MusclePharm Corp
Form 10-K/A
February 08, 2017

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 2)

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the Fiscal Year ended December 31, 2013

Commission File Number – 000-53166

MusclePharm Corporation

(Exact name of registrant as specified in its charter)

Nevada	**77-0664193**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

4721 Ironton Street, Building A Denver, Colorado	**80239**
(Address of principal executive offices)	**(Zip code)**

(303) 396-6100

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(g) of the Act:

Title of each class

Common Stock, Par Value $0.001 Per Share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. [ ] Yes [X] No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. [ ] Yes [X] No

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [ ]

Indicate by check mark whether the registrant is a large accelerated file, an accelerated file, a non-accelerated filer, or a smaller reporting company. (Check one):

Large accelerated filer	[ ]	Accelerated filer	[ ]
Non-accelerated filer	[ ]	Smaller reporting company	[X]

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

Aggregate market value of the voting common stock held by non-affiliates of the registrant at June 30, 2013: $54,522,921

Number of shares of the registrant's common stock outstanding at March 28, 2014: 10,349,912

DOCUMENTS INCORPORATED BY REFERENCE:

None.

EXPLANATORY NOTE

MusclePharm Corporation (the "Company") is filing this Amendment No. 2 on Form 10-K/A (this "Amendment") to its Annual Report on Form 10-K for the year ended December 31, 2013 filed with the United States Securities and Exchange Commission (the "SEC") on March 31, 2014, as amended on October 31, 2014 (as amended, the "Original Form 10-K") in connection with the withdrawal of its application for confidential treatment of the redacted portions of Exhibit 10.38 to the Original Form 10-K, for which the Company had previously sought confidential treatment pursuant to Rule 24b-2 of the Securities and Exchange Act of 1934, as amended, and Rule 406 under the Securities Act of 1933, as amended. An unredacted copy of Exhibit 10.38 that includes the previously-redacted information for which the Company has withdrawn its request for confidential treatment is attached hereto as Exhibit 10.38 to this Amendment.

As reported in a Current Report on Form 8-K filed by the Company on January 9, 2017, on December 17, 2016, the Company entered into a Settlement Agreement (the "Settlement Agreement") with Marine MP, LLC ("Marine MP"), Arnold Schwarzenegger ("Schwarzenegger"), and Fitness Publications, Inc. ("Fitness," and together with Marine MP and Schwarzenegger, the "AS Parties"), effective January 4, 2017. As previously disclosed, in May 2016, the Company received written notice that the AS Parties were terminating the Endorsement Licensing and Co-Branding Agreement by and among the Company and the AS Parties (the "Endorsement Agreement"), the Company provided written notice to the AS Parties that it was terminating the Endorsement Agreement, and the AS Parties commenced arbitration, alleging that the Company breached the parties' agreement and misappropriated Schwarzenegger's likeness. The Company filed its response and counterclaimed for breach of contract and breach of the implied covenant of good faith and fair dealing. Pursuant to the Settlement Agreement, and to resolve and settle all disputes between the parties and release all claims between them, the Company agreed to pay the AS Parties (a) $1 million, which payment was released to the AS Parties on January 9, 2017, and (b) $2 million within six months of the effective date of the Settlement Agreement. If the Company fails to make the second payment when due, pursuant to a confession of judgment entered into by the Company, the AS Parties will be entitled to an additional $1,000,000, for a total additional payment of $3,000,000 to satisfy the AS Parties' contract claim, which the AS Parties claim is valued at $4,000,000. The Company also has agreed that it will not sell any products from its Arnold Schwarzenegger product line, will donate to a charity chosen by Arnold Schwarzenegger any remaining usable product, and otherwise destroy any products currently in inventory. In addition, in connection with the transaction, the 780,000 shares of Company common stock held by Marine MP were sold to a third party yesterday in exchange for an aggregate payment by such third party of $1,677,000 to the AS Parties.

Additionally, pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended, Item 15 of the Original Form 10-K has been amended to contain currently dated certifications of the Company's Chief Executive Officer and President and Chief Financial Officer, as required by Section 302 of the Sarbanes-Oxley Act of 2002. All other information contained in the Original Form 10-K remains unchanged.

This Amendment is limited in scope to the items noted above and should be read in conjunction with the Original Form 10-K. This Amendment does not reflect events that have occurred after the filing of the Original Form 10-K, and no revisions are being made to the Company's financial statements pursuant to this Amendment. Other than the filing of the information identified above, this Amendment does not modify or update the disclosure in the Original Form 10-K in any way.

PART IV

Item 15. Exhibits, Financial Statement Schedules

(a)(3) Exhibits

Exhibit No.	Description	Incorporated by Reference Form	SEC File No.	Exhibit	Filing Date	Filed Herewith	Furnished Herewith
2.1	Agreement Concerning the Exchange of Securities by and Among Tone in Twenty and Muscle Pharm, LLC and the Security Holders of Muscle Pharm, LLC, dated February 1, 2010.	8-K	000-53166	2.1	February 2, 2010		
3.1	Articles of Incorporation of MusclePharm Corporation (successor to Tone in Twenty).	SB-2	333-147111	3.1	November 2, 2007		
3.2	Bylaws of MusclePharm Corporation (successor to Tone in Twenty). (Amended on March 1, 2010 to change fiscal year end to December 31 – set forth on Form 8-K filed on 03-03-2010.)	SB-2	333-147111	3.2	November 2, 2007		
3.3	Amendment to the Articles of Incorporation.	SB-2	333-147111	3.3	November 2, 2007		
3.4	Amendment to the Articles of Incorporation	8-K	000-53166	3.3	February 24, 2010		
3.5	Certificate of Designation relating to the Series A Convertible Preferred Stock.	8-K	000-53166	3.4	February 24, 2010		
3.6	Amendment to the Articles of Incorporation.	10-Q	000-53166	3.1	May 23, 2011		

3.7	Certificate of Designation of Series B Convertible Preferred Stock.	10-Q	000-53166	3.1	August 16, 2011

3.8	Certificate of Designation of Series C Convertible Preferred Stock.	8-K	000-53166	3.1	November 4, 2011
3.9	Amendment to the Articles of Incorporation.	8-K	000-53166	3.1	November 23, 2011
3.10	Amendment to the Articles of Incorporation.	8-K	000-53166	3.1	January 27, 2012
3.11	Amendment to the Articles of Incorporation.	8-K	000-53166	3.1	March 30, 2012
3.12	Certificate of Change.	8-K	000-53166	3.1	November 28, 2012
3.13	Certificate of Amendment to Articles of Incorporation.	8-K	000-53166	3.2	November 28, 2012
3.14	Form of Certificate of Designation of Series D Convertible Preferred Stock.	S-1/A	333-184625	3.14	December 31, 2012
3.15	Certificate of Correction.	S-1/A	333-184625	3.15	December 26, 2012
4.1	Specimen of certificate for MusclePharm Corporation Series D Convertible Preferred Stock.	8-K	000-53166	4.1	January 28, 2013
4.2	Specimen of certificate for MusclePharm Corporation Common Stock.	S-1/A	333-184625	4.4	December 28, 2012
4.3	Form of Promissory Note, dated July 13, 2012, issued by MusclePharm Corporation in favor of TCA Global Credit Master Fund LP.	8-K	000-53166	4.1	July 20, 2012
4.4	Form of Promissory Note.	8-K	000-53166	4.2	December 10, 2012

10.1	Purchasing Agreement with General Nutrition Corporation dated December 16, 2009.	8-K	000-53166	10.2	February 24, 2010
10.2	Order Approving Stipulation for Settlement of Claim, dated December 8, 2010, between MusclePharm Corporation and Socius CG II, Ltd.	8-K	000-53166	10.1	December 9, 2010
10.3	Endorsement Agreement, dated July 20, 2011, between MusclePharm Corporation and Michael Vick, individually.	8-K	000-53166	10.1	July 22, 2011
10.4	Convertible Promissory Note between MusclePharm Corporation and Brad J. Pyatt, dated November 18, 2010.	S-1/A	333-176771	4.2	September 27, 2011
10.5	Convertible Promissory Note between MusclePharm Corporation and Brad J. Pyatt, dated November 23, 2010.	S-1/A	333-176771	4.3	September 27, 2011
10.6	Amended and Restated Employment Agreement, dated November 14, 2011, between MusclePharm Corporation and Brad J. Pyatt.	10-Q	000-53166	10.6	November 14, 2011
10.7	Amended and Restated Employment Agreement, dated November 14, 2011, between MusclePharm Corporation and Cory J. Gregory.	10-Q	000-53166	10.7	November 14, 2011
10.8	Employment Agreement, dated September 15, 2011, by and between MusclePharm Corporation and John H. Bluher.	10-Q	000-53166	10.4	November 14, 2011
10.9	Employment Agreement, dated November 14, 2011, by and between MusclePharm Corporation and Jeremy R. DeLuca.	10-Q	000-53166	10.5	November 14, 2011
10.10	Securities Purchase Agreement, dated July 10, 2012, between MusclePharm Corporation and Subscribers set forth therein.	8-K	000-53166	10.1	July 19, 2012
10.11	Consulting Agreement, dated July 12, 2012, between MusclePharm Corporation and Melechdavid, Inc.	8-K	000-53166	10.2	July 19, 2012
10.12	Consulting Agreement, dated July 12, 2012, between MusclePharm Corporation and GRQ Consultants, Inc.	8-K	000-53166	10.3	July 19, 2012

10.13	Form of Committed Equity Facility Agreement, dated July 13, 2012, between MusclePharm Corporation and TCA Global Credit Master Fund LP.	8-K	000-53166	10.1	July 20, 2012
10.14	Form of Registration Rights Agreement, dated July 13, 2012, between MusclePharm Corporation and TCA Global Credit Master Fund LP.	8-K	000-53166	10.1	July 20, 2012
10.15	Form of Security Agreement, dated July 13, 2012, between MusclePharm Corporation and TCA Global Credit Master Fund LP.	8-K	000-53166	10.1	July 20, 2012
10.16	Form of Indemnification Agreement.	8-K	000-53166	10.1	August 27, 2012
10.17	Amended and Restated Employment Agreement, dated October 18, 2012, between MusclePharm Corporation and Brad J. Pyatt.	8-K	000-53166	10.1	October 23, 2012
10.18	Employment Agreement, dated October 18, 2012, between MusclePharm Corporation and L. Gary Davis.	8-K	000-53166	10.2	October 23, 2012
10.19	Amended and Restated Employment Agreement, dated October 18, 2012, between MusclePharm Corporation and John H. Bluher.	8-K	000-53166	10.3	October 23, 2012
10.20	Amended and Restated Employment Agreement, dated October 18, 2012, between MusclePharm Corporation and Jeremy R. DeLuca.	8-K	000-53166	10.4	October 23, 2012
10.21	Amended and Restated Employment Agreement, dated October 18, 2012, between MusclePharm Corporation and Cory J. Gregory.	8-K	000-53166	10.5	October 23, 2012
10.22	Form of Restricted Stock Unit Award.	8-K	000-53166	10.1	November 21, 2012
10.23	Subscription Agreement dated November 30, 2012 between MusclePharm Corporation and the subscribers listed therein.	8-K	000-53166	10.1	December 10, 2012
10.24	Form of Escrow Agreement.	POS AM	333-184625	10.24	January 8, 2013
10.25	Form of Subscription Agreement.	8-K	000-53166	10.1	January 28, 2013

10.26	Subscription Agreement	8-K	000-53166	10.1	March 27, 2013	
10.27	Registration Rights Agreement	8-K	000-53166	10.2	March 27, 2013	
10.28	First Amendment to the Melechdavid Consulting Agreement	8-K	000-53166	10.1	April, 5, 2013	
10.29	First Amendment to the GRQ Consulting Agreement	8-K	000-53166	10.2	April 5, 2013	
10.30	Form of Endorsement Licensing and Co-Branding Agreement (1)	8-K	000-531666	10.1	August 1, 2013	
10.31	Asset Purchase Agreement	8-K	000-531666	10.1	November 13, 2013	
10.32	Employment Agreement, dated September 30, 2013, between MusclePharm Corporation and Richard Estalella.	8-K	000-531666	10.1	October 3, 2013	
10.33	Securities Purchase Agreement	8-K	000-531666	10.1	August 30, 2013	
10.34	Form of Note	8-K	000-531666	10.2	August 30, 2013	
10.35	Form of Warrant	8-K	000-531666	10.3	August 30, 2013	
10.36	Security Agreement Letter	8-K	000-531666	10.4	August 30, 2013	
10.37	Vendor Agreement, dated December 3, 2010, between MuslcePharm Corporation and Bodybuilding.com, LLC.	10-K	000-531666	10.37	March 31, 2014	
10.38×	Endorsement Licensing and Co-Branding Agreement, dated July 26, 2013, by and among MusclePharm Corporation, Marine MP, LLC, and Fitness Publications, Inc.					X
14.1	Code of Ethics	8-K	000-53166	14	April 23, 2012	
21	Subsidiaries of the Registrant	10-K	000-531666	10.37	March 31, 2014	
24.1	Power of Attorney.	10-K	000-531666	10.37	March 31, 2014	

31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X

31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1	Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	10-K	000-531666	10.37	March 31, 2014	
32.2	Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	10-K	000-531666	10.37	March 31, 2014	
101.INS	INS XBRL Instance Document.	10-K	000-531666	10.37	March 31, 2014	
101.SCH	SCH XBRL Schema Document.	10-K	000-531666	10.37	March 31, 2014	
101.CAL	CAL XBRL Calculation Linkbase Document.	10-K	000-531666	10.37	March 31, 2014	
101.DEF	DEF XBRL Definition Linkbase Document.	10-K	000-531666	10.37	March 31, 2014	
101.LAB	LAB XBRL Label Linkbase Document.	10-K	000-531666	10.37	March 31, 2014	
101.PRE	PRE XBRL Presentation Linkbase Document.	10-K	000-531666	10.37	March 31, 2014	

× This exhibit was filed with the Original Form 10-K, and is being re-filed as an exhibit hereto in unredacted form.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Amendment No. 2 on Form 10-K/A to the Annual Report on Form 10-K of MusclePharm Corporation for the year ended December 31, 2013 to be signed on its behalf by the undersigned, thereunto duly authorized.

MUSCLEPHARM CORPORATION
Registrant

By	/s/ Ryan Drexler
	Ryan Drexler
Title	Chief Executive Officer, President and Chairman of the Board of Directors (Principal Executive Officer)
Date	February 8, 2017

Pursuant to the requirements of the Securities Exchange Act of 1934, this Amendment No. 2 on Form 10-K/A to the Annual Report on Form 10-K of MusclePharm Corporation for the year ended December 31, 2013 has been signed below on February 8, 2017, by the following persons on behalf of the Registrant and in the capacities indicated.

Signature	Title	Date
/s/ Ryan Drexler Ryan Drexler	Chief Executive Officer, President and Chairman of the Board of Directors (Principal Executive Officer)	February 8, 2017
/s/ Peter Lynch Peter Lynch	Chief Financial Officer (Principal Financial Officer, Principal Accounting Officer)	February 8, 2017
/s/ Michael J. Doron Michael J. Doron	Director	February 8, 2017
/s/ William Bush William Bush	Director	February 8, 2017

for unrecognized tax benefits was $1,074, including $100 of accrued interest. The Company is currently under examination in the U.S., and is not currently undergoing examinations in any major foreign tax jurisdiction. There have been no material changes in unrecognized tax benefits as a result of tax positions in the current year ended October 3, 2008. The Company estimates that the unrecognized tax benefits will not change significantly within the next year.

In accordance with its accounting policy, the Company recognizes accrued interest and penalties related to unrecognized tax benefits as a component of income tax expense. During fiscal 2008, $3 of interest was recorded as a component of income tax expense in the consolidated statement of operations. At October 3, 2008, $103 of accrued interest and penalties are included in the consolidated balance sheet.

The Company files income tax returns, including returns for its subsidiaries, with federal, state, local and foreign taxing jurisdictions. The following tax years remain subject to examination by the respective major tax jurisdictions:

Jurisdiction	Fiscal Year(s)
United States	1993-2007
Canada	2004-2007
France	2006-2007
Germany	2005-2007
Italy	2004-2007
Japan	2007
Switzerland	1998-2007

Federal and state income taxes are provided on foreign subsidiary income distributed to, or taxable in, the U.S. during the year. At October 3, 2008, net undistributed earnings of foreign subsidiaries totaled approximately $117,512. The Company considers these unremitted earnings to be permanently invested abroad and no provision for federal or state income taxes has been made on these amounts. In the future, if foreign earnings are returned to the U.S., provision for U.S. income taxes will be made.

7 EMPLOYEE BENEFITS

The Company has non-contributory defined benefit pension plans covering certain U.S. employees. Retirement benefits are generally provided based on employees' years of service and average earnings. Normal retirement age is 65, with provisions for earlier retirement. The Company recognizes retirement plan expenses in accordance with SFAS No. 87, Employers' Accounting for Pensions. Effective September 28, 2007, the Company adopted SFAS No. 158 Employers' Accounting for Defined Pension and Other Postretirement Plans. SFAS No. 158 requires the recognition of the funded status of defined benefit and other postretirement benefit plans in the accompanying Consolidated Balance Sheets, with changes in the funded status recognized through "Accumulated other comprehensive income (loss)," net of tax. SFAS No. 158 also requires the measurement of the funded status to be the same as the balance sheet date by 2008. The Company currently uses its fiscal year-end as its measurement date. The adoption of SFAS No. 158 did not change the amount of net periodic benefit cost included in the Company's Consolidated Statements of Income.

The impact of adopting SFAS No. 158 on the Consolidated Balance Sheets at September 28, 2007 is summarized in the following table:

	Before Application of SFAS No. 158	Incremental Effect of Application of SFAS No. 158	After Application of SFAS No. 158
Deferred income taxes	$ 12,592	$ 505	$ 13,097
Other intangible assets, net	6,641	(3)	6,638
Total assets	319,177	502	319,679
Other liabilities	9,193	1,260	10,453
Accumulated other comprehensive income	17,377	(758)	16,619
Total shareholders' equity	200,923	(758)	200,165
Total liabilities and shareholders' equity	319,177	502	319,679

The status of the Company's non-contributory defined benefit plans as of fiscal year end 2008 and 2007 is as follows:

	2008	2007
Projected benefit obligation:		
Projected benefit obligation at beginning of year	$ 16,676	$ 16,040
Service cost	682	630
Interest cost	1,074	1,005
Actuarial gain	(1,336)	(266)
Benefits paid	(748)	(733)
Projected benefit obligation at end of year	$ 16,348	$ 16,676
Fair value of plan assets:		
Fair value of plan assets at beginning of year	$ 12,629	$ 11,594
Actual (loss) return on plan assets	(1,505)	1,230
Company contributions	440	538
Benefits paid	(748)	(733)
Fair value of plan assets at end of year	$ 10,816	$ 12,629
Funded status of the plan	$ (5,532)	$ (4,047)
Amounts recognized in the consolidated balance sheets consist of:		
Net deferred tax assets	$ —	$ 705
Current pension liabilities	194	193
Noncurrent pension liabilities	5,338	3,854
Accumulated other comprehensive income (loss)	(2,842)	(1,760)
Components of accumulated other comprehensive income (loss):		
Net actuarial loss	$ (2,842)	$ (1,756)
Prior service cost	—	(4)
Accumulated other comprehensive income	$ (2,842)	$ (1,760)

Net periodic benefit cost, for our non-contributory defined benefit pension plans, for the respective years includes the following components:

	2008	2007	2006
Service cost	$ 682	$ 630	$ 703
Interest cost	1,074	1,005	925
Expected return on plan assets	(975)	(923)	(871)
Amortization of unrecognized:			
Net loss	59	92	268
Prior service cost	4	9	9
Transition asset	(1)	(2)	(2)
Net periodic pension cost	$ 843	$ 811	$ 1,032
Other changes in benefit obligations recognized in other comprehensive income (OCI):			
Prior service cost	$ (4)	$ (9)	
Net loss	1,085	(922)	
Transition asset	1	2	
Total recognized in OCI	1,082	(929)	
Total recognized in net periodic benefit costs and OCI	$ 1,925	$ (118)	

The Company expects to recognize $25 of unrecognized loss amortization as a component of net periodic benefit cost in 2009. This amount is included in accumulated other comprehensive income as of October 3, 2008.

The accumulated benefit obligation for all plans was $13,933 and $13,916 at October 3, 2008 and September 28, 2007, respectively.

At October 3, 2008, the aggregate accumulated benefit obligation and aggregate fair value of plan assets for plans with benefit obligations in excess of plan assets was $13,933 and $10,816, respectively, and there were no plans with plan assets in excess of benefit obligations. At September 28, 2007, the aggregate accumulated benefit obligation and aggregate fair value of plan assets for plans with benefit obligations in excess of plan assets was $1,678 and $0, respectively, and the aggregate accumulated benefit obligation and aggregate fair value of plan assets for plans with plan assets in excess of benefit obligations was $12,238 and $12,629, respectively.

The Company anticipates making contributions to the defined benefit pension plans of $324 through September 30, 2009.

Estimated benefit payments from the defined benefit plans to participants for the next five years ending September 2013 and five years thereafter are as follows:

Year	
2009	$ 741
2010	753
2011	749
2012	787
2013	826
Five years thereafter	4,946

Actuarial assumptions used to determine the projected benefit obligation as of fiscal year end are as follows:

	2008	2007	2006
Discount rate	7.00%	6.50%	6.25%
Long-term rate of return	8.00	8.00	8.00
Average salary increase rate	3.70	4.00	4.00

The impact of the change in discount rates resulted in an actuarial gain of $1,225 and $668 in 2008 and 2007, respectively. The remainder of the change in actuarial gains for each year results from adjustments to mortality tables, other modifications to actuarial assumptions and investment returns in excess of or less than estimates.

To determine the discount rate assumption used in the Company's pension valuation, the Company identified a benefit payout stream based on the demographics of the pension plans and constructed a hypothetical bond portfolio using high-quality corporate bonds with cash flows that matched that benefit payout stream. A yield curve was calculated based on this hypothetical portfolio which was used for the discount rate determination.

To determine the long-term rate of return assumption for plan assets, the Company studies historical markets and preserves the long-term historical relationships between equities and fixed-income securities consistent with the widely accepted capital market principle that assets with higher volatility generate a greater return over the long run. The Company evaluates current market factors such as inflation and interest rates before it determines long-term capital market assumptions and reviews peer data and historical returns to check for reasonableness and appropriateness. The Company uses measurement dates of October 1 to determine pension expenses for each year and the last day of the fiscal year to determine the fair value of the pension assets.

The Company's pension plans' weighted average asset allocations at October 3, 2008 and September 28, 2007, by asset category were as follows:

	2008	2007
Equity securities	73%	71%
Fixed income securities	26	27
Other securities	1	2
Total	100%	100%

The Company's primary investment objective for the plans' assets is to maximize the probability of meeting the plans' actuarial target rate of return of 8%, with a secondary goal of returning 4% above the rate of inflation. These return objectives are targeted while simultaneously striving to minimize risk to the plans' assets. The investment horizon over which the investment objectives are expected to be met is a full market cycle or five years, whichever is greater.

The Company's investment strategy for the plans is to invest in a diversified portfolio that will generate average long-term returns commensurate with the aforementioned objectives while minimizing risk.

A majority of the Company's full-time employees are covered by defined contribution programs. Expense attributable under the defined contribution programs was approximately $1,025 $2,800 and $2,600 for 2008, 2007 and 2006, respectively.

8 PREFERRED STOCK

The Company is authorized to issue 1,000,000 shares of preferred stock in various classes and series, of which there are none currently issued or outstanding.

9 COMMON STOCK

The number of authorized and outstanding shares of each class of the Company's common stock at the end of the respective years was as follows:

	2008	2007
Class A, $.05 par value:		
Authorized	20,000,000	20,000,000
Outstanding	8,006,569	7,949,617
Class B, $.05 par value:		
Authorized	3,000,000	3,000,000
Outstanding	1,216,464	1,217,409

Holders of Class A common stock are entitled to elect 25% of the members of the Board of Directors and holders of Class B common stock are entitled to elect the remaining directors. With respect to matters other than the election of directors or any matters for which class voting is required by law, holders of Class A common stock are entitled to one vote per share while holders of Class B common stock are entitled to ten votes per share. If any dividends (other than dividends paid in shares of the Company’s stock) are paid by the Company on its common stock, a dividend would be paid on each share of Class A common stock equal to 110% of the amount paid on each share of Class B common stock. Each share of Class B common stock is convertible at any time into one share of Class A common stock. During 2008, 2007 and 2006, respectively, 945, 568 and 1,690 shares of Class B common stock were converted into Class A common stock.

10 STOCK OWNERSHIP PLANS

The Company’s current stock ownership plans provide for issuance of options to acquire shares of Class A common stock by key executives and non-employee directors. Current plans also allow for issuance of restricted stock or stock appreciation rights in lieu of options. Shares available for grant to key executives and non-employee directors are 500,458 at October 3, 2008.

Stock Options

All stock options have been granted at a price not less than fair market value at the date of grant and become exercisable over periods of one to three years from the date of grant. Stock options generally have a term of 10 years.

All of the Company’s stock options outstanding are fully vested, with no further compensation expense to be recorded. There were no grants of stock options in 2008, 2007 or 2006.

A summary of stock option activity related to the Company's plans is as follows:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at September 29, 2005	343,034	$ 9.13		
Exercised	(6,501)	6.28		$ 75
Cancelled	(4,000)	22.06		
Outstanding at September 29, 2006	332,533	$ 9.03		
Exercised	(44,190)	10.94		$ 326
Cancelled	(1,950)	19.88		
Outstanding at September 28, 2007	286,393	$ 8.66		
Exercised	(15,350)	13.94		$ 86
Cancelled	—	—		
Outstanding and exercisable at October 3, 2008	271,043	$ 8.36	2.1	$ 1,217

The range of options outstanding at October 3, 2008 is as follows:

Price Range per Share	Number of Options Outstanding and Exercisable	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)
$5.31 – 8.00	145,033	$6.87	2.4
$8.01 – 10.00	95,390	8.24	0.7
$10.01 – 20.00	30,620	15.77	4.7
	271,043	$8.36	2.1

Restricted Stock

All restricted stock has been granted at fair market value on the date of grant and vests either immediately or in three to five years. The Company granted 35,972, 43,328 and 69,754 shares of restricted stock with a total value of $782, $798 and $1,165 during 2008, 2007 and 2006, respectively. Restricted stock forfeitures totaled 0, 7,496 and 22,770 shares during 2008, 2007 and 2006, respectively. These forfeited restricted shares had an original fair market value at date of grant of $0, $130 and $385, respectively. Stock compensation expense related to the restricted stock was $711, $596, $530 during 2008, 2007 and 2006, respectively. Unvested restricted stock issued and outstanding as of October 3, 2008 and September 28, 2007 totaled 109,277 and 105,102 shares, respectively, having a gross unamortized value of $992 and $921, respectively, which will be amortized to expense through November 2012 or adjusted for changes in future estimated or actual forfeitures. Restricted stock grantees may elect to reimburse the Company for withholding taxes due as a result of the vesting of restricted shares by tendering a portion of the vested shares back to the Company. Shares tendered back to the Company totaled 4,881 for the year ended October 3, 2008.

A summary of unvested restricted stock activity for 2008 and 2007 related to the Company's plans is as follows:

	Shares	Weighted Average Grant Price
Unvested restricted stock at September 29, 2006	76,120	$ 16.88
Restricted stock grants	43,328	18.42
Restricted stock cancelled	(7,496)	17.35
Restricted stock vested	(6,850)	18.25
Unvested restricted stock at September 28, 2007	105,102	17.39
Restricted stock grants	35,972	21.75
Restricted stock vested	(31,797)	(17.77)
Unvested restricted stock at October 3, 2008	109,277	$ 18.72

Phantom Stock Plan

The Company adopted a phantom stock plan during fiscal 2003. Under this plan, certain employees were entitled to earn cash bonus awards based upon the performance of the Company's Class A common stock. The Company recognized expense under the phantom stock plan of $0, $24 and $80 during 2008, 2007 and 2006, respectively. The Company made payments of $319 and $411 to participants in the plan during 2007 and 2006, respectively. No payments were made to participants in this plan in 2008. There were no grants of phantom shares by the Company in fiscal 2008, 2007 and 2006 and the Company does not anticipate grants of phantom shares in the future. No further payments are expected to be made under this Plan.

Employee Stock Purchase Plan

The Company's employees' stock purchase plan provides for the issuance of shares of Class A common stock at a purchase price of not less than 85% of the fair market value of such shares on the date of grant or at the end of the offering period, whichever is lower. Shares available for purchase by employees under this plan were 55,764 at October 3, 2008. The Company issued 9,566 and 10,227 shares under the plan on March 31, 2008 and April 30, 2007, respectively. The Company recognized expense under the employees' stock purchase plan of $29, $31 and $22, respectively, during 2008, 2007 and 2006.

11 RELATED PARTY TRANSACTIONS

The Company conducts transactions with certain related parties including organizations controlled by the Johnson family and other related parties. These include consulting services, aviation services, office rental, royalties and certain administrative activities. Total costs of these transactions were $1,889, $1,833 and $1,838 for 2008, 2007 and 2006, respectively. Amounts due to/from related parties were immaterial at October 3, 2008 and September 28, 2007.

12 SEGMENTS OF BUSINESS

The Company conducts its worldwide operations through separate business segments, each of which represent major product lines. Operations are conducted in the U.S. and various foreign countries, primarily in Europe, Canada and the Pacific Basin.

Net sales and operating profit include both sales to customers, as reported in the Company's Consolidated Statements of Operations, and interunit transfers, which are priced to recover costs plus an appropriate profit margin. Total assets represent assets that are used in the Company's operations in each business segment at the end of the years presented.

A summary of the Company's operations by business segment is presented below:

		2008	2007	2006
Net sales:				
Marine Electronics:	Unaffiliated customers	$ 186,534	$ 197,728	$ 164,362
Interunit transfers		189	321	110
Outdoor Equipment	Unaffiliated customers	48,247	55,786	65,903
Interunit transfers		68	76	45
Watercraft:	Unaffiliated customers	87,862	88,632	85,287
Interunit transfers		225	216	175
Diving:	Unaffiliated customers	97,485	87,881	77,880
Interunit transfers		761	797	590
Other/Corporate		660	577	518
Eliminations		(1,242)	(1,410)	(920)
		$ 420,789	$ 430,604	$ 393,950
Operating profit (loss):				
Marine Electronics		$ 414	$ 22,933	$ 21,583
Outdoor Equipment		1,982	8,463	8,236
Watercraft		(8,282)	(4,219)	161
Diving		(21,520)	6,933	5,604
Other/Corporate		(10,647)	(14,084)	(12,225)
		$ (38,053)	$ 20,026	$ 23,359
Depreciation and amortization expense:				
Marine Electronics		$ 4,389	$ 3,647	$ 3,195
Outdoor Equipment		560	442	358
Watercraft		2,042	2,182	2,525
Diving		1,664	1,663	1,646
Other/Corporate		1,401	1,468	1,440
		$ 10,056	$ 9,402	$ 9,164
Additions to property, plant and equipment:				
Marine Electronics		$ 6,969	$ 6,149	$ 4,583
Outdoor Equipment		310	2,615	321
Watercraft		2,597	1,832	1,336
Diving		1,519	1,199	1,547
Other/Corporate		1,029	1,623	1,078
		$ 12,424	$ 13,418	$ 8,865
Total assets:				
Marine Electronics		$ 89,487	$ 95,725	
Outdoor Equipment		25,400	23,739	
Watercraft		45,586	59,019	
Diving		79,138	114,091	
Other/Corporate		15,458	27,105	
		$ 255,069	$ 319,679	
Goodwill, net:				
Marine Electronics		$ 10,013	$ 14,596	
Outdoor Equipment		—	563	
Watercraft		338	6,587	
Diving		3,734	29,708	
		$ 14,085	$ 51,454	

A summary of the Company's operations by geographic area is presented below:

	2008	2007	2006
Net sales:			
United States:			
Unaffiliated customers	$ 293,354	$ 332,830	$ 313,496
Interarea transfers	19,089	12,840	11,712
Europe:			
Unaffiliated customers	82,315	59,976	46,684
Interarea transfers	15,123	13,187	12,527
Other:			
Unaffiliated customers	45,119	37,798	33,769
Interarea transfers	1,259	2,037	1,561
Eliminations	(35,470)	(28,064)	(25,799)
	$ 420,789	$ 430,604	$ 393,950
Total assets:			
United States	$ 139,024	$ 180,761	
Europe	83,642	109,580	
Other	32,403	29,338	
	$ 255,069	$ 319,679	
Long-term assets (1)			
United States	$ 50,113	$ 60,057	
Europe	12,303	38,556	
Other	2,345	2,748	
	$ 64,761	$ 101,361	

(1) Long-term assets consist of net property, plant and equipment, net intangible assets, goodwill and other assets excluding deferred income taxes.

The Company had no single customer that accounted for more than 10% of its net sales in 2008, 2007, or 2006.

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13 VALUATION AND QUALIFYING ACCOUNTS

The following summarizes changes to valuation and qualifying accounts for 2008, 2007 and 2006:

	Balance at Beginning of Year	Additions Charged to Costs and Expenses	Reserves of Businesses Acquired	Less Deductions	Balance at End of Year
Year ended October 3, 2008:					
Allowance for doubtful accounts	$ 2,267	$ 735	$ 95	$ 520	$ 2,577
Reserves for inventory valuation	4,024	4,010	—	1,688	6,346
Valuation of deferred tax assets	3,437	31,630	—	—	35,067
Reserves for sales returns	1,314	2,979	119	2,855	1,557
Year ended September 28, 2007:					
Allowance for doubtful accounts	$ 2,250	$ 977	$ 39	$ 999	$ 2,267
Reserves for inventory valuation	3,405	1,086	—	467	4,024
Valuation of deferred tax assets	3,260	663	—	486	3,437
Reserves for sales returns	1,023	2,648	—	2,357	1,314
Year ended September 29, 2006:					
Allowance for doubtful accounts	$ 2,481	$ 554	$ —	$ 785	$ 2,250
Reserves for inventory valuation	2,540	2,734	—	1,869	3,405
Valuation of deferred tax assets	4,568	224	—	1,532	3,260
Reserves for sales returns	1,323	583	78	961	1,023

Deductions include the net impact of foreign currency fluctuations on the respective accounts. Previously reported amounts have changed due to the Company's accounting for its Escape business as a discontinued operation.

14 LITIGATION

The Company is subject to various legal actions and proceedings in the normal course of business, including those related to product liability, intellectual property and environmental matters. The Company is insured against loss for certain of these matters. Although litigation is subject to many uncertainties and the ultimate exposure with respect to these matters cannot be ascertained, management does not believe the final outcome of any pending litigation will have a material adverse effect on the financial condition, results of operations, liquidity or cash flows of the Company.

On July 10, 2007, after considering the costs, risks and business distractions associated with continued litigation, the Company reached a settlement agreement with Confluence Holdings Corp. that ended a long-standing intellectual property dispute between the two companies. The Company has made a claim with its insurance carriers to recover the

$4,400 settlement, plus defense costs (approximately $800). This matter is presently the subject of litigation in the U.S. District Court for the Eastern District of Wisconsin. The Company is unable to estimate at this time the amount of insurance recovery and, accordingly, has not recorded a receivable for this matter.

15 DISCONTINUED OPERATIONS

On December 17, 2007, the Company committed to a plan to divest the Company's Escape business. In accordance with the provisions of Statement of Financial Accounting Standards (SFAS) No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets (SFAS No. 144), the operations of the Escape business have been reported as discontinued operations in the consolidated financial statements for the fiscal years ended October 3, 2008, September 28, 2007, and September 29, 2006. Accordingly, certain amounts in the 2007 and 2006 consolidated financial statements have been reclassified from the prior year presentation. The Company recorded after tax losses related to the discontinued Escape business of $2,559, $1,315 and $1,722 for 2008, 2007, and 2006, respectively. Revenues of the Escape business were $206, $1,457 and $1,840 for 2008, 2007, and 2006 respectively.

The assets and liabilities of the Escape business have been reported as "held for sale" in the consolidated balance sheets as of October 3, 2008 and September 28, 2007. As of October 3, 2008, assets of $47 consist entirely of inventory and liabilities of $76 consist primarily of reserves for customer claims. As of September 28, 2007, assets consist primarily of $335 of net accounts receivable, $1,107 of net inventory and $264 of property, plant and equipment and liabilities of $938 consist entirely of trade accounts payable.

16 QUARTERLY FINANCIAL SUMMARY (unaudited)

The following summarizes quarterly operating results:

	First Quarter		Second Quarter		Third Quarter		Fourth Quarter	
	2008	2007	2008	2007	2008	2007	2008	2007
Net sales	$ 75,967	$ 71,427	$ 121,813	$ 121,972	$ 141,243	$ 149,868	$ 81,766	$ 87,337
Gross profit	29,289	28,520	46,806	47,157	55,751	63,738	27,705	36,081
Operating (loss) profit	(4,581)	(2,233)	3,647	4,608	14,569	14,783	(51,688)	2,868
(Loss) income from continuing operations	(3,624)	(1,312)	782	1,931	7,887	8,335	(73,520)	1,595
Loss from discontinued operations, net of income tax benefit	(1,066)	(257)	(320)	(338)	(104)	(67)	(1,069)	(653)
Net (loss) income	$ (4,690)	$ (1,569)	$ 462	$ 1,593	$ 7,783	$ 8,268	$ (74,589)	$ 942
(Loss) Income from continuing operations per common share – Basic:								
Class A	$ (0.40)	$ (0.14)	$ 0.09	$ 0.22	$ 0.88	$ 0.93	$ (8.07)	$ 0.18
Class B	$ (0.40)	$ (0.14)	$ 0.09	$ 0.19	$ 0.79	$ 0.84	$ (8.07)	$ 0.16
Loss from discontinued operations per common share – Basic:								
Class A	$ (0.12)	$ (0.03)	$ (0.04)	$ (0.04)	$ (0.01)	$ ---	$ (0.11)	$ (0.07)
Class B	$ (0.12)	$ (0.03)	$ (0.04)	$ (0.03)	$ (0.01)	$ (0.01)	$ (0.11)	$ (0.07)
Net (loss) income per common share – Basic:								
Class A	$ (0.52)	$ (0.17)	$ 0.05	$ 0.18	$ 0.87	$ 0.93	$ (8.18)	$ 0.11
Class B	$ (0.52)	$ (0.17)	$ 0.05	$ 0.16	$ 0.78	$ 0.83	$ (8.18)	$ 0.09
(Loss) Income from continuing operations per common Class A and B share – Dilutive	$ (0.40)	$ (0.14)	$ 0.09	$ 0.21	$ 0.85	$ 0.90	$ (8.07)	$ 0.17
	$ (0.12)	$ (0.03)	$ (0.04)	$ (0.04)	$ (0.01)	$ (0.01)	$ (0.11)	$ (0.07)

Loss from discontinued operations per common Class A and B share – Dilutive								
Net (loss) income per common Class A and B share – Dilutive	$ (0.52)	$ (0.17)	$ 0.05	$ 0.17	$ 0.84	$ 0.89	$ (8.18)	$ 0.10

Operating loss, loss from continuing operations, and net loss for the fourth quarter of 2008 reflect a goodwill and other intangible impairment charge of $41.0 million recognized in that quarter. Loss from continuing operations and net loss for the fourth quarter of 2008 also reflect a deferred tax asset valuation allowance of $29.5 million recorded in that quarter.

Due to changes in stock prices during the year and timing of issuance of shares, the cumulative total of quarterly net income (loss) per share amounts may not equal the net income per share for the year. The first three fiscal quarters in 2008 were 13 weeks long with the last fiscal quarter being 14 weeks long. Each of the fiscal quarters in 2007 was thirteen weeks long. Fiscal quarters end on the Friday nearest to the calendar quarter end.

17 SUBSEQUENT EVENT

The Company entered into a revised debt agreement on December 31, 2008, effective January 2, 2009. See further discussion at Note 4, Indebtedness. The Company also modified the terms of its interest rate swap contract on December 29, 2008. See further discussion at Note 4, Indebtedness.