

**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 March 31, 2008

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-14895

**AVI BIOPHARMA, INC.**

(Exact name of registrant as specified in its charter)

**Oregon**

(State or other jurisdiction of incorporation  
or organization)

**93-0797222**

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

**One SW Columbia Street, Suite 1105, Portland, Oregon**

(Address of principal executive offices)

**97258**

(Zip Code)

Issuer's telephone number, including area code: **503-227-0554**

Indicate by check mark whether the issuer (1) 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 is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Exchange Act Rule 12b-2).

Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

**Common Stock with \$.0001 par value**  
(Class)

**70,963,047**  
(Outstanding at May 8, 2008)

**AVI BIOPHARMA, INC.  
FORM 10-Q  
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AVI BIOPHARMA, INC.  
(A Development Stage Company)  
BALANCE SHEETS  
(unaudited)

	March 31, 2008	December 31, 2007
<b>Assets</b>		
Current Assets:		
Cash and cash equivalents	\$ 19,960,809	\$ 24,802,562
Short-term securities—available-for-sale	274,209	271,851
Accounts receivable	4,053,301	2,869,760
Other current assets	1,075,033	767,278
Total Current Assets	<u>25,363,352</u>	<u>28,711,451</u>
Property and Equipment, net of accumulated depreciation and amortization of \$12,111,844 and \$11,816,549	6,677,465	6,825,145
Patent Costs, net of accumulated amortization of \$1,766,674 and \$1,725,074	3,404,340	3,066,625
Other Assets	34,709	34,709
Total Assets	<u>\$ 35,479,866</u>	<u>\$ 38,637,930</u>
<b>Liabilities and Shareholders’ Equity</b>		
Current Liabilities:		
Accounts payable	\$ 3,367,551	\$ 3,026,072
Accrued employee compensation	1,064,891	1,171,666
Long-term debt, current portion	25,994	71,099
Warrant liability	5,849,341	4,414,657
Deferred revenue	1,596,250	737,500
Other liabilities	237,585	331,335
Total Current Liabilities	<u>12,141,612</u>	<u>9,752,329</u>
Commitments and Contingencies		
Long-term debt, non-current portion	2,098,349	2,070,704

Other long-term liabilities	453,767	433,149
<b>Shareholders' Equity:</b>		
Preferred stock, \$.0001 par value, 20,000,000 shares authorized; none issued and outstanding	—	—
Common stock, \$.0001 par value, 200,000,000 shares authorized; 70,429,110 and 64,449,094 issued and outstanding	7,043	6,445
Additional paid-in capital	262,151,126	252,732,858
Accumulated other comprehensive income	—	—
Deficit accumulated during the development stage	(241,372,031)	(226,357,555)
<b>Total Shareholders' Equity</b>	<b>20,786,138</b>	<b>26,381,748</b>
<b>Total Liabilities and Shareholders' Equity</b>	<b>\$ 35,479,866</b>	<b>\$ 38,637,930</b>

See accompanying notes to financial statements.

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AVI BIOPHARMA, INC.  
(A Development Stage Company)  
STATEMENTS OF OPERATIONS  
(unaudited)

	<u>Three months ended March 31,</u>		<u>July 22, 1980</u>
	<u>2008</u>	<u>2007</u>	<u>(Inception) to</u>
			<u>March 31, 2008</u>
Revenues from license fees, grants and research contracts	\$ 5,624,617	\$ 536,042	\$ 26,590,627
<b>Operating expenses:</b>			
Research and development	7,472,811	6,317,641	189,880,428
General and administrative	1,982,679	4,303,885	52,135,572
Acquired in-process research and development	9,916,271	—	29,461,299
	<u>19,371,761</u>	<u>10,621,526</u>	<u>271,477,299</u>
<b>Other income (loss):</b>			
Interest income, net	167,352	362,509	8,600,870
Gain (loss) on warrant liability	(1,434,684)	1,498,691	8,052,617
Realized gain on sale of short-term securities—available-for-sale	—	—	3,862,502
Write-down of short-term securities—available-for-sale	—	—	(17,001,348)
	<u>(1,267,332)</u>	<u>1,861,200</u>	<u>3,514,641</u>
<b>Net loss</b>	<b>\$ (15,014,476)</b>	<b>\$ (8,224,284)</b>	<b>\$ (241,372,031)</b>
<b>Net loss per share - basic and diluted</b>	<b>\$ (0.23)</b>	<b>\$ (0.15)</b>	
<b>Weighted average number of common shares outstanding for computing basic and diluted loss per share</b>	<b><u>65,321,986</u></b>	<b><u>53,241,730</u></b>	

See accompanying notes to financial statements.

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AVI BIOPHARMA, INC.  
(A Development Stage Company)  
STATEMENTS OF CASH FLOWS  
(unaudited)

	<u>Three months ended March 31,</u>		<u>For the Period</u>
	<u>2008</u>	<u>2007</u>	<u>July 22, 1980</u>
			<u>(Inception) to</u>
			<u>March 31, 2008</u>
<b>Cash flows from operating activities:</b>			
Net loss	\$ (15,014,476)	\$ (8,224,284)	\$ (241,372,031)
<b>Adjustments to reconcile net loss to net cash flows used in operating activities:</b>			
Depreciation and amortization	348,554	479,630	15,182,652
Loss on disposal of assets	439	53,498	374,998
Realized gain on sale of short-term securities—available-for-sale	—	—	(3,862,502)
Write-down of short-term securities—available-for-sale	—	—	17,001,348
Issuance of common stock to vendors	—	300,000	2,075,000
Compensation expense on issuance of common stock and partnership units	118,045	—	979,700
Compensation expense to non-employees on issuance of options and warrants to purchase common stock or partnership units	103,459	312,637	3,059,149
Stock-based compensation	1,278,705	2,360,770	10,879,112
Conversion of interest accrued to common stock	—	—	7,860

Acquired in-process research and development	9,916,271	—	29,461,299
(Gain) loss on warrant liability	1,434,684	(1,498,691)	(8,052,617)
(Increase) decrease in:			
Accounts receivable and other current assets	(1,408,122)	(473,488)	(5,045,160)
Other assets	—	—	(34,709)
Net increase (decrease) in accounts payable, accrued employee compensation, deferred revenue, and other liabilities	(1,203,592)	1,195,910	4,733,141
Net cash used in operating activities	(4,426,033)	(5,494,018)	(174,612,760)
<b>Cash flows from investing activities:</b>			
Purchase of property and equipment	(149,651)	(464,029)	(16,718,042)
Patent costs	(189,315)	(145,933)	(5,521,559)
Purchase of marketable securities	(2,358)	—	(112,978,571)
Sale of marketable securities	—	909,694	117,613,516
Acquisition costs	(11,375)	—	(2,388,991)
Net cash provided by (used in) investing activities	(352,699)	299,732	(19,993,647)
<b>Cash flows from financing activities:</b>			
Proceeds from sale of common stock, warrants, and partnership units, net of offering costs, and exercise of options and warrants	—	—	215,015,674
Repayments of long-term debt	(63,021)	—	(63,021)
Buyback of common stock pursuant to rescission offering	—	—	(288,795)
Withdrawal of partnership net assets	—	—	(176,642)
Issuance of convertible debt	—	—	80,000
Net cash provided by (used in) financing activities	(63,021)	—	214,567,216
Increase (decrease) in cash and cash equivalents	(4,841,753)	(5,194,286)	19,960,809
<b>Cash and cash equivalents:</b>			
Beginning of period	24,802,562	20,159,201	—
End of period	<u>\$ 19,960,809</u>	<u>\$ 14,964,915</u>	<u>\$ 19,960,809</u>

**SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING ACTIVITIES AND FINANCING ACTIVITIES:**

Short-term securities—available-for-sale received in connection with the private offering	\$	—	\$	—	\$	17,897,000
Change in unrealized loss on short-term securities—available-for-sale	\$	—	\$	(2,041)	\$	—
Issuance of common stock and warrants in satisfaction of liabilities	\$	—	\$	—	\$	545,000
Issuance of common stock for building purchase	\$	—	\$	—	\$	750,000
Assumption of long-term debt for building purchase	\$	—	\$	—	\$	2,199,792
Issuance of common stock for Ercole assets	\$	7,918,059	\$	—	\$	—
Assumption of liabilities for Ercole assets	\$	2,280,850	\$	—	\$	—

See accompanying notes to financial statements.

**AVI BIOPHARMA, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**(Unaudited)**

**Note 1. Basis of Presentation**

The financial information included herein for the three-month period ended March 31, 2008 and 2007 and the financial information as of March 31, 2008 is unaudited; however, such information reflects all adjustments consisting only of normal recurring adjustments, which, in the opinion of management, are necessary for a fair presentation of the financial position, results of operations and cash flows for the interim periods. The financial information as of December 31, 2007 is derived from AVI BioPharma, Inc.'s (the "Company's") Form 10-K. The interim financial statements should be read in conjunction with the financial statements and the notes thereto included in the Company's Form 10-K. The results of operations for the interim periods presented are not necessarily indicative of the results to be expected for the full year.

Stock-based compensation costs are generally based on the fair value calculated from the Black-Scholes option-pricing model on the date of grant for stock options and on the date of enrollment for the Plan. The fair value of stock grants is amortized as compensation expense on a straight-line basis over the vesting period of the grants. Stock options granted to employees are service-based and typically vest over four years.

The fair market values of stock options granted during the periods presented were measured on the date of grant using the Black-Scholes option-pricing model, with the following weighted average assumptions:

Three Months Ended March 31,	2008	2007
Risk-free interest rate	2.28%	4.91%
Expected dividend yield	0%	0%
Expected lives	8.3 years	8.0 years
Expected volatility	89%	90%

The risk-free interest rate is estimated using an average of treasury bill interest rates. The expected dividend yield is zero as the Company has not paid any dividends to date and does not expect to pay dividends in the future. The expected lives are estimated using expected and historical exercise behavior. The expected volatility is estimated using historical calculated volatility and considers factors such as future events or circumstances that could impact volatility.

As part of the requirements of FSAS 123R, the Company is required to estimate potential forfeiture of stock grants and adjust compensation cost recorded accordingly. The estimate of forfeitures is adjusted over the requisite service period to the extent that actual forfeitures differ, or are expected to differ, from such estimates. Changes in estimated forfeitures are recognized through a cumulative catch-up in the period of change and impact the amount of stock compensation expense to be recognized in future periods.

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A summary of the Company's stock option compensation activity with respect to the fiscal quarter ended March 31, 2008 follows:

<b>Stock Options</b>	<b>Shares</b>	<b>Weighted Average Exercise Price</b>	<b>Weighted Average Remaining Contractual Term</b>	<b>Aggregate Intrinsic Value</b>
Outstanding at January 1, 2008	6,304,453	\$ 4.60		
Granted	1,401,807	\$ 1.25		
Exercised	—	\$ —		
Canceled or expired	(509,087)	\$ 6.48		
Outstanding at March 31, 2008	<u>7,197,173</u>	<u>\$ 3.81</u>	<u>6.29</u>	<u>\$ —</u>
Vested at March 31, 2008 and expected to vest	<u>7,153,905</u>	<u>\$ 3.82</u>	<u>6.27</u>	<u>\$ —</u>
Exercisable at March 31, 2008	<u>5,033,748</u>	<u>\$ 4.37</u>	<u>5.07</u>	<u>\$ —</u>

The weighted average fair value per share of stock-based payments granted to employees during the three months ended March 31, 2008 and March 31, 2007 was \$0.99 and \$2.25, respectively. During the same periods, the total intrinsic value of stock options exercised were \$0 and \$0, and the total fair value of stock options that vested were \$877,204 and \$1,303,398, respectively.

As of March 31, 2008, there was \$3,315,423 of total unrecognized compensation cost related to nonvested share-based compensation arrangements granted under the Plan. These costs are expected to be recognized over a weighted-average period of 2.0 years.

During the first quarter of fiscal 2008, no stock options were exercised. The Company is obligated to issue shares reserved under the 2002 Equity Incentive Plan upon the exercise of stock options. The Company does not currently expect to repurchase shares from any source to satisfy its obligations under the Plan.

The following are the stock-based compensation costs recognized in the Company's statements of operations:

	<b>Three Months Ended March 31, 2008</b>	<b>Three Months Ended March 31, 2007</b>
Research and development	\$ 504,018	\$ 397,037
General and administrative	373,186	1,963,733
Total	<u>\$ 877,204</u>	<u>\$ 2,360,770</u>

The 2000 Employee Stock Purchase Plan (ESPP) provides that eligible employees may contribute, through payroll, deductions, up to 10% of their earnings toward the purchase of the Company's Common Stock at 85% of the fair market value at specific dates. On January 1, 2006, the Company adopted SFAS 123R, which requires the measurement and recognition of compensation expense for all share based payment awards made to the Company's employees and directors related to the Employee Stock Purchase Plan, based on estimated fair values.

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During the first quarter of 2008 the total compensation expense for participants in the ESPP was \$7,490 using the Black-Scholes option-pricing model with a weighted average estimated fair value per share of \$0.86, expected life of six months, risk free interest rate of 3.57%, volatility of 43.12%, and no dividend yield. During the first quarter of 2007 the total compensation expense for participants in the ESPP was \$7,849 using the Black-Scholes option-pricing model with a weighted average estimated fair value per share of \$1.26, expected life of six months, risk free interest rate of 5.17%, volatility of 70.90%, and no dividend yield. At March 31, 2008, 208,585 shares remain available for purchase through the plan and there were 86 employees eligible to participate in the plan, of which 28 were participants.

After the acquisition of Ercole Biotechnology, Inc ("Ercole"), the Company recognized severance payments to certain Ercole employees of \$401,501 in the first quarter of 2008 to be paid using the Company's common stock.

On March 27, 2007, in connection with his resignation, the Company entered into a Separation and Release Agreement with AVI's former Chairman and Chief Executive Officer. Pursuant to this agreement, he may exercise his previously granted options until the earlier of the termination date specified in the respective stock option grant agreements or March 28, 2010. This modification of these stock options in the first quarter of 2007 increased compensation costs by \$1,057,372.

The Company records the fair value of stock options granted to non-employees in exchange for services in accordance with EITF 96-18 "Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services." The fair value of the options granted is expensed when the measurement date is known. The performance for services was satisfied on the grant date for stock options granted to non-employees. The total fair value of the options granted to non-employees during the three months ended March 31, 2008 and March 31, 2007 was \$103,459 and \$312,637 which was expensed to research and development, respectively.

*Warrants.* Certain of the Company's warrants issued in connection with financing arrangements are classified as liabilities in accordance with EITF 00-19, "Accounting for derivative financial instruments indexed to, and potentially settled in, a Company's own stock." The fair market value of these warrants is recorded on the balance sheet at issuance and marked to market at each financial reporting period. The change in the fair value of the warrants is recorded in the Statement of Operations as a non-cash gain (loss) and is estimated using the Black-Scholes option-pricing model with the following weighted average assumptions:

<u>Three Months Ended March 31,</u>	<u>2008</u>	<u>2007</u>
Risk-free interest rate	1.6%-2.5%	4.4%-4.5%
Expected dividend yield	0%	0%
Expected lives	.7-4.7 years	1.7-3.1 years
Expected volatility	61.2%-77.0%	79.8%-88.9%

The risk-free interest rate is estimated using an average of treasury bill interest rates. The expected dividend yield is zero as the Company has not paid any dividends to date and does not expect to pay dividends in the future. The expected lives are based on the remaining contractual lives of the related warrants. The expected volatility is estimated using historical calculated volatility and considers factors such as future events or circumstances that could impact volatility.

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For warrants classified as permanent equity in accordance with EITF 00-19, the fair value of the warrants is recorded in shareholders' equity and no further adjustments are made.

*Commitments and Contingencies.* In the normal course of business, the Company may be named as a party to various legal claims, actions and complaints, including matters involving employment, intellectual property, effects from the use of drugs utilizing our technology, or others. It is impossible to predict with certainty whether any resulting liability would have a material adverse effect on the Company's financial position, results of operations or cash flows.

*Fair Value of Financial Instruments.* The Company measures at fair value certain financial assets and liabilities, including cash equivalents. SFAS No. 157, "Fair Value Measurements" (SFAS No. 157) specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's market assumptions. These two types of inputs have created the following fair-value hierarchy:

Level 1—Quoted prices for identical instruments in active markets;

Level 2—Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets; and

Level 3—Valuations derived from valuation techniques in which one or more significant value drivers are unobservable.

	<u>Fair Value Measurement as of March 31, 2008</u>			
	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Cash and cash equivalents	\$ 19,960,809	\$ 19,960,809	—	—
Short-term securities—available-for-sale	\$ 274,209	\$ 274,209	—	—
Total	<u>\$ 20,235,018</u>	<u>\$ 20,235,018</u>	—	—

The Company has deferred the adoption of SFAS No. 157 with respect to nonfinancial assets and liabilities in accordance with the provisions of FSP FAS 157-2, "Effective Date of FASB Statement No. 157." Items in this classification include goodwill, intangible assets, long term investments, pension obligations, and certain other items.

The carrying amounts reported in the balance sheets for cash and cash equivalents, accounts receivable, accounts payable, and other current monetary assets and liabilities approximate fair value because of the immediate or short-term maturity of these financial instruments.

*License Arrangements.* License arrangements may consist of non-refundable upfront license fees, data transfer fees, research reimbursement payments, exclusive licensed rights to patented or patent pending compounds, technology access fees, various performance or sales milestones and future product royalty payments. Some of these arrangements are multiple element arrangements.

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The Company defers recognition of non-refundable upfront fees if it has continuing performance obligations without which the technology, right, product or service conveyed in conjunction with the non-refundable fee has no utility to the licensee that is separate and independent of Company performance under the other elements of the arrangement. In addition, if the Company has continuing involvement through research and development services that are required because its know-how and expertise related to the technology is proprietary to the Company, or can only be performed by the Company, then such up-front fees are deferred and recognized over the period of continuing involvement.

Payments related to substantive, performance-based milestones in a research and development arrangement are recognized as revenue upon the achievement of the milestones as specified in the underlying agreements when they represent the culmination of the earnings process.

*Government Research Contract Revenue.* The Company recognizes revenues from federal research contracts during the period in which the related expenditures are incurred. The Company presents these revenues and related expenses at gross in the consolidated financial statements in accordance with EITF 99-19 "Reporting Revenue Gross as a Principal versus Net as an Agent."

**Income Taxes.** In July 2006, the FASB issued FASB Interpretation No. 48, “Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109” (“FIN 48”). FIN 48 clarifies the accounting for uncertainty in income taxes by prescribing the recognition threshold a tax position is required to meet before being recognized in the financial statements. It also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The provisions of FIN 48 are effective for the Company as of January 1, 2007, with cumulative effect, if any, of applying FIN 48 recorded as an adjustment to opening retained earnings in the year of adoption. The Company adopted FIN 48 on January 1, 2007, which did not have a material impact on the consolidated financial statements. See Note 7.

## **Note 2. Liquidity**

Since its inception in 1980 through March 31, 2008, the Company has incurred losses of approximately \$241 million, and is still in the development stage. The Company has not generated any material revenue from product sales to date and there can be no assurance that revenues from product sales will be achieved. Moreover, even if the Company does achieve revenues from product sales, the Company expects to incur operating losses over the next several years.

The financial statements have been prepared assuming that the Company will continue as a going concern. The Company’s ability to achieve a profitable level of operations in the future will depend in large part on completing product development of its antisense products, obtaining regulatory approvals for such products, and bringing these products to market. During the period required to develop these products, the Company will require substantial additional financing. There is no assurance that such financing will be available when needed or that the Company’s planned products will be commercially successful. The Company believes it has

sufficient cash to fund operations at least through the first quarter of 2009, inclusive of future receipts from billings on existing government contracts, as described below. For 2008, the Company expects expenditures for operations, net of government funding, including collaborative efforts and GMP facilities to be approximately \$19 to \$22 million. Expenditures for 2008 could exceed this level if the Company undertakes additional collaborative efforts. If necessary, however, the Company’s management has the ability to curtail certain expenditures because a significant amount of the Company’s costs are variable.

In December 2006, the Company announced the execution of a two-year \$28 million research contract with the Defense Threat Reduction Agency (DTRA), an agency of the United States Department of Defense (DoD). The contract is directed toward funding the Company’s development of antisense therapeutics to treat the effects of Ebola, Marburg and Junin hemorrhagic viruses, which are seen by DoD as potential biological warfare and bioterrorism agents. During the quarter ended March 31, 2008, the Company recognized \$3,945,072 in research contract revenue from this contract. Funding under this contract is expected over three years, with approximately \$24.5 million committed through the end of 2008 (including amounts received in 2007), and the remainder anticipated in the first five months of 2009.

In January 2006, the Company announced that the final version of the 2006 defense appropriations act had been approved, which included an allocation of \$11.0 million to fund the Company’s ongoing defense-related programs. Net of government administrative costs, it is anticipated that the Company will receive up to \$9.8 million under this allocation. The Company’s NeuGene<sup>®</sup> technology is expected to be used to continue developing therapeutic agents against Ebola, Marburg and dengue viruses, as well as to continue developing countermeasures for anthrax exposure and antidotes for ricin toxin. The Company has received signed contracts for all four of these projects. The Company expects that funding under these signed contracts will be completed over the next 12 months. During the quarter ended March 31, 2008, the Company recognized \$1,630,760 in research contract revenue from these contracts.

The likelihood of the long-term success of the Company must be considered in light of the expenses, difficulties and delays frequently encountered in the development and commercialization of new pharmaceutical products, competitive factors in the marketplace as well as the complex regulatory environment in which the Company operates. There can be no assurance that the Company will ever achieve significant revenues or profitable operations.

## **Note 3. Earnings Per Share**

Basic EPS is calculated using the weighted average number of common shares outstanding for the period and diluted EPS is computed using the weighted average number of common shares and dilutive common equivalent shares outstanding. Given that the Company is in a loss position, there is no difference between basic EPS and diluted EPS since the common stock equivalents would be antidilutive.

<b>Three Months Ended March 31,</b>	<b>2008</b>	<b>2007</b>
Net loss	\$ (15,014,476)	\$ (8,224,284)
Weighted average number of shares of common stock and common stock equivalents outstanding:		
Weighted average number of common shares Outstanding for computing basic earnings per share	65,321,986	53,241,730
Dilutive effect of warrants and stock options after application of the treasury stock method	*	*
Weighted average number of common shares outstanding for computing diluted earnings per share	65,321,986	53,241,730
Net loss per share - basic and diluted	\$ (0.23)	\$ (0.15)

\* Warrants and stock options to purchase 21,499,569 and 15,173,475 shares of common stock as of March 31, 2008 and 2007, respectively, were excluded from the earnings per share calculation as their effect would have been antidilutive.

## **Note 4. Comprehensive loss and securities available for sale**

Comprehensive loss includes charges or credits to equity that did not result from transactions with shareholders. The Company’s only component of “other comprehensive loss” is unrealized gain (loss) on cash equivalents and short-term securities—available-for-sale. Accordingly, such investment securities are stated on the balance sheet at their fair market value. The Company classifies its investment securities with an original maturity of three months or less from the date of purchase as cash equivalents. The Company classifies its investment securities with an original maturity of more than three months from the date of



purchase as short-term securities—available-for-sale. At March 31, 2008 and December 31, 2007, the Company’s investments in marketable securities had gross unrealized gains (losses) of \$0 and \$0, respectively. The unrealized difference between the adjusted cost and the fair market value of these securities has been reflected as a separate component of shareholders’ equity. The following table sets forth the calculation of comprehensive income for the periods indicated:

	Three Months Ended	
	March 31,	
	2008	2007
Net loss	\$ (15,014,476)	\$ (8,224,284)
Unrealized loss on marketable securities	—	(2,041)
Total comprehensive loss	<u>\$ (15,014,476)</u>	<u>\$ (8,226,325)</u>

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#### **Note 5. Acquisition of Ercole**

On March 20, 2008, the Company acquired all of the stock of Ercole Biotechnology, Inc (“Ercole”) in exchange for 5,647,016 shares of AVI common stock. The transaction included assumption of \$1.5 million in liabilities of Ercole. The AVI common stock was valued at approximately \$8.1 million. AVI also issued warrants to purchase AVI stock to settle certain outstanding warrants held in Ercole. These warrants are classified in equity. The acquisition was aimed at consolidating AVI’s position in directed alternative RNA splicing therapeutics. Ercole and the Company had been collaborating since 2006 to develop drug candidates, including AVI-4658, currently in clinical testing in the United Kingdom for the treatment of Duchenne muscular dystrophy. Ercole has other ongoing discovery research programs.

Ercole has been a development stage company since inception and does not have a product for sale. The Company is retaining a limited number of Ercole employees and plans on incorporating in-process technology of Ercole into the Company’s processes. The acquisition of Ercole did not meet the definition of a business under EITF 98-3 “*Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business.*” and, therefore, is being accounted for as an asset acquisition.

The total estimated purchase price of \$10.3 million has been allocated as follows:

Cash	\$ 54,000
A/R	\$ 76,000
Prepaid Expenses	\$ 7,000
Fixed Assets	\$ 10,000
Patents	\$ 190,000
Acquired In-Process Research and Development	\$ 9,916,000

The acquired pending patents have an expected expiration date of 2026. Acquired in-process research and development consists of other discovery research programs in areas including beta thalassemia and soluble tumor necrosis factor receptor. As these programs were in development at the time of acquisition, there were significant risks associated with completing these projects, and there were no alternative future uses for these projects, the associated value has been considered acquired in-process research and development.

#### **Note 6. Other current assets**

Amounts included in other current assets are as follows:

	March 31, 2008	December 31, 2007
Prepaid expenses	\$ 670,773	\$ 388,371
Prepaid rents	118,740	96,077
Restricted cash	285,520	282,830
Other current assets	<u>\$ 1,075,033</u>	<u>\$ 767,278</u>

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Starting in April 2006, the Company was required to pledge \$150,000 as collateral for company credit cards issued to certain employees. Starting in April 2007, the Company was required to pledge \$125,000 as collateral for payments on long-term debt. The Company classifies these amounts as restricted cash. As of March 31, 2008, restricted cash including accrued interest was \$285,520. The remaining components of other current assets include normally occurring prepaid expenses and rents.

#### **Note 7. Income Taxes**

The Company adopted the provisions of FIN 48 on January 1, 2007, which did not materially impact its consolidated financial statements. No unrecognized tax benefits were recorded as of the date of adoption. As a result of the implementation of FIN 48, the Company did not recognize any liability for unrecognized tax benefits. There are no unrecognized tax benefits included in the balance sheet that would, if recognized, affect the effective tax rate.

The Company’s policy is to recognize interest and/or penalties related to income tax matters in income tax expense. The Company had no accrual for interest or penalties on its balance sheet at March 31, 2008 and at December 31, 2007, and has not recognized interest and/or penalties in the statement of operations for the three months ended March 31, 2008.



At March 31, 2008, the Company had net deferred tax assets of approximately \$95,000,000. The deferred tax assets are primarily composed of federal and state tax net operating loss carryforwards, federal and state R&D credit carryforwards, share-based compensation expense and intangibles. Due to uncertainties surrounding its ability to generate future taxable income to realize these assets, a full valuation allowance has been established to offset its net deferred tax asset. Additionally, the Internal Revenue Code rules under Section 382 could limit the future use of its net operating loss and R&D credit carryforwards to offset future taxable income based on ownership changes and the value of the Company's stock.

## **Item 2. Management's Discussion and Analysis or Plan of Operations**

This section should be read in conjunction with the same titled section contained in our Annual Report on Form 10-K as filed with the SEC for the year ended December 31, 2007 and the "Risk Factors" contained in such report.

### **Forward-Looking Information**

The Financial Statements and Notes thereto should be read in conjunction with the following discussion. The discussion in this Form 10-Q contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Exchange Act. Forward looking statements are identified by such words as "believe," "expect," "anticipate" and words of similar import. All statements other than historical or current facts, including, without limitation, statements about our business strategy, plans and objectives of management and our future prospects, are forward-looking statements. Such forward-looking statements involve risks and uncertainties, including, but not limited to, the results of research and development efforts, the success of raising funds in the current offering or future offerings under our current shelf registration, the results of pre-clinical and clinical testing, the effect of regulation by FDA and other agencies, the impact of competitive products, product development, commercialization and technological difficulties, and other risks detailed in the Company's Securities and Exchange Commission filings, that could cause actual results to differ materially from the expected results reflected in such forward looking statements.

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### **Overview**

From our inception in 1980, we have devoted our resources primarily to fund our research and development efforts. We have been unprofitable since inception and, other than limited interest, license fees, grants and research contracts, we have had no material revenues from the sale of products or other sources, other than from government grants and research contracts, and we do not expect material revenues for the foreseeable future. We expect to continue to incur losses for the foreseeable future as we continue our research and development efforts and enter additional collaborative efforts. As of March 31, 2008, our accumulated deficit was \$241,372,031.

### **Results of Operations**

Revenues, from license fees, grants and research contracts, increased to \$5,624,617 in the first quarter of 2008 from \$536,042 in the comparable period in 2007, due to increases in research contracts revenues of \$5,105,575, partially offset by decreases in grants revenues of \$19,500.

Operating expenses increased to \$19,371,761 in the first quarter of 2008 from \$10,621,526 in the first quarter of 2007, due primarily to \$9,916,271 of acquired in-process research and development associated with the acquisition of Ercole Biotechnology, Inc ("Ercole"), as well as increases in research and development which increased to \$7,472,811 in the first quarter of 2008 from \$6,317,641 in the first quarter of 2007. These increases were partially offset by decreases in general and administrative, which decreased to \$1,982,679 in the first quarter of 2008 from \$4,303,885 in the comparable period in 2007. Research and development increased to \$7,472,811 in the first quarter of 2008 from \$6,317,641 in the first quarter of 2007. This research and development increase was due primarily to government research contract expense of approximately \$800,000, increases in compensation costs of approximately \$580,000, severance payments to certain Ercole employees of approximately \$402,000, increases in net clinical expenses of approximately \$400,000, partially offset by decreases in professional consultant costs of approximately \$425,000, decreases in chemical costs of approximately \$245,000, decreases in purchases of government contract related equipment of approximately \$225,000 and decreases in amortization of patents and leaseholds of approximately \$190,000. The general and administrative decrease was due primarily to decreases in employee costs of approximately \$2,160,000, of which approximately \$1,620,000 (including \$562,500 in cash compensation and \$1,057,372 in SFAS 123R expenses) was related to the Separation and Release Agreement with the Company's former Chief Executive Officer during the first quarter of 2007, as well as, decreases in SFAS 123R expenses of approximately \$530,000. General and administrative expenses also includes a decrease in legal expenses of approximately \$150,000. Net interest income decreased to \$167,352 in the first quarter of 2008 from \$362,509 in the first quarter of 2007 due to decreases in average cash, cash equivalents and short-term securities, as well as, decreases in average interest rates of the Company's interest earning investments. For the first quarter of 2008, the Company recognized a loss on warrant liability of \$1,434,684 compared to a gain on warrant liability in the first quarter of 2007 of \$1,498,691. The gain (loss) on warrant liability is a function of the Company's stock price and fluctuates as the market price of the Company's stock fluctuates.

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### **Liquidity and Capital Resources**

The Company does not expect any material revenues in 2008 or 2009 from its business activities, other than from potential government grants and research contracts. The Company expects that its cash requirements through 2008 will be satisfied by existing cash resources. To fund its operations beyond 2008, the Company will need to secure additional funds. Such funds could come from technology license fees, government grants and research contracts, and accessing capital markets.

In December 2006, the Company announced the execution of a two-year \$28 million research contract with the Defense Threat Reduction Agency (DTRA), an agency of the United States Department of Defense (DoD). In February 2008, the contract was extended into the first five months of 2009. The contract is directed toward funding the Company's development of antisense therapeutics to treat the effects of Ebola, Marburg and Junin hemorrhagic viruses, which are seen by DoD as potential biological warfare and bioterrorism agents. Funding under this contract is expected over three years, with approximately \$24.5 million committed through the end of 2008 (including amounts received in 2007), and the remainder anticipated in the first five months of 2009. In the first quarter of 2008, the Company recognized \$3,945,072 in research contract revenue from this contract.

In January 2006, the Company announced that the final version of the 2006 defense appropriations act had been approved, which included an allocation of \$11.0 million to fund the Company's ongoing defense-related programs. Net of government administrative costs, it is anticipated that the Company will receive up to \$9.8 million under this allocation. The Company's NEUGENE<sup>®</sup> technology is expected to be used to continue developing therapeutic agents against Ebola, Marburg and dengue viruses, as well as to continue developing countermeasures for anthrax exposure and antidotes for ricin toxin. The Company has received signed contracts for all four of these projects. The Company expects that funding under these signed contracts will be received over the next 12 months. In the first quarter of 2008, the Company recognized \$1,630,760 in research contract revenue from this contract.

The Company's cash, cash equivalents and short-term securities were \$20,235,018 at March 31, 2008, compared with \$25,074,413 at December 31, 2007. The decrease of \$4,839,395 was due primarily to \$4,426,033 used in operations and \$338,966 used for purchases of property and equipment and patent related costs. This decrease included approximately \$900,000 advanced to Ercole for its use in retiring certain of its debts prior to closing of the Ercole asset purchase.

The Company's short-term securities may include certificates of deposit, commercial paper and other highly liquid investments with original maturities in excess of 90 days at the time of purchase and less than one year from the balance sheet date. The Company classifies its investment securities as available-for-sale and, accordingly, such investment securities are stated on the balance sheet at their fair market value with unrealized gains (losses) recorded as a separate component of shareholders' equity and comprehensive income (loss).

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The Company's future expenditures and capital requirements depend on numerous factors, most of which are difficult to project beyond the short term, including without limitation, the progress of its research and development programs, the progress of its pre-clinical and clinical trials, the time and costs involved in obtaining regulatory approvals, the cost of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights, competing technological and market developments, its ability to establish collaborative arrangements and the terms of any such arrangements, and the costs associated with commercialization of its products. The Company's cash requirements are expected to continue to increase each year as the Company expands its activities and operations. There can be no assurance, however, that the Company will ever be able to generate product revenues or achieve or sustain profitability.

The Company expects to continue to incur losses as it continues its research and development activities and related regulatory work and collaborative efforts. For 2008, the Company expects expenditures for operations, net of government funding, including collaborative efforts, and GMP facilities to be approximately \$19 to \$22 million. Expenditures for 2008 could increase if the Company undertakes additional collaborative efforts. If necessary, however, the Company's management has the ability to significantly curtail certain expenditures because a significant amount of the Company's costs are variable.

### **Critical Accounting Policies and Estimates**

The discussion and analysis of the Company's financial condition and results of operations are based upon its financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosure of contingent assets and liabilities. The Company's critical accounting policies and estimates are consistent with the disclosure in the Company's Form 10-K, with the exception of FIN 48, see Note 7.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

There has been no material change in the Company's market risk exposure since the filing of our 2007 Annual Report on Form 10-K.

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### **Item 4. Controls and Procedures**

#### **Disclosure Controls and Procedures**

As of March 31, 2008, the Company carried out an evaluation, under the supervision and with the participation of its management, including its Chief Executive Officer and its Chief Financial Officer, of the effectiveness of the design and operation of its disclosure controls and procedures pursuant to Rule 13a-15(e) under the Securities Exchange Act of 1934. Based on this review of its disclosure controls and procedures, the Chief Executive Officer and the Chief Financial Officer have concluded that its disclosure controls and procedures are effective in timely alerting them to material information relating to the Company that is required to be included in our periodic SEC filings.

#### **Internal Controls and Procedures**

There were no significant changes in internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

## **PART II - OTHER INFORMATION**

**Item 1. Legal Proceedings.** None

### **Item 1A. Risk Factors.**

There has been no substantial changes in the Company's "Risk Factors" contained in our Annual Report on Form 10-K as filed with the SEC for the year ended December 31, 2007.

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

None

**Item 3 Defaults Upon Senior Securities.** None

**Item 4. Submission of Matters to a Vote of Securities Holders.** None

**Item 5. Other Information.** None

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**Item 6. Exhibits**

<u>Exhibit No</u>	<u>Exhibit Description</u>	<u>Incorporated by Reference to Filings Indicated</u>				<u>Filed Herewith</u>
		<u>Form</u>	<u>File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>	
2.1	Agreement and Plan of Merger dated March 12, 2008 by and among AVI BioPharma, Inc., EB Acquisition Corp., and Ercole Biotech, Inc. and Stockholder Representative	8-K	1-14895	2.1	3/13/08	
3.1	Third Restated Articles of Incorporation of AntiVirals Inc.	SB-2	333-20513	3.1	5/29/97	
3.2	First Restated Bylaws of AVI BioPharma, Inc.	8-K	1-14895	3.5	2/7/08	
3.3	First Amendment to Third Restated Articles of Incorporation	8-K	0-22613	3.3	9/30/98	
3.4	Amendment to Article 2 of the Company's Third Restated Articles of Incorporation	DEF 14A	1-14895	N/A	4/11/02	
10.63	Employment Agreement dated February 8, 2008 by and between AVI BioPharma, Inc. and Leslie Hudson, Ph.D.					X
31.1	Certification of the Company's Chief Executive Officer, K. Michael Forrest, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification of Chief Financial Officer, Mark M. Webber pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32	Certification of the Company's Chief Executive Officer, K. Michael Forrest, and Chief Financial Officer, Mark M. Webber, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X

Materials in the exhibit marked with a "+" have been omitted pursuant to a request for confidential treatment filed with the Securities and Exchange Commission. Omitted portions have been filed separately with the Securities and Exchange Commission.

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**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.

Date: May 12, 2008

**AVI BIOPHARMA, INC.**

By: /s/ LESLIE HUDSON, Ph.D.

Leslie Hudson, Ph.D.

Chief Executive Officer

(Principal Executive Officer)

By: /s/ MARK M. WEBBER

Mark M. Webber

Chief Financial Officer and Chief Information Officer

(Principal Financial and Accounting Officer)

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## AVI BIOPHARMA, INC.

## EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement"), made on this 8th day of February, 2008 (the "Effective Date") by and between AVI BioPharma, Inc., an Oregon corporation, with its principal office at 1 SW Columbia Street, Suite 1105, Portland, OR 97258 (the "Company"), and Leslie Hudson, Ph.D. (the "Executive").

## RECITALS:

The Company desires to hire the Executive as Chief Executive Officer, and the Executive desires to accept such position under the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the sufficiency of which the parties acknowledge, the parties hereby agree as follows:

## AGREEMENT:

## 1. Employment Term.

The term of employment (the "Term") shall commence on the Effective Date and shall continue until terminated in accordance with Section 12. This Agreement establishes an "at will" employment relationship between the Company and the Executive as such term is defined and used under Oregon law.

## 2. Duties.

(a) The Executive shall have all of the authority, duties and responsibilities commensurate with being the Chief Executive Officer of a public company of the size and nature of the Company and such other duties commensurate with his position as may be assigned to him from time to time by the Board of Directors of the Company (the "Board").

(b) The Executive shall devote substantially all of his business time to the service of the Company throughout the Term. Notwithstanding anything to the contrary herein, the Executive and the Company acknowledge and agree that (i) the Executive may hold certain offices and directorships within certain for-profit entities as set forth on Exhibit A to this Agreement, (ii) the Executive's devotion of reasonable amounts of time in such capacities, so

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long as it does not materially interfere with his performance of services hereunder, shall not conflict with the terms of this Agreement, and (iii) Exhibit A may be amended from time to time by agreement of the parties. The Executive may also be involved in charitable and professional activities and manage his personal investments so long as such activities, as determined by the Board in good faith, do not materially interfere with the Executive's duties hereunder. If the Board determines any activities described in this paragraph materially interfere with the Executive's duties, the Board shall provide written notice to the Executive and a reasonable time period for the Executive to reduce such activities to the extent necessary to reduce such interference to a level reasonably acceptable to the Board with due regard for Executive's fiduciary duties to such other organizations.

## 3. Compensation.

(a) Base Compensation. During the Term the Company shall compensate the Executive at an initial annual salary of four hundred eighty thousand dollars (\$480,000.00), payable in accordance with the Company's payroll practices in effect from time to time, and less amounts required to be withheld under applicable law and requested to be withheld by the Executive (as increased from time to time, "Base Compensation"). The Executive's Base Compensation shall be subject to review for potential increase (but not decrease) on an annual basis. Except as otherwise provided in this Agreement, the Base Compensation shall be prorated for any period of service less than a full month.

(b) Bonuses. The Executive shall be eligible for an annual bonus. The Board shall set performance objectives to achieve the bonus compensation. The payment amount will be determined in good faith by the Board based on the Executive's and the Company's performance. The bonus target shall be sixty percent (60 %) of the Base Compensation. The bonus, if any, shall be paid within two and one-half (2-1/2) months after the end of the period to which it relates.

(c) Equity Compensation. On the Effective Date, the Executive will be granted options to purchase six hundred sixty-seven thousand (667,000) shares of the Company's common stock (the "Options") under the Company's 2002 Equity Incentive Plan (the "Plan"), with an exercise price at the fair market value of the Company common stock on the Effective Date. Subject to accelerated vesting or termination as set forth herein, the Options shall vest in equal annual installments over four (4) years. In addition, on the Effective Date, the Executive shall be issued three hundred thirty-three thousand (333,000) shares of the Company's common stock (the "Restricted Stock") under the Plan. Subject to the following vesting schedule, and acceleration as provided herein, the Restricted Stock shall be subject to forfeiture upon termination of this Agreement: 100,000 shares of Restricted Stock shall become 100% vested on the Effective Date and the remaining 233,000 shares of Restricted Stock shall vest in equal annual installments over four years commencing on the Effective Date. The exercise price of the Options, the issuance price of the Restricted Stock and all other terms and conditions associated with the Options and Restricted Stock shall be determined in accordance with the Plan and grants (the forms of which are annexed hereto as Exhibits B and C). To the maximum extent possible, the Options shall be Incentive Stock Options.

## 4. Expenses.

The Company will reimburse the Executive for all expenses reasonably incurred by him in discharging his duties for the Company, conditioned upon the Executive's submission of written documentation in support of claimed reimbursement of such expenses, and consistent with the Company's expense

reimbursement policies in effect from time to time.

## 5. Benefits.

In addition to the compensation set forth above, the Executive shall be entitled to the following benefits:

(a) During the Term of this Agreement, the Company shall, at the Executive's direction, either reimburse the Executive monthly or pay on the Executive's behalf monthly the monthly premiums required to be paid by the Executive from time to time to the Pfizer healthcare provider for Pfizer retiree healthcare coverage for the Executive and the Executive's spouse.

(b) Upon execution of this Agreement, the Company shall promptly pay to the Executive's counsel up to twenty-five thousand dollars (\$25,000.00) for legal fees reasonably incurred by the Executive in connection with the negotiation of this Agreement.

(c) The Company shall pay to the Executive monthly a living allowance in the amount of four thousand five hundred dollars (\$4,500.00) per month. To the extent that these costs associated with the living allowance are not tax deductible under Section 217 of the Internal Revenue Code ("Code"), the Company agrees to provide the Executive with a Gross-Up Payment, as defined and in accordance with Section 14 of this Agreement. Only four thousand dollars (\$4,000.00) per month of this amount will be subject to the Gross-Up Payment provisions of Section 14. This living allowance shall be provided for a period of twelve (12) months beginning one month after the Effective Date. If, following a review period of approximately six (6) months after the Effective Date, the Company's Board decides to relocate the Company's headquarters to a state other than Oregon, the amount set forth in this paragraph (c) will be extended for an additional six (6) months. In addition, the Executive shall be reimbursed for one month of temporary living expenses during his transition to Portland, Oregon.

(d) The Company will provide the Executive monthly with a car allowance of one thousand dollars (\$1,000.00) per month. The Executive shall also receive a Gross-Up Payment in accordance with Section 14 of this Agreement with regard to such allowance.

(e) Within twenty-four (24) months of the Effective Date, the Company will reimburse the Executive for the reasonable and customary costs of selling a residence in Princeton, New Jersey (but not vacant home carrying costs), shipment of personal effects to Portland, Oregon or other headquarters location, and the customary closing costs associated with the purchase of a residence in Portland, Oregon or the new headquarters location. In addition, Executive and his spouse will each be entitled during 2008 to receive two round-trip economy

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fare airplane tickets for house-hunting purposes. To the extent that these costs associated with relocation are not tax deductible under Section 217 of the Code, the Company agrees to provide the Executive with a Gross-Up Payment in accordance with Section 14 of this Agreement.

(f) During the first year of employment, beginning one month after the Effective Date, the Executive shall be reimbursed for up to four (4) round trip economy plane tickets per month for travel actually incurred between Portland, Oregon and Bend, Oregon. If the Company's headquarters are relocated outside the state of Oregon during this period, this benefit shall be extended to apply to travel actually incurred between the new headquarters location and Bend, Oregon. If the headquarters are relocated outside the state of Oregon during the first year of employment, this benefit shall be extended up to eighteen (18) months beginning one month after the Effective Date.

(g) Subject to eligibility requirements, the Executive shall be entitled to participate in such benefit plans and programs as are generally available to all employees or executives as adopted by the Company from time to time, including participation in the Company's pre-tax spending account (if any), stock purchase plan (if any), disability and life insurance programs, and retirement plans (qualified and non-qualified). Without limiting the foregoing, the Company shall cover the Executive as an insured under the Company's standard directors and officers insurance policy insuring the Executive against liability arising out of the performance of his duties, and shall indemnify and hold the Executive harmless from liability arising out of his services hereunder to the fullest extent allowed under Oregon law, including but not limited to advancement of legal fees. The provisions of the prior sentence shall survive any termination of employment.

(h) The Executive shall be entitled to four (4) weeks of paid vacation each calendar year. The Executive shall also be entitled to the same standard paid holidays given by the Company to senior executives generally, all as determined from time to time by the Board. Vacation time shall accrue according to Company policy.

(i) The Executive shall be entitled to nine thousand five hundred dollars (\$9,500.00) per year for reasonable expenses incurred in connection with preparation of Executive's federal and state income tax returns and investment advice. Such amount shall be paid in March of each year during the Term, and shall be adjusted after good faith review by the Board each year to reflect reasonable increases in the preparation of the returns and investment advice.

(j) Upon the Effective Date, the Executive will be appointed to the Board and shall be renominated to the Board each time his term would otherwise expire. For the purposes of "Good Reason" being on the Board shall be part of the Executive's "position".

## 6. Confidentiality.

(a) In the course of his employment with the Company, it is anticipated that the Executive may acquire knowledge (both orally and in writing) regarding confidential affairs of the Company and confidential or proprietary information including: (i) matters of a technical nature, such as know-how, Inventions, processes, products, designs, chemicals, compounds,

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materials, drawings, concepts, formulas, trade secrets, secret processes or machines, Inventions or research projects; (ii) matters of a business nature, such as information about costs, profits and pricing policies; (iii) markets, sales, suppliers, customers, plans for future development, plans for future products, marketing plans or strategies; and (iv) other information of a similar nature which is not generally disclosed by the Company to the public, referred to collectively hereafter as "Confidential Information." "Confidential Information" shall not include information generally available to the public. The Executive agrees that during the Term of this Agreement and thereafter, other than in the good faith performance of his duties, he (1) will keep secret and retain in the

strictest confidence all Confidential Information, (2) not disclose Confidential Information to anyone except employees of the Company authorized to receive it and third parties to whom such disclosure is specifically authorized, and (3) not use any Confidential Information for any purpose other than performance of services under this Agreement without prior written permission from the Company.

(b) If the Executive is served with any subpoena or other compulsory judicial or administrative process calling for production or disclosure of Confidential Information or if the Executive is otherwise required by law or regulation to disclose Confidential Information, he may comply with it, but the Executive will immediately, and to the extent feasible, prior to production or disclosure, notify the Company and provide it with such information as may be in his possession as may be reasonably requested by the Company in order that the Company may take such action as it deems necessary to protect its interest.

(c) The provisions of this Section 6 shall survive termination of this Agreement.

#### **7. Non-competition; Non-solicitation.**

(a) The Executive agrees that for a two (2) year period from the effective date of the termination of the Executive's employment with the Company, the Executive shall not directly or indirectly engage in or have any ownership interest in, or participate in the financing, operation, management or control of, persons, firms, corporations or businesses to the extent such entity (collectively, the "Specified Entities") engages in any activity that competes with any of the Company's business activities ("Competitors") at the time of such termination; *provided however*, that there shall be no more than five (5) Specified Entities at any one time. The Company shall promptly notify the Executive of the Specified Entities after the Effective Date in writing, and at any time up to sixty (60) days prior to the effective date of any termination of the Executive's employment the Company may amend such list of Specified Entities by written notice to the Executive so long so as at no time shall it include more than five (5) Competitors. This provision shall not prohibit the Executive from owning up to five percent (5%) of any class of outstanding bonds, preferred stock or shares of common stock of any such entity (whether or not such entity is a Competitor).

(b) For a period of two (2) years following termination of employment with the Company for any reason, except with the express written consent of the Company, the Executive agrees to refrain from directly or indirectly recruiting, hiring or assisting anyone else to hire, or otherwise counseling to discontinue employment with the Company, any person then employed

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by the Company or its subsidiaries or affiliates, provided that the foregoing shall not be violated by general advertising not targeted at Company employees or by serving as a reference.

(c) In the event that the provisions of this Section 7 should ever be deemed to exceed the duration or geographic limitations or scope permitted by applicable law, then such provisions shall be reformed to the maximum time or geographic limitations or scope, as the case may be, permitted by applicable laws.

(d) The provisions of this Section 7 shall survive termination of this Agreement and the term of employment.

#### **8. Covered Work.**

(a) All rights, title and interest to any Covered Work that the Executive makes or conceives (whether alone or with others) while employed by the Company, belong to the Company. This Agreement operates as an actual assignment of all rights in Covered Work to the Company. "Covered Work" means products and Inventions that relate to the actual or anticipated business of the Company or any of its subsidiaries or affiliates, or that result from or are suggested by a task assigned to the Executive or work performed by the Executive on behalf of the Company or any of its subsidiaries or affiliates, or that were developed in whole or in part on the Company time or using the Company's equipment, supplies or facilities. "Inventions" mean ideas, improvements, designs, computer software, technologies, techniques, processes, products, chemicals, compounds, materials, concepts, drawings, authored works or discoveries, whether or not patentable or copyrightable, as well as other newly discovered or newly applied information or concepts. The foregoing does not cover any product or Invention in which the Executive had or has any right, title or interest prior to the Effective Date.

(b) The Executive shall promptly reveal all information relating to Covered Work and Confidential Information to an appropriate officer of the Company and shall cooperate with the Company, and execute such documents (prepared at Company expense) as may be necessary, in the event that the Company desires to seek copyright, patent or trademark protection thereafter relating to same.

(c) In the event that the Company requests that the Executive assist in efforts to defend any legal claims to Covered Works or Inventions, the Company agrees to reimburse the Executive for any reasonable expenses the Executive may incur in connection with such assistance. This obligation to reimburse shall survive termination of this Agreement and the term of employment.

(d) The provisions of this Section 8 shall survive termination of this Agreement and the term of employment.

#### **9. Return of Inventions, Products and Documents.**

The Executive acknowledges and agrees that all Inventions, all products of the Company and all originals and copies of records, reports, documents, lists, drawings, memoranda, notes, proposals, contracts and other documentation related to the business of the Company or

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containing any information described in this Section 9 shall be the sole and exclusive property of the Company and shall be returned to the Company immediately upon termination of the Executive's employment with the Company or upon the written request of the Company. The foregoing shall not include Executive's rolodex and other address books (whether hard copy or electronic). The Executive shall also be entitled to retain his cell phone number and the Company shall cooperate, as necessary, to transfer it to Executive upon termination.

#### **10. Injunction.**

The Executive agrees that it would be difficult to measure damages to the Company from any breach by the Executive of Sections 6, 7, 8, and/or 9 of this Agreement, and that monetary damages would be an inadequate remedy for any such breach. Accordingly, the Executive agrees that if the Executive shall breach Sections 6, 7, 8, and/or 9 of this Agreement, the Company shall be entitled, in addition to all other remedies it may have at law or in equity, to an injunction or other appropriate orders to restrain any such breach without showing or proving any actual damage sustained by the Company.

#### 11. Obligations to Others.

Except for items disclosed to the Company, the Executive represents and warrants to the Company that (i) the Executive's employment by the Company does not violate any agreement with any prior employer or other person or entity, and (ii) the Executive is not subject to any existing confidentiality or non-competition agreement or obligation, or any agreement relating to the assignment of Inventions except as has been fully disclosed in writing to the Company. The Company acknowledges that the Executive has informed it of limitations with regard to prior employers and where he is or has served as a director.

#### 12. Termination.

- (a) During the first year of employment the Executive may voluntarily terminate his employment with the Company with or without Good Reason upon giving the Company not less than ninety (90) days written notice. Thereafter, such written notice will be reduced to not less than thirty (30) days.
- (b) The Company may terminate the Executive's employment without Cause and other than in connection with a Change of Control (in both cases as defined below) upon giving the Executive thirty (30) days' written notice of termination.
- (c) The Executive's employment with the Company shall terminate upon the occurrence of any one of the following:
  - (i) The Executive's death;
  - (ii) The Executive's Disability, which is defined as the Board's determination made in good faith and after consultation with a qualified physician selected by the Board, that the Executive is incapable of performing his

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duties under this Agreement, with or without reasonable accommodation because of a physical or mental incapacity that has prevented the Executive from performing his full-time duties for a period of ninety (90) consecutive calendar days and the determination that such incapacity is likely to continue for at least another ninety (90) days. Termination under this paragraph (c) (ii) shall be effective on the date specified in the notice of termination; or

(iii) The effective date of a notice sent to the Executive terminating the Executive's employment for Cause.

(d) "Cause" means the occurrence of one or more of the following events:

- (i) The Executive's willful and repeated failure or refusal to attempt in good faith to (x) comply in any material respect with the reasonable lawful direction of the Board, or (y) to perform his duties in accordance with this Agreement after notice to the Executive of such failure or refusal;
- (ii) The Executive being indicted for, convicted of, or pleading guilty or nolo contendere to, a felony;
- (iii) The Executive engages in willful misconduct that is materially detrimental to the reputation, character or standing of the Company; or
- (iv) The Executive's willful and material breach of Sections 6, 7 and 8 in this Agreement.

No act shall be deemed detrimental if taken in good faith that such act is not adverse to the best interests of the Company.

(e) "Good Reason" means the termination by the Executive upon the occurrence of any of the below described events. The Executive must provide notice to the Company of the existence of such event within ninety (90) days of the first occurrence of such event, and the Company will have thirty (30) days to remedy the condition, in which case no Good Reason shall exist. If the Company fails to remedy the condition within such thirty (30) day period, the Executive must terminate employment within two (2) years of the first occurrence of such event. The events which constitute a Good Reason termination are:

- (i) A material reduction in the Executive's Base Compensation;
- (ii) A material reduction in the Executive's duties or responsibilities or budget authority, including without limitation requiring the Executive to report to a corporate officer rather than directly to the Board;
- (iii) Relocation of the Company's headquarter offices at which the Executive performs the substantial portion of his services to more than fifty (50) miles from its then location, other than (x) to a location, even if in excess of 50 miles from its then location, recommended in writing, or consented to, by the Executive, or (y) a relocation which results in the Company's headquarter offices being closer to the Executive's primary residence than prior to such relocation; *provided however*, that this clause (iii) shall not

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apply to the first relocation, if any, of the Company's headquarters following the Effective Date; or

- (iv) A material breach of this Agreement.



### 13. Termination Compensation.

(a) Upon the Executive's voluntary termination of employment (other than with Good Reason) or termination of the Executive's employment for Cause, the Company shall pay the Executive all Base Compensation, unpaid reimbursements, Gross-Up Payments and other unpaid expenses due through the effective date of termination and any unused vacation accrued according to the Company's policies at such times as such amounts would otherwise be due hereunder. The Executive shall not be entitled to any other compensation, including without limitation the right to receive benefits under Section 5 or any bonus relating to the year in which such termination is effective.

(b) Upon the Executive's death, the Company shall pay to the Executive's estate or such other party who shall be legally entitled thereto, all Base Compensation, earned but unpaid bonuses, unpaid reimbursements, Gross-Up Payments and other unpaid expenses due at the date of death at such times as such amounts would otherwise be due hereunder, plus a continuation of Base Compensation and benefits under Section 5 (a) and (h) at the rate set forth in this Agreement following the date of death for six (6) months following the end of the month in which the death occurs. The Executive's estate or such other party who shall be legally entitled thereto shall have six (6) months to exercise all vested stock Options.

(c) Upon the Executive's Disability (as defined above), the Company shall pay to the Executive all Base Compensation, earned but unpaid bonuses, and unpaid reimbursements, Gross-Up Payments and other unpaid expenses due at the effective date of termination because of Disability, accrued but unused vacation in accordance with Company policy at such times as such amounts would otherwise be due hereunder, plus a continuation of Base Compensation and benefits under Section 5 (a) and (h) at the rate set forth in this Agreement from such effective date of termination for six (6) months following the end of the month in which the Executive's termination for Disability occurs. Any such party who shall be legally entitled thereto shall have six (6) months to exercise vested stock Options.

(d) Upon termination of the Executive's employment by the Company without Cause or by the Executive for Good Reason where no Change of Control under Section 13(e) has occurred, the Company shall pay to the Executive (i) all Base Compensation and earned but unpaid bonuses, and unpaid reimbursements, Gross-Up Payments and other unpaid expenses due at the effective date of termination at such time as such amounts would otherwise be due hereunder and (ii) an amount equal to the sum of (x) two (2) years of Base Compensation, (y) two (2) years of bonus compensation based on the average of the past two years' bonuses actually paid or if only one year's bonus has been paid, such bonus or if no bonus has been paid, 50% of the target bonus for the current year, and (z) two (2) times the then current annual cost of the benefits under Section 5(a). The sum of the amounts set forth in (ii)(x), (y) and (z) in the preceding sentence shall be paid in equal monthly installments over a period of twenty-four (24) months from the date of termination provided that during the first six (6) months after

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termination, Executive shall be paid the lesser of (A) one fourth of such amount and (B) the permitted amount under Treasury Regulation Section 1.409A-1(b)(9)(iii) and any amounts paid under the foregoing formula prior to March 15 of the calendar year following the calendar year of termination (the "Non-Delayed Amounts"). Any other amount due during such six (6) month period shall be subject to Section 26 hereof. If termination under this Section 13(d) occurs before the second anniversary of the Effective Date, fifty percent (50%) of unvested Options and fifty percent (50%) of unvested shares of Restricted Stock shall immediately become fully vested and exercisable. If termination under this Section 13(d) occurs on or after the second anniversary of the Effective Date, all unvested Options and all shares of Restricted Stock shall immediately become fully vested and exercisable. The exercise period of all vested Options granted to the Executive pursuant to the Company's 2002 Equity Incentive Plan, or successor plan, shall be the earlier of their original expiration date or six (6) months from the effective date of termination. Executive agrees and acknowledges that if Executive chooses not to exercise vested Options within three (3) months following the date of termination, such unexercised Options become non-qualified options under applicable law.

(e) Upon termination of the Executive's employment by the Company without Cause or by the Executive for Good Reason that occurs within twelve (12) months of a Change of Control, the Company shall pay to the Executive (i) all Base Compensation, earned but unpaid bonuses, and unpaid reimbursements, Gross-Up Payments and other unpaid expenses due at the effective date of termination at such time as such amounts would otherwise be due and (ii) an amount equal to the sum of (x) two (2) years of Base Compensation, (y) two (2) times the Executive's target annual bonus at the effective time of such termination and (z) two (2) times the then current annual cost of the benefits under Section 5(a), (d), (g) and (i) plus the amount of the benefits remaining to be paid under Section 5(c). The sum of the amounts set forth in (ii)(x), (y) and (z) in the preceding sentence shall be paid in equal monthly installments over a period of twenty-four (24) months from the date of termination, provided that during the first six (6) months after termination, Executive shall be paid the lesser of (A) one fourth of such amount and (B) the Non-Delayed Amounts. Any other amount due during the six (6) month period shall be subject to Section 26 hereof. In addition, all unvested Options and all shares of Restricted Stock shall immediately become fully vested and exercisable and all such vested Options may be exercised for a period of the earlier of their original expiration date or six (6) months from the effective day of termination.

(f) As used herein, "Change of Control" shall mean a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the company within the meaning of Treasury Regulation Section 1.409A-3(k)(5), with the following modifications: (i) with respect to a change in ownership of a substantial portion of the Company's assets, a Change of Control shall mean the sale of all or substantially all the assets of the Company (as opposed to forty percent (40%) of such assets) and (ii) the criteria described in Treasury Regulation 1.409A-3(i)(5)(vi)(A) (1) shall be changed from thirty percent (30%) to fifty percent (50%).

(g) As a condition of payment of the amounts set forth in this Section 13, if requested by the Company, the Executive agrees to enter into a Separation and Release Agreement substantially in the form attached hereto as Exhibit C.

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(h) Amounts payable under this Section 13 shall be net of amounts required to be withheld under applicable law and amounts requested to be withheld by the Executive.

### 14. Gross-Up Payments.

(a) If at any time it shall be determined that:

(i) any payment or distribution by the Company to the Executive or for his benefit, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or any other plan, arrangement or otherwise (the "Compensation

Payment”) is or will be subject to an excise tax imposed by Section 4999 of the Code, as an “excess parachute payment” within the meaning of Section 280G of the Code; or

- (ii) any Compensation Payment is or will be subject to the additional twenty percent (20%) tax and interest under Section 409A(a)(1)(B) of the Code; or
- (iii) the value of the living allowance defined in Section 5(c), the vehicle allowance defined in Section 5(d), and the relocation expense reimbursement defined in Section 5(e), whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or any other plan, arrangement or otherwise (the “Reimbursement Payment”) is or will be subject to an income tax imposed because it is or will be included into the Executive’s gross income; then
- (iv) the Company shall pay the Executive an additional amount (the “Gross-Up Payments”) such that the net amount retained by the Executive: after deduction of any taxes under Sections 14(a)(i) and (ii), and any federal, state and local income and employment tax and excise tax imposed upon the Gross-Up Payments, shall be equal to the Compensation Payment less any federal, state, local income and employment tax on the Compensation Payment; and after deduction of any taxes under Sections 14(a)(iii), and any federal, state and local income and employment tax and excise tax imposed upon the Gross-Up Payments, shall be equal to the Reimbursement Payment. For purposes of determining the amount of the Gross-Up Payments, the Executive shall be deemed to pay federal income tax and employment taxes at the highest marginal rate of federal income and employment taxation in the calendar year in which the Gross-Up Payments is to be made and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Executive’s residence (or, if greater, the state and locality in which the Executive is required to file a nonresident income tax return with respect to the Compensation or Reimbursement Payment) on the date of the Compensation or Reimbursement Payment, net of the

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maximum reduction in federal income taxes that may be obtained from the deduction of such state and local taxes.

(b) All determinations to be made under this Section 14 shall be made by the Company’s independent public accountant (the “Accounting Firm”) at the Company’s sole expense. The Accounting Firm shall provide its determinations and any supporting calculations both to the Company and the Executive within thirty (30) days of the event requiring a Gross-Up Payment. Any such determination by the Accounting Firm shall be binding upon the Company and the Executive. Within five (5) days after the Accounting Firm’s determination, the Company shall pay (or cause to be paid) or distribute (or cause to be distributed) to or for the benefit of the Executive such amounts as are then due to the Executive under this Section 14.

(c) In the event that the amounts under Section 14(a) are subsequently determined by the Accounting Firm to be less than the amount taken into account at the time a Gross-Up Payment is made, the Executive shall repay to the Company, at the time that the amount of such reduction in the excise tax is finally determined, the portion of the prior Gross-Up Payment attributable to such reduction (plus the portion of the Gross-Up Payment attributable to the excise tax and federal, state and local income tax imposed on the portion of the Gross-Up Payment being repaid by the Executive if such repayment results in a reduction in excise tax or federal, state and local income tax deduction). If Executive’s obligation to provide such refund violates the prohibited loan provisions of the Sarbanes-Oxley Act, no refund shall be required.

(d) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payments. Such notification shall be given as soon as practicable but no later than fifteen (15) business days after the Executive knows of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the thirty (30) day period following the date on which the Executive gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall: (i) give the Company any information reasonably requested by the Company relating to such claim; (ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company; (iii) reasonably cooperate with the Company in good faith in order to effectively contest such claim; and (iv) permit the Company to participate in any proceedings relating to such claim. The Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any excise tax, income tax or employment tax, including interest and penalties, with respect thereto, imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions, the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim. The Company’s control of the contest shall be limited to issues with respect to which a Gross-Up Payments would be payable

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hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(e) Any and all of the fees and expenses of the Accounting Firm in performing the determinations referred to in this Section 14 shall be borne solely by the Company. In addition, in the event the Executive seeks any accounting, financial or legal services in connection with this Section 14, any and all fees and expenses by such accountants, financial advisors or counsel shall be fully reimbursed by the Company.

(f) If at any time it appears that a tax may become due and owing under this Section 14, then the Company and the Executive shall consult with each other to determine if there is a mutually agreeable method of reducing such tax.

(g) Any Gross-Up Payments made by the Company under this Section 14 shall be made by the end of the year following the year in which the Executive pays the related tax.

Unless otherwise provided herein, any notice, request, certificate or instrument required or permitted under this Agreement shall be in writing and shall be deemed "given" upon personal delivery to the party to be notified or three (3) business days after deposit with the United States Postal Service, by registered or certified mail, addressed to the party to receive notice at the address set forth above, postage prepaid. Either party may change its address by notice to the other party given in the manner set forth in this Section 15.

If to the Executive, to:

Leslie Hudson, Ph.D.  
(at the latest home address shown in the Company's records)

If to the Company, to:

AVI BioPharma, Inc.  
1 SW Columbia Street, Suite 1105  
Portland, OR 97258  
Attention: Chairman of the Board of Directors

With a copy (which shall not constitute notice) to:

Davis Wright Tremaine LLP  
1300 SW Fifth Avenue, Suite 2300  
Portland, OR 97201  
Facsimile: 503.778.5299  
Attn: Michael C. Phillips

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## 16. Entire Agreement.

This Agreement constitutes the entire agreement between the parties and contains all the agreements between them with respect to the subject matter hereof. It also supersedes any and all other agreements or contracts, either oral or written, between the parties with respect to the subject matter hereof; *provided, however*, in the event any of Sections 6, 7, 8, 9, or 10 of this Agreement is found unenforceable in any way, then the Sections 6, 7, 8, 9 or 10 shall be amended to conform with the applicable law.

## 17. Modification.

Except as otherwise specifically provided, the terms and conditions of this Agreement may be amended at any time by mutual agreement of the parties, provided that before any amendment shall be valid or effective, it shall have been reduced to writing and signed by an authorized representative of the Company and the Executive.

## 18. No Waiver.

The failure of any party hereto to exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon compliance by any other party hereto with its obligations, shall not be a waiver by such party of its right to exercise any such or other right, power or remedy or to demand compliance.

## 19. Severability.

In the event that any section or provision of this Agreement shall be held to be illegal or unenforceable, such section or provision shall be severed from this Agreement and the entire Agreement shall not fail as a result, but shall otherwise remain in full force and effect.

## 20. Assignment.

This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns, and shall be binding upon the Executive, his administrators, executors, legatees, and heirs. In that this Agreement is a personal services contract, it shall not be assigned by the Executive. The Company may assign its rights and obligations under this Agreement to a successor-in-interest to all or substantially all of its assets of the Company, provided the Company shall provide the Executive written notice of the assignee's agreement to assume the obligations of the Company hereunder (accompanied by a copy of such assumption). The Company shall not otherwise assign its rights and obligations under this Agreement without the Executive's prior written consent (which may be provided in the sole and absolute discretion of the Executive).

## 21. Dispute Resolution; Attorney Fees.

Except as otherwise provided in Section 10, the Company and the Executive agree that any dispute between the Executive and the Company shall be submitted to a mediator for

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nonbinding, confidential mediation. If the matter cannot be resolved with the aid of the mediator, the Company and the Executive mutually agree to arbitration of the dispute. The arbitration shall be in accordance with the then-current Employment Dispute Resolution Rules of the American Arbitration Association (the "AAA") before an arbitrator who is licensed to practice law in the State of the Company's then headquarters. The arbitration shall take place in or near the Company's headquarters. The Executive and the Company will share the cost of the arbitration equally, but each will bear their own costs and legal fees associated with the arbitration. However, if the arbitrator determines that the Executive has prevailed in the matter the arbitrator shall award the Executive his reasonable attorneys' fees and expenses and his portion of the costs of the arbitration, which amount shall be paid by the Company with ninety

(90) days of it being made. The Company and the Executive agree that the procedures outlined in this provision are the exclusive method of dispute resolution.

**22. Applicable Law.**

This Agreement shall be construed and enforced under and in accordance with the laws of the State of Oregon.

**23. Counterparts.**

This Agreement may be signed in two counterparts, each of which shall be deemed an original and both of which shall together constitute one agreement.

**24. Right to Change Business.**

This Agreement and any rights or privileges granted to the Executive hereunder shall not prevent the Company or any of the Company's subsidiaries from exercising its corporate powers to modify the business operations or activities of such entity.

**25. Headings.**

The headings contained in this Agreement are for the convenience of reference only and shall not define or limit the provision hereof.

**26. Section 409A.**

(a) It is the intention of the parties to this Agreement that no payment or entitlement pursuant to this Agreement will give rise to any adverse tax consequences to Executive or the Company with regard to Section 409A of the Code. This Agreement shall be interpreted to that end and consistent with that objective. The Company and the Executive shall, to the extent necessary to comply with Section 409A of the Code and permitted thereunder, agree to act reasonably and in good faith to mutually reform the provisions of this Agreement to avoid the application of the additional tax and interest under Section 409A(a)(1)(B) of the Code, provided that any such reformation shall not negatively impact the economics of the Company or the Executive hereunder. Notwithstanding any other provision herein, if Executive is a "specified employee," as defined in, and pursuant to, Treasury Regulation Section 1.409A-1(i) or any successor regulation, on the date

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of termination, no payment of any "deferred compensation", as defined under Treasury Regulation Section 1.409A or any successor regulation, shall be made to Executive during the period lasting until the earlier of six (6) months from the date of termination or upon Executive's death. If any payment to Executive is delayed pursuant to the foregoing sentence, such payment instead shall be made on the first business day following the expiration of the six (6) month period referred to in the prior sentence or, if in the case of Executive's death, promptly thereafter.

(b) Except as otherwise specifically provided in this Agreement, if any reimbursement to which the Executive is entitled under this Agreement would constitute deferred compensation subject to Section 409A of the Code, the following additional rules shall apply: (i) the reimbursable expense must have been incurred, except as otherwise expressly provided in this Agreement, during the term of this Agreement; (ii) the amount of expenses eligible for reimbursement during any calendar year will not affect the amount of expenses eligible for reimbursement in any other calendar year; (iii) the reimbursement shall be made not later than December 31 of the calendar year following the calendar year in which the expense was incurred; and (iv) the Executive's entitlement to reimbursement shall not be subject to liquidation or exchange for another benefit.

(c) With regard to any installment payment, each installment thereof shall be deemed a separate payment for purposes of Section 409A of the Code.

**[SIGNATURE PAGE FOLLOWS]**

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IN WITNESS WHEREOF, AVI BioPharma, Inc. has caused this Agreement to be signed by its duly authorized representative, and the Executive has hereunder set his name as of the date of this Agreement.

**COMPANY:**

**AVI BioPharma, Inc.**

**By:** /s/ K. Michael Forrest

K. Michael Forrest, Interim Chief Executive Officer

**EXECUTIVE:**

/s/ Leslie Hudson

Leslie Hudson, Ph.D.

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**Exhibit A**

**List of Offices and Directorships Held**

Boards of Directors of Nabi Bio Pharmaceutical

and

Hooper Holmes Inc.

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**Exhibit B**

**Form of Option Grant**

**AVI BIOPHARMA, INC.  
STOCK OPTION AGREEMENT**

Incentive Stock Option

This STOCK OPTION AGREEMENT is entered into the 8<sup>th</sup> day of February, 2008 (the "Grant Date") by and between AVI BIOPHARMA, INC., an Oregon corporation (the "Company"), and Leslie Hudson, Ph.D. (the "Optionee"), pursuant to the Company's 2002 Equity Incentive Plan (the "Plan"). The Company and the Optionee agree as follows:

1. **Option Grant.** The Company hereby grants to the Optionee on the terms and conditions of this Agreement the right and the option (the "Option") to purchase all or any part of 667,000 shares of the Company's Common Stock at a purchase price of \$1.09 per share. To the maximum extent possible, the Option is intended to be and shall be treated as an Incentive Stock Option, as defined in Section 422A of the Internal Revenue Code of 1986, as amended (the "Code"). To the extent the Option may not be treated as an Incentive Stock Option under the Code, the Option shall be treated as a non-qualified option under the Code.

2. **Terms and Conditions.** The terms and conditions of the Option are as set forth in the Plan, a copy of which is attached hereto as Exhibit A and as set forth in that certain Employment Agreement dated February 8, 2008, by and between the Company and Optionee, a copy of which is attached hereto as Exhibit B (the "Employment Agreement"). In the event of a conflict between the Plan and the Employment Agreement, the terms and conditions of the Employment Agreement shall control.

AVI BIOPHARMA, INC.

OPTIONEE

By: /s/ K. Michael Forrest

/s/ Leslie Hudson

Name: K. Michael Forrest

Leslie Hudson, Ph.D.

Title: Interim Chief Executive Officer

4575 SW Research Way  
Suite 200  
Corvallis, OR 97333

4575 SW Research Way  
Suite 200  
Corvallis, OR 97333

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**Exhibit C**

**Form of Restricted Stock Grant**

**AVI BIOPHARMA, INC.  
RESTRICTED STOCK GRANT AGREEMENT**

This Restricted Stock Grant Agreement (this "Agreement") is entered into by and between AVI BioPharma, Inc. ("Company"), and Leslie Hudson, Ph.D. ("Recipient"), effective February 8, 2008.

**RECITALS**

A. WHEREAS, Company has adopted the AVI BioPharma, Inc. 2002 Equity Incentive Plan (the "Plan"), a copy of which is attached hereto as Exhibit A, to enable it to attract and retain experienced and able directors, officers, employees and other key contributors and to provide an additional incentive to these individuals to exert their best efforts for Company and its shareholders;

B. WHEREAS, Company's Board of Directors (the "Board") has the authority under the Plan to grant restricted stock;

C. WHEREAS, in connection with that certain Employment Agreement by and between the Company and Recipient dated the date hereof (the "Employment Agreement"), a copy of which is attached hereto as Exhibit B, the Board has determined to grant restricted stock to Recipient, pursuant to the terms of the Plan and the Employment Agreement, and Recipient desires to accept the grant on those terms.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

**AGREEMENT**

1. Stock Subject to this Agreement. The stock subject to this Agreement shall be Company's common stock (the "Common Stock"), presently authorized but unissued or subsequently acquired by Company.

2. Grant of Shares. Company hereby grants to Recipient, and Recipient accepts from Company, 333,333 shares of Common Stock (the "Shares"). Recipient shall be the sole owner of the Shares, subject to the provisions of the Plan, the Employment Agreement and this Agreement, and Company shall list Recipient as a shareholder on its corporate books and records.

3. Shares Subject to Restrictions on Transfer. Unless and until the Shares have vested in the manner set forth in Section 4, the Shares may not be sold, transferred or otherwise disposed of, and will not be pledged or otherwise hypothecated. Company may instruct the

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transfer agent for its Common Stock to place a legend on the certificates representing the Shares, or otherwise note its corporate records, as to the restrictions on transfer set forth in this Agreement.

4. Terms and Conditions. The terms and conditions relating to Shares, including with respect to vesting, are set forth in the Plan and the Employment Agreement. In the event of a conflict between the Plan, this Agreement and the Employment Agreement, the terms and conditions of the Employment Agreement shall control.

5. Forfeiture. Upon forfeiture, if any, in accordance with the Employment Agreement, Recipient's unvested Shares shall automatically transfer back to Company, without payment from Company. Recipient hereby appoints the Company as Recipient's true and lawful attorney-in-fact with irrevocable power and authority in the name and on behalf of Recipient to take any action and execute all documents and instruments, including, without limitation, stock powers which may be necessary to transfer the certificate (or certificates) evidencing the unvested Shares to Company upon any forfeiture.

6. Tax Filing; Tax Withholding. In connection with receiving the Shares, Recipient may elect to file an election under section 83(b) of the Internal Revenue Code of 1986, as amended (the "Code"), which election is intended to accelerate the tax consequences of the transfer, regardless of the potential effect of the vesting schedule of Section 4 or the risk of forfeiture set forth in Section 5. The choice to file an 83(b) election is entirely at Recipient's discretion. Election under section 83(b) may be made by Recipient on the form attached hereto as Exhibit C.

RECIPIENT UNDERSTANDS THAT TO BE VALID, AN ELECTION UNDER SECTION 83(b) OF THE CODE MUST BE FILED WITH THE IRS WITHIN 30 DAYS OF THE DATE OF GRANT, A COPY OF THE ELECTION MUST BE PROVIDED TO THE COMPANY, AND A COPY OF THE ELECTION MUST BE ATTACHED TO RECIPIENT'S FEDERAL (AND POSSIBLY STATE) INCOME TAX RETURN FOR THE YEAR OF THE ELECTION. RECIPIENT ACKNOWLEDGES THAT IF HE CHOOSES TO FILE AN ELECTION UNDER SECTION 83(B) OF THE CODE, IT IS RECIPIENT'S SOLE RESPONSIBILITY, AND NOT THE COMPANY'S, TO MAKE A VALID AND TIMELY ELECTION.

7. Status as Shareholder. Except as expressly stated in this Agreement, Recipient shall have the rights and privileges of a shareholder of Company with respect to all the Shares, regardless of their vested or unvested status, including the right to vote such Shares and receive all dividends and distributions on such Shares.

8. Changes in Shares. In the event of any merger, reorganization, consolidation, recapitalization, separation, liquidation, stock dividend, split-up, Share combination, or other change in the corporate structure of Company affecting the Shares, the Shares will be increased, reduced or otherwise changed, and by virtue of any such change Recipient will, in the capacity as owner of all the Shares, including any unvested portion of the Shares, be entitled to new or additional or different shares of stock, cash or securities, in the same manner as other shareholders of Common Stock, provided that the new securities replacing the unvested Shares will be subject to all of the conditions and restrictions that were applicable to the unvested Shares

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pursuant to this Agreement. Company in its absolute discretion at any time may accelerate the vesting of all or any portion of such new or additional shares of stock, cash or securities, rights or warrants to purchase securities or shares or other securities acquired by the exercise of such rights or warrants.

9. No Employment Rights. Nothing in this Agreement will confer upon Recipient any right to continue in the employ or service of Company or affect the right of Company to terminate the employment of Recipient at any time with or without cause. All such rights are set forth in the Employment Agreement.

10. Governing Law. This Agreement shall be governed by and construed with accordance the laws of the State of Oregon.

11. Integration. This Agreement, when read in conjunction with the Plan and the Employment Agreement, contains the entire agreement and understanding of the parties with respect to the subjects discussed above, including but not limited to the topics of employment and equity ownership in Company. The parties agree that this Agreement expressly supersedes all prior agreements or understandings, written or oral, provided that if there is any disagreement between the terms of this Agreement, the Plan and the Employment Agreement, the terms of the Employment Agreement shall control.

IN WITNESS WHEREOF, the parties have signed this Agreement, effective as of the date set forth in the first paragraph of this Agreement.

**COMPANY:**

**AVI BioPharma, Inc.**

**RECIPIENT:**

**Leslie Hudson, Ph.D.**

Name: K. Michael Forrest

Its: Interim Chief Executive Officer

Date: February 8, 2008

Date: February 8, 2008

**AVI BIOPHARMA, INC.  
RESTRICTED STOCK GRANT AGREEMENT**

**EXHIBIT C**

**Election Under Internal Revenue Code Section 83(b)**

The undersigned hereby elects pursuant to §83(b) of the Internal Revenue Code with respect to the property described below and supplies the following information in accordance with the regulations promulgated thereunder:

1. The name, address and taxpayer identification number of the undersigned is:

Name:  
Address:  
SSN:

2. Description of property with respect to which the election is made:

( ) shares of common stock of AVI BioPharma, Inc. (the "Company").

3. The property was transferred during the calendar year .

4. The nature of the restrictions to which property is subject are:

Pursuant to the terms of the AVI BioPharma, Inc. 2002 Equity Incentive Plan and a corresponding Restricted Stock Grant Agreement ("Agreement") between Company and the undersigned dated as of , the Shares shall vest as follows: [ ]. To the extent that Recipient's employment with Company terminates for Cause (as defined in the Agreement) or without Good Reason (as defined in the Agreement), Recipient's unvested Shares shall be forfeited and automatically transfer back to Company, without payment from Company.

5. Fair market value of the property is \$ .

6. The amount paid for the property was \$ .

7. A copy of this statement was reported to Company.

\_\_\_\_\_  
Signature

Dated: , 200 .

Print Name

**Exhibit D  
Form of Separation and Release Agreement**

**SEPARATION AND RELEASE AGREEMENT**

THIS SEPARATION AND RELEASE AGREEMENT (the "Agreement") is between Leslie Hudson, Ph.D. (the "Executive") and AVI BioPharma, Inc. (the "Employer"), and is effective eight (8) days after the Executive signs this Agreement (the "Effective Date").

The parties agree as follows:

1. **Resignation.** The Executive resigned his position as Employer's Chief Executive Officer effective [effective date of termination] (the "Resignation Date"). The Executive has been paid his salary and other compensation due on or before the Resignation Date other than , less all lawful or required deductions either as a result of a termination.

2. **Consideration.** In consideration of the Executive's agreements hereunder, the Employer shall pay to the Executive the amounts set forth and described in that certain Employment Agreement dated effective the 8<sup>th</sup> day of February 2008 (the "Employment Agreement").



3. **Return of Company Property.** The Executive represents that he has returned all Employer property in his possession or under his control, including but not limited to keys, credit cards, files, laptop computer and any and all Company documents, which shall not include rolodex or address books (whether in hard copy or electronic) or cell phone number.

4. **Release.**

4.1 In exchange for the consideration paid to the Executive as set forth in this Agreement, the Executive forever releases and discharges the Employer, any of the Employer-sponsored employee benefit plans in which the Executive participates, or was participating in, (collectively the "Plans") and all of their respective officers, members, managers, partners, directors, trustees, agents, employees, and all of their successors and assigns (in such capacities collectively the "Releasees") from any and all claims, actions, causes of action, rights, or damages, including costs and attorneys' fees (collectively the "Claims") which the Executive may have arising out of his employment (including Claims that may arise out of the Executive's employment agreement), on behalf of himself, known, unknown, or later discovered which arose prior to the date the Executive signs this Agreement. This release includes but is not limited to, any Claims under any local, state, or federal laws prohibiting discrimination in employment, including without limitation the federal civil rights acts, Oregon Revised Statutes Chapter 659A, the Americans with Disabilities Act, the Age Discrimination in Employment Act, or Claims under the Employee Retirement Income Security Act, or Claims alleging any legal restriction on the Employer's right to terminate its employees, any Claims the Executive has relating to his rights to or against any of the Plans, or personal injury Claims, including without limitation wrongful discharge, breach of contract, defamation, tortious interference with business expectancy, constructive discharge, or infliction of emotional distress. The Executive represents that he has not filed any Claim against the Employer or its Releasees, he has no knowledge of any facts that would support any Claim by

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the Executive against the Employer or by a third party against the Employer, and that he will file a Claim at any time in the future concerning Claims released in this Agreement; provided, however, that this will not limit the Executive from filing a Claim to enforce the terms of this Agreement or the Employment Agreement. This release does not cover your rights of indemnification, to be held harmless, to contribution or to directors and officers insurance coverage or with regard to vested benefits or equity.

4.2 In consideration of the promises of the Executive as set forth herein and subject to any claims surviving the termination of the Employment Agreement, the Employer does hereby, and for its successors and assigns, release, acquit and forever discharge the Executive from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts, and demands (including attorneys' fees and costs actually incurred), of whatever character in law or in equity known or unknown, suspected or unsuspected, from the beginning of time to the date of execution hereof.

5. **Non-disparagement.** The Executive and the Employer each agree for three (3) years not to make disparaging statements about each other, except in the case of statements that are required under applicable federal or state securities laws or applicable rules and regulations of any exchange on which the Employer's stock is traded, to comply with legal process, normal competitive type statements or to rebut statements of the other.

6. **Consideration and Revocation Periods.** The Executive understands and acknowledges the significance and consequences of this Agreement, that it is voluntary, that it has not been given as a result of any coercion, and expressly confirms that it is to be given full force and effect according to all of its terms, including those relating to unknown Claims. The Executive was hereby advised of his right to seek the advice of an attorney prior to signing this Agreement. The Executive acknowledges that he has signed this Agreement only after full reflection and analysis. Although he is free to sign this Agreement before then, the Executive acknowledges he was given at least 21 days after receipt of this document in which to consider it (the "Consideration Period"). If the Executive executes this Agreement prior to the end of the Consideration Period, the Executive hereby waives any rights associated therewith. The Executive may revoke this Agreement seven (7) days after signing it and forfeit all benefits described in Section 2 of this Agreement. The Executive and the Employer agree that any changes made to this Agreement during the Consideration Period as a result of negotiations between the parties do not restart the running of the Consideration Period.

7. **No Liability.** This Agreement shall not be construed as an admission by either party that it acted wrongfully with respect to the other.

8. **Severability.** If any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions will nevertheless continue to be valid and enforceable.

9. **Entire Agreement.** This Agreement represents and contains the entire understanding between the parties in connection with its subject matter. All other prior written or oral agreements or understandings are merged into and superseded by this Agreement. The Executive acknowledges that in signing this Agreement, he has not relied upon any representation or statement not set forth in this Agreement made by the Employer or any of its representatives.

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10. **Arbitration and Attorney Fees.** Section 21 of the Employment Agreement shall govern any disputes with regard to this Agreement.

11. **Choice of Law.** This Agreement is made and shall be construed and performed under the laws of the State of Oregon.

**PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES A RELEASE OF CERTAIN KNOWN OR UNKNOWN CLAIMS.**

DATED this    day of    , 200X.

DATED this    day of    , 200X.

AVI BioPharma, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Leslie Hudson, Ph.D.

**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Leslie Hudson, Ph.D., certify that:

1. I have reviewed this quarterly report on Form 10-Q of AVI BioPharma, Inc. (the "Registrant");
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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15 (f) and 15d-15 (f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared; and
  - (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; and
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 12, 2008

By:

/s/ Leslie Hudson, Ph.D.

**Leslie Hudson, Ph.D.**

**Chief Executive Officer and Director  
(Principal Executive Officer)**

**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark M. Webber, certify that:

1. I have reviewed this quarterly report on Form 10-Q of AVI BioPharma, Inc. (the "Registrant");
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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15 (f) and 15d-15 (f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared; and
  - (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; and
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 12, 2008

By:

/s/ Mark M. Webber

**Mark M. Webber**

**Chief Financial Officer and Chief Information  
Officer**

**(Principal Financial and Accounting Officer)**

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

In connection with the Quarterly Report of AVI BioPharma, Inc. (the "Company") on Form 10-Q for the period ended March 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Leslie Hudson, Ph.D., as Chief Executive Officer of the Company, and Mark M. Webber, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge,:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Leslie Hudson, Ph.D.

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Leslie Hudson, Ph.D.  
Chief Executive Officer and Director  
AVI BioPharma, Inc.  
May 12, 2008

/s/ Mark M. Webber

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Mark M. Webber  
Chief Financial Officer and Chief Information Officer  
AVI BioPharma, Inc.  
May 12, 2008

This certification accompanies the Report pursuant to § 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of §18 of the Securities Exchange Act of 1934, as amended.

See also the certification pursuant to Sec. 302 of the Sarbanes-Oxley Act of 2002, which is also attached to this Report.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to AVI BioPharma, Inc. and will be retained by AVI BioPharma, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

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