% per annum, payable semiannually in arrears on May 1 and November 1 of each year, beginning November 1, 2011. Upon the occurrence of a fundamental change, as defined in the indenture, holders have the option to require PDL to repurchase their May 2015 Notes at a purchase price equal to 100% of the principal, plus accrued interest. Our May 2015 Notes are convertible under any of the following circumstances:

- During any fiscal quarter commencing after the fiscal quarter ending June 30, 2011, if the closing price of the Company's common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter exceeds 130% of the conversion price for the Series 2012 Notes on the last day of such preceding fiscal quarter;
- During the five business-day period immediately after any five consecutive trading-day period, which we refer to as the measurement period, in which the trading price per $1,000 principal amount of notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate for the notes for each such day;
- Upon the occurrence of certain corporate transactions as provided in the indenture; or
- Anytime, on or after November 1, 2014.

Upon conversion of the May 2015 Notes, the Company will be required to pay cash, and if applicable, deliver shares of the Company's common stock. Our May 2015 Notes are convertible into 154.4189 shares of the Company's common stock per $1,000 of principal amount, or approximately $6.48 per share of our common stock, subject to further adjustment upon certain events including dividend payments. As of June 30, 2013, $155.3 million of our May 2015 Notes were outstanding and the if-converted value exceeded the principal amount by approximately $29.8 million. However, our common stock price did not exceed the threshold price of $8.57 per common share for at least 20 days during the 30 consecutive trading days ended March 31, 2013; accordingly, the May 2015 Notes were not convertible at the option of the holder during the quarter ended June 30, 2013. Our common stock did not exceed the conversion threshold price of $8.42 for at least 20 days during the 30 consecutive trading days ended June 30, 2013; accordingly, the May 2015 Notes are not convertible at the option of
the holder during the quarter ending September 30, 2013.

Purchased Call Options and Warrants

In connection with the issuance of our May 2015 Notes, we entered into purchased call option transactions with two hedge counterparties. We paid an aggregate amount of $20.8 million, plus legal fees, for the purchased call options with terms substantially similar to the embedded conversion options in our May 2015 Notes. The purchased call options cover, subject to anti-dilution and certain other customary adjustments substantially similar to those in our May 2015 Notes, approximately 24.0 million shares of our common stock at a strike price of approximately $6.48, which corresponds to the conversion price of our

May 2015 Notes. We may exercise the purchased call options upon conversion of our May 2015 Notes and require the hedge counterparty to deliver shares to the Company in an amount equal to the shares required to be delivered by the Company to the note holder for the excess conversion value. The purchased call options expire on May 1, 2015, or the last day any of our May 2015 Notes remain outstanding.

In addition, we sold to the hedge counterparties warrants exercisable, on a cashless basis, for the sale of rights to receive up to 27.5 million shares of common stock underlying our May 2015 Notes, at a current strike price of approximately $7.62 per share, subject to additional anti-dilution and certain other customary adjustments. We received an aggregate amount of $10.9 million for the sale from the two counterparties. The warrant counterparties may exercise the warrants on their specified expiration dates that occur over a period of time ending on January 20, 2016. If the VWAP of our common stock, as defined in the warrants, exceeds the strike price of the warrants, we will deliver to the warrant counterparties shares equal to the spread between the VWAP on the date of exercise or expiration and the strike price. If the VWAP is less than the strike price, neither party is obligated to deliver anything to the other.

The purchased call option transactions and warrant sales effectively serve to reduce the potential dilution associated with conversion of our May 2015 Notes.

If the share price is above $6.48, but below $7.62, upon conversion of our May 2015 Notes, the purchased call options will offset the share dilution, because the Company will receive shares on exercise of the purchased call options equal to the shares that the Company must deliver to the note holders. If the share price is above $7.62, upon exercise of the warrants, the Company will deliver shares to the counterparties in an amount equal to the excess of the share price over $7.62. For example, a 10% increase in the share price above $7.62 would result in the issuance of 1.9 million incremental shares upon exercise of the warrants. As our share price continues to increase, additional dilution would occur.

While the purchased call options are expected to reduce the potential equity dilution upon conversion of our May 2015 Notes, prior to conversion or exercise, our May 2015 Notes and the warrants could have a dilutive effect on the Company's earnings per share to the extent that the price of the Company's common stock during a given measurement period exceeds the respective exercise prices of those instruments. As of June 30, 2013, the market price condition for convertibility of our May 2015 Notes was not met and there were no related purchased call options or warrants exercised.

The purchased call options and warrants are considered indexed to PDL stock, require net-share settlement, and met all criteria for equity classification at inception and at June 30, 2013, and December 31, 2012. The purchased call options cost, including legal fees, $20.8 million, less deferred taxes of $7.2 million, and the $10.9 million received for the warrants were recorded as adjustments to additional paid-in capital. Subsequent changes in fair value will not be recognized as long as the purchased call options and warrants continue to meet the criteria for equity classification.

February 2015 Notes

As of June 30, 2013, $1.0 million of our February 2015 Notes were outstanding and met the criteria for conversion into shares of our common stock. In January and February 2012, we exchanged $179.0 million of our February 2015 Notes for an identical amount of our new Series 2012 Notes. Our February 2015 Notes are due February 15, 2015, and are convertible at any time, at the holders' option, into our common stock at a conversion price of 176.389 shares of common stock per $1,000 principal amount or $5.67 per share of common stock, subject to further adjustment upon certain events including dividend payments. Our February 2015 Notes bear interest at a rate of 2.875% per annum, payable semiannually in arrears on February 15 and August 15 of each year. Our February 2015 Notes are senior unsecured debt and are redeemable by us in whole or in part on or after August 15, 2014, at 100% of principal amount. Our February 2015 Notes are not puttable by the note holders other than in the context of a fundamental change resulting in the reclassification, conversion, exchange or cancellation of our common stock. Such repurchase event or fundamental change is generally defined to include a merger involving PDL, an acquisition of a majority of PDL's outstanding common stock and a change of a majority of PDL's board of directors without the approval of the board of directors.

Off-Balance Sheet Arrangements

As of June 30, 2013, we did not have any off-balance sheet arrangements, as defined under SEC Regulation S-K Item 303(a)(4)(ii).

Contractual Obligations

As of June 30, 2013, our contractual obligations consisted primarily of our Series 2012 Notes, May 2015 Notes and our February 2015 Notes, which in the aggregate totaled $335.3 million in principal. Our Series 2012 and our May 2015 Notes are not puttable by the note holders other than in the context of a fundamental change.

We expect that our debt service obligations over the next several years will consist of interest payments and repayment of our Series 2012 Notes, our May 2015 Notes and our February 2015 Notes. We may further seek to exchange, repurchase or otherwise acquire the convertible notes in the open market in the future which could adversely affect the amount or timing of any distributions to our stockholders. We would make such exchanges or repurchases only if we deemed it to be in our stockholders' best interest. We may finance such repurchases with cash on hand and/or with public or private equity or debt financings if we deem such financings are available on favorable terms.

On April 18, 2013, PDL entered into a credit agreement with Avinger, under which we made available to Avinger up to $40.0 million to be used by Avinger in connection with the commercialization of its currently marketed lumivascular catheter devices and in the development of Avinger's lumivascular atherectomy device. Of the $40.0 million available to Avinger, we funded an initial $20.0 million, net of fees, at close of the transaction. Upon the attainment of certain revenue milestones to be accomplished no later than the end of the first half of 2014, we will fund Avinger an additional amount between $10.0 million and $20.0 million (net of fees) at Avinger's election.

As discussed in Note 6, in July 2012, PDL loaned $35.0 million to Merus Labs in connection with its acquisition of a commercial-stage pharmaceutical product and related assets. In addition, PDL agreed to provide a $20.0 million letter of credit on behalf of Merus Labs for the seller of the assets to draw upon to satisfy the remaining $20.0 million purchase price obligation. The seller made this draw on the letter of credit in July 2013 and an additional loan to Merus Labs for $20.0 million was recorded. Outstanding borrowings under the July 2012 loan bear interest at the rate of 13.5% per annum and outstanding borrowings as a result of the draw on the letter of credit will bear interest at the rate of 14.0% per annum. Merus Labs is required to make four periodic principal payments in respect of the July 2012 loan, with repayment of the remaining principal balance of all loans due on March 31, 2015. The borrowings are subject to mandatory prepayments upon certain asset dispositions or debt issuances as set forth in the credit agreement.

Lease Guarantee

In connection with the Spin-Off, we entered into amendments to the leases for our former facilities in Redwood City, California, under which Facet was added as a co-tenant, and a Co-Tenancy Agreement, under which Facet agreed to indemnify us for all matters related to the leases attributable to the period after the Spin-Off date. Should Facet default under its lease obligations, we could be held liable by the landlord as a co-tenant and, thus, we have in substance guaranteed the payments under the lease agreements for the Redwood City facilities. As of June 30, 2013, the total lease payments for the duration of the guarantee, which runs through December 2021, are approximately $95.1 million. If Facet were to default, we could also be responsible for lease related costs including utilities, property taxes and common area maintenance which may be as much as the actual lease payments. We have recorded a liability of $10.7 million on our Condensed Consolidated Balance Sheets as of June 30, 2013, and December 31, 2012, related to this guarantee.

Indemnification

As permitted under Delaware law and under the terms of our bylaws, the Company has entered into indemnification agreements with its directors and executive officers. Under these agreements, the Company has agreed to indemnify such individuals for certain events or occurrences, subject to certain limits, against liabilities that arise by reason of their status as directors or officers and to advance expense incurred by such individuals in connection with related legal proceedings. While the maximum amount of potential future indemnification is unlimited, we have a director and officer insurance policy that limits our exposure and may enable us to recover a portion of any future amounts paid.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Currency Risk

The underlying sales of our licensees' products are conducted in multiple countries and in multiple currencies throughout the world. While foreign currency conversion terms vary by license agreement, generally most agreements require that royalties first be calculated in the currency of sale and then converted into U.S. dollars using the average daily exchange rates for that currency for a specified period at the end of the calendar quarter. Accordingly, when the U.S. dollar weakens in relation to other currencies, the converted amount is greater than it would have been had the U.S. dollar not weakened. More than 50% of our licensees' product sales are in currencies other than U.S. dollars; as such, our revenues may fluctuate due to changes in foreign currency exchange rates and is subject to foreign currency exchange risk. For example, in a quarter in which we generate $70 million in royalty revenues, and when approximately $35 million is based on sales in currencies other than the U.S. dollar, if the U.S. dollar strengthens across all currencies by 10% during the conversion period for that quarter, when compared to the same amount of local currency royalties for the prior year, U.S. dollar converted royalties will be approximately $3.5 million less in that current quarter sales, assuming that the currency risk in such forecasted sales was not hedged.

We hedge Euro-denominated risk exposures related to our licensees' product sales with Euro forward contracts. In general, these contracts are intended to offset the underlying Euro market risk in our royalty revenues. Our current contracts extend through the fourth quarter of 2014 and are all classified for accounting purposes as cash flow hedges. We continue to monitor the change in the Euro exchange rate and regularly purchase additional forward contracts to achieve hedged rates that approximate the average exchange rate of the Euro over the year, which we anticipate will better offset potential changes in exchange rates than simply entering into larger contracts at a single point in time.

In January 2012, we modified our existing Euro forward and option contracts related to our licensees' sales through December 2012 into forward contracts with more favorable rates than the rate that was ensured by the previous contracts. Additionally, we entered into a series of Euro forward contracts covering the quarters in which our licensees' sales occur through December 2013.

During the third quarter of 2012, we reduced our forecasted exposure to the Euro for 2013 royalties. In August 2012, we de-designated and terminated certain forward contracts, recording a gain of approximately $391,000 in interest and other income, net. The termination of these contracts was effected through a reduction in the notional amount of the original hedge contracts that was then exchanged for new hedges of 2014 Euro-denominated royalties. These 2014 hedges were entered into at a rate more favorable than the market rate as of the date of the exchange.

Gains or losses on our cash flow hedges are recognized in the same period that the hedged transaction impacts earnings as an adjustment to royalty revenue. Ineffectiveness, if any, resulting from the change in fair value of the modified 2012 hedge or lower than forecasted Euro-based royalties will be reclassified from other comprehensive income (loss) and recorded as interest and other income, net, in the period it occurs. The following table summarizes the notional amounts, Euro exchange rates and fair values of our outstanding Euro contracts designated as hedges at June 30, 2013, and December 31, 2012:

Euro Forward Contracts			**June 30, 2013**		**December 31, 2012**	
			(In thousands)		***(In thousands)***	
Currency	**Settlement Price ($ per Euro)**	**Type**	**Notional Amount**	**Fair Value**	**Notional Amount**	**Fair Value**
Euro	1.230	Sell Euro	$ —	$ —	$ 27,553	$ (2,036)
Euro	1.240	Sell Euro	10,850	(534)	10,850	(726)
Euro	1.270	Sell Euro	44,450	(1,136)	44,450	(1,950)
Euro	1.281	Sell Euro	36,814	(651)	36,814	(1,331)
Euro	1.300	Sell Euro	57,200	(89)	91,000	(1,538)
Total			$ 149,314	$ (2,410)	$ 210,667	$ (7,581)

Interest Rate Risk

Our investment portfolio was approximately $247.6 million at June 30, 2013, and $140.8 million at December 31, 2012, and consisted of investments in Rule 2a-7 money market funds, certificates of deposit and corporate debt securities. If market

interest rates were to have increased by 1% in either of these years, there would have been no material impact on the fair value of our portfolio.

The aggregate fair value of our convertible notes was estimated to be $440.0 million at June 30, 2013, and $410.5 million at December 31, 2012, based on available pricing information. At June 30, 2013, and December 31, 2012, our convertible notes consisted of our Series 2012 Notes, with a fixed interest rate of 2.875%, our May 2015 Notes, with a fixed interest rate of 3.75%, and our February 2015 Notes, with a fixed interest rate of 2.875%. These obligations are subject to interest rate risk because the fixed interest rates under these obligations may exceed current market interest rates.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of June 30, 2013, our disclosure controls and procedures were effective to ensure the information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Changes in Internal Controls

There were no changes in our internal controls over financial reporting during the quarter ended June 30, 2013, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Controls

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within an organization have been detected. We continue to improve and refine our internal controls and our compliance with existing controls is an ongoing process.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Genentech / Roche Matter

Communications with Genentech regarding European SPCs

In August 2010, we received a letter from Genentech, sent on behalf of Roche and Novartis, asserting that the Avastin, Herceptin, Lucentis and Xolair do not infringe the SPCs granted to PDL by various countries in Europe for covering those products and seeking a response from PDL to these assertions. Genentech did not state what actions, if any, it intends to take with respect to its assertions. PDL's SPCs were granted by the relevant national patent offices in Europe and specifically cover Avastin, Herceptin, Lucentis and Xolair. The SPCs covering the Avastin, Herceptin, Lucentis, and Xolair effectively extend our European patent protection for the '216B Patent generally until December 2014, except that the SPCs for Herceptin will generally expire in July 2014.

Genentech's letter does not suggest that any of the Genentech Products do not infringe PDL's U.S. patents to the extent that such Genentech Products are U.S.-based Sales. Genentech's quarterly royalty payments received after receipt of the letter have included royalties generated on all worldwide sales of the Genentech Products.

If Genentech is successful in asserting this position, then under the terms of our license agreements with Genentech, it would not owe us royalties on sales of Avastin, Herceptin, Lucentis and Xolair that are both manufactured and sold outside of the United States. Royalties on sales of Avastin, Herceptin, Lucentis and Xolair that are ex-U.S.-based Manufacturing and Sales accounted for approximately 40% of our royalty revenues for the six months ended June 30, 2013.

We believe that the SPCs are enforceable, that Genentech's letter violates the terms of the 2003 settlement agreement and that Genentech owes us royalties on sales of the Genentech Products on a worldwide basis. We intend to vigorously assert our SPC-based patent rights.

Nevada Litigation with Genentech, Roche and Novartis in Nevada State Court

In August 2010, we filed a complaint in the Second Judicial District of Nevada, Washoe County, naming Genentech, Roche and Novartis as defendants. We intend to enforce our rights under our 2003 settlement agreement with Genentech and are seeking an order from the court declaring that Genentech is obligated to pay royalties to us on ex-U.S.-based Manufacturing and Sales of Avastin, Herceptin, Lucentis and Xolair.

The 2003 settlement agreement was entered into as part of a definitive agreement resolving intellectual property disputes between the two companies at that time. The agreement limits Genentech's ability to challenge infringement of our patent rights and waives Genentech's right to challenge the validity of our patent rights. Certain breaches of the 2003 settlement agreement as alleged by our complaint require Genentech to pay us liquidated and other damages of potentially greater than one billion dollars. This amount includes a retroactive royalty rate of 3.75% on past U.S.-based Sales of the Genentech Products and interest, among other items. We may also be entitled to either terminate our license agreements with Genentech or be paid a flat royalty of 3.75% on future U.S.-based Sales of the Genentech Products.

On February 25, 2011, we reached a settlement with Novartis under which, among other things, we agreed to dismiss our claims against Novartis in the action in Nevada state court against Genentech, Roche and Novartis. Genentech and Roche continue to be parties to the Nevada suit.

The parties have been engaged in discovery motion practice. On March 29, 2013, the court affirmed an order of the discovery commissioner requiring the production of certain documents in the possession of Roche and Genentech to PDL. Roche and Genentech have communicated to us that they have requested review of the court's order from the Nevada Supreme Court. The parties have agreed to a stay in the proceedings pending the decision of the Nevada Supreme Court regarding whether they will review the court's order. In the event that the Nevada Supreme Court agrees to consider Roche and Genentech's request and review the court's order, we expect a lengthy delay in the case schedule for a period that may extend up to eighteen months. Accordingly, while the court has scheduled trial to commence on October 7, 2013, the likelihood that a trial date will be pushed out to as late as mid-2014 to mid-2015 is significant. Even in the event that the Nevada Supreme Court does not accept review of Roche and Genentech's request, due to the stay of proceedings in the interim period, the possibility exists that the parties will have insufficient time to complete discovery and other pre-trial activities, necessitating a delay in the currently scheduled

October 2013 trial. In that instance, it is unclear at this time whether such a delay would occur or how long such a delay would be. The outcome of this litigation is uncertain and we may not be successful in our allegations.

Arbitration with Genentech

On June 7, 2013, the Company filed a Notice of Arbitration against Genentech with the American Arbitration Association in Voorhees, New Jersey, alleging, *inter alia*, that Genentech underpaid royalties going back to at least 2007 and impeded PDL's attempts to have Genentech's books and records inspected to determine whether Genentech's past payments to PDL were accurately calculated.

In 2009, PDL retained KPMG to conduct an independent inspection and analysis of the books and records of Genentech and its sublicensees for the three year period covering January 1, 2007 to December 31, 2009, a right granted to PDL under PDL's Patent License Master Agreement and license agreements with Genentech. KPMG reported to PDL that, due to limitations on its inspection imposed by Genentech, it was unable to assess the completeness or accuracy of Genentech's reporting of royalties. KPMG concluded that, based on the limited information it was able to review, Genentech appears to have underpaid PDL in an amount that, if substantiated, PDL believes would be material. Genentech has informed PDL that it disagrees with KPMG's conclusions and that it believes that it has correctly calculated royalties due.

In the arbitration, PDL: (i) requests a declaration of the parties' rights and obligations with respect to reporting and payment of royalties under the license agreements; (ii) alleges that Genentech has breached the license agreements due to its obstruction of KPMG's inspection and underpayment of royalties; and (iii) alleges that Genentech breached the implied covenant of good faith and fair dealing by depriving PDL of the benefits of the license agreements through its obstruction of the inspection, which we further assert concealed the nature and extent of its underpayment.

On July 3, 2013, Genentech filed its Response and Counterclaim in which Genentech requests that the arbitrator (i) reject PDL's claims that Genentech breached the license agreements by underpaying royalties owed to PDL, obstructing KPMG's inspection, or violating the covenant of good faith and fair dealing; (ii) reject PDL's claim that Genentech owed any royalties to PDL on Herceptin, Avastin and Xolair manufactured and sold outside of the United States prior to December 27, 2009 on the ground that those products did not infringe the '216B patent prior to its expiration; (iii) offset any royalties underpaid during the audit period by the amount Genentech claims to have overpaid in royalties attributable to the sale of Herceptin, Avastin and Xolair manufactured and sold outside of the United States prior to December 27, 2009; and (iv) award damages to Genentech in the amount of $428,751, representing royalties Genentech overpaid during the audit period, as well as costs and reasonable attorney's fees. Genentech's counterclaim does not challenge whether Herceptin, Avastin and Xolair manufactured and sold outside of the United States after December 27, 2009, are Licensed Products (and subject to a royalty under PDL's SPCs issued to such products in Europe) as Genentech's ability to contest infringement of PDL's SPCs is the subject of pending litigation in Nevada.

The outcome of this arbitration is uncertain, and PDL may not be successful in its allegations.

Other Legal Proceedings

In addition, from time to time, we are subject to various other legal proceedings and claims that arise in the ordinary course of business and which we do not expect to materially impact our financial statements.

ITEM 1A. RISK FACTORS

Except as set forth below, during the six months ended June 30, 2013, there were no material changes to the risk factors included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2012. Please carefully consider the information set forth in this Quarterly Report on Form 10-Q and the risk factors discussed in Part I, “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2012, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K, as well as other risks and uncertainties, could materially and adversely affect our business, results of operations and financial condition, which in turn could materially and adversely affect the trading price of shares of our common stock. Additional risks not currently known or currently material to us may also harm our business.

We depend on our licensees for the determination of royalty payments. While we have rights to audit our licensees and borrowers, the independent auditors may have difficultly determining the correct royalty calculation, we may not be able to detect errors and payment calculations may call for retroactive adjustments. We may have to exercise legal remedies to resolve any disputes resulting from the audit.

The royalty payments we receive are determined by our licensees based on their reported sales. Each licensee's calculation of the royalty payments is subject to and dependent upon the adequacy and accuracy of its sales and accounting functions, and errors may occur from time to time in the calculations made by a licensee. Our license and credit agreements provide us the right to audit the calculations and sales data for the associated royalty payments; however, such audits may occur many months following our recognition of the royalty revenue, may require us to adjust our royalty revenues in later periods and may require expense on the part of the Company. Further, our licensees and borrowers may be uncooperative or have insufficient records, which may complicate and delay the audit process.

Although we regularly exercise our royalty audit rights, we rely in the first instance on our licensees to accurately report sales and calculate and pay applicable royalties and, upon exercise of such royalty audit rights, we rely on licensees' cooperation in performing such audits. In the absence of such cooperation, we may be forced to exercise legal remedies to enforce our agreements. For example, after a protracted audit of our licensee, Genentech, we initiated an arbitration procedure to resolve disputes over Genentech's cooperation and the underpayment of royalties as reported to us by the independent auditor.

ITEM 6. EXHIBITS

4.1	Certificate of Amendment of Restated Certificate of Incorporation effective May 22, 2013 (incorporated by reference to Exhibit 4.4 to Registration Statement on Form S-3 filed June 21, 2013)
10.1#	Credit Agreement between the Company and Avinger, Inc., dated April 18, 2013†
12.1#	Ratio of Earnings to Fixed Charges
31.1#	Certification of Principal Executive pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
31.2#	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
32.1**#	Certification by the Principal Executive, as required by Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934, as amended, and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350)
32.2**#	Certification by the Principal Financial Officer, as required by Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934, as amended, and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350)
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.
*	Management contract or compensatory plan or arrangement.
**	This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Registrant under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.
†	Certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request under 17 C.F.R. Sections 200.80(b)(4) and 24b-2.

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.

Dated: August 8, 2013

PDL BIOPHARMA, INC. (REGISTRANT)

/s/ John P. McLaughlin

John P. McLaughlin

President and Chief Executive Officer (Principal Executive Officer)

/s/ Peter S. Garcia

Peter S. Garcia

Vice President and Chief Financial Officer (Principal Financial Officer)

Exhibit 10.1

Pursuant to 17 CFR 240.24b-2, confidential information has been omitted in places marked "* * *" and has been filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Application filed with the Commission.

CREDIT AGREEMENT

dated as of April 18, 2013

among

AVINGER, INC.

as the Borrower,

PDL BIOPHARMA, INC.,

as the Lender,

and

PDL BIOPHARMA, INC.,

as the Agent

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CREDIT AGREEMENT

This Credit Agreement dated as of April 18, 2013, (as amended, restated or otherwise modified from time to time, this "Agreement") is made among AVINGER, INC., a Delaware corporation (the "Borrower"), PDL BIOPHARMA, INC. (the "Lender"), and PDL BIOPHARMA, INC., not individually, but as the Agent (as defined below).

The Borrower has agreed to enter into this Agreement with the Lender and the Agent evidencing its agreement to incur the Loan, and in connection therewith, to make the representations and warranties, covenants and undertakings as hereinafter set forth.

Section 1. Definitions; Interpretation.

1.1 Definitions. When used herein the following terms shall have the following meanings:

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of 50% of the Stock of any Person, or otherwise causing any Person to become a Subsidiary, (c) a merger, consolidation, amalgamation or any other combination with another Person (other than a combination between two Persons that prior to the merger, consolidation, amalgamation or combination were already Loan Parties) in which the surviving Person is the Borrower or is or becomes a Subsidiary of the Borrower and (d) the acquisition of a brand, line of business, division, branch, product line, marketing rights, patent rights, or other Intellectual Property rights unrelated to Product, with respect to a product line, operating division, product or potential product, or other unit operation of any Person.

"Affiliate" of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person and (b) any officer or director of such Person. A Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, neither the Agent nor the Lender shall be deemed an Affiliate of any Loan Party.

"Agent" means PDL BioPharma, Inc. in its capacity as administrative agent for the Lender hereunder and any successor thereto in such capacity.

"Agreement" has the meaning set forth in the Preamble.

"Applicable Percentage" means, for any period, * * * of the Borrower's Net Revenues for such period; provided that, beginning on the first full Fiscal Quarter after the Prepayment Date, the "Applicable Percentage" for any period shall be * * * of the Borrower's Net Revenues for such period.

"Applicable Law" means all applicable provisions of all (i) constitutions, treaties, statutes, laws, rules, regulations and ordinances of any Governmental Authority, (ii) authorizations, consents, approvals, permits or licenses issued by, or a registration or filing with, any Governmental Authority and (iii) orders, decisions, judgments, awards and decrees of any Governmental Authority (including common law and principles of public policy).

"Assigned Interests" shall mean, (i) from the Closing Date until the end of the calendar quarter in which the Prepayment Date occurs, an amount equal to the product of the Applicable Percentage multiplied by the Borrower's quarterly Net Revenues, and (ii) from the beginning of the first Fiscal Quarter after the Prepayment Date through the Maturity Date, for each of the following Fiscal Quarters the greater of (a) an amount equal to the product of the Applicable Percentage multiplied by the sum of the Borrower's monthly Net Revenues for each calendar month in such Fiscal Quarter and (b) the following amounts (the "Mandatory Minimum Payments"):

(a) For each Fiscal Quarter in the Fiscal Year ended December 31, 2013, * * *;
(b) for each Fiscal Quarter in the Fiscal Year ended December 31, 2014, * * *;
(c) for each Fiscal Quarter in the Fiscal Year ended December 31, 2015, * * *;
(d) for each Fiscal Quarter in the Fiscal Year ended December 31, 2016, * * *;
(e) for each Fiscal Quarter in the Fiscal Year ended December 31, 2017, * * *; and
(f) for each Fiscal Quarter in the Fiscal Year ended December 31, 2018, * * *.

"Audit Costs" means the reasonable out-of-pocket costs of any audit of the books and records of the Borrower and its Subsidiaries with respect to amounts paid or payable under this Agreement, including all fees and expenses incurred in connection therewith.

"Borrower" has the meaning set forth in the Preamble.

"Borrowing Request" has the meaning set forth in Section 2.1.1(b).

"Business Day" means any day on which commercial banks are open for commercial banking business in New York, New York and San Francisco, California.

"Capital Lease" means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of such Person.

"Capital Stock" means, with respect to any Person, the Stock and Stock Equivalents of such Person.

"Cash Equivalent Investment" means, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States Government or any agency thereof, (b) commercial paper, or corporate demand notes, in each case rated at least A-l

by Standard & Poor's Ratings Group or P-l by Moody's Investors Service, Inc., (c) any certificate of deposit (or time deposit represented by a certificate of deposit), overnight bank deposit or banker's acceptance maturing not more than one year after such time, or any overnight Federal Funds transaction that is issued or sold by a commercial banking institution that is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than $500,000,000, (d) any repurchase agreement entered into with any commercial banking institution of the nature referred to in clause (c) above which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such commercial banking institution thereunder, (e) money market accounts or mutual funds which invest predominantly in assets satisfying the foregoing requirements, (f) other investments set forth in Borrower's investment policy from time to time and approved in writing by the Agent and (g) other short term liquid investments approved in writing by the Agent.

"CFC" means a Person that is a "controlled foreign corporation" as defined in Section 957 of the IRC.

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) (other than the Holders) becomes the "beneficial owner" (as defined in Rules 13-d and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all Stock that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of fifty percent (50%) or more of the Stock and Stock Equivalents of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

(b) individuals who on the Closing Date constituted the board of directors or similar governing body of the Borrower (together with any new directors whose election or appointment by such board of directors or similar governing body or whose nomination for election by the shareholders of the Borrower was approved by a vote of a majority of the directors of the Borrower then still in office who were either directors on the Closing Date or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the board of directors or similar governing body of the Borrower then in office;

(c) all or substantially all of the assets of the Borrower are disposed of in any one or more transactions; or

(d) at any time prior to the initial public offering of the Borrower's common Stock, the Holders shall fail to hold directly at least 50% of the Capital Stock of the Borrower, other than as a result of dilution through the sale of equity of the Borrower for purposes of raising capital.

"Closing Date" means the date on which the conditions set forth in Section 4.1 have been satisfied or waived by the Lender.

"Closing Fee" means the fee due from the Borrower to the Agent on or before (a) with respect to the Tranche One Loan, the Closing Date and (b) with respect to the Tranche Two Loan, the funding date thereof, in each case in an amount equal to * * * of the aggregate principal amount of the applicable Loan.

"Collateral" means all property and interests in property and proceeds thereof now owned or hereafter acquired by any Loan Party and any other Person who has granted a Lien to the Agent, in or upon which a Lien now or hereafter exists in favor of the Lender or the Agent for the benefit of the Agent and the Lender, whether under this Agreement or under any other documents executed by any such Persons and delivered to the Agent.

"Collateral Access Agreement" means an agreement in form and substance satisfactory to the Agent in its reasonable discretion pursuant to which a mortgagee or lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of inventory or other property owned by any Loan Party, acknowledges the Liens of the Agent and waives (or, if approved by the Agent, subordinates) any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits the Agent reasonable access to and use of such real property during the continuance of an Event of Default to assemble, complete and sell any Collateral stored or otherwise located thereon.

"Collateral Documents" means, collectively, the Security Agreement (including as may be supplemented by the joinder of any Subsidiary of the Borrower thereto), any Subsidiary Guaranty, and each other agreement or instrument pursuant to or in connection with which any Loan Party or any other Person grants a security interest in any Collateral to the Agent for the benefit of the Lender or pursuant to which any such security interest in Collateral is perfected, each as amended, restated or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Commitments" means the Tranche One Commitment and the Tranche Two Commitment.

"Compliance Certificate" means a certificate substantially in the form of Exhibit A.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes, including, for the avoidance of doubt, those described in clause (i) (A) of Section 3.1(a).

"Contingent Obligation" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, to provide security for the obligations of a debtor or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the Stock of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall (subject to any limitation

set forth therein) be deemed to be the principal amount of the indebtedness, obligation or other liability supported thereby or the amount of the dividends or distributions guaranteed, as applicable.

"Control Agreement" means a tri-party deposit account, securities account or commodities account Control Agreement by and among the applicable Loan Party, the Agent and the depository, securities intermediary or commodities intermediary, and each in form and substance satisfactory in all respects to the Agent in its reasonable discretion and in any event providing to the Agent "control" of such deposit account, securities or commodities account within the meaning of Articles 8 and 9 of the UCC.

"Copyrights" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Applicable Law in copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith.

"Debt" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business), (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the fair market value of such property), (f) all obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person for obligations of any other Person constituting Debt (under another clause of this definition) of such other Person, (i) all earn-out, purchase price adjustment and similar obligations that are required by GAAP to be reflected on the balance sheet of such Person, (j) all obligations of such Person in respect of Disqualified Capital Stock issued by such Person, (k) all indebtedness of the types listed in (a) through (j) and (l) of any partnership of which such Person is a general partner and (l) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for tax purposes but the transaction is classified as an operating lease in accordance with GAAP.

"Default" means any event that, if it continues uncured, will, with the lapse of time or the giving of notice or both, constitute an Event of Default.

"Default Rate" has the meaning set forth in Section 2.3.1.

"Disclosure Letter" means the letter dated as of the date of this Agreement delivered by the Borrower to the Agent and the Lender in connection with the execution and delivery of this Agreement.

"Disqualified Capital Stock" means any Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of

any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable or is redeemable at the option of the holder thereof, in whole or in part, on or prior to April 18, 2019, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Stock referred to in (a) above, in each case at any time on or prior to April 18, 2019, or (c) contains any repurchase obligation which may come into effect prior to the Obligations being Paid in Full; provided that any Stock that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Stock is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem or repurchase such Stock upon the occurrence of a change in control or an asset sale occurring prior to April 18, 2019 shall not constitute Disqualified Capital Stock if such Stock provides that the issuer thereof will not redeem or repurchase any such Stock pursuant to such provisions prior to the repayment in full of the Obligations.

"Dollar" and "$" mean lawful currency of the United States of America.

"Eligible Institution" means any Person that is a bank, institutional lender or other recognized financing provider.

"Environmental Claims" means all claims, however asserted, by any governmental, regulatory or judicial authority or other Person alleging potential liability or responsibility under or for violation of any Environmental Law, or for release or injury to the environment or any Person or property or natural resources.

"Environmental Laws" means all present or future federal, state, provincial or local laws, statutes, common law duties, rules, regulations, ordinances and codes, including all amendments, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case relating to any matter arising out of or relating to health and safety, or pollution or protection of the environment, natural resources or workplace, including any of the foregoing relating to the presence, use, production, recycling, reclamation, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, emission, control, cleanup or investigation or management of any Hazardous Substance.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Event of Default" means any of the events described in Section 8.1.

"Excluded Accounts" means, collectively, that certain collateral money market account held in the name of Borrower at Silicon Valley Bank as collateral for Borrower's credit card obligations with Silicon Valley Bank, so long as the balance thereof does not at any time exceed $300,000, and that certain Euro account held in the name of Borrower at Standard Chartered Bank, so long as the balance thereof does not at any time exceed €250,000.

"Excluded Taxes" has the meaning set forth in Section 3.1(a).

"Exit Fee" means an amount equal to * * * of the aggregate original principal amount of Tranche One Loan and the Tranche Two Loan (to the extent the Tranche Two Loan is made).

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor provision that is substantively comparable and not materially more burdensome to comply with), and any current or future regulations issued thereunder or official interpretations thereof.

"Fiscal Quarter" means a fiscal quarter of a Fiscal Year.

"Fiscal Year" means the fiscal year of the Borrower and its Subsidiaries, which period shall be the 12-month period ending on December 31 of each year.

"FRB" means the Board of Governors of the Federal Reserve System or any successor thereto.

"GAAP" means generally accepted accounting principles as in effect in the United States of America.

"Governmental Authority" means any nation or government, any state, province, municipality or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"Gross Revenue" means, for any period of determination, the sum of the following for such period: (i) the amounts recognized as revenue in accordance with GAAP by the Borrower, its Subsidiaries or any of their Affiliates with respect to (a) the sale of Product to a Third Party by the Borrower, its Subsidiaries or any of their Affiliates, (b) the sale, distribution or other commercial use of Product by such Third Party in connection with any marketing, royalty, manufacturing, co-promotion, co-development, or other strategic arrangements, (c) the license, assignment or other transfer of Intellectual Property to market, sell, lease or transfer Product or any other product utilizing such Intellectual Property and (ii) any collections in respect of write-offs or allowances for bad debts in respect of items described in the preceding clause (i) that constitute reversals of allowances for bad debt made in calculating Net Revenue. For purposes of prevention of duplication, "Gross Revenue" shall not include amounts invoiced by Affiliates, distributors, wholesalers or other Persons acting in similar capacities to the extent that such amounts are duplicative.

"Hazardous Substances" means any waste, chemical, substance, or material listed, defined, classified, or regulated as a hazardous waste, hazardous substance, pollutant, contaminant, toxic substance, or hazardous, dangerous or radioactive material, chemical or waste or otherwise regulated by any Environmental Law, including, without limitation, any petroleum or any derivative, waste, or byproduct thereof, radon, asbestos, and polychlorinated biphenyls, and any other substance, the storage, manufacture, disposal, treatment, generation, use, transportation, remediation, release into or concentration in the environment of which is prohibited, controlled, regulated or licensed by any governmental authority under any Environmental Law.

"Hedging Obligation" means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

"Holders" means, collectively, the holders of the Capital Stock of the Borrower as of the Closing Date, each natural relative who is a rightful heir of the foregoing, and any trust maintained by or for the benefit of any of the foregoing.

"Indemnified Liabilities" has the meaning set forth in Section 10.4.

"Intellectual Property" means all rights, title and interests in intellectual property arising under any Applicable Law and all IP Ancillary Rights relating thereto, including all Copyrights, Patents, Trademarks, Internet Domain Names, Trade Secrets, industrial designs, integrated circuit topographies, and rights under IP Licenses.

"Interest-Only Period" shall mean the period beginning on the Closing Date and continuing through (i) if a Tranche Two Milestone does not occur, the tenth Interest Payment Date after the Closing Date, or (ii) if a Tranche Two Milestone occurs, the twelfth Interest Payment Date after the Closing Date.

"Interest Payment Date" means the last Business Day of each March, June, September and December.

"Internet Domain Name" means all right, title and interest (and all related IP Ancillary Rights) arising under any Applicable Law in internet domain names.

"Investment" means, with respect to any Person, (a) the purchase or other acquisition of any debt or equity security of any other Person, (b) the making of any loan, advance or capital contribution to any other Person, (c) becoming obligated with respect to a Contingent Obligation in respect of obligations of any other Person or (d) the making of an Acquisition. For the avoidance of doubt, a deposit account shall not be an "Investment."

"IP Ancillary Rights" means, with respect to an item of Intellectual Property all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

"IP License" means all contractual obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in any Intellectual Property.

"IRC" means the Internal Revenue Code of 1986, as amended.

"IRS" has the meaning set forth in Section 3.1(d).

"Legal Costs" means, with respect to any Person, (a) all reasonable fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, (b) the reasonable allocable cost of internal legal services of such Person and all reasonable disbursements of such internal counsel and (c) all court costs and similar legal expenses.

"Lender Party" has the meaning set forth in Section 10.4.

"Lender" has the meaning set forth in the Preamble.

"Letter Agreement" has the meaning set forth in Section 4.1.7.

"Lien" means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

"Liquidity" means, at any time, the sum of cash and Cash Equivalent Investments held by the Borrower and its Subsidiaries at such time that are not (i) subject to any Liens (other than Liens under the Collateral Documents and customary setoff rights with respect to deposit accounts or other funds maintained with depository institutions that are created by law or by applicable account agreements in favor of such depositary institutions or securities intermediaries), (ii) required to be maintained or kept segregated from the general assets of the applicable Subsidiary for the purpose of securing or providing a source of payment for Debt or other obligations that are or from time to time may be owed to one or more creditors of the Borrower or any Subsidiary (other than to secure the Obligations) or (iii) held by a Subsidiary that is subject to restrictions on its ability to pay dividends or distributions.

"Loans" means the Tranche One Loan, the Tranche Two Loan and any PIK Loans.

"Loan Documents" means this Agreement, the Notes, the Collateral Documents, the Letter Agreement, the Disclosure Letter and all other documents, instruments and agreements delivered in connection with the foregoing, all as amended, restated or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Loan Party" means the Borrower and each Subsidiary of the Borrower that has executed and delivered a Subsidiary Guaranty and Security Agreement.

"Mandatory Minimum Payments" has the meaning set forth in the definition of "Assigned Interests."

"Margin Stock" means any "margin stock" as defined in Regulation T, U or X of the FRB.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, assets, business, properties or condition (financial or otherwise) of the Borrower or the Loan Parties taken as a whole, (b) a material impairment of the ability of any Loan Party to perform in any material respect any of its Obligations under any Loan Document to which it is a party or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Maturity Date" means April 18, 2018.

"Monthly Net Revenue Report" means, with respect to the relevant calendar month, a report reflecting Net Revenue for such calendar month, including a description of Gross Revenue for such calendar month and the adjustments and other reconciliations used to arrive at Net Revenue, in form and substance acceptable to the Agent and the Lender

"Net Revenue" means, for any period of determination, the difference between (a) Gross Revenue for such period, less (b) the sum, with respect to the items described in clauses (i) and (ii) of the definition of Gross Revenue, without duplication, of (i) bona fide cash, trade discounts and rebates actually granted or paid to Third Parties in accordance with customary industry standards, (ii) allowances and adjustments actually credited to customers for Product that is spoiled, damaged, outdated, obsolete, returned or otherwise recalled, but only if and to the extent the same are in accordance with sound business practices and not in excess of customary industry standards, (iii) charges for freight, postage, shipping, delivery, service and insurance charges, to the extent invoiced, (iv) taxes, duties or other governmental charges to the extent invoiced, (v) write-offs or allowances for bad debts, (vi) rebates and chargebacks and other price reduction programs, and (vii) other payments required by Applicable Law, in each case as determined in accordance with GAAP.

"Non-Excluded Taxes" has the meaning set forth in Section 3.1(a).

"Note" means a promissory note in form and substance acceptable to the Lender and the Agent, as the same may be replaced, substituted, amended, restated or otherwise modified from time to time.

"Obligations" means all liabilities, indebtedness and obligations (including interest accrued at the rate provided in the applicable Loan Document after the commencement of a bankruptcy proceeding whether or not a claim for such interest is allowed) of any Loan Party under this Agreement, or any Loan Party under any other Loan Document, any Collateral Document or any other document or instrument executed in connection herewith or therewith, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, including the Assigned Interests.

"OFAC" has the meaning set forth in Section 5.20.1.

"Other Connection Taxes" means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than any such connection arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a

security interest under, engaged in any other transaction with respect to the Loan or enforced any Loan Document or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"Paid in Full" or "Payment in Full" means, with respect to any Obligations, the payment in full in cash and performance of all such Obligations.

"Patents" means all (i) all patents and certificates of invention, or similar property rights, and applications for any of the foregoing, of the United States, any other country or any political subdivision thereof, (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all rights corresponding thereto throughout the world, (iv) all inventions and improvements described therein, (v) all rights to sue for past, present and future infringements thereof, (vi) all licenses, claims, damages, and proceeds of suit arising therefrom, (vii) all proceeds of the foregoing, including, without limitation, licenses, royalties, and income, and (viii) without duplication, all IP Ancillary Rights in respect of the foregoing.

"Permitted AR Facility" means a loan facility from an Eligible Institution (i) that is secured solely by the Borrower's Accounts (as such term is defined in the Security Agreement), Inventory (as such term is defined in the Security Agreement), and cash, deposit accounts and other similar assets and payment intangibles, (ii) the aggregate amount due and outstanding under which does not exceed 85% of the amount of eligible accounts outstanding (as defined in the documentation governing such facility) and securing the obligations thereunder, and which shall provide facilities that shall in no event exceed $10,000,000 in principal amount (including undrawn committed or available amounts), and (iii) with respect to which the Agent and the lender under such facility have entered into a mutually acceptable intercreditor agreement.

"Permitted Lien" means any Lien expressly permitted by Section 7.2.

"Permitted Refinancing" means any replacement, renewal, refinancing or extension of any existing Debt, in any such case, permitted by this Agreement that (a) does not exceed the aggregate principal amount (plus accrued interest and any applicable premium and associated fees and expenses) of the Debt being replaced, renewed, refinanced or extended, (b) does not have a weighted average life to maturity at the time of such replacement, renewal, refinancing or extension that is less than the weighted average life to maturity of the Debt being replaced, renewed, refinanced or extended, (c) does not rank at the time of such replacement, renewal, refinancing or extension senior to the Debt being replaced, renewed, refinanced or extended, and (d) does not contain terms (including, without limitation, terms relating to security, amortization, interest rate, premiums, fees, covenants, subordination, event of default and remedies) that, taken as a whole, are materially less favorable to any Loan Party or adverse to the interests of the Agent and the Lender than those applicable to the Debt being replaced, renewed, refinanced or extended.

"Person" means any natural person, corporation, partnership, trust, limited liability company, association, Governmental Authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

"PIK Loans" has the meaning set forth in Section 2.3.1.

"PIK Periods" has the meaning set forth in Section 2.3.1.

"Prepayment Date" means any date prior to the Maturity Date on which the Loans (including, if applicable, any PIK Loans), and all accrued interest thereon, are Paid in Full.

"Product" means the Wildcat, Kittycat, Kittycat2, Juicebox, Ocelot, Ocelot PIXL, Lightbox and Pantheris products, and any and all future iterations of any of the foregoing, and any other products developed internally by any Loan Party; provided, that after the date of an Acquisition of the Borrower, "Product" shall mean those products that existed either as commercialized products or in development by the Borrower, under Borrower's standard operating procedure defining the product development process as delivered to the Lender prior to the date hereof, immediately prior the date of such Acquisition. For the avoidance of doubt, "Product" shall not include any product owned or in development by any acquirer immediately prior to such Acquisition.

"Qualified Capital Stock" of any person shall mean any Stock of such person that is not Disqualified Capital Stock.

"Quarterly Net Revenue Report" means, with respect to the relevant Fiscal Quarter, a report reflecting Net Revenue for such Fiscal Quarter, including a description of Gross Revenue for such Fiscal Quarter and the adjustments and other reconciliations used to arrive at Net Revenue, in form and substance reasonably acceptable to the Agent and the Lender.

"Restricted Payment" has the meaning set forth in Section 7.3.

"Security Agreement" means the Security Agreement, dated as of the Closing Date, made by the Borrower in favor of the Agent, and governed by the laws of the State of New York, as amended, restated or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Stock" means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in, or equivalents (regardless of how designated) of, a Person (other than an individual), whether voting or non-voting.

"Stock Equivalents" means all securities convertible into or exchangeable for Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable. For the avoidance of doubt, "Stock Equivalents" shall not include debt instruments that are convertible into Stock or Stock Equivalents.

"Subsidiary" means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares of voting Stock or Stock Equivalents as to have more than 50% of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to Subsidiaries of the Borrower.

"Subsidiary Guaranty" means each Subsidiary Guaranty executed and delivered by a Subsidiary in favor of the Agent pursuant to Section 6.7, in form and substance satisfactory to the Agent and the Lender.

"Taxes" has the meaning set forth in Section 3.1(a).

"Tax Returns" has the meaning set forth in Section 5.12.

"Third Party" means any Person other than the Borrower, Lender and Agent.

"Trade Secrets" means all right, title and interest (and all related IP Ancillary Rights) arising under any Applicable Law in or relating to trade secrets.

"Trademark" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Applicable Law in trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, all registrations and recordations thereof and all applications in connection therewith.

"Tranche One Commitment" means, as to the Lender, the Lender's commitment to provide the Loans in the aggregate principal amount of $20,000,000 pursuant to Section 2.1.1(a).

"Tranche Two Commitment" means, as to the Lender, the Lender's commitment to provide the Loans in the aggregate principal amount of up to $20,000,000 pursuant to Section 2.1.1(b).

"Tranche One Loan" means the term loan from the Lender in a principal amount of $20,000,000 made to the Borrower on the Closing Date pursuant to Section 2.1.1(a).

"Tranche Two Loan" means the term loan from the Lender in a principal amount of at least $10,000,000 and up to $20,000,000, at the Borrower's discretion, made to the Borrower pursuant to Section 2.1.1(b).

"Tranche Two Milestone" has the meaning set forth in Section 4.2.2.

"True-Up Amount" shall have the meaning set forth in Section 6.9.

"True-Up Statement" shall have the meaning set forth in Section 6.9.

"UCC" means the Uniform Commercial Code as in effect in from time to time in the State of New York.

"Wholly-Owned Subsidiary" means, as to any Subsidiary, all of the Stock and Stock Equivalents of which (except directors' qualifying shares) are at the time directly or indirectly owned by the Borrower and/or another Wholly-Owned Subsidiary of the Borrower.

1.2. Interpretation. In the case of this Agreement and each other Loan Document, (a) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (b) Annex, Exhibit, Schedule and Section references in each Loan Document are to the particular Annex, Exhibit, Schedule and Section of such Loan Document unless otherwise specified; (c) the term "including" is not limiting and means "including but not limited to"; (d) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including"; (e) unless otherwise expressly provided in such Loan Document, (i) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation; (f) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms; and (g) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to the Agent, the Borrower, the Lender and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against the Agent or the Lender merely because of the Agent's or the Lender's involvement in their preparation. Any reference in any Loan Document to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Loan Documents to any Permitted Lien.

Section 2. Credit Facilities.

2.1. Loans.

2.1.1. Loans. On the terms and subject to the conditions of this Agreement, the Lender agrees to lend to the Borrower funds in an aggregate principal amount of up to the Commitment, in installments as follows:

(a) on the Closing Date, the entire amount of its Tranche One Commitment, after which the Tranche One Commitment shall terminate;

(b) on the date set forth in the Borrower's written request (the "Borrowing Request"), the amount of the Tranche Two Commitment set forth in such Borrowing Request (provided that such amount shall be no less than $10,000,000 and no more than $20,000,000), after which the Tranche Two Commitment shall terminate in full; provided that the Borrowing Request must be received by Lender no later than noon Pacific time five (5) Business Days prior to the date of such proposed borrowing.

2.1.2. General. No portion of the Loans may be re-borrowed once repaid. The proceeds of the Loans shall be used for working capital, capital expenditures and general corporate purposes, in compliance with the Loan Documents and Applicable Law.

2.2. Loan Accounting.

2.2.1. Recordkeeping. The Agent, on behalf of the Lender, shall record in its records the date and amount of the Loan made by the Lender, each interest payment paid in kind, accrued interest and each repayment of principal or interest thereon. The aggregate unpaid principal amount so recorded shall be rebuttably presumptive evidence of the principal amount of the Loan owing and unpaid. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of the Borrower hereunder or under any Note to repay the principal amount of the Loan hereunder, together with all interest accruing thereon.

2.2.2. Notes. At the request of the Lender, the Loans shall be evidenced by one or more Notes, with appropriate insertions, payable to the order of the Lender in a face principal amount equal to the Loans and payable in such amounts and on such dates as are set forth herein.

2.3. Interest.

2.3.1. Interest Rate.

(a) The Borrower promises to pay interest on the unpaid principal amount of the Loans for the period commencing on the Closing Date until the Loans are Paid in Full at a rate payable in cash (subject to clause (b) below) per annum equal to (i) 12.0% for the Tranche One Loan and (b) 14.0% for the Tranche Two Loan.

(b) The Borrower may elect to pay an amount of interest up to * * * per annum in the form of additional term loans ("PIK Loans") (i) for the first eight Interest Payments Dates after the Closing Date, with respect to the Tranche One Loan, and (ii) for the first four Interest Payment Dates after the Tranche Two Loan is funded, with respect to the Tranche Two Loan (the "PIK Periods"). The Borrower shall deliver to the Agent a written notice of its election to pay an amount of interest in the form of PIK Loans at least five (5) Business Days prior to the applicable Interest Payment Date. Any such election shall be deemed to remain in effect until superseded by a subsequent notice delivered as set forth in the preceding sentence, or until the applicable PIK Period has expired.

(c) The foregoing notwithstanding, (i) at any time an Event of Default exists, if requested by the Agent or the Lender, the interest rate then applicable to the Loan shall be increased by two percent (2.00%) per annum (any such increased rate, the "Default Rate"), (ii) any such increase may thereafter be rescinded by the Lender, and (iii) upon the occurrence of an Event of Default under Section 8.1.1 or 8.1.3, any such increase described in the foregoing clause (i) shall occur automatically. In the event that the Obligations are not Paid in Full as of the Maturity Date, or in the event that the Obligations shall be declared or

shall become due and payable pursuant to Section 8.2, the Obligations shall bear interest subsequent thereto at the Default Rate and such interest shall be payable in cash on demand. In no event shall interest or other amounts payable by the Borrower to the Lender hereunder exceed the maximum rate permitted under Applicable Law, and if any such provision of this Agreement is in contravention of any such law, (x) any amounts paid hereunder shall be deemed to be and shall be applied against the principal amount of the Obligations to the extent necessary such that the amounts paid hereunder do not exceed the maximum rate under Applicable Law and (y) such provision shall otherwise be deemed modified as necessary to limit such amounts paid to the maximum rate permitted under Applicable Law.

2.3.2 Interest Payments. Interest accrued on the Loan during the period from the Closing Date until the Maturity Date shall accrue and be payable in cash (subject to Section 2.3.1(b)) quarterly on each Interest Payment Date, in arrears (provided, however, that PIK Loans, if any, shall accrue, be capitalized and be compounded and added to the aggregate principal balance of the Loans in arrears on each Interest Payment Date), and, to the extent not paid in advance, upon a prepayment of the Loan in accordance with Section 2.4 and at maturity, in each such case, in cash. After maturity and at any time an Event of Default exists, all accrued interest on the Loan shall be payable in cash on demand at the rates specified in Section 2.3.1.

2.3.3. Computation of Interest. Interest shall be computed for the actual number of days elapsed on the basis of a year of 360 days consisting of twelve 30-day months.

2.4. Amortization; Prepayment.

2.4.1. Amortization. Commencing on the first Interest Payment Date following the Interest-Only Period, the Borrower shall repay to the Agent for the account of the Lender on each Interest Payment Date an installment payment in respect of the Loans (including, if applicable, any PIK Loans). Such installment payments shall be in equal principal amounts (which amounts shall be reduced as a result of the application of prepayments in accordance with Section 2.7), plus accrued and unpaid interest, which principal amounts shall be determined by the Agent based on the principal amount of the Loans (including, if applicable, any PIK Loans) outstanding on the first Interest Payment Date following the Interest Only Period.

2.4.2. Voluntary Prepayment. The Borrower may, on at least three (3) Business Days' written notice to the Agent, not later than 12:00 noon New York City time on such day, prepay the Loan in whole or in part (together with accrued and unpaid interest to the date of prepayment on such prepaid amount and without premium or penalty); provided, however, that each partial prepayment that is not of the entire outstanding amount of any Loan shall be in an aggregate amount that is an integral multiple of $100,000; and provided, further, that any prepayment in full shall be accompanied by the Exit Fee.

2.4.3. Payments in Respect of the Assigned Interests. The Borrower shall pay to the Lender the Assigned Interests (a) in respect of Net Revenues earned during the immediately preceding Fiscal Quarter concurrently with the delivery of each Quarterly Net Revenue Report in the amount set forth thereon, until the end of the Fiscal Quarter in which the Prepayment Date occurs and (b) commencing with the first calendar month beginning after the end of the Fiscal Quarter in which the Prepayment Date

occurs, in respect of Net Revenues earned during the immediately preceding month concurrently with the delivery of each Monthly Net Revenue Report in the amount set forth thereon, until the Maturity Date.

2.5. Payment Upon Maturity. The Loans, together with the Exit Fee, shall be Paid in Full on the Maturity Date.

2.6. Making of Payments. All payments on the Loans in accordance with this Agreement, including any payment in respect of the Assigned Interests and all payments of fees and expenses, shall be made by the Borrower to the Agent without setoff, recoupment or counterclaim and in immediately available funds, in United States Dollars, by wire transfer to the account of the Agent set forth on Annex I or as otherwise specified by the Agent, in any case, not later than 1:00 p.m. New York City time on the date due, and funds received after that hour shall be deemed to have been received by the Agent on the following Business Day. The Agent shall promptly remit to the Lender all payments received in collected funds by the Agent for the account of such Lender.

2.7. Application of Payments and Proceeds. Each prepayment of the outstanding Loans pursuant to Section 2.4.2 shall be applied to the principal repayment installments of the Loans as directed by the Borrower.

2.8. Payment Dates. If any payment of principal of or interest on a Loan, or of any fees, falls due on a day which is not a Business Day, then such due date shall be extended to the immediately following Business Day and, in the case of principal, additional interest shall accrue and be payable for the period of any such extension.

2.9. Set-off. The Borrower agrees that the Agent and the Lender and its Affiliates have all rights of set-off and bankers' lien provided by Applicable Law, and in addition thereto, the Borrower agrees that at any time an Event of Default has occurred and is continuing, the Agent and the Lender may apply to the payment of any Obligations of the Borrower hereunder, whether or not then due, any and all balances, credits, deposits, accounts or moneys of the Borrower then or thereafter maintained with the Agent or such Lender.

2.10. Currency Matters. All amounts payable under this Agreement and the other Loan Documents to the Agent and the Lender shall be payable in Dollars.

Section 3. Yield Protection.

3.1. Taxes.

(a) Except as otherwise provided in this Section 3.1, all payments of principal and interest on the Loan and all other amounts payable under any Loan Document shall be made free and clear of and without deduction or withholding for any present or future income, excise, stamp, documentary, property or franchise taxes or other taxes, fees, duties, levies, withholdings or other charges of any nature whatsoever imposed by any taxing authority,

including any interest, additions to tax or penalties applicable thereto ("Taxes"), excluding (i) taxes imposed on or measured by the Lender's net income, franchise taxes in lieu of taxes on net income, and branch profits taxes imposed by (A) the jurisdiction under which the Lender is organized or has its principal office or (B) that are Other Connection Taxes, (ii) U.S. federal withholding taxes pursuant to a law in effect at the time such Lender first becomes a party to this Agreement, except to the extent that, pursuant to this Section 3.1(a), amounts with respect to such Taxes were payable to such Lender's assignor immediately before such Lender became a party hereto, and (iii) any U.S. federal withholding taxes imposed pursuant to FATCA (collectively, "Excluded Taxes" and all such non-Excluded Taxes, "Non-Excluded Taxes")). If any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Taxes pursuant to any Applicable Law (as determined in the good faith reasonable discretion of the Borrower or the Agent), rule or regulation, then the Borrower shall: (i) timely pay directly to the relevant taxing authority the full amount required to be so withheld or deducted; (ii) within thirty (30) days after the date of any such payment of Taxes, forward to the Agent an official receipt or other documentation satisfactory to the Agent evidencing such payment to such relevant taxing authority; and (iii) in the case of Non-Excluded Taxes, pay to the Agent for the account of the Lender such additional amount or amounts as is necessary to ensure that the net amount actually received by the Lender will equal the full amount the Lender would have received had no such withholding or deduction for Non-Excluded Taxes (including withholdings and deductions for Non-Excluded Taxes applicable to any additional sums payable under this Section 3.1) been required.

(b) the Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Borrower shall reimburse and indemnify, within 10 days after receipt of demand therefor (with copy to the Agent), the Agent and the Lender for all Non-Excluded Taxes and Other Taxes (including any additional Non-Excluded Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 3.1) paid by the Agent or the Lender, or required to be withheld or deducted from a payment to the Agent or the Lender, and any liabilities arising therefrom or with respect thereto (including any penalty, interest or expense), whether or not such Taxes were correctly or legally asserted. A certificate of the Agent or the Lender (or of the Agent on behalf of the Lender) claiming any compensation under this clause (c), setting forth the amounts to be paid thereunder and delivered to the Borrower with a copy to the Agent, shall be conclusive, binding and final for all purposes, absent manifest error.

(d) On or prior to the date it becomes a party to this Agreement, and from time to time thereafter as required by law or reasonably requested in writing by the Borrower, the Lender (including for this purpose any assignee of the Lender that becomes a party to this Agreement) shall (but only so

long as the Lender remains lawfully able to do so) provide the Borrower with such documents and forms as prescribed by the Internal Revenue Service ("IRS") in order to certify that payments to the Lender are exempt from or entitled to a reduced rate of U.S. federal withholding tax on payments pursuant to this Agreement or any other Loan Document. For the avoidance of doubt, if the documents and forms provided by the Lender at the time the Lender first becomes a party to this Agreement indicate a U.S. federal withholding tax rate on payments to the Lender in excess of zero, withholding tax at such rate shall be considered an Excluded Tax unless and until the Lender provides the appropriate forms certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered an Excluded Tax for periods governed by such form. Without limiting the generality of the foregoing, any Lender that is the beneficial owner of payments made under this Agreement will (but only so long as the Lender remains lawfully able to do so) provide: (i) in the case of a beneficial owner that is U.S. person within the meaning of Section 7701 of the IRC, IRS Form W-9 certifying that such beneficial owner is exempt from U.S. Federal backup withholding tax, (ii) in the case of a beneficial owner claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code both (A) IRS Form W-8BEN and (B) a certificate to the effect that such beneficial owner is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, (iii) in the case of a beneficial owner that is not a U.S. person within the meaning of Section 7701 of the IRC claiming the benefits of an income tax treaty to which the United States is a party, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty; and (iv) in the case of a beneficial owner for whom payments under this Agreement constitute income that is effectively connected with such beneficial owner's conduct of a trade or business in the United States, IRS Form W-8ECI. Any Lender that is not the beneficial owner of payments made under this Agreement, such as an entity treated as a partnership for U.S. federal income tax purposes, will (but only so long as the Lender remains lawfully able to do so) provide (x) an IRS Form W-8IMY on behalf of itself and (y) on behalf of each such beneficial owner, the forms set forth in clauses (i) through (iv) of the preceding sentence that would be required of such beneficial owner if such beneficial owner were a Lender. If a payment made to the Lender under this Agreement would be subject to U.S. federal withholding tax imposed by FATCA if the Lender were to fail to comply with the applicable reporting requirements of FATCA, the Lender shall (but only so long as the Lender remains lawfully able to do so) deliver to the Borrower, at the time or times prescribed by law or reasonably requested in writing by the Borrower, such documentation prescribed by applicable law or reasonably requested in writing by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA, to determine that the Lender has complied with its obligations under FATCA, or to determine the amount to deduct and withhold from such payment. Solely for

purposes of the preceding sentence, FATCA shall include any amendments made to FATCA after the date of this Agreement (and thus shall not be limited to amendments or successor provisions that are substantively comparable to (and not materially more onerous to comply with than) Section 1471 through 1474 of the Code as of the date of this Agreement).

(e) If the Lender determines, in its sole discretion, that it has received a refund of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, the Lender shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by the Lender, and without interest (other than any interest paid by the relevant taxing authority with respect to such refund), provided that the Borrower, upon the request of the Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant taxing authority) to the Lender in the event the Lender is required to repay such refund to such taxing authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to the Borrower pursuant to this paragraph (e) the payment of which would place the Lender in a less favorable net after-Tax position than the Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph (e) shall not be construed to require the Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(f) The provisions of this Section 3.1 shall survive the termination of this Agreement and repayment of all Obligations.

3.2. Increased Cost.

(a) If, after the Closing Date, the adoption or taking effect of, or any change in, any Applicable Law, rule, regulation or treaty, or any change in the interpretation or administration of any Applicable Law, rule, regulation or treaty by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Lender with any request, rule, guideline or directive (whether or not having the force of law) of any such authority, central bank or comparable agency: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the FRB), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by the Lender; (ii) subject the Lender or the Agent to any Taxes (other than Taxes described in clauses (ii) and (iii) of the definition of Excluded Taxes, Taxes indemnified pursuant to Section 3.1 and Connection Income Taxes); or (iii) shall impose on the Lender any other

condition affecting its Loan, its Note or its obligation to make the Loan; and the result of anything described in clauses (i) through (iii) above is to increase the cost to (or to impose a cost on) such Lender of making or maintaining its Loan, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or under its Note with respect thereto, then, upon demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to the Agent), the Borrower shall pay directly to the Lender such additional amount as will compensate the Lender for such increased cost or such reduction.

(b) If the Lender shall reasonably determine that any change in, or the adoption or phase-in of, any Applicable Law, rule or regulation regarding capital adequacy, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or the compliance by the Lender or any Person controlling the Lender with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Lender's or such controlling Person's capital as a consequence of such Lender's Commitments hereunder to a level below that which the Lender or such controlling Person could have achieved but for such change, adoption, phase-in or compliance (taking into consideration the Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by the Lender or such controlling Person to be material, then from time to time, upon demand by the Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to the Agent), the Borrower shall pay to the Lender such additional amount as will compensate the Lender or such controlling Person for such reduction.

(c) Notwithstanding anything herein to the contrary, (i) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, in each case pursuant to Basel III, and (ii) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a change in law, regardless of the date enacted, adopted, issued or implemented. Notwithstanding anything to the contrary in this Section 3.2, the Borrower shall not be required to compensate the Lender for any amounts incurred more than 180 days prior to the date that the Lender delivers the statement making the demand for such payment.

3.3. Mitigation of Circumstances.

The Lender shall promptly notify the Borrower and the Agent of any event of which it has knowledge which will result in, and will use reasonable commercial efforts available to it (and not, in such Lender's sole judgment, otherwise disadvantageous to such Lender) to mitigate or avoid, any obligation by the Borrower to pay any amount pursuant to Section 3.1 or 3.2; provided, that this Section 3.3 shall not apply to, or operate to prevent, any assignment of the Loan and the rights and obligations of the Lender pursuant to Section 10.13. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with this Section 3.3.

3.4. Conclusiveness of Statements; Survival. Determinations and statements of the Lender pursuant to Sections 3.1 or 3.2 shall be conclusive absent demonstrable error provided that the Lender or the Agent provides the Borrower with written notification of such determinations and statements. The Lender may use reasonable averaging and attribution methods in determining compensation under Sections 3.1 or 3.2 and the provisions of such Sections shall survive repayment of the Loan, cancellation of the Notes and termination of this Agreement.

Section 4. Conditions Precedent.

4.1. Tranche One Loan. The obligation of the Lender to make the Tranche One Loan on the Closing Date is subject to the following conditions precedent, each of which shall be satisfactory in all respects to the Agent and the Lender:

4.1.1. Delivery of Loan Documents. The Borrower shall have delivered the following documents in form and substance satisfactory to the Agent (and, as applicable, duly executed by all Persons named as parties thereto and dated the Closing Date or an earlier date satisfactory to the Agent):

(a) Agreement. This Agreement.

(b) Notes. A Note in respect of the Tranche One Loan.

(c) Collateral Documents. The Security Agreement and all other Collateral Documents, and all instruments, documents, certificates and agreements executed or delivered pursuant thereto (including Intellectual Property assignments and pledged equity and limited liability company interests in the Borrower and the Borrower's Subsidiaries, if any, with undated irrevocable transfer powers executed in blank), in each case, executed and delivered by each Loan Party and each other Person named as a party thereto.

(d) Financing Statements. Properly completed Uniform Commercial Code financing statements and other filings and documents required by law or the Loan Documents to provide the Agent perfected Liens (subject only to Permitted Liens) in the Collateral.

(e) Lien Searches. Copies of Uniform Commercial Code search reports listing all effective financing statements or equivalent filings filed against any Loan Party, with copies of such financing statements and filings; and copies of Patent, Trademark, Copyright and Internet Domain Name search reports in material jurisdictions listing all effective collateral assignments in respect of such Intellectual Property filed with respect to any Loan Party, with copies of such collateral assignment documentation.

(f) Authorization Documents. For each Loan Party, such Person's (i) charter (or similar formation document), certified by the appropriate Governmental Authority (as applicable) in its jurisdiction of incorporation (or formation), (ii) good standing certificates in its jurisdiction of incorporation (or formation) and in each other jurisdiction requested by the Agent or the Lender, (iii) limited liability company agreement, partnership agreement, bylaws (and similar governing document) (as applicable), (iv) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby, and (v) signature and incumbency certificates of its directors and/or officers executing any of the Loan Documents, all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification.

(g) Opinions of Counsel. Opinions of counsel for each Loan Party, in form and substance requested by the Agent.

(h) Insurance. Certificates or other evidence of insurance in effect as required by Section 6.3(b), with endorsements naming the Agent as lenders' loss payee and/or additional insured, as applicable.

(i) Chattel Paper. Any tangible chattel paper (or any other instrument (other than checks received in the ordinary course of business) evidencing any account of Borrower) held by Borrower, accompanied by instruments of transfer or assignment duly executed in blank, to be held by the Agent as Collateral pursuant to the Security Agreement.

(j) Other Documents. Such other certificates, documents and agreements that may be listed on the closing checklist provided by the Agent to the Borrower or as the Agent or the Lender may request.

4.1.2. Payment of Fees and Expenses. The Borrower shall have paid, on or prior to the Closing Date, (i) all fees and expenses owing and payable to the Agent and the Lender as of the Closing Date, including the Closing Fee with respect to the Tranche One Loan; and (ii) subject to Section 10.3 and without duplication, all fees, expenses and other amounts payable set forth herein and costs and expenses incurred by the Agent and the Lender in connection with the transactions contemplated hereby which are required to be paid by the Borrower, and shall provide evidence acceptable to the Agent of each of the foregoing; provided, that the Closing Fee

shall be reduced by, and the out-of-pocket costs and expenses of Lender paid by the Borrower shall be limited to, for the period through the Closing Date, an amount not to exceed $150,000.

4.1.3. Representations and Warranties. Each representation and warranty by each Loan Party contained herein or by each Loan Party in any other Loan Document to which such Loan Party is a party, shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the Closing Date.

4.1.4. No Default. No Default or Event of Default shall have occurred and be continuing.

4.1.5. No Material Adverse Change. Since December 31, 2012, there has been no event or occurrence that has or could reasonably be expected to result in a Material Adverse Effect.

4.1.6. Execution and Delivery of Letter Agreement. The Borrower shall have executed and delivered a letter agreement to the Agent dated as of the Closing Date (the "Letter Agreement") containing, among other items, certain representations and warranties regarding its Intellectual Property, on terms and conditions acceptable to the Lender and Agent.

4.2. Tranche Two Loan. The obligation of the Lender to make the Tranche Two Loan is subject to the following conditions precedent, each of which shall be satisfactory in all respects to the Agent and the Lender:

4.2.1. Delivery of Borrowing Request. The Borrower shall have delivered a Borrowing Request in respect of the Tranche Two Loan no later than noon Pacific time at least five (5) Business Days prior to the proposed borrowing date.

4.2.2. Tranche Two Milestones. The Borrower's Net Revenue shall have been greater than either: (i) * * * in the Fiscal Year ended December 31, 2013 (and Net Revenue for the fourth Fiscal Quarter of such Fiscal Year is no more than 45% of the total Net Revenue for such Fiscal Year) or (ii) * * * in the aggregate in any three consecutive months ending in the first six months of 2014 (each of the events described in clauses (i) and (ii), a "Tranche Two Milestone"), and Borrower shall have delivered to Lender a certificate of the Borrower signed by the chief financial officer of the Borrower certifying to the foregoing.

4.2.3. Payment of Fees and Expenses. The Borrower shall have paid, on or prior to the borrowing date of the Tranche Two Loan, (i) all fees and expenses owing and payable to the Agent and the Lender as of such date, including the Closing Fee with respect to the Tranche Two Loan and (ii) subject to Section 10.3 and without duplication, all fees, expenses and other amounts payable set forth herein and costs and expenses incurred by the Agent and the Lender in connection with the transactions contemplated hereby which are required to be paid by the Borrower, and shall provide evidence acceptable to the Agent of each of the foregoing.

4.2.4. Representations and Warranties. Each representation and warranty by each Loan Party contained herein or by in any other Loan Document to which such Loan Party is a party, shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the proposed borrowing date.

4.2.5. No Default. No Default or Event of Default shall have occurred and be continuing.

4.2.6. No Material Adverse Change. Since December 31, 2012, there has been no event or occurrence that has or could reasonably be expected to result in a Material Adverse Effect.

4.2.7. Note. The Borrower shall have delivered a Note in respect of the Tranche Two Loan in form and substance satisfactory to the Agent, duly executed by the Borrower.

Section 5. Representations and Warranties.

To induce the Agent and the Lender to enter into this Agreement and to induce the Lender to advance the Loans hereunder, the Borrower represents and warrants to the Agent and the Lender that each of the following are, and after giving effect to the borrowing of the Loans, will be, true, correct and complete:

5.1. Organization. The Borrower is a corporation validly existing and in good standing under the laws of the State of Delaware; and each other Loan Party is validly existing and in good standing (as applicable) under the laws of the jurisdiction of its organization; and each Loan Party is duly qualified to do business in each jurisdiction where, because of the nature of its activities or properties, such qualification is required, except for such jurisdictions where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect.

5.2. Authorization; No Conflict. Each of the Borrower and each other Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, the Borrower is duly authorized to borrow monies hereunder, the granting of the security interests pursuant to the Collateral Documents is within the corporate purposes of the Borrower and each other Loan Party party thereto, and the Borrower and each other Loan Party is duly authorized to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by the Borrower of this Agreement and by the Borrower and each Loan Party of each Loan Document to which it is a party, and the borrowings by the Borrower hereunder, do not and will not (a) require any consent or approval of any Governmental Authority (other than (i) any consent or approval which has been obtained and is in full force and effect and (ii) recordings and filings in connection with the Liens granted to the Agent under the Collateral Documents), (b) conflict with (i) any provision of Applicable Law, (ii) the charter, by-laws, limited liability company agreement, partnership agreement or other organizational documents of any Loan Party or (iii) any agreement, indenture, instrument or other document, or any judgment, order or decree, which is binding upon any Loan Party or any of their respective properties or (c) require, or result in, the creation or imposition of any Lien on any asset of the Borrower or any other Loan Party (other than Liens in favor of the Agent created pursuant to the Collateral Documents).

5.3. Validity; Binding Nature. Each of this Agreement and each other Loan Document to which the Borrower or any other Loan Party is a party is the legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms,

subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

5.4. Financial Condition. The unaudited consolidated financial statements of the Borrower and its Subsidiaries (presented on a consolidated basis) as at December 31, 2012 and the audited consolidated financial statements of the Borrower and its Subsidiaries (presented on a consolidated basis) as at December 31, 2011 have been prepared in accordance with GAAP and present fairly the consolidated financial condition of such Persons as at such dates and the results of their operations for the periods then ended. As of the Closing Date, the Borrower and its Subsidiaries have no liabilities other than as set forth on the foregoing financial statements other than trade payables and compensation costs incurred in the ordinary course of business.

5.5. No Material Adverse Change. Since December 31, 2011, there has been no event or occurrence that has or could reasonably be expected to result in a Material Adverse Effect.

5.6. Litigation. No litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding is pending or, to any Loan Party's knowledge, threatened, against any Loan Party or any of their respective properties which (i) purport to affect or pertain to this Agreement, any other Loan Document or any of the transactions contemplated hereby or (ii) could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement, any other Loan Document, or directing that the transactions provided for herein not be consummated as herein provided. As of the Closing Date, no Loan Party is the subject of an audit or, to each Loan Party's knowledge, any review or investigation by any Governmental Authority (excluding the IRS and other taxing authorities) concerning the violation or possible violation of any requirement of law.

5.7. Ownership of Properties; Liens. There are no Liens on the Collateral other than those granted in favor of the Agent to secure the Obligations and Permitted Liens. Each of the Borrower and each other Loan Party owns good and, in the case of real property, marketable, title to all of its properties and assets, real and personal, tangible and intangible, of any nature whatsoever (including patents, trademarks, trade names, service marks and copyrights), free and clear of all Liens, charges and claims (including infringement claims with respect to Intellectual Property) other than Permitted Liens. As of the Closing Date, Section 5.7 of the Disclosure Letter lists all of the real property owned, leased, subleased or otherwise owned or occupied by any Loan Party.

5.8. Capitalization; Subsidiaries.

(a) Equity Interests. As of the Closing Date, the Borrower has no Subsidiaries and does not hold any Capital Stock of any other Person. All Stock and Stock Equivalents of each Loan Party are duly and validly issued and, in the case of each entity that is a corporation, are fully paid and non-assessable, and, other than the Stock and Stock Equivalents of the Borrower, are owned by

the Borrower, directly or indirectly through Wholly-Owned Subsidiaries. Each Loan Party is the record and beneficial owner of, and has good and marketable title to, the Stock and Stock Equivalents pledged by it to the Agent under the Collateral Documents, free of any and all Liens, rights or claims of other persons, except the security interest created by the Collateral Documents, and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such Stock and Stock Equivalents. As of the Closing Date, no Loan Party is engaged in any joint venture with any other Person.

(b) No Consent of Third Parties Required. No consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or reasonably desirable (from the perspective of a secured party) in connection with the creation, perfection or first priority status of the security interest of the Agent in any Stock and Stock Equivalents pledged to the Agent for the benefit of the Lender under the Collateral Documents or the exercise by the Agent of the voting or other rights provided for in the Collateral Documents or the exercise of remedies in respect thereof.

5.9. Pension Plans. No Loan Parties have any liability under ERISA and no Loan Party sponsors any "pension plan" or has any liability subject to Title IV of ERISA.

5.10. Compliance with Law; Investment Company Act; Other Regulated Entities. The Borrower and each other Loan Party possesses all necessary authorizations, permits, licenses and approvals from all Governmental Authorities in order to conduct their respective businesses as presently conducted, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. All business and operations of the Borrower and each other Loan Party complies with all applicable federal, state and local laws and regulations, except where the failure so to comply could not reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any other Loan Party is operating any aspect of its business under any agreement, settlement, order or other arrangement with any Governmental Authority. Neither the Borrower nor any other Loan Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company", within the meaning of the Investment Company Act of 1940. None of any Loan Party, any Person controlling any Loan Party, or any Subsidiary of any Loan Party, is subject to regulation under any Federal or state statute, rule or regulation limiting its ability to incur Debt, pledge its assets or perform its Obligations under the Loan Documents.

5.11. Margin Stock. Neither the Borrower nor any Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. No portion of the Obligations is secured directly or indirectly by Margin Stock.

5.12. Taxes. Each of the Borrower and each other Loan Party has filed all federal, state, provincial, local and foreign income, and all material sales, goods and services,

harmonized sales and franchise and all other material tax returns, reports and statements (collectively, the "Tax Returns") with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are or were required to be filed. All such Tax Returns are true, correct and complete in all material respects. All Taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any liability may be added thereto for non-payment thereof, except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Loan Party, as applicable. As of the Closing Date, no Tax Return is under audit or examination by any Governmental Authority and no written notice of such an audit or examination or any written assertion of any claim for Taxes, except as set forth in Section 5.12 of the Disclosure Letter, has been given or made by any Governmental Authority. Amounts have been withheld by each Loan Party, as applicable, from their respective employees for all periods in compliance with the tax, social security and unemployment withholding provisions of Applicable Law and such withholdings have been timely paid to the respective Governmental Authorities in accordance with Applicable Law. No Loan Party has been a member of an affiliated, combined or unitary group other than the group of which a Loan Party is the common parent or has liability for Taxes of any other person by contract, as a successor or transferor or otherwise by operation of law.

5.13. Solvency. Both immediately before and after giving effect to (a) the Loan made on or prior to the date this representation and warranty is made or remade, (b) the disbursement of proceeds of such Loan, and (c) the payment and accrual of all transaction costs in connection with the foregoing, with respect to the Borrower and each other Loan Party, on a consolidated basis, (i) the fair value of its assets is greater than the amount of its liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated, (ii) the present fair saleable value of its assets is not less than the amount that will be required to pay the probable liability on its debts as they become absolute and matured, (iii) it is able to realize upon its assets and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business, (iv) it does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature and (v) it is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which its property would constitute unreasonably small capital.

5.14. Environmental Matters. The on-going operations of the Borrower and each other Loan Party comply in all respects with all Environmental Laws, except such non-compliance which could not (if enforced in accordance with Applicable Law) reasonably be expected to result in a Material Adverse Effect. The Borrower and each other Loan Party have obtained, and maintained in good standing, all licenses, permits, authorizations and registrations required under any Environmental Law and necessary for their respective ordinary course operations, and the Borrower and each other Loan Party are in compliance with all material terms and conditions thereof, except where the failure to do so could not reasonably be expected to result in material liability to the Borrower or any other Loan Party and could not reasonably be expected to result in a Material Adverse Effect. None of the Borrower, any other Loan Party or any of their respective properties or operations is subject to any outstanding written order from or agreement with any federal, state or local Governmental Authority, nor subject to any judicial or docketed administrative proceeding, nor subject to any indemnification agreement or other

contractual obligation, respecting any Environmental Law, Environmental Claim or Hazardous Substance. There are no Hazardous Substances or other conditions or circumstances existing with respect to any property, or arising from operations prior to the Closing Date, of the Borrower or any other Loan Party that could reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any other Loan Party has any underground or above ground storage tanks that are not properly registered or permitted under applicable Environmental Laws or that are leaking or disposing of Hazardous Substances.

5.15. Insurance. The Borrower and each other Loan Party and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or such other Loan Party operates. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth in Section 5.15 of the Disclosure Letter.

5.16. Information. All information heretofore or contemporaneously herewith furnished in writing by the Borrower or any other Loan Party to the Agent or the Lender for purposes of or in connection with this Agreement and the transactions contemplated hereby is, and all written information hereafter furnished by or on behalf of the Borrower or any Loan Party to the Agent or the Lender pursuant hereto or in connection herewith will be, true and accurate in every material respect on the date as of which such information is dated or certified, and none of such information is or will be, taken as a whole, incomplete by omitting to state any material fact necessary to make such information not misleading in light of the circumstances under which made (it being recognized by the Agent and the Lender that any projections and forecasts provided by the Borrower are based on good faith estimates and assumptions believed by the Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results).

5.17. Intellectual Property. Each Loan Party owns, or is licensed or otherwise has the right to use, all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or have a license or other right to use would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Loan Party, (a) the conduct and operations of the businesses of each Loan Party do not, and the anticipated products and Intellectual Property applications of the Loan Parties will not, infringe upon, misappropriate, dilute or violate any Intellectual Property owned by any other Person and (b) no other Person has contested any right, title or interest of any Loan Party in any Intellectual Property or any anticipated products and applications derived or expected to be derived therefrom, other than, in each case, as cannot reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Intellectual Property of the Loan Parties is sufficient, and conveys adequate rights, title and interests, for the Borrower and other Loan Parties to develop and commercialize its anticipated products and Intellectual Property applications.

5.18. Labor Matters. Neither the Borrower nor any other Loan Party is subject to any labor or collective bargaining agreement. There are no existing or threatened strikes,

lockouts or other labor disputes involving the Borrower or any other Loan Party that singly or in the aggregate could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of the Borrower and the other Loan Parties are not in violation of the Fair Labor Standards Act or any other Applicable Law, rule or regulation dealing with such matters.

5.19. No Default. No Loan Party is in default under or with respect to any contractual obligation in any respect which, individually or together with all such defaults, would reasonably be expected to have a Material Adverse Effect.

5.20. Foreign Assets Control Regulations and Anti-Money Laundering.

5.20.1. OFAC. Each Loan Party is and will remain in compliance in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") and all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to any of the foregoing. No Loan Party (i) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (ii) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (iii) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law.

5.20.2. Patriot Act. The Loan Parties and each of their Affiliates are in compliance in all material respects with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (b) the Patriot Act. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

5.21. Non-Competes. None of the Loan Parties nor any of their officers or, to any Loan Party's knowledge, employees is subject to a non-compete agreement that prohibits or will interfere with the development, commercialization or marketing of any Product.

5.22. Internal Controls. Borrower acknowledges that its management is responsible for establishing and maintaining effective internal control over financial reporting and assessing the effectiveness of internal control over financial reporting. Borrower has performed an evaluation and made an assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2011. Based on Borrower's assessment,

Borrower has concluded that it maintained effective internal control over financial reporting as of December 31, 2011.

Section 6. Affirmative Covenants.

Until all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted and other than the Assigned Interests after the Prepayment Date are Paid in Full) (except with respect to Sections 6.1.2, 6.1.5, 6.2, 6.4, 6.5, 6.7 (to the extent applicable after the Prepayment Date) and 6.9, which shall continue to be in effect after the Prepayment Date until the Assigned Interests are Paid in Full), the Borrower agrees that, unless at any time the Lender shall otherwise expressly consent in writing, it will:

6.1. Information. Furnish to the Agent and the Lender:

6.1.1. Annual Report. Promptly when available and in any event within 270 days of the end of the Fiscal Year ended December 31, 2012, and within 180 days of the end of each Fiscal Year of the Borrower beginning with the Fiscal Year ending December 31, 2013, the audited consolidated financial statements of the Borrower and the Subsidiaries as at the end of such Fiscal Year prepared on a basis consistent with GAAP.

6.1.2. Quarterly Reports. Commencing with respect to the first Fiscal Quarter of 2013, promptly when available and in any event within 45 days of the end of such Fiscal Quarter and each subsequent Fiscal Quarter, a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal quarter, together with consolidated statements of income and cash flows for such period prepared on a basis consistent with GAAP, certified by the chief financial officer of the Borrower.

6.1.3. Reserved.

6.1.4. Compliance Certificate. Contemporaneously with the furnishing of the financial statements required pursuant to Sections 6.1.1 and 6.1.2, a duly completed Compliance Certificate signed by the chief financial officer of the Borrower to the effect that such officer has not become aware of any Event of Default or Default that has occurred and is continuing or, if there is any such Event of Default, describing it and the steps, if any, being taken to cure it, and providing such other information as required thereby.

6.1.5. Net Revenue Reports. (a) Until the first Fiscal Quarter after the occurrence of the Prepayment Date, promptly when available and in any event within forty-five (45) days after the end of each Fiscal Quarter, a Quarterly Net Revenue Report, and (b) after the end of the Fiscal Quarter in which the Prepayment Date occurs, promptly when available and in any event within 20 days after the end of each calendar month, a Monthly Net Revenue Report, in each case, together with a certificate of the Borrower signed by the chief financial officer or other executive officer of the Borrower certifying that the foregoing report is true, correct and accurate in all material respects as of such date.

6.1.6. Notice of Default; Litigation; ERISA Matters. Promptly upon becoming aware of any of the following, written notice describing the same and the steps being taken by the Borrower or the applicable Loan Party affected thereby with respect thereto:

(a) the occurrence of an Event of Default or a Default;

(b) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by the Borrower to the Lender which has been instituted or, to the knowledge of the Borrower, is threatened against the Borrower or any other Loan Party, or to which any of the properties of any thereof is subject, which could reasonably be expected to have a Material Adverse Effect;

(c) any cancellation or material change in coverage in any insurance maintained by the Borrower or any other Loan Party; or

(d) any other event (including (i) any violation of any Environmental Law or the assertion of any Environmental Claim, (ii) the enactment or effectiveness of any law, rule or regulation, (iii) any violation or noncompliance with any law or (iv) any breach or non-performance of, or any default under, any contractual obligation of any Loan Party) which could reasonably be expected to have a Material Adverse Effect.

6.1.7. Reserved.

6.1.8. Budgets. As soon as practicable, and in any event not later than 30 days after the commencement of each Fiscal Year, a budget of the Borrower and its Subsidiaries for such Fiscal Year (including quarterly operating and cash flow budgets) prepared in a manner reasonably satisfactory to the Agent, accompanied by a certificate of the chief financial officer of the Borrower to the effect that (a) such budget was prepared by the Borrower, in good faith, (b) the Borrower has a reasonable basis for the assumptions contained in such budget and (c) such budget has been prepared in accordance with such assumptions.

6.1.9. Other Information. Promptly from time to time, such other information concerning the Borrower and any other Loan Party as the Lender or the Agent may reasonably request.

6.2. Books; Records; Inspections. Keep, and cause the Borrower and each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP; permit, and cause the Borrower and each other Loan Party to permit, the Agent, the Lender, or any representative of the foregoing to inspect, at any reasonable time and with reasonable notice (or at any time without notice if an Event of Default exists), the properties and operations of the Borrower or such other Loan Party; and permit, and cause the Borrower and each other Loan Party to permit, at any reasonable time and with reasonable notice (or at any time without notice if an Event of Default exists), the Agent, the Lender, or any representative thereof to visit any or all of its offices, to discuss its financial matters with its directors or officers and its independent auditors, if any (and the Borrower hereby authorizes such independent auditors, if any, to discuss such financial matters with the Lender or the Agent or any representative thereof), and to examine (and, at the expense of the Borrower or the applicable Loan Party, photocopy extracts from) any of its books or other records; and permit, and cause the Borrower and each other Loan Party to permit, the Agent, the Lender and their representatives to inspect, at any reasonable time

and with reasonable notice (or at any time without notice if an Event of Default exists), the Collateral and other tangible assets of the Borrower or such Loan Party, to perform appraisals of the equipment of the Borrower or such Party, and to inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral, including the Assigned Interests for purposes of or otherwise in connection with conducting a review, audit or appraisal of such books and records. In the event that the Agent or Lender shall determine pursuant to any audit of the books and records of the Borrower and its Subsidiaries conducted pursuant to this Section 6.2 that the aggregate amount paid to the Lender hereunder during any period covered by such audit is less than the aggregate amount that was in fact due and payable in respect of such period the Borrower shall promptly remit the amount of such shortfall to the Agent together with interest thereon payable at the Default Rate.

6.3. Maintenance of Property; Insurance.

(a) Keep, and cause each other Loan Party to keep, all property useful and necessary in the business of the Borrower or such other Loan Party in good working order and condition, ordinary wear and tear excepted, and maintain, and cause each other Loan Party to maintain, its Intellectual Property in accordance with the provisions of the Collateral Documents.

(b) Maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is customarily maintained by companies similarly situated; provided that in any event, such insurance shall insure against all risks and liabilities of the type insured against as of the Closing Date and shall have insured amounts no less than, and deductibles no higher than, those amounts provided for as of the Closing Date. Upon request of the Agent or the Lender, the Borrower shall furnish to the Agent or such Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by the Borrower and each other Loan Party. The Borrower shall cause each issuer of an insurance policy to provide the Agent with an endorsement (i) showing the Agent as a loss payee with respect to each policy of property or casualty insurance and naming the Agent as an additional insured with respect to each policy of liability insurance, (ii) providing that 30 days' notice will be given to the Agent prior to any cancellation of such policy and (iii) reasonably acceptable in all other respects to the Agent. The Borrower shall execute and deliver to the Agent, upon request of the Agent, a collateral assignment, in form and substance satisfactory to the Agent, of each business interruption insurance policy maintained by the Loan Parties.

(c) Unless the Borrower provides the Agent with evidence of the continuing insurance coverage required by this Agreement, the Agent may purchase insurance (to the extent of such insurance coverage as shall be required by clause (b) above) at the Borrower's expense to protect the Agent's and the Lender's interests in the Collateral. This insurance may, but need not, protect the

Borrower's and each other Loan Party's interests. The coverage that the Agent purchases may, but need not, pay any claim that is made against the Borrower or any other Loan Party in connection with the Collateral. The Borrower may later cancel any insurance purchased by the Agent, but only after providing the Agent with evidence that the Borrower has obtained the insurance coverage required by this Agreement. If the Agent purchases insurance for the Collateral, as set forth above, the Borrower will be responsible for the costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance and the costs of the insurance may be added to the principal amount of the Loan owing hereunder.

6.4. Compliance with Laws and Contractual Obligations; Payment of Taxes and Liabilities. Comply, and cause each other Loan Party to comply, in all material respects with all Applicable Laws, rules, regulations, decrees, orders, judgments, licenses and permits and all indentures, agreements and other instruments binding upon it or its property, except where failure to comply could not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who owns a controlling interest in or otherwise controls a Loan Party is or shall be (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, Department of the Treasury, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a person designated under Section 1(b), (c) or (d) of Executive Order 13224, any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations; and (d) timely prepare and file all Tax Returns required to be filed by Applicable Law and pay, and cause each other Loan Party to pay, prior to delinquency, all Taxes (reflected in the Tax Returns) against it or any of its property, as well as claims of any kind which, if unpaid, could become a Lien on any of its property; provided that the foregoing shall not require the Borrower or any other Loan Party to pay any such Tax or charge so long as it shall promptly contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP.

6.5. Maintenance of Existence. Maintain and preserve, and (subject to Section 7.4) cause each other Loan Party to maintain and preserve, (a) its existence and good standing (as applicable) in the jurisdiction of its organization and (b) its qualification to do business and good standing (as applicable) in each jurisdiction where the nature of its business makes such qualification necessary, other than any such jurisdiction where the failure to be qualified or in good standing could not reasonably be expected to have a Material Adverse Effect.

6.6. Environmental Matters. If any release or disposal of Hazardous Substances shall occur or shall have occurred on or from any real property or any other assets of the Borrower or any other Loan Party, cause, or direct the applicable Loan Party to cause, the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each other Loan Party to, comply with each valid Federal or

state judicial or administrative order requiring the performance at any real property by the Borrower or any other Loan Party of activities in response to the release or threatened release of a Hazardous Substance. If any violation of any Environmental Law shall occur or shall have occurred at any real property or any other assets of the Borrower or any other Loan Party or otherwise in connection with their operations, cause, or direct the applicable Loan Party to cause, the prompt correction of such violation.

6.7. Further Assurances. Promptly upon request by the Agent, the Loan Parties shall (and, subject to the limitations hereinafter set forth, shall cause each of their Subsidiaries to) take such additional actions as the Agent may reasonably require from time to time in order (i) to subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests, whether now owned or hereafter acquired, covered or intended to be covered by any of the Collateral Documents, (ii) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby, and (iii) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Agent and the Lender the rights granted or now or hereafter intended to be granted to the Agent and the Lender under any Loan Document or under any other document executed in connection therewith. Without limiting the generality of the foregoing and except as otherwise approved in writing by the Lender, the Loan Parties shall cause each of their Subsidiaries other than CFCs (including any such Subsidiary formed or acquired after the Closing Date within 30 days of such formation or acquisition) to guaranty the Obligations and cause each such Subsidiary to grant to the Agent, for the benefit of the Agent and the Lender, a security interest in, subject to the limitations hereinafter set forth or set forth in the Security Agreement, all of such Subsidiary's property to secure such guaranty, in each case pursuant to the execution and delivery of a Subsidiary Guaranty and a joinder to the Security Agreement and such other documents as may be reasonably requested, each in form and substance reasonably satisfactory to the Agent. Furthermore and except as otherwise approved in writing by the Lender, the Borrower shall, and shall cause each of its Subsidiaries to, pledge all of the Stock and Stock Equivalents of each of its Subsidiaries that are not CFCs, all of the nonvoting Stock and Stock Equivalents of each of its Subsidiaries that are CFCs, and 65% of the voting Stock and Stock Equivalents of each of its Subsidiaries that are CFCs, to the Agent for the benefit of the Agent and the Lender, to secure the Obligations, in each case pursuant to documents in form and substance reasonably satisfactory to the Agent. In connection with each pledge of Capital Stock that is certificated, the Borrower and each Subsidiary shall deliver, or cause to be delivered, to the Agent, irrevocable proxies and stock powers and/or assignments, as applicable, duly executed in blank, in each case pursuant to documents in form and substance reasonably satisfactory to the Agent. The Borrower and each Loan Party shall be under an ongoing obligation to use commercially reasonable efforts to obtain a Collateral Access Agreement from the lessor of each leased property and bailee in possession of any Collateral with a book value in excess of $250,000 with respect to each location in the United States where any Collateral is stored or located, which Collateral Access Agreement shall be in form and substance reasonably satisfactory to the Agent. Without limiting the requirements of the Collateral Documents, in the event that any Loan Party shall acquire, develop, or otherwise obtain, register or seek to register any Patent, Copyright, Trademark, or other Intellectual Property with any United States Governmental Authority, or obtain, register or seek to register any application for, or license in respect of, any of the foregoing, the Borrower shall notify the Agent thereof within 45 days of the end of each calendar quarter and shall promptly thereafter execute and deliver to the Agent,

for the benefit of the Lender, such Intellectual Property security agreements, other Collateral Documents or other documents as the Agent may request in order to secure and perfect the security interest in respect of such Intellectual Property (it being understood that this sentence only applies to registered Intellectual Property).

6.8. Post-Closing Obligations. Within thirty (30) days after the Closing Date (subject to extension by the Agent in its sole discretion), the Loan Parties shall deliver to the Agent a deposit account or securities account, as applicable, Control Agreement for each deposit account and securities account maintained by any Loan Party (other than the Excluded Accounts (provided, that if at any time any such account fails to meet the requirements set forth in the definition of "Excluded Accounts," the Loan Parties shall deliver a Control Agreement for such account within thirty (30) days after such date) and zero balance payroll and similar accounts), in form and substance satisfactory to the Agent.

6.9. Assigned Interests.

6.9.1. Payments. The Borrower shall remit to the Lender amounts pursuant to Section 2.4.3.

6.9.2. True-Up.

(a) Following the end of each Fiscal Quarter after the Prepayment Date, concurrently with the delivery of the Monthly Net Revenue Report for the third month in such Fiscal Quarter, the Borrower shall deliver to the Lender a calculation of the difference between (i) the amount Lender has received in payments from the Borrower under Section 2.4.3 in respect of such Fiscal Quarter and (ii) the Mandatory Minimum Payments (the "True-Up Amount").

(b) If the True-Up Amount calculated pursuant to clause (a) above is negative, the Borrower shall pay the absolute value of such amount to Lender within five (5) days of the receipt by Lender of the True-Up Statement.

6.10. Internal Controls. Borrower will maintain internal controls over financial reporting that are no less effective in maintaining control over financial reporting than those in effect on the Closing Date.

Section 7. Negative Covenants.

Until the Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted and other than the Assigned Interests after the Prepayment Date) are Paid in Full (except with respect to Section 7.17, which shall be in effect from the Prepayment Date until the Assigned Interests are Paid in Full), the Borrower agrees that, unless at any time the Lender shall otherwise expressly consent in writing (such consent to be withheld in the Lender's sole discretion), it will:

7.1. Debt. Not, and not suffer or permit any Loan Party to, create, incur, assume or suffer to exist any Debt, except for the following Debt of the Borrower and/or Loan Party Subsidiaries:

(a) Obligations under this Agreement and the other Loan Documents;

(b) Debt in respect of Capital Leases and purchase money Debt, in each case incurred for the purpose of financing all or any part of the cost of acquiring, repair, construction or improvement of fixed or capital assets; provided that the aggregate principal amount of all such Debt at any time outstanding shall not exceed $100,000;

(c) Debt of the Borrower to any Loan Party that is a Wholly-Owned Subsidiary of the Borrower or Debt of any Loan Party that is a Wholly-Owned Subsidiary of the Borrower to the Borrower or another Loan Party that is a Wholly-Owned Subsidiary of the Borrower; provided that all such Debt shall be evidenced by a global intercompany demand note in form and substance satisfactory to the Agent and pledged and delivered to the Agent pursuant to the applicable Collateral Document as additional collateral security for the Obligations, and the obligations under such demand note shall be subordinated to the Obligations hereunder in a manner satisfactory to the Agent;

(d) Debt described in Section 7.1 of the Disclosure Letter as of the Closing Date, and any Permitted Refinancing thereof;

(e) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions permitted under Section 7.4;

(f) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, provided that such Debt is extinguished within two (2) Business Days of notice to the Borrower or the relevant Subsidiary of its incurrence;

(g) Debt incurred in connection with the financing of insurance premiums in the ordinary course of business;

(h) guaranties by the Borrower of the Debt of any Loan Party that is a Wholly-Owned Subsidiary of the Borrower or guaranties by any Subsidiary thereof of the Debt of the Borrower in each case so long as such Debt is otherwise permitted under Section 7.1(a) or (b);

(i) Debt under a Permitted AR Facility;

(j) Debt consisting of Hedging Obligations;

(k) unsecured Debt of the Borrower or any Subsidiary (i) that is convertible into Stock or Stock Equivalents and is validly subordinated by its terms to the payment of the Obligations on terms which shall provide that no payments of principal or interest may be made on such Debt prior to the Prepayment Date, (ii) that is validly subordinated by its terms to the payment of the Obligations on terms reasonably satisfactory to the Agent or (iii) in respect of earn-out, purchase price adjustment and similar obligations; provided that the aggregate principal amount of all such Debt under this clauses (ii) and (iii) at any time outstanding shall not exceed $10,000,000.

7.2. Liens. Not, and not suffer or permit any Loan Party to, create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except:

(a) Liens for Taxes or other governmental charges not at the time delinquent or thereafter payable without penalty, or being diligently contested in good faith by appropriate proceedings and for which it maintains adequate reserves in accordance with GAAP and the execution or other enforcement of which is effectively stayed;

(b) Liens arising in the ordinary course of business (such as (i) Liens of carriers, warehousemen, mechanics, customs brokers, landlords and materialmen and other similar Liens imposed by law and (ii) Liens consisting of pledges or deposits incurred in connection with worker's compensation, unemployment compensation and other types of social security (excluding Liens arising under ERISA) or in connection with surety bonds, bids, performance bonds and similar obligations) for sums not more than 30 days overdue or being diligently contested in good faith by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves to the extent required in accordance with GAAP and the execution or other enforcement of which is effectively stayed;

(c) Liens described in Section 7.2 of the Disclosure Letter as of the Closing Date;

(d) Liens securing Debt permitted by Section 7.1(b); provided, however, that any such Lien (i) attaches only to the property being leased or financed and any accessions thereto and proceeds thereof, and (ii) attaches to such property within 60 days of the acquisition thereof and attaches solely to the property so acquired and any accessions thereto and proceeds thereof;

(e) attachments, appeal bonds, judgments and other similar Liens, in connection with judgments the existence of which do not constitute an Event of Default;

(f) easements, encroachments, rights of way, leases, subleases, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of the Borrower or any Subsidiary;

(g) any interest or title of a lessor or sublessor under any lease (other than a Capital Lease) or of a licensor or sublicensor under any license, in each case permitted by this Agreement;

(h) leases, licenses, subleases or sublicenses granted to third parties in the ordinary course of business which do not (i) interfere in any material respect with, or materially detract from the value of, the business of the Borrower and its Subsidiaries, taken as a whole or (ii) secure any Debt, and in each case permitted by this Agreement;

(i) Liens arising from precautionary uniform commercial code financing statements filed under any lease (other than a Capital Lease) permitted by this Agreement;

(j) Liens with respect to a Permitted AR Facility;

(k) Liens arising under the Loan Documents;

(l) bankers' liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses; and

(m) the replacement, extension or renewal of any Lien permitted by clauses (c) or (d) above upon or in the same property subject thereto arising out of the Permitted Refinancing of the Debt secured thereby.

7.3. Restricted Payments. Not, and not suffer or permit any Loan Party to, (i) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any Stock or Stock Equivalent, (ii) purchase, redeem or otherwise acquire for value any Stock or Stock Equivalent now or hereafter outstanding or (iii) make any payment or prepayment of principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, Debt that is subordinated by its terms to the payment of the Obligations (the items described in clauses (i), (ii) and (iii) above are referred to as "Restricted Payments") except that (i) any Subsidiary of the Borrower may declare and pay dividends to, repay intercompany debt owed to, and make internal profit-sharing payments to, the Borrower or any other Loan Party that is a Wholly-Owned Subsidiary of the Borrower, (ii) the Borrower may make repurchases from any present or former employee, director, officer or consultant (or the assigns, estate, heirs or current or former spouses thereof) upon the death, disability or termination of employment of such employee, director, officer or consultant provided such repurchases do not exceed $1,000,000 in the aggregate per Fiscal Year, (iii) the Borrower may convert its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange therefor

(provided that such securities shall not be converted or exchanged into Disqualified Capital Stock or Debt that is not permitted by Section 7.1), and (iv) the Borrower may make cash payments in lieu of the issuance of fractional shares upon such conversion or in connection with the exercise of warrants or similar securities).

7.4. Mergers; Consolidations; Asset Sales.

(a) Not, and not suffer or permit any Loan Party to, be a party to any merger, consolidation or amalgamation, except for any such merger or consolidation (i) of any Subsidiary of the Borrower into the Borrower (so long as the Borrower survives such merger) or any Loan Party that is a Wholly-Owned Subsidiary of the Borrower, as applicable (so long as such Loan Party that is a Wholly-Owned Subsidiary survives such merger) or (ii) in which the Obligations (other than the Assigned Interests) shall be Paid in Full prior to or concurrently with the consummation of such transaction and in which provision is made for the Assigned Interests to be assumed by the surviving or acquiring Person and such Person delivers written notice to the Lender acknowledging such assumption.

(b) Not, and not suffer or permit any Loan Party to, sell, transfer, dispose of, convey or lease any of its assets or the Capital Stock of any Loan Party, or sell or assign with or without recourse any receivables (any such transaction, a "Disposition"), except for (i) Dispositions of worn-out or surplus equipment, all in the ordinary course of business, (ii) the abandonment or other Disposition of Intellectual Property that is no longer useful or material to the conduct of the business of the Loan Parties as determined by the Borrower in its reasonable business judgment, (iii) Dispositions of cash and Cash Equivalent Investments, (iv) licenses, sublicenses, leases or subleases (including any license or sublicense of Intellectual Property) granted to third parties in the ordinary course of business not interfering with the business of the Loan Parties in any material respect as determined by the Borrower in its reasonable business judgment, (v) the granting of Liens permitted under Section 7.2, Restricted Payments permitted by Section 7.3, transactions permitted by Section 7.4(a) and Investments permitted by Section 7.10, (vi) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party provided the proceeds thereof are promptly applied to replace such assets and (vii) other Dispositions of assets having a book value of not more than $500,000 in the aggregate in any Fiscal Year; provided that, for the avoidance of doubt, nothing in this Section 7.4(b) shall prevent the Borrower from selling and issuing its Capital Stock.

(c) Not, and not suffer or permit any Loan Party to, sell, transfer, dispose of, convey or license any of its Intellectual Property other than as permitted by the foregoing clauses (a) and (b) of this Section 7.4.

7.5. Modification of Organizational Documents. Not waive, amend or modify, and not suffer or permit any waiver, amendment or modification of, any term of the charter,

limited liability company agreement, partnership agreement, articles of incorporation, by-laws or other organizational documents of the Borrower or any other Loan Party, in each case except for those amendments and modifications that do not materially adversely affect the interests of the Agent or the Lender under the Loan Documents or in the Collateral (it being understood and agreed that any adverse impact on the effectiveness or validity of any Collateral Document or the Liens granted to the Agent thereunder shall each be deemed to materially adversely affect such interests of the Agent and the Lender).

7.6. Use of Proceeds. Not use the proceeds of the Loan for any purposes other than solely as expressly provided in Section 2.1.2.

7.7. Transactions with Affiliates. Not, and not suffer or permit any Loan Party to, enter into any transaction or arrangement with any Affiliate of the Borrower or of any such Loan Party, except:

(a) Restricted Payments permitted by Section 7.3, intercompany loans among Loan Parties permitted by Section 7.1(c), transactions permitted by Section 7.4(a) and Investments permitted by Section 7.10(a) and (b);

(b) in the ordinary course of business and pursuant to the reasonable requirements of the business of such Loan Party or such Subsidiary; provided that, in the case of this clause (b), such transaction shall be upon fair and reasonable terms no less favorable to such Loan Party or such Subsidiary than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of the Borrower or such Subsidiary and which are disclosed in writing to the Agent;

(c) payment of compensation and benefits (including customary indemnities) to officers, directors and employees of the Loan Parties for actual services rendered to the Loan Parties in the ordinary course of business;

(d) payment of reasonable and customary fees to members of the boards of directors (or similar governing body) of the Loan Parties, and the reimbursement of actual out of pocket expenses incurred in connection with attending board of director meetings;

(e) advances for reasonable travel and entertainment expenses and reasonable relocation costs and expenses and other reasonable loans and advances in the ordinary course of business; and

(f) the subordinated Debt investments by the Borrower's stockholders in the Borrower, to the extent permitted by Section 7.1(k), and equity investments by the Borrower's stockholders in the Borrower for purposes of raising capital.

7.8. Inconsistent Agreements. Not, and not suffer or permit any other Loan Party to, enter into any agreement containing any provision which would (i) be violated or breached by any borrowing by the Borrower hereunder or by the performance by the Borrower

or any other Loan Party of any of its Obligations hereunder or under any other Loan Document, (ii) prohibit the Borrower or any other Loan Party from granting to the Agent and the Lender a Lien on any of its assets that constitute Collateral or (iii) other than pursuant to the Loan Documents, create or permit to exist or become effective any encumbrance or restriction on the ability of any other Subsidiary to (x) pay dividends or make other distributions to the Borrower or any Wholly-Owned Subsidiary, or pay any Debt owed to the Borrower or any Wholly-Owned Subsidiary, (y) make loans or advances to the Borrower or any Wholly-Owned Subsidiary or (z) transfer any of its assets or properties to the Borrower or any Wholly-Owned Subsidiary, except, in the case of clause (ii) and (iii) above: (a) negative pledges and restrictions on Liens in favor of any holder of Debt permitted under Section 7.1(b) but solely to the extent any negative pledge or limitation on Liens relates to the property that is the subject of such Debt and the proceeds and products thereof, (b) customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (c) customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (d) prohibitions and limitations that exist pursuant to Applicable Law, (e) customary restrictions and conditions contained in agreements relating to (A) the sale of a Subsidiary or assets pending such sale, provided such restrictions and conditions apply only to the Subsidiary or assets that are to be sold and such sale is permitted hereunder, and (B) the acquisition of the Borrower provided that the acquisition agreement shall provide that all amounts due and payable under this Agreement shall be Paid in Full upon the closing of such transaction; (f) customary provisions in joint venture agreements (and other similar agreements) provided that such provisions apply only to such joint venture or such other arrangement and to the Capital Stock of such joint venture or such other arrangement; and (g) customary net worth provisions or similar financial maintenance provisions contained in any agreement entered into by a Subsidiary.

7.9. Business Activities. Not, and not suffer or permit any Loan Party to, engage in any line of business other than the businesses engaged in on the Closing Date and businesses directly related thereto including businesses constituting extensions thereof or which are incidental thereto. As of the Closing Date the Borrower and other Loan Parties engage in the business of the development, manufacture, maintenance, sale, rental and distribution of minimally-invasive imaging systems and medical devices used in the treatment and/or diagnosis of various medical conditions.

7.10. Investments. Not, and not suffer or permit any Loan Party to, make or permit to exist, any Investment in any other Person, except the following:

(a) Investments (i) between or among the Loan Parties; (ii) by Subsidiaries that are not Loan Parties in Loan Parties; (iii) by Subsidiaries that are not Loan Parties in Subsidiaries that are not Loan Parties; and (iv) by Loan Parties in Subsidiaries that are not Loan Parties in an amount not to exceed $250,000 in the aggregate in any Fiscal Year, provided, that the Lender's consent to any such Investments in an amount exceeding $250,000 but less than $1,000,000 shall not be unreasonably withheld;

(b) Investments constituting Debt permitted by Section 7.1(c);

(c) Contingent Obligations constituting Debt permitted by Section 7.1 or constituting guarantees of commercial obligations of Subsidiaries (not constituting Debt) in the ordinary course of business not prohibited hereby;

(d) Cash Equivalent Investments;

(e) Investments listed in Section 7.10 of the Disclosure Letter as of the Closing Date;

(f) extensions of trade credit in the ordinary course of business;

(g) notes payable, or stock or other securities issued by an account debtor pursuant to settlement in the ordinary course of business of such account debtor's accounts receivable owing to the Borrower or its Subsidiaries;

(h) Investments in connection with Hedging Obligations;

(i) Investments of any Person existing at the time such Person becomes a Subsidiary of a Borrower or consolidates or merges with the Borrower or any of the Subsidiaries so long as such Investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;

(j) Investments received in connection with the dispositions of assets permitted by Section 7.4;

(k) loans or advances to employees, officers and directors of a Loan Party for reasonable travel and entertainment expenses and reasonable relocation costs and expenses and other ordinary business purposes; provided, however, that the aggregate outstanding principal amount of all loans and advances permitted pursuant to this clause (k) shall not exceed $500,000 at any time;

(l) Investments consisting of non-cash loans to employees, officers, directors or consultants for the purpose of purchasing Capital Stock in the Borrower so long as the proceeds of such loans are used entirely to pay the purchase price of such Capital Stock; and

(m) other Investments in an aggregate amount not to exceed $250,000 at any time outstanding.

7.11. Fiscal Year. Not, and not suffer or permit any other Loan Party to, change its Fiscal Year.

7.12. Deposit Accounts and Securities Accounts. Not, and not suffer or permit any Loan Party to, maintain or establish any deposit account or securities account other than the deposit accounts and securities accounts set forth in Section 7.12 of the Disclosure Letter without prior written notice to the Agent and unless the Agent, the Borrower or such other Loan Party

and the bank or securities intermediary at which such deposit account or securities account, as applicable, is to be opened or maintained enter into a Control Agreement regarding such deposit account or securities account, as applicable, on terms satisfactory to the Agent.

7.13. Sale-Leasebacks. Not and not suffer or permit any Loan Party to, engage in a sale leaseback (except as permitted under Section 7.1(b)), synthetic lease or similar transaction involving any of its assets.

7.14. Hazardous Substances. Not, and not suffer or permit any other Loan Party to, cause or suffer to exist any release of any Hazardous Substances at, to or from any real property owned, leased, subleased or otherwise operated or occupied by any Loan Party that would violate any Environmental Law, form the basis for any Environmental Claims or otherwise adversely affect the value or marketability of any real property (whether or not owned by any Loan Party), other than such violations, Environmental Claims and effects that would not, in the aggregate, be reasonably be expected to have a Material Adverse Effect. Notwithstanding the foregoing, under no circumstances will any Loan Party cause or suffer to exist any disposal of any Hazardous Substances at, on, under or in any real property owned, leased, subleased, or otherwise operated or occupied by any Loan Party.

7.15. ERISA Liability. Not suffer or permit any liability under ERISA and the sponsorship of any "pension plan" or any liability subject to Title IV of ERISA that is in excess of $250,000.

7.16. Liquidity. Not suffer or permit Liquidity to be less than * * * at any time.

7.17. Post-Prepayment Date Covenants. After the Prepayment Date through the earlier to occur of (i) December 31, 2018, and (ii) the Acquisition of the Borrower:

(a) Merger; Consolidations; Asset Sales

(i) Not, and not suffer or permit any Loan Party to, be a party to any merger, consolidation or amalgamation, or any Disposition of all or substantially all of the assets of the Borrower, except for (A) any such merger, consolidation or amalgamation of any Subsidiary of the Borrower into the Borrower (so long as the Borrower survives such merger) or any Loan Party that is a Wholly-Owned Subsidiary of the Borrower, as applicable (so long as a Loan Party that is a Wholly-Owned Subsidiary survives such merger) or (B) any such merger, consolidation or amalgamation or any such Disposition in which the Obligations (other than the Assigned Interests) shall be Paid in Full prior to or concurrently with the consummation of such transaction and in which provision is made for the Assigned Interests to be assumed by the surviving or acquiring Person and such Person delivers written notice to the Lender acknowledging such assumption.

(ii) Not, and not suffer or permit any Loan Party to, sell, transfer, dispose of, convey or license any of its Intellectual Property related to the Products other than as permitted by the foregoing clause (a)(i)(B) of this Section 7.17 and except for (A) the abandonment or other Disposition of Intellectual Property that is no longer useful or material to the conduct of the business of the Loan Parties as determined by the Borrower in its reasonable business judgment, and (B) licenses and sublicenses granted to third parties in the

ordinary course of business not interfering with the business of the Loan Parties in any material respect as determined by the Borrower in its reasonable business judgment.

(b) Modification of Organizational Documents. Not waive, amend or modify, and not suffer or permit any waiver, amendment or modification of, any term of the charter, limited liability company agreement, partnership agreement, articles of incorporation, by-laws or other organizational documents of the Borrower or any other Loan Party, in each case except as permitted by Section 7.17(a)(i) and for those amendments and modifications that do not materially adversely affect the interests of the Agent or the Lender in the Assigned Interests.

(c) Inconsistent Agreements. Not, and not suffer or permit any other Loan Party to, enter into any agreement containing any provision which would be violated or breached by the performance by the Borrower or any other Loan Party of any of its Obligations with respect to the Assigned Interests.

(d) Fiscal Year. Not, and not suffer or permitted any other Loan Party to, change its Fiscal Year, except in connection with an Acquisition of the Borrower, in which case any necessary adjustment shall be made such that Lender receives the benefits of the Assigned Interests contemplated hereunder.

Section 8. Events of Default; Remedies.

8.1. Events of Default. Each of the following shall constitute an Event of Default under this Agreement:

8.1.1. Non-Payment of Credit Agreement. Any default (i) in the payment when due of the principal of the Loan, (ii) for a period in excess of three (3) Business Days in the payment when due of any interest, fee, or other amount payable hereunder, including any payment in respect of the Assigned Interests, by any Loan Party, or (iii) for a period in excess of three (3) Business Days in any payment of any amount due under any other Loan Document, shall occur.

8.1.2. Default Under Other Debt.

(a) Any default in the payment of principal or interest when due (giving effect to all applicable grace periods, if any) shall occur under the terms applicable to any Debt (other than the Obligations) of any Loan Party in an aggregate amount (for all such Debt so affected and including amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding $250,000; and

(b) Any default shall occur under the terms applicable to any Debt (other than the Obligations) of any Loan Party in an aggregate amount (for all such Debt so affected and including undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding $250,000 and such default shall result in the acceleration of the maturity of such Debt or permit the holder or holders thereof, or any trustee

or agent for such holder or holders, to cause such Debt to become due and payable (or require the Borrower or any other Loan Party to purchase or redeem such Debt or post cash collateral in respect thereof) prior to its expressed maturity.

8.1.3. Bankruptcy; Insolvency. (i) Any Loan Party generally fails to pay, or admits in writing its inability or refusal to pay, debts as they become due; (ii) any Loan Party commences any case, proceeding or other action (x) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (y) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets; or (iii) there shall be commenced against any Loan Party any case, proceeding or other action of a nature referred to in clause (ii) above that (x) results in the entry of an order for relief or any such adjudication or appointment or (y) remains undismissed or undischarged for a period of 60 days; (iv) there shall be commenced against any Loan Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; (v) any Loan Party shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (ii), (iii) or (iv) above; or (vi) any Loan Party shall make a general assignment for the benefit of its creditors.

8.1.4. Non-Compliance with Loan Documents.

(a) Failure by the Borrower or any other Loan Party to comply with or to perform any covenant set forth in Sections 6.1, 6.4, 6.5(a) (with respect to the maintenance of existence of the Borrower or any other Loan Party), 6.5(b), 6.6, 6.8, 6.9 and 7, in each case during the period when each such covenant is applicable; or (b) failure by the Borrower or any other Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8), in each case during the period when each such provision is applicable, and continuance of such failure described in this clause (b) for 30 days.

8.1.5. Representations; Warranties. Any representation or warranty made by or in respect of any Loan Party herein or any other Loan Document is breached or is false or misleading in any material respect (without duplication of any materiality qualifier contained therein), or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to the Agent or the Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

8.1.6. Judgments.

(a) Final judgments which exceed an aggregate of $500,000 shall be rendered against any Loan Party and shall not have been paid, discharged

or vacated or had execution thereof stayed pending appeal within 30 days after entry or filing of such judgments; or

(b) One or more non-monetary judgments, orders or decrees shall be rendered against any one or more of the Loan Parties or any of their respective Subsidiaries which has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, and there shall be any period of ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

8.1.7. Invalidity of Collateral Documents. Any Collateral Document shall cease to be in full force and effect, except as provided for under the release provisions of the Security Agreement; or any Loan Party or other grantor or pledgor (or any Person by, through or on behalf of any Loan Party, grantor or pledgor) shall contest in any manner the validity, binding nature or enforceability of any Collateral Document.

8.1.8. Invalidity of Subordination Provisions. Any subordination provision in any document or instrument governing Debt that is intended to be subordinated to the Obligations or any subordination provision in any subordination agreement that relates to any such Debt, or any subordination provision in any guaranty by any Loan Party of any such Debt, shall cease to be in full force and effect, or any Person (including the holder of any applicable Debt) shall contest in any manner the validity, binding nature or enforceability of any such provision.

8.1.9. Change of Control. (a) A Change of Control shall occur, or (b) a "Change of Control" or other similar event shall occur, as defined in, or under, any indenture, agreement, instrument or other documentation evidencing or otherwise relating to any Debt; provided, however, that no Event of Default shall exist under this Section 8.1.9 to the extent the transaction giving rise thereto is not in violation of Section 7.4(a) or 7.17(a).

8.2. Remedies. If any Event of Default described in Section 8.1.3 shall occur, the Loan and all other Obligations shall become immediately due and payable and all outstanding Commitments shall terminate, all without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, the Agent may, and upon the written request of the Lender shall, declare all or any part of the Loan and other Obligations to be due and payable and/or all or any part of the Commitments then outstanding to be terminated, whereupon the Loan and other Obligations shall become immediately due and payable (in whole or in part, as applicable), and such Commitments shall immediately terminate (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind. The Agent shall promptly advise the Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration. Any cash collateral delivered hereunder shall be applied by the Agent to any remaining Obligations and any excess remaining after the Obligations shall have been Paid in Full shall be delivered to the Borrower or as a court of competent jurisdiction may elect. Upon the declaration of the Obligations to be, or the Obligations becoming, due and payable pursuant to this Section 8.2 such Obligations shall bear interest at the Default Rate as provided in Section 2.3.1.

Section 9. The Agent.

9.1. Appointment; Authorization.

(a) Lender hereby irrevocably appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall the Agent have or be deemed to have any fiduciary relationship with the Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent.

9.2. Delegation of Duties. The Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects with reasonable care.

9.3. Limited Liability. None of the Agent or any of its directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined in a final non-appealable judgment by a court of competent jurisdiction), or (b) be responsible in any manner to the Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. The Agent shall not be under any obligation to the Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4. Successor Agent. The Agent may resign as the Agent at any time upon 30 days' prior notice to the Lender. If the Agent resigns under this Agreement, the Lender shall, with (so long as no Event of Default exists) the consent of the Borrower (which shall not be unreasonably withheld or delayed), appoint a successor agent for the Lender. If no successor agent is appointed prior to the effective date of the resignation of the Agent, the Agent may appoint, on behalf of the Lender after consulting with the Lender and (so long as no Event of

Default exists) the Borrower, a successor agent. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "the Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as the Agent shall be terminated. After any retiring the Agent's resignation hereunder as the Agent, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Agent under this Agreement. If no successor agent has accepted appointment as the Agent by the date which is 30 days following a retiring the Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lender shall perform all of the duties of the Agent hereunder until such time as the Lender shall appoint a successor agent as provided for above.

9.5. Collateral Matters. Lender irrevocably authorizes the Agent, at its option and in its discretion, to release any Lien granted to or held by the Agent under any Collateral Document (i) when all Obligations have been Paid in Full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (it being agreed and understood that the Agent may conclusively rely without further inquiry on a certificate of an officer of the Borrower as to the sale or other disposition of property being made in compliance with this Agreement); or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by the Lender. Upon request by the Agent at any time, the Lender will confirm in writing the Agent's authority to release types or items of Collateral pursuant to this Section 9.5. The Agent shall have the right, in accordance with the Collateral Documents, to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and the Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and setoff the amount of such price against the Obligations.

Section 10. Miscellaneous.

10.1. Waiver; Amendments. No delay on the part of the Agent or the Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement, the Notes or any of the other Loan Documents (or any subordination and intercreditor agreement or other subordination provisions relating to any other Debt) shall in any event be effective unless the same shall be in writing and approved by the Agent and the Lender, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No provision of Section 9 or other provision of this Agreement affecting the Agent in its capacity as such shall be amended, modified or waived without the consent of the Agent.

10.2. Notices. All notices hereunder shall be in writing (including facsimile transmission) and shall be sent to the applicable party at its address shown on Annex I or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by facsimile or other electronic transmission shall be deemed to have been given when sent; notices sent to the Borrower by mail shall be deemed to have been given three Business Days after the date when sent by registered or certified mail, postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed

to have been given when received.

10.3. Costs; Expenses. The Borrower agrees to pay on demand (a) all reasonable out-of-pocket costs and expenses of the Agent and the Lender (including Legal Costs, but excluding Audit Costs except as provided below) after the Closing Date in connection with the administration (including perfection and protection of Collateral subsequent to the Closing Date) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith (including any proposed or actual amendment, supplement or waiver to any Loan Document), and (b) all out-of-pocket costs and expenses (including Legal Costs) incurred by the Agent and the Lender in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. In addition, the parties agree that in the event that the Agent or Lender determines pursuant to any audit of the books and records of the Borrower and its Subsidiaries conducted pursuant to Section 6.2 that the aggregate amount paid to the Lender hereunder during any period covered by such audit was less than the aggregate amount that was in fact due and payable in respect of such period and the amount of such shortfall exceeds five percent (5%) of the amount that was due and payable, then all Audit Costs in respect of such audit shall be borne by the Borrower and reimbursed to the Agent or Lender, as applicable, and in all other cases, such Audit Costs shall be borne by the Agent or Lender conducting such audit. All Obligations provided for in this Section 10.3 shall survive repayment of the Loan, cancellation of the Notes and termination of this Agreement.

10.4. Indemnification by the Borrower. In consideration of the execution and delivery of this Agreement by the Agent and the Lender and the agreement to extend the Commitments provided hereunder, the Borrower hereby agrees to indemnify, exonerate and hold the Agent, the Lender and each of the officers, directors, employees, Affiliates, controlling persons, advisors and agents of the Agent and the Lender (each a "the Lender Party") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities (including, without limitation, strict liabilities), obligations, damages, penalties, judgments, fines, disbursements, expenses and costs, including Legal Costs (collectively, the "Indemnified Liabilities"), incurred by the Lender Parties or asserted against the Lender Party by any Person (including in connection with any action, suit or proceeding brought by any Holder, the Borrower, any other Loan Party or any Lender Party) as a result of, or arising out of, or relating to the execution, delivery, performance, administration or enforcement of this Agreement or any other Loan Document, the use of proceeds of the Loans, or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of any Loan Party, except to the extent any such Indemnified Liabilities result from the applicable Lender Party's own gross negligence, willful misconduct, or material breach of any Loan Document, in each case as determined by a court of competent jurisdiction in a final, non-appealable determination. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under Applicable Law. All Obligations provided for in this Section 10.4 shall survive repayment of the Loan, cancellation of the Notes, any

foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

10.5. Marshaling; Payments Set Aside. Neither the Agent nor the Lender shall be under any obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that the Borrower makes a payment or payments to the Agent or the Lender, or the Agent or the Lender enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent or the Lender in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (a) to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred and (b) the Lender severally agrees to pay to the Agent upon demand its ratable share of the total amount so recovered from or repaid by the Agent to the extent paid to such Lender.

10.6. Nonliability of the Lender. The relationship between the Borrower on the one hand and the Lender and the Agent on the other hand shall be solely that of borrower and lender. Neither the Agent nor the Lender shall have any fiduciary responsibility to the Borrower or any other Loan Party. Neither the Agent nor the Lender undertakes any responsibility to the Borrower or any other Loan Party to review or inform (including payment of all outstanding principal), the Borrower or any other Loan Party of any matter in connection with any phase of the Borrower's or any other Loan Party's business or operations. Execution of this Agreement by the Borrower constitutes a full, complete and irrevocable release of any and all claims which the Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. Neither the Borrower, the Agent nor the Lender shall have any liability with respect to, and the Borrower, Agent and Lender each hereby waives, releases and agrees not to sue for, any special, indirect, punitive or consequential damages or liabilities.

10.7. Confidentiality. The Agent and the Lender agree to use commercially reasonable efforts (equivalent to the efforts the Agent or such Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all information provided to them by any Loan Party, except that the Agent and the Lender may disclose such information (a) to Persons employed or engaged by the Agent or such Lender or any of their Affiliates (including collateral managers of the Lender) in evaluating, approving, structuring or administering the Loan and the Commitments; (b) to any assignee or participant or potential assignee or participant that has agreed to comply with the covenant contained in this Section 10.7 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or as reasonably believed by the Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of the Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which the Agent or such Lender is a party

arising out of, under or in connection with the Loan Documents; (f) to any nationally recognized rating agency or investor of the Lender that requires access to information about the Lender's investment portfolio in connection with ratings issued or investment decisions with respect to such Lender to the extent consisting of general portfolio information that does not identify Loan Parties; (g) that ceases to be confidential through no fault of the Agent or the Lender; or (h) to a Person that is an investor or prospective investor in the Agent or any of its Affiliates to the extent such Person agrees to be bound by provisions substantially similar to the provisions of this Section 10.7.

10.8. Captions. Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

10.9. Nature of Remedies. All Obligations of the Borrower and rights of the Agent and the Lender expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by Applicable Law. No failure to exercise and no delay in exercising, on the part of the Agent or the Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.10. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by telecopy or electronic transmission of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page.

10.11. Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.12. Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and any prior arrangements made with respect to the payment by the Borrower of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of the Agent or the Lender

10.13. Successors; Assigns. This Agreement shall be binding upon the Borrower, the Lender and the Agent and their respective successors and assigns, and shall inure to the benefit of the Borrower, the Lender and the Agent and the successors and assigns of the Lender and the Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. The Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of the Agent and the Lender. With the prior written consent of the Borrower (not to be unreasonably withheld), the Lender may sell, transfer, or assign all (but not less than all) of its rights and obligations hereunder to any Person acceptable to the Lender pursuant to assignment documentation reasonably acceptable to Lender and such assignee. The Agent (acting solely for this purpose as the agent of the Borrower) shall maintain a register for the recordation of the names and addresses of the Lender and its assignees, and the amounts of principal and interest owing to any of them hereunder from time to time (the "Register"), in order to establish that the

Borrower's obligations hereunder are in registered form for purposes of Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Register shall be the only means of transfer hereunder and shall be conclusive absent manifest error, and the Borrower, Agent, the Lender and its assignees shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and the Lender at any reasonable time and from time to time upon reasonable prior notice.

10.14. Governing Law. THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

10.15. Forum Selection; Consent to Jurisdiction; Service of Process. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH LOAN PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10.16. Waiver of Jury Trial. EACH LOAN PARTY, AGENT AND LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE

FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.17. Collateral Agent. Lender hereby appoints PDL BioPharma, Inc. as its collateral agent under the Security Agreement and agrees that in so acting PDL BioPharma, Inc. will have all the rights, protections, exculpations, indemnities and other benefits provided to PDL BioPharma, Inc. under Section 9 hereof, and authorizes and directs PDL BioPharma, Inc. to take or refrain from taking any and all action that it deems necessary or advisable in fulfilling its role as Collateral Agent under the Security Agreement.

[signature pages follow]

The parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

AVINGER, INC.

By:___/s/ Matthew Ferguson_____
Name: Matthew Ferguson
Title: Co-President and Chief Financial Officer

PDL BIOPHARMA, INC.,
as the Agent and the Lender

By:_/s/ John P. McLaughlin_____
Name: John P. McLaughlin
Title: President and Chief Executive Officer

ANNEX I

Addresses

LOAN PARTIES

Address for Notices:

Avinger, Inc.
400 Chesapeake Drive
Attn: Matt Ferguson, Co-President
Telephone: 650-241-7900
Facsimile: 650-241-7901

AGENT

PDL BioPharma, Inc.,
as the Agent and the Lender

Address for Notices:
932 Southwood Boulevard
Incline Village, NV 89451
Attention: General Counsel
Telephone: (775) 832-8500
Facsimile: (775) 832-8501

Bank:
Wells Fargo Bank, N.A.
San Francisco, CA 94136

Account #:
* * *

ABA Routing #:
* * *

Swift Code:
* * *

Exhibit A - Compliance Certificate

See attached.

EXHIBIT A

COMPLIANCE CERTIFICATE

Date: _____, 201_

This Compliance Certificate (this "**Certificate**") is given by AVINGER, INC., a Delaware corporation ("**Borrower**"), pursuant to that certain Credit Agreement dated as of

April 18, 2013 (the "**Credit Agreement**"; capitalized terms used and not defined herein shall have the meaning set forth in the Credit Agreement), between Borrower and PDL BIOPHARMA, INC., as Lender and Agent ("**Agent**").

Pursuant to Section 6.1.4 of the Credit Agreement, the undersigned hereby certifies that he or she is the duly appointed, qualified, and acting chief financial officer of Borrower, and in such capacity, certifies on behalf of Borrower to Agent that:

1. The financial statements delivered with this Certificate fairly present, on a basis consistent with GAAP, the financial condition and the results of operations of Borrower and its Subsidiaries as of the dates of and for the periods covered by such financial statements as required by the Credit Agreement;

2. Such officer has reviewed the terms of the Credit Agreement and made, or caused to be made under such officer's supervision, a review in reasonable detail of the transactions and conditions of Borrower and its Subsidiaries during the accounting period covered by such financial statements; and

3. Such review has not disclosed the existence during or at the end of such accounting period, and such officer has no knowledge of, the existence, as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth on Schedule 1 hereto Schedule 1 should be prepared and attached if a Default or Event of Default has occurred., which includes a description of the nature and period of existence of such Default or Event of Default and what action Borrower has taken, is undertaking and proposes to take with respect thereto.

IN WITNESS WHEREOF, Borrower has caused this Certificate to be executed as of the date first written above.

AVINGER, INC.

By: _____
Name:
Title: Chief Financial Officer

[1] Schedule 1 should be prepared and attached if a Default or Event of Default has occurred.

Exhibit 12.1

PDL BIOPHARMA, INC.
COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES
(Unaudited)
(Amount in thousands, except for ratios)

	For the Years Ended December 31,					For the Six Months Ended June 30,
	2008	2009	2010	2011	2012	2013
Earnings:						
Income before income taxes	$ 243,334	$ 280,285	$ 150,370	$ 307,428	$ 327,133	$ 218,245
Add: fixed charges	14,285	19,430	43,578	36,153	29,097	12,081
Earnings	$ 257,619	$ 299,715	$ 193,948	$ 343,581	$ 356,230	$ 230,326
Fixed Charges:						
Interest expense[1]	$ 14,219	$ 19,357	$ 43,529	$ 36,102	$ 29,036	$ 12,051
Estimated interest portion of rent expense[2]	66	73	49	51	61	30
Fixed charges	$ 14,285	19,430	$ 43,578	$ 36,153	$ 29,097	$ 12,081
Ratio of earnings to fixed charges	18.03	15.43	4.45	9.50	12.24	19.07

[1] Interest expense includes amortization of debt discount and expenses.
[2] Represents the estimated portion of operating lease rental expense that is considered by us to be representative of interest and amortization of discount related to indebtedness.

Exhibit 31.1

CERTIFICATIONS

I, John P. McLaughlin, President and Chief Executive Officer, of PDL BioPharma, Inc., certify that:

(1) I have reviewed this Quarterly Report on Form 10-Q of PDL BioPharma, Inc.;

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

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

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

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated 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 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

Date: August 8, 2013

/s/ John P. McLaughlin

John P. McLaughlin

President and Chief Executive Officer

(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, Peter S. Garcia, Vice President and Chief Financial Officer, of PDL BioPharma, Inc., certify that:

(1) I have reviewed this Quarterly Report on Form 10-Q of PDL BioPharma, Inc.;

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

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

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

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated 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 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

Date: August 8, 2013

/s/ Peter S. Garcia

Peter S. Garcia

Vice President and Chief Financial Officer

(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION

I, John P. McLaughlin, President and Chief Executive Officer of PDL BioPharma, Inc. (the "Registrant"), hereby certify in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, based on my knowledge:

(1) the Quarterly Report on Form 10-Q for the quarter ended June 30, 2013, of the Registrant, to which this certification is attached as an exhibit (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); and

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

A signed original of this written statement required by Section 906 will be provided to the Securities and Exchange Commission or its staff upon request.

Date: August 8, 2013

/s/ John P. McLaughlin

John P. McLaughlin

President and Chief Executive Officer

(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION

I, Peter S. Garcia, Vice President and Chief Financial Officer of PDL BioPharma, Inc. (the "Registrant"), hereby certify in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, based on my knowledge:

(1) the Quarterly Report on Form 10-Q for the quarter ended June 30, 2013, of the Registrant, to which this certification is attached as an exhibit (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); and

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

A signed original of this written statement required by Section 906 will be provided to the Securities and Exchange Commission or its staff upon request.

Date: August 8, 2013

/s/ Peter S. Garcia

Peter S. Garcia

Vice President and Chief Financial Officer

(Principal Financial Officer)