
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 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)

71,161,072
(Outstanding at November 7, 2008)

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AVI BIOPHARMA, INC.
(A Development Stage Company)
BALANCE SHEETS
(UNAUDITED)

	September 30, 2008	December 31, 2007
Assets		
Current Assets:		
Cash and cash equivalents	\$ 14,081,213	\$ 24,802,562
Short-term securities—available-for-sale	279,528	271,851
Accounts receivable	4,076,586	2,869,760
Other current assets	1,222,654	767,278
Total Current Assets	19,659,981	28,711,451
Property and Equipment, net of accumulated depreciation and amortization of \$12,630,586 and \$11,816,549	6,277,736	6,825,145
Patent Costs, net of accumulated amortization of \$1,858,214 and \$1,725,074	3,542,520	3,066,625
Other Assets	34,709	34,709
Total Assets	\$ 29,514,946	\$ 38,637,930
Liabilities and Shareholders’ Equity		
Current Liabilities:		
Accounts payable	\$ 3,258,153	\$ 3,026,072
Accrued employee compensation	1,684,540	1,171,666
Long-term debt, current portion	73,672	71,099
Warrant liability	2,970,857	4,414,657
Deferred revenue	2,243,750	737,500
Other liabilities	435,086	331,335
Total Current Liabilities	10,666,058	9,752,329

Commitments and Contingencies

Long-term debt, non-current portion	2,015,124	2,070,704
Other long-term liabilities	495,002	433,149
Shareholders' Equity:		
Preferred stock, \$.0001 par value, 20,000,000 shares authorized; none issued and outstanding	—	—
Common stock, \$.0001 par value, 200,000,000 shares authorized; 71,161,072 and 64,449,094 issued and outstanding	7,116	6,445
Additional paid-in capital	265,501,292	252,732,858
Deficit accumulated during the development stage	(249,169,646)	(226,357,555)
Total Shareholders' Equity	16,338,762	26,381,748
Total Liabilities and Shareholders' Equity	<u>\$ 29,514,946</u>	<u>\$ 38,637,930</u>

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 September 30,</u>		<u>Nine months ended September 30,</u>		<u>July 22, 1980</u>
	<u>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>	<u>(inception) through</u>
					<u>September 30, 2008</u>
Revenues from license fees, grants and research contracts	\$ 5,170,663	\$ 2,911,406	\$ 15,778,243	\$ 5,798,872	\$ 36,744,253
Operating expenses:					
Research and development	7,934,886	9,880,480	23,572,395	25,358,937	205,980,012
General and administrative	3,173,942	1,544,512	6,853,417	7,879,193	57,006,310
Acquired in-process research and development	—	—	9,916,271	—	29,461,299
	<u>11,108,828</u>	<u>11,424,992</u>	<u>40,342,083</u>	<u>33,238,130</u>	<u>292,447,621</u>
Other income (loss):					
Interest income, net	60,147	182,320	307,949	848,397	8,741,467
Gain (loss) on warrant liability	(168,975)	1,296,322	1,443,800	3,550,330	10,931,101
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>(108,828)</u>	<u>1,478,642</u>	<u>1,751,749</u>	<u>4,398,727</u>	<u>6,533,722</u>
Net loss	<u>\$ (6,046,993)</u>	<u>\$ (7,034,944)</u>	<u>\$ (22,812,091)</u>	<u>\$ (23,040,531)</u>	<u>\$ (249,169,646)</u>
Net loss per share - basic and diluted	<u>\$ (0.08)</u>	<u>\$ (0.13)</u>	<u>\$ (0.33)</u>	<u>\$ (0.43)</u>	
Weighted average number of common shares outstanding for computing basic and diluted loss per share	<u>71,150,972</u>	<u>53,693,693</u>	<u>69,160,118</u>	<u>53,500,250</u>	

See accompanying notes to financial statements

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

	<u>Nine months ended September 30,</u>		<u>For the Period</u>
	<u>2008</u>	<u>2007</u>	<u>July 22, 1980</u>
			<u>(Inception) to</u>
			<u>September 30, 2008</u>
Cash flows from operating activities:			
Net loss	\$ (22,812,091)	\$ (23,040,531)	\$ (249,169,646)
Adjustments to reconcile net loss to net cash flows used in operating activities:			
Depreciation and amortization	1,043,428	1,506,768	15,877,526

Loss on disposal of assets	10,797	58,584	385,356
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 and warrants to vendors	687,833	700,000	2,762,833
Compensation expense on issuance of common stock and partnership units	149,878	—	1,011,533
Compensation expense to non-employees on issuance of options and warrants to purchase common stock or partnership units	179,687	312,637	3,135,377
Stock-based compensation	3,103,180	3,933,926	12,703,587
Conversion of interest accrued to common stock		—	7,860
Acquired in-process research and development	9,916,271	—	29,461,299
Gain on warrant liability	(1,443,800)	(3,550,330)	(10,931,101)
Decrease (increase) in:			
Accounts receivable and other current assets	(1,181,175)	(1,916,573)	(4,818,213)
Other assets	(235,009)	—	(269,718)
Net increase (decrease) in accounts payable, accrued employee compensation, deferred revenue, and other liabilities	716,403	4,646,244	6,653,136
Net cash used in operating activities	(9,864,598)	(17,349,275)	(180,051,325)
Cash flows from investing activities:			
Purchase of property and equipment	(363,614)	(1,151,800)	(16,932,005)
Patent costs	(419,035)	(651,649)	(5,751,279)
Purchase of marketable securities	(7,677)	(110,417)	(112,983,890)
Sale of marketable securities		2,896,443	117,613,516
Acquisition costs	(11,375)	—	(2,388,991)
Net cash (used in) provided by investing activities	(801,701)	982,577	(20,442,649)
Cash flows from financing activities:			
Proceeds from sale of common stock, warrants, and partnership units, net of offering costs, and exercise of options and warrants	43,518	68,769	215,059,192
Repayments of long-term debt	(98,568)		(98,568)
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 financing activities	(55,050)	68,769	214,575,187
(Decrease) increase in cash and cash equivalents	(10,721,349)	(16,297,929)	14,081,213
Cash and cash equivalents:			
Beginning of period	24,802,562	20,159,201	—
End of period	<u>\$ 14,081,213</u>	<u>\$ 3,861,272</u>	<u>\$ 14,081,213</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 gain (loss) on short-term securities—available-for-sale	\$	—	\$	(18,418)	\$	—
Issuance of common stock and warrants in satisfaction of liabilities	\$	—	\$	—	\$	545,000
Issuance of common stock for building purchase	\$	—	\$	750,000	\$	750,000
Assumption of long-term debt for building purchase	\$	—	\$	2,199,792	\$	2,199,792
Issuance of common stock for Ercole assets	\$	8,075,233	\$	—	\$	—
Assumption of liabilities for Ercole assets	\$	2,124,274	\$	—	\$	—

See accompanying notes to financial statements

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

Note 1. Basis of Presentation

The financial information included herein for the three and nine-month periods ended September 30, 2008 and 2007 and the financial information as of September 30, 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 recognized 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 assumptions:

Three and Nine Months Ended September 30,	2008	2007
Risk-free interest rate	1.9%-4.4%	4.5%-5.1%
Expected dividend yield	0%	0%
Expected lives	3.6-9.1 years	3.7-8.7 years
Expected volatility	81.0%-90.7%	84.1%-90.6%

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.

As part of the requirements of SFAS 123R, the Company is required to estimate potential forfeiture of stock grants and adjust compensation cost recorded accordingly. The estimate of forfeitures will be 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 will be recognized through a cumulative catch-up in the period of change and will also 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 nine months ended September 30, 2008 is as follows:

Stock Options	Shares	Weighted Average Exercisable Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding at January 1, 2008	6,304,453	\$ 4.60		
Granted	2,741,007	\$ 1.27		
Exercised	(6,761)	\$ 1.31		
Canceled or expired	(898,636)	\$ 5.09		
Outstanding at September 30, 2008	<u>8,140,063</u>	<u>\$ 3.42</u>	<u>6.14</u>	<u>\$ —</u>
Vested at September 30, 2008 and expected to vest	<u>8,080,095</u>	<u>\$ 3.44</u>	<u>6.11</u>	<u>\$ —</u>
Exercisable at September 30, 2008	<u>5,141,665</u>	<u>\$ 4.29</u>	<u>4.12</u>	<u>\$ —</u>

The weighted average fair value per share of stock-based payments granted to employees during the nine months ended September 30, 2008 and September 30, 2007 was \$1.04 and \$2.26, respectively. During the same periods, the total intrinsic value of stock options exercised were \$1,831 and \$4,937, and the total fair value of stock options that vested were \$2,486,455 and \$2,876,554, respectively.

As of September 30, 2008, there was \$3,022,123 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.

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

	Three Months Ended September 30, 2008	Nine Months Ended September 30, 2008
Research and development	\$ 342,246	\$ 1,232,762
General and administrative	660,597	1,253,693
Total	<u>\$ 1,002,843</u>	<u>\$ 2,486,455</u>
	Three Months Ended September 30, 2007	Nine Months Ended September 30, 2007
Research and development	\$ 497,002	\$ 1,381,687
General and administrative	282,088	1,494,867
Total	<u>\$ 779,090</u>	<u>\$ 2,876,554</u>

The 2000 Employee Stock Purchase Plan (ESPP) provides that eligible employees may contribute, through payroll, deductions of 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

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compensation expense for all share-based payment awards made to the Company's employees and directors related to the ESPP, based on estimated fair values. During the three and nine-month periods ended September 30, 2008 and 2007, the total compensation expense for participants in the ESPP was immaterial.

After the acquisition of Ercole Biotechnology, Inc. ("Ercole") in March 2008, the Company recognized severance payments to certain Ercole employees of \$616,725 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 increased compensation costs by \$1,057,372 for the nine months ended September 30, 2007.

In the first quarter of 2008, the Company granted 333,000 shares of restricted stock to its new Chief Executive Officer. These shares vest over a period of four years. During the three and nine-month periods ended September 30, 2008, the Company recognized compensation expense related to these shares of \$16,003 and \$149,878, respectively.

On September 18, 2008, the Company's President and Chief Operating Officer resigned. In accordance with his existing employment 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 18, 2010. This acceleration of the vesting of these stock options resulted in additional compensation costs of \$382,419 for the three and nine-month periods ended September 30, 2008.

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 with no performance or market conditions is expensed when the measurement date is known.

In the third quarter of 2008, the Company granted options to purchase 100,000 shares to a non-employee. Of these options, 20,000 vested immediately and were expensed as of the grant date, 60,000 had market conditions and 20,000 had performance conditions. Of the 60,000 options with market conditions, the criteria with respect to 40,000 were not met, and such options were canceled during the quarter; the fair value of the remaining 20,000 options with market conditions was not material. Of the 20,000 options with performance conditions, the performance conditions were not considered probable as of September 30, 2008, and therefore no expense was recognized during the period.

For the nine months ended September 30, 2008 and 2007, the Company recognized \$179,687 and \$312,637, respectively, in research and development expenses for options granted to non-employees.

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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 assumptions:

Three and Nine Months Ended September 30,	2008	2007
Risk-free interest rate	0.9%-3.0%	3.9%-4.0%
Expected dividend yield	0%	0%
Expected lives	0.2-4.2 years	1.2-2.6 years
Expected volatility	63.6%-78.5%	57.6%-71.2%
Market value of stock at beginning of year	\$1.41	\$3.18
Market value of stock at end of period	\$1.21	\$2.55

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.

A summary of the Company's warrant activity with respect to the nine months ended September 30, 2008 is as follows:

Warrants	Shares	Weighted Average Exercisable Price	Weighted Average Remaining Contractual Term
Outstanding at January 1, 2008	13,856,411	\$ 8.12	
Granted	445,985	\$ 1.77	
Canceled or expired	(2,565,000)	\$ 7.00	
Outstanding at September 30, 2008	<u>11,737,396</u>	\$ 8.12	<u>2.66</u>

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.

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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.

	Fair Value Measurement as of September 30, 2008			
	Total	Level 1	Level 2	Level 3
Cash and cash equivalents	\$ 14,081,213	\$ 14,081,213	—	—
Short-term securities—available-for-sale	279,528	279,528	—	—
Warrants classified as liabilities	2,970,857	—	—	\$ 2,970,857
Total	\$ 17,331,598	\$ 14,360,741	—	\$ 2,970,857

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 intangible assets 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.

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, “*The Fair Value Option for Financial Assets and Financial Liabilities – including an amendment of FASB Statement No. 115*” (Statement 159). Statement 159 gives the Company the irrevocable option to carry most financial assets and liabilities at fair value that are not currently required to be measured at fair value. If the fair value option is elected, changes in fair value would be recorded in earnings at each subsequent reporting date. SFAS 159 is effective for the Company’s 2008 fiscal year. The Company is currently evaluating the impact the adoption of this statement could have on its financial condition, results of operations and cash flows.

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

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sales milestones and future product royalty payments. Some of these arrangements are multiple element arrangements.

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 the Company’s 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 upfront 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 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 the 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 9.

Note 2. Liquidity

Since its inception in 1980 through September 30, 2008, the Company has incurred losses of approximately \$249 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

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Company’s planned products will be commercially successful. The Company believes it has adequate cash for the next twelve months, subject to its ability to secure additional government awards, collaboration agreements, or capital in the equity markets. For 2008, the Company expects expenditures for operations,

net of government funding, including collaborative efforts and GMP facilities to be approximately \$14 to \$16 million. Expenditures for 2008 could exceed this level if the Company undertakes additional collaborative efforts.

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. The Company recognized \$4,924,791 and \$13,555,621 in research contract revenues from this contract in the third quarter and first nine months of 2008, respectively, and has recognized \$21,574,010 in total revenues to date 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). The Company has requested a no-cost extension of this contract, which the Company expects to be granted, the result of which is that the Company anticipates receiving the remaining \$3.5 million during 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[®] 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 three and nine months ended September 30, 2008, the Company recognized \$193,391 and \$2,100,106, respectively, in research contract revenue from these contracts. As of September 30, 2008, approximately \$5.0 million in additional funding remains available under 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. Recent Accounting Pronouncements

In June 2008, the FASB ratified EITF Issue No. 07-5, "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock" ("EITF 07-5"). Equity-linked instruments (or embedded features) that otherwise meet the definition of a derivative as outlined in SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," are not accounted for as derivatives if certain criteria are met, one of which is that the instrument (or embedded feature) must be indexed to the entity's stock. EITF 07-5 provides guidance on

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determining if equity-linked instruments (or embedded features) such as warrants to purchase our stock, our convertible notes and convertible note hedges are considered indexed to our stock. EITF 07-5 is effective for the financial statements issued for fiscal years and interim periods within those fiscal years, beginning after December 15, 2008 and will be applied to outstanding instruments as of the beginning of the fiscal year in which it is adopted. Upon adoption, a cumulative effect adjustment will be recorded, if necessary, based on amounts that would have been recognized if this guidance had been applied from the issuance date of the affected instruments. The Company is currently determining the impact, if any, that EITF 07-05 will have on its financial statements.

In December 2007, the FASB issued SFAS No. 141(R), "Business Combinations" ("SFAS 141(R)") and SFAS No. 160, "Accounting and Reporting of Noncontrolling Interests in Consolidated Financial Statements — an amendment of ARB No. 51" ("SFAS 160"). These standards will significantly change the accounting and reporting for business combination transactions and noncontrolling (minority) interests in consolidated financial statements, including capitalizing at the acquisition date the fair value of acquired in-process research and development ("IPR&D"), and testing for impairment and writing down these assets, if necessary, in subsequent periods during their development. These new standards will be applied prospectively for business combinations that occur on or after January 1, 2009, except that presentation and disclosure requirements of SFAS 160 regarding noncontrolling interests shall be applied retrospectively.

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Note 4. 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.

The Company's basic and diluted EPS were as follows for the periods indicated:

Three Months Ended September 30,	2008	2007
Net loss	\$ (6,046,993)	\$ (7,034,944)
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	71,150,972	53,693,693
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	71,150,972	53,693,693
Net loss per share - basic and diluted	<u>\$ (0.08)</u>	<u>\$ (0.13)</u>
Nine Months Ended September 30,	2008	2007

Net loss	\$	(22,812,091)	\$	(23,040,531)
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		69,160,118		53,500,250
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		69,160,118		53,500,250
Net loss per share - basic and diluted	\$	(0.33)	\$	(0.43)

* Warrants and stock options to purchase 19,877,459 and 14,807,629 shares of common stock as of September 30, 2008 and 2007, respectively, were excluded from the earnings per share calculation as their effect would have been antidilutive.

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Note 5. 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. Any unrealized difference between the adjusted cost and the fair market value of these securities is reflected as a separate component of shareholders' equity. At September 30, 2008 and December 31, 2007, there were no unrealized gains on the Company's investments in marketable securities. The following table sets forth the calculation of comprehensive loss for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Net loss	\$ (6,046,993)	\$ (7,034,944)	\$ (22,812,091)	\$ (23,040,531)
Unrealized loss on marketable securities	—	—	—	(18,418)
Total comprehensive loss	\$ (6,046,993)	\$ (7,034,944)	\$ (22,812,091)	\$ (23,058,949)

Note 6. 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 the 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, which were valued at \$0.4 million. 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.

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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 pending patents acquired as part of the Ercole acquisition 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 7. Other current assets

Amounts included in other current assets are as follows:

September 30, 2008

December 31, 2007

Prepaid expenses	\$	828,340	\$	388,371
Prepaid rents		113,254		96,077
Restricted cash		281,060		282,830
Other current assets	\$	1,222,654	\$	767,278

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 September 30, 2008, restricted cash, including accrued interest, was \$281,060. The remaining components of other current assets include normally occurring prepaid expenses and rents.

Note 8. Deferred Revenue

At September 30, 2008, the Company had deferred revenue of \$2,243,750, which represents up-front fees received from third parties pursuant to certain contractual arrangements. The Company will recognize the revenue from these contracts upon the achievement of certain performance milestones, as specified in the agreements.

Note 9. 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

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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 September 30, 2008 and at December 31, 2007, and has not recognized interest or penalties in the statement of operations for the nine months ended September 30, 2008.

At September 30, 2008, the Company had net deferred tax assets of approximately \$95 million. 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 assets. 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.

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, have had no material revenues from the sale of products or other sources, and 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 into additional collaborative efforts. As of September 30, 2008, the Company's accumulated deficit was \$249,169,646.

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Results of Operations

Revenues, from license fees, grants and research contracts, increased to \$5,170,663 in the third quarter of 2008 from \$2,911,406 in the third quarter of 2007, primarily due to increases in research contract revenues of \$2,270,078, partially offset by a decrease in grant revenues of \$10,821. For the nine months ended September 30, 2008, revenues, from license fees, grants and research contracts, increased to \$15,778,243 from \$5,798,872 for the comparable period in 2007, due to increases in research contract revenues of \$10,012,002, partially offset by a decrease in grant revenues of \$35,132.

Operating expenses decreased to \$11,108,828 in the third quarter of 2008 from \$11,424,992 in the third quarter of 2007. This decrease was due to a decline in research and development, which decreased to \$7,934,886 in the third quarter of 2008 from \$9,880,480 in the third quarter of 2007, partially offset by an increase in general and administrative to \$3,173,942, compared with \$1,544,512 for the third quarter of 2007.

The decrease in research and development in the third quarter of 2008 was due primarily to decreases of approximately \$2,876,000 in contracting costs for the production of GMP subunits, which are used by the Company to manufacture compounds for future clinical trials, decreases in the purchases of equipment for government research contracts of approximately \$323,000, and decreases in amortization of leaseholds of approximately \$136,000, partially offset by increases in net clinical expenses of approximately \$1,379,000 and government research contract expenses of approximately \$180,000. The increase in general and administrative costs was primarily due to a \$1,380,000 increase in employee compensation in the third quarter of 2008 as compared with the third quarter of 2007. This increase in compensation was due to a number of factors, including \$630,000 of severance for the Company's former President and Chief Operating Officer, who resigned during the quarter; an increase in stock-based compensation of approximately \$400,000, primarily due to the acceleration of the vesting of the former President and Chief Operating Officer's stock options; and approximately \$195,000 in relocation expenses paid on behalf of certain executive officers. The increase in general and administrative costs for the quarter also reflects an increase in accounting and auditing expenses of \$189,000 and an increase in corporate travel of \$102,000.

For the nine months ended September 30, 2008, operating expenses increased to \$40,342,083 from \$33,238,130 for the comparable period of 2007. This increase was due to \$9,916,271 of acquired in-process research and development associated with the acquisition of Ercole Biotechnology, Inc. ("Ercole"), partially offset by a decrease in research and development to \$23,572,395 from \$25,358,937 for the first nine months of 2007 and a decrease in general and administrative to \$6,853,417 from \$7,879,193 for the comparable 2007 period.

The decrease in research and development expenses for the nine months ended September 30, 2008 was due primarily to decreases in contracting costs for the production of GMP subunits of approximately \$3,176,000, a decrease in government research contract expenses of approximately \$770,000, a decrease in amortization of leaseholds of approximately

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\$409,000, a decrease in chemical costs of approximately \$312,000, a decrease in the purchases of equipment for government research contracts of approximately \$261,000 and a decrease of \$100,000 in amortization of patent costs. These amounts were partially offset by an increase in net clinical expenses of approximately \$1,949,000, an increase in compensation costs of approximately \$715,000 and an increase in professional consultants of approximately \$576,000. The decrease in general and administrative expenses for the nine months ended September 30, 2008 was due primarily to a decrease in compensation costs of approximately \$843,000. This decrease in compensation reflects year 2007 expenses of approximately \$1,620,000 (including \$562,500 in cash compensation and \$1,057,372 in SFAS 123R expenses) related to the Separation and Release Agreement with the Company's former Chief Executive Officer, partially offset by year 2008 expenses of approximately \$1,012,000 (including \$630,000 in cash compensation and \$382,000 in additional SFAS 123R expenses), pursuant to the resignation of the Company's President and Chief Operating Officer in the third quarter of 2008. General and administrative expenses also includes decreases in legal expenses of approximately \$318,000 and public and investor-relations costs of approximately \$111,000, partially offset by increases in accounting and auditing expenses of \$314,000.

Net interest income decreased to \$60,147 in the third quarter of 2008 from \$182,320 in the third quarter of 2007 and to \$307,949 for the nine months ended September 30, 2008 from \$848,397 for the comparable period in 2007. These declines were due to decreases in average cash, cash equivalents and short-term securities and decreases in average interest rates of the Company's interest-earning investments. The loss on warrant liability was \$168,975 in the third quarter of 2008, compared with a gain of \$1,296,322 in the third quarter of 2007. For the nine months ended September 30, 2008, the gain on warrant liability was \$1,443,800, compared with a gain of \$3,550,330 for the comparable period in 2007. The gain (loss) on warrant liability is primarily a function of the Company's stock price and fluctuates as the market price of the Company's stock fluctuates.

Liquidity and Capital Resources

The Company does not expect any material revenues in the remainder of 2008 or 2009 from its business activities, other than from potential government grants and research contracts. The Company believes it has adequate cash for the next twelve months, subject to its ability to secure additional government awards, collaboration agreements, or capital in the equity 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). 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). The Company has requested a no-cost extension of this contract, which the Company expects to be granted, the result of which is that the Company anticipates receiving the remaining \$3.5 million during the first five months of 2009. The Company recognized \$4,924,791 and \$13,555,621 in research contract revenues from this contract in the third quarter and first nine months of 2008, respectively, and has recognized \$21,574,010 in total revenues to date from this contract.

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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[®] 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 quarter and nine-month period ended September 30, 2008, the Company recognized \$193,391 and \$2,100,106, respectively, in research contract revenues from this contract. As of September 30, 2008, approximately \$5.0 million in additional funding remains available under these contracts.

The Company's cash, cash equivalents and short-term securities totaled \$14,360,741 at September 30, 2008, compared with \$25,074,413 at December 31, 2007. The decrease of \$10,713,672 was due primarily to \$9,864,598 used in operations and \$782,649 used for purchases of property and equipment and patent related costs. This decrease also included approximately \$900,000 paid 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).

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 \$14 to \$16 million. Expenditures for 2008 could increase if the Company undertakes additional collaborative efforts.

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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 disclosures 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 9).

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.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

As of September 30, 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 as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934. Based on this review of its disclosure controls and procedures pursuant to Rule 13a-15(b) under the Securities Exchange Act of 1934, 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 changes in the Company's internal controls over financial reporting identified in connection with the evaluation required by paragraph (d) of Rule 13a-15 that have materially affected, or are reasonably likely to materially affect, the Company's internal controls over financial reporting.

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PART II - - OTHER INFORMATION

Item 1. Legal Proceedings.

None

Item 1A. Risk Factors.

There have 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.

The Company will need additional funds to continue operations at current levels.

As noted previously, the Company's net cash use through the end of 2008 is expected to be approximately \$4 to \$6 million, assuming no material change in the Company's operations, including clinical trials and research and development activities. As of September 30, 2008, the Company had cash, cash equivalents and short-term securities of \$14 million. Thus, assuming no receipt of any material amounts of cash or cash equivalents and assuming no change in the Company's net cash use rates, the Company expects to have cash available for operations of approximately \$8 to \$10 million at December 31, 2008. Based on

historical net cash use rates, the amount expected to be available at December 31, 2008 would satisfy the Company's net cash needs only through the end of the second quarter in 2009, thereby requiring the Company to secure additional funds through additional government funding awards, the issuance of debt or equity securities or through collaboration efforts. The recent credit crisis and retrenchment of the capital markets is likely to make the Company's fund raising efforts more difficult than was the case earlier in 2008.

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 Security Holders.

None

Item 5. Other Information.

None

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Item 6. Exhibits

Exhibit No	Exhibit Description	Incorporated by Reference to Filings Indicated				
		Form	File No.	Exhibit	Filing Date	Filed Herewith
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	
10.65+	Employment Agreement dated July 24, 2008 by and between AVI BioPharma, Inc. and J. David Boyle II					X
10.66+	Amendment No. 1 to Employment Agreement dated August 1, 2008 by and between AVI BioPharma, Inc. and J. David Boyle II					X
31.1	Certification of the Company's Chief Executive Officer, Leslie Hudson, Ph.D, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
31.2	Certification of Chief Financial Officer, J. David Boyle II, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
32	Certification of the Company's Chief Executive Officer, Leslie Hudson, Ph.D, and Chief Financial Officer, J. David Boyle II, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X

Portions of the materials in the exhibits 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: November 10, 2008

AVI BIOPHARMA, INC.

By: /s/ LESLIE HUDSON, Ph.D.
 Leslie Hudson, Ph.D.
 Chief Executive Officer
 (Principal Executive Officer)

By: /s/ J. DAVID BOYLE II
 J. David Boyle II
 Chief Financial Officer
 (Principal Financial and Accounting Officer)

Portions of this document have been redacted pursuant to a confidential treatment request and filed separately with the Securities and Exchange Commission. Redacted sections marked with "*****."

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made on this 24th day of July, 2008 (the "Effective Date"), by and between AVI BioPharma, Inc., an Oregon corporation, with its principal office at 1 S.W. Columbia Street, Suite 1100, Portland, Oregon 97258 ("Company"), and J. David Boyle II, 5329 Broadway, Oakland, CA 94618 ("Employee").

RECITALS:

The Company desires to hire the Employee as Senior Vice President – Chief Financial Officer and the Employee 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 ("Term") shall commence on the Effective Date and shall continue until the first anniversary of the Effective Date, unless extended or terminated in accordance with Section 12. This Agreement establishes an "at will" employment relationship, as such term is defined and used under Oregon law, between the Company and the Employee. Employee shall commence employment not later than August 18, 2008. Failure to do so shall be grounds for immediate termination for Cause, as such term is defined in Section 12 hereof.

2. Duties. Employee shall be employed as Senior Vice President- Chief Financial Officer and shall have such duties as are customarily associated with that position, including oversight of the Company's financial and other administrative systems and such other duties as may be assigned to him from time to time by the Company's Chief Executive Officer ("CEO") and the Board of Directors of the Company ("Board"). Employee shall be a direct report of the Company's Chief Executive Officer. Employee shall devote substantially all of his business time to the service of the Company throughout the Term. Employee and Company acknowledge and agree that (i) Employee may hold certain offices within certain entities as set forth on Exhibit A to this Agreement, (ii) Employee's devotion of reasonable amounts of time in such capacities, so long as it does not 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.

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3. Compensation.

(a) **Base Compensation.** During the Term the Company shall compensate the Employee at an initial annual salary of Three Hundred Twenty Four Thousand Dollars (\$324,000.00), 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 Employee (as increased from time to time, "Base Compensation"). The Employee'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) **Bonus.** The Employee shall be eligible for an annual bonus of up to 30% of Employee's Base Compensation, which bonus shall be paid in the normal cycle of payment of executive bonuses and upon achievement and satisfaction of goals and objectives ("Goals and Objectives") established upon mutual agreement of the CEO, Employee and the Compensation Committee of the Company's Board. Such goals shall be established concurrently with the goals and objectives of the Company's other senior executives. Employee shall be eligible for consideration for an award of a full 12-month bonus based on achievement of 2008 Goals and Objectives.

(c) Equity Compensation.

- (i) On the Effective Date, the Employee will be granted options to purchase Three Hundred Fifty Thousand (350,000) shares of the Company's common stock (the "Standard 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 Standard Options shall vest in equal annual installments over three (3) years;
- (ii) In addition, on the Effective Date the Employee will be granted options to purchase an additional One Hundred Fifty Thousand (150,000) options (the "Performance Options" and, together with the Standard Options, the "Options") under the Plan with an exercise price at the fair market value of the Company common stock on the Effective Date. The Performance Options shall vest in the event that *****. Notwithstanding anything to the

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contrary herein, in the event that the effect of an event that constitutes a Change in Control (as such term is defined in Section 13(f) hereof) denies or would reasonably be expected to deny Employee the opportunity to achieve the vesting milestone set forth in this Section 3(c)(ii), the Performance Options shall fully vest upon the effective date of the Change in Control.

- (iii) The exercise price of the Options and all other terms and conditions associated with the Options shall be determined in accordance with the Plan and grants (the forms of which are annexed hereto as Exhibit B and Exhibit C, respectively). To the maximum extent possible, the Options shall be Incentive Stock Options.

4. **Expenses.** The Company will reimburse Employee for all expenses reasonably incurred by him in discharging his duties for the Company, conditioned upon Employee'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. The Company will reimburse the Employee up to One Hundred Thousand Dollars (\$100,000) for reasonable expenses incurred in 2008 to relocate Employee, Employee's spouse and parts of Employee's and Employee's Spouse's household in a manner compatible with Employee's duties hereunder to the city where the Company's headquarters are located ("Facility Location"), including the reasonable and customary costs of selling his California residence (but not vacant home carrying costs), shipment of personal effects to the Facility Location, and the customary closing costs associated with the purchase of a residence in the Facility Location. In addition, Company shall reimburse Employee (or pay on Employee's behalf) rent and related living expenses, not to exceed \$2,000 per month in the aggregate and up to six (6) months in duration, for temporary living arrangements and up to \$5,000 for reasonable attorney's fees incurred in negotiation of this Agreement.

5. **Benefits.** Subject to eligibility requirements, Employee shall be entitled to participate in such benefits plans and programs as adopted by the Company from time to time and shall be eligible for paid vacation of four (4) business weeks (20 business days) annually; *provided, however*, if Employee does not use all available vacation in any given year, Employee may roll-over up to one business week (5 business days) to the following year, the parties intending that Employee shall have an aggregate of five (5) business weeks (25 business days) of paid vacation in any year following 2008.

6. **Confidentiality.**

(a) In the course of his employment with the Company, it is anticipated that Employee 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, 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

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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. Employee agrees that during the term of this Agreement and thereafter, 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 Employee is served with any subpoena or other compulsory judicial or administrative process calling for production or disclosure of Confidential Information or if Employee is otherwise required by law or regulation to disclose Confidential Information, Employee will immediately, and prior to production or disclosure, notify the Company and provide it with such information as may be necessary 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 and Non-solicitation.**

(a) For a period of one (1) year in the case of the payment of severance equal to 12 months Base Compensation and for a period of two (2) years in the case of the payment of severance equal to 24 months Base Compensation, in both instances as provided in Section 13(c) below, Employee shall not directly or indirectly engage in or have any ownership interest in, or participate in the financing, operation, management or control of, any person, firm, corporation or business that engages in any activity customarily associated with the Company's ordinary course of business at the time of such termination anywhere in the world; *provided, however*, that this provision shall not prohibit Employee from owning up to five percent (5%) of any class of outstanding bonds, preferred stock or shares of common stock of any such entity or from employment with any institute of higher learning.

(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, Employee 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 by the Company or its subsidiaries or affiliates.

(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.

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8. **Covered Work.**

(a) All rights, title and interest to any Covered Work that Employee 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 Employee or work performed by Employee 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. Attached hereto as Exhibit D is a description of any product or Invention in which Employee had or has any right, title or interest, which is not included within the definition of Covered Work or which is otherwise excluded from the restrictions set forth in this Section 8.

(b) Employee 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 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 Employee assist in efforts to defend any legal claims to patents or other right, the Company agrees to reimburse Employee for any reasonable expenses Employee 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. Employee 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 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 Employee's employment with the Company or upon the written request of the Company. The provisions of this Section 9 shall survive termination of this Agreement and the term of employment

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10. Injunction. Employee agrees that it would be difficult to measure damages to the Company from any breach by Employee 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, Employee agrees that if Employee 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. The provisions of this Section 10 shall survive termination of this Agreement and the term of employment.

11. Obligations to Others. Except for items fully disclosed in writing to the Company, Employee represents and warrants to the Company that (i) Employee's employment by the Company does not violate any agreement with any prior employer or other person or entity, and (ii) Employee 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.

12. Termination.

(a) Employee may voluntarily terminate his employment with the Company upon giving the Company sixty (60) days written notice.

(b) The Company may terminate Employee's employment without Cause (as defined below) upon giving Employee thirty (30) days written notice of termination.

(c) Employee's employment with the Company shall terminate upon the occurrence of any one of the following:

(i) Employee's death;

(ii) The effective date of a notice sent to Employee stating the Board's determination made in good faith and after consultation with a qualified physician selected by the Board, that Employee is incapable of performing his duties under this Agreement, with or without reasonable accommodation, because of a physical or mental incapacity that has prevented Employee from performing such 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; or

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

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

(i) Employee's willful and repeated failure or refusal to comply in any material respect with the reasonable lawful policies, standards or regulations from time to time established by the Company, or to perform his duties in accordance with this Agreement after notice to Employee of such failure and after Employee has been given a reasonable period of time to cure such failure to comply; or

(ii) Employee engages in criminal conduct or engages in misconduct that is materially detrimental to the reputation, character or standing of the Company.

(e) Notwithstanding anything to the contrary herein, unless sooner terminated in accordance with the terms hereof, this Agreement shall automatically renew for an additional one-year term unless one party notifies the other party in accordance with Section 14 hereof of its intention not to renew, such notice to be delivered not less than 90 days before the term ends.

13. Termination Compensation.

(a) Upon Employee's voluntary termination of employment, other than voluntary termination with Good Reason (as defined below), the Company shall pay to Employee all compensation due to the date of termination, but shall have no further obligation to Employee hereunder in respect of any period following termination.

(b) Upon the death of Employee, the Company shall pay to Employee's estate or such other party who shall be legally entitled thereto, all compensation due at the date of death, and an additional amount equal to compensation at the rate set forth in this Agreement or then current annual salary rate, whichever is greater, from the date of death to the final day of the month following the month in which the death occurs.

(c) (i) Upon termination of Employee's employment by the Company other than for Cause and other than in connection with a Change in Control, the Company shall pay to Employee twelve (12) months of Base Compensation. In addition, all nonvested Options shall immediately vest and be exercisable for a period of 180-days following the effective date of termination.

(ii) Upon termination by the Company other than for Cause in connection with a Change in Control or upon Employee's voluntary termination of employment for Good Reason, the Company shall pay to Employee twenty-four (24) months of Base Compensation. In addition, all nonvested Options shall immediately vest and be exercisable for a period of 180-days following the effective date of termination.

(d) 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 Employee.

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(e) As used herein, "Good Reason" shall mean, following a Change of Control (as such term is defined below) the termination by Employee upon the occurrence of any of the below described events. The Employee 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 Employee must terminate employment within two (2) years of the first occurrence of such event. The events which constitute a Good Reason termination are:

(i) The assignment of a different title or change that results in a material reduction in Employees duties or responsibilities;

(ii) A reduction by the Company in Employee's Base Compensation, other than a salary reduction that is part of a general salary reduction affecting employees generally and provided the reduction is not greater, percentage-wise, than the reduction affecting other employees generally or failure to provide an annual increase in Base Compensation commensurate with other Employees; *provided, however*, in determining whether to provide an annual increase in Base Compensation commensurate with an annual increase provided to other Employees, the Company may take into account factors such as market levels of compensation, Employee's overall performance, and other factors reasonably considered by the Company's compensation committee and/or Board of Directors, so long as such determination is not made in bad faith with the intent to discriminate against Employee; or

(iii) Relocation of Employee's principal place of business of greater than seventy-five (75) miles from its then location; *provided, however*, the first such relocation in connection with the concurrent relocation of the Company's headquarters shall not constitute Good Reason hereunder.

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

(f) As used herein, "Change of Control" means the occurrence of any one of the following events: (i) any person becomes the beneficial owner of twenty-five percent (25%) or more of the total number of voting shares of the Company; (ii) any person (other than the persons named as proxies solicited on behalf of the Board of Directors of the Company) holds revocable or irrevocable proxies representing twenty-five percent (25%) or more of the total number of voting shares of the Company; (iii) any person has commenced a tender or exchange offer, or entered into an agreement or received an option, to acquire beneficial ownership of twenty-five percent (25%) or more of the total number of voting shares of the Company; and (iv) as the result of, or in connection with, any cash tender or exchange offer, merger, or other business combination, sale of assets, or any combination of the foregoing transactions, the persons who were directors of the Company before such transactions shall cease to constitute at least two-thirds (2/3) of the Board of Directors of the Company or any successor entity.

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14. Notice. 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 business days after deposit with the United States 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. 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 enforceable in any way, then such section shall be amended to the extent necessary to conform to applicable law.

16. 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 Employee.

17. 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.

18. 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.

19. 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 Employee, his administrators, executors, legatees, and heirs. In that this Agreement is a personal services contract, it shall not be assigned by Employee.

20. Dispute Resolution. Except as otherwise provided in Section 10, the Company and Employee agree that any dispute between Employee and the Company or its officers, directors, employees, or agents in their individual or Company capacity of this Agreement, shall be submitted to a mediator for nonbinding, confidential mediation. If the matter cannot be resolved with the aid of the mediator, the Company and Employee mutually agree to arbitration of the dispute. The arbitration shall be in accordance with the then-current Employment Dispute Resolution Rules of the Arbitration Service of Portland (“ASP”) before an arbitrator who is licensed to practice law in the State of Oregon. The arbitration shall take place in or near Portland, Oregon. Employee 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; *provided, however,*

if any party prevails on a statutory claim, which affords the prevailing party attorneys’ fees, or if there is a written agreement providing for attorneys’ fees, the arbitrator may award reasonable attorneys’ fees. The Company and Employee agree that the procedures outlined in this provision are the exclusive method of dispute resolution.

21. Attorneys’ Fees. In the event suit or action is instituted pursuant to Section 10 or Section 20 of this Agreement, the prevailing party in such proceeding, including any appeals thereon, shall be awarded reasonable attorneys’ fees and costs.

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

23. 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 Employee or the Company with regard to Section 409A of the Internal Revenue Code of 1986 (“Section 409A”). This Agreement shall be interpreted to that end and consistent with that objective. The Company and the Employee shall, to the extent necessary to comply with Section 409A 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), provided that any such reformation shall not negatively impact the economics of the Company or the Employee hereunder. Notwithstanding any other provision herein, if Employee is a “specified employee,” as defined in, and pursuant to, Treasury Regulation Section 1.409A-1(i) or any successor regulation, on the date of termination, no payment of any “deferred compensation”, as defined under Treasury Regulation Section 1.409A or any successor regulation, shall be made to Employee during the period lasting until the earlier of six (6) months from the date of termination or upon Employee’s death. If any payment to Employee 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 Employee’s death, promptly thereafter.

(b) Except as otherwise specifically provided in this Agreement, if any reimbursement to which the Employee 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 Employee’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.

24. 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.

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

COMPANY: AVI BioPharma, Inc.

By: _____
Leslie Hudson, PhD, Chief Executive Officer

EMPLOYEE:

J. David Boyle II

Exhibit A

List of Offices Held

Exhibit B

2002 Equity Incentive Plan

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Exhibit C

Form Of Stock Option Agreement

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Exhibit D

Inventions Excluded from Covered Works

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Exhibit E

SEPARATION AND RELEASE AGREEMENT

THIS SEPARATION AND RELEASE AGREEMENT ("Agreement") is between J. David Boyle II ("Employee") and AVI BioPharma, Inc. ("Employer"), and is effective eight (8) days after Employee signs this Agreement ("Effective Date").

The parties agree as follows:

1. **Resignation.** Employee resigned his position as Employer's [Title] effective [effective date of termination] (the "Resignation Date"). Employee has been paid his salary and other compensation through the Resignation Date, less all lawful or required deductions.
2. **Consideration.** In consideration of Employee's agreements hereunder, Employer shall pay to Employee the amounts set forth and described in that certain Employment Agreement dated effective the day of , 2008.
3. **Return of Employer Property.** Employee 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 Employer documents.
4. **Confidentiality.** The parties will use reasonable efforts to keep the terms of this Agreement confidential. Employee may disclose the terms of this Agreement to his immediate family. Employer may disclose the terms of this Agreement to its officers and managers. Either party may disclose the terms of this Agreement to their respective attorneys, accountants, financial advisers, auditors, or similar advisors, or in response to government requests. Third persons informed of the terms of this Agreement shall in turn be advised of this confidentiality provision and requested to maintain such confidentiality.
5. **Release.**

5.1 In exchange for the consideration paid to Employee as set forth in this Agreement, Employee forever releases and discharges Employer, any of Employer-sponsored employee benefit plans in which Employee 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 (collectively "Releasees") from any and all claims, actions, causes of action, rights, or damages, including costs and attorneys' fees (collectively "Claims") which Employee may have arising out of his employment (including Claims that may arise out of Employee's employment agreement), on behalf of himself, known, unknown, or later discovered which arose prior to the date Employee 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 Employer's right to terminate its employees, any Claims Employee has relating to his rights to or against any of the Plans, or personal injury Claims, including without limitation

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wrongful discharge, breach of contract, defamation, tortious interference with business expectancy, constructive discharge, or infliction of emotional distress. Employee represents that he has not filed any Claim against Employer or its Releasees, he has no knowledge of any facts that would support any Claim by Employee against Employer or by a third party against 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 Employee from filing a Claim to enforce the terms of this Agreement. Notwithstanding the foregoing, nothing herein shall constitute release of any of Employee's rights relating to vested options, vested benefits or vested entitlements under the Company's employee benefits plans, including equity incentive and retirement plans.

5.2 In consideration of the promises of Employee as set forth herein, Employer does hereby, and for its successors and assigns, release, acquit and forever discharge Employee 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.

6. **Non-disparagement.** Employee and Employer each agree not to make disparaging statements about each other, except in the case of Employer statements that are required under applicable federal or state securities laws or applicable rules and regulations of any exchange on which Employer's stock is traded.

7. **Consideration and Revocation Periods.** Employee 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. Employee was hereby advised of his right to seek the advice of an attorney prior to signing this Agreement. Employee acknowledges that he has signed this Agreement only after full reflection and analysis. Although he is free to sign this Agreement before then, Employee acknowledges he was given at least 21 days after receipt of this document in which to consider it (the "Consideration Period"). If Employee executes this Agreement prior to the end of the Consideration Period, Employee hereby waives any rights associated therewith. Employee may revoke this Agreement seven (7) days after signing it and forfeit all benefits described in Section 2 of this Agreement. Employee and 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.

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

9. **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.

10. **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. Employee acknowledges that in signing this Agreement, he has not relied upon any representation or statement not set forth in this Agreement made by Employer or any of its representatives.

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11. **Attorney Fees.** If any suit or action is filed by either party to enforce this Agreement or otherwise with respect to the subject matter hereof, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

12. **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: _____

J. David Boyle II

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Portions of this document have been redacted pursuant to a confidential treatment request and filed separately with the Securities and Exchange Commission. Redacted sections marked with "*****."

**AMENDMENT NO. 1
TO
EMPLOYMENT AGREEMENT**

This Amendment No. 1 to Employment Agreement (the "Amendment") is entered into effective the 1st day of August, 2008 (the "Effective Date") by and between AVI BioPharma, Inc., an Oregon corporation ("Company") and J. David Boyle II ("Employee").

RECITALS

A. Whereas, Company and Employee are parties to that certain Employment Agreement dated the 24th day of July, 2008, a copy of which is attached hereto as Exhibit A (the "Employment Agreement").

B. Whereas, the Company and the Employee desire to amend certain provisions of the Employment Agreement.

Now, therefore, in consideration of the representations, warranties and covenants contained herein, the Company and the Employee agree as follows:

AGREEMENT

1. Section 3(c) of the Employment Agreement shall be amended and restated to provide as follows:

(c) Equity Compensation.

(i) On the date the Employee commences employment with the Company, the Employee will be granted options to purchase Three Hundred Fifty Thousand (350,000) shares of the Company's common stock (the "Standard 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 Standard Options shall vest in equal annual installments over three (3) years.

(ii) In addition, on the date the Employee commences employment with the Company, the Employee will be granted options to purchase an additional One Hundred Fifty Thousand (150,000) options (the "Performance Options" and, together with the Standard Options, the "Options") under the Plan with an exercise price at the fair market value of the Company common stock on the Effective Date. The Performance Options shall vest in the event that *****.

Notwithstanding anything to the contrary herein, in the event that the effect of an event that constitutes a Change in Control (as such term is defined in Section 13(f) hereof) denies or would reasonably be expected to deny Employee the opportunity to achieve the vesting milestone set forth in this Section 3(c)(ii), the Performance Options shall fully vest upon the effective date of the Change in Control.

(iii) The exercise price of the Options and all other terms and conditions associated with the Options shall be determined in accordance with the Plan and grants (the forms of which are annexed hereto as Exhibit B and Exhibit C, respectively). To the maximum extent possible, the Options shall be Incentive Stock Options.

2. Section 23 of the Employment Agreement shall be amended and restated to provide as follows:

Section 409A; Section 280G

(a) Section 409A

(i) 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 Employee or the Company with regard to Section 409A ("Section 409A") of the Internal Revenue Code of 1986 (the "Code"). This Agreement shall be interpreted to that end and consistent with that objective. The Company and the Employee shall, to the extent necessary to comply with Section 409A 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), provided that any such reformation shall not negatively impact the economics of the Company or the Employee hereunder. Notwithstanding any other provision herein, if Employee is a "specified employee," as defined in, and pursuant to, Treasury Regulation Section 1.409A-1(i) or any successor regulation, on the date of termination, no payment of any "deferred compensation", as defined under Treasury Regulation Section 1.409A or any successor regulation, shall be made to Employee during the period lasting until the earlier of six (6) months from the date of termination or upon Employee's death. If any payment to Employee 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 Employee's death, promptly thereafter.

(ii) Except as otherwise specifically provided in this Agreement, if any reimbursement to which the Employee is entitled under this

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 Employee's entitlement to reimbursement shall not be subject to liquidation or exchange for another benefit.

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

(b) Section 280G

(i) Except as provided below, the payments or benefits to which Employee will be entitled under Section 13 of the Agreement will be reduced to the extent necessary so that Employee will not be liable for the federal excise tax levied on certain "excess parachute payments" under section 4999 of the Internal Revenue Code of 1986, as amended ("Code").

(ii) The limitation above will not apply if:

(1) the difference between

(A) the present value of all payments to which Employee is entitled under Section 13 of the Agreement determined without regard to the limitation above, less

(B) the present value of all federal, state, and other income and excise taxes for which Employee is liable as a result of such payments; exceeds

(2) the difference between

(A) the present value of all payments to which Employee is entitled under Section 13 of the Agreement calculated as if the limitation above applies, less

(B) the present value of all federal, state, and other income and excise taxes for which Employee is liable as a result of such reduced payments.

(iii) Present values will be determined using the interest rate specified in section 280G of the Code and will be the present values as of the

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date on which Employee's employment terminates (unless it is necessary to use a different date in order to avoid adverse consequences under section 280G).

3. In all other respects, the Employment Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment effective the date first set forth above.

DATED the day of August, 2008.

DATED the day of August, 2008.

AVI BioPharma, Inc.

By: _____
Name: Leslie Hudson, PhD
Title: Chief Executive Officer

J. David Boyle II

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**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 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 10, 2008

By: _____
/s/ Leslie Hudson, Ph.D.
Leslie Hudson, Ph.D.,
Chief Executive Officer
(Principal Executive Officer)

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 September 30, 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 J. David Boyle, as Chief Financial Officer of the Company, each hereby certify, 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 our 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 results of operations of the Company.

/s/ Leslie Hudson, Ph.D.

Leslie Hudson, Ph.D.
Chief Executive Officer
AVI BioPharma, Inc.
November 10, 2008

/s/ J. David Boyle II

J. David Boyle II
Chief Financial Officer
AVI BioPharma, Inc.
November 10, 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.
