

ATOSSA GENETICS INC
Form 10-Q/A
November 13, 2018

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 10-Q/A

(Amendment No. 1)

(Mark One)

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

For the quarterly period ended June 30, 2018

OR

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

For the transition period from _____ to _____

Commission file number: 001-35610

ATOSSA GENETICS INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

26-4753208

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

107 Spring Street

Seattle, WA

(Address of principal executive offices)

98104

(Zip Code)

Registrant's telephone number, including area code: (206) 325-6086

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition 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

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

The number of shares of the registrant's common stock, \$0.18 par value per share, outstanding at August 10, 2018 was 5,069,559.

EXPLANATORY NOTE

This Amendment No. 1 to the Quarterly Report on Form 10-Q (the “Amended Form 10-Q”) of Atossa Genetics Inc. (the “Company”) amends the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2018, filed with the Securities and Exchange Commission on August 13, 2018 (the “Original Form 10-Q”). This Amended Form 10-Q corrects an inadvertent error in the calculation of the deemed dividend on Series B convertible preferred stock in the financial statements for the three and six months ended June 30, 2018 that were included in the Original Form 10-Q. Accounting principles generally accepted in the United States of America require that we allocate the proceeds from the May 2018 financing to the warrants and preferred stock issued in the financing and that we estimate and record any discount on the securities as a deemed dividend. In the financial statements included in the Original Form 10-Q, we did not properly allocate the proceeds to the warrants, and we did not properly record the deemed dividend related to the warrant discount as additional paid in capital to common stock. The Company incorrectly stated the deemed dividend for the three and six months ended June 30, 2018 as \$4,782,100, rather than \$11,479,308. The corrections result from application of technical accounting rules and do not impact cash or operations. As a result, the following items in the original filing have been amended:

Part I, Item 1. Financial Statements, Condensed Consolidated Statements of Operations (unaudited);

Part I, Item 1. Financial Statements, Condensed Consolidated Statement of Stockholders’ Equity (unaudited);

Part I, Item 1. Notes to Condensed Consolidated Financial Statement (Unaudited), Note 7 – Stockholders’ Equity –Accounting Treatment; and Note 8 - Net Loss Per Share; and

Part I, Item 4. Controls and Procedures.

In accordance with applicable generally accepted accounting principles, the Company has calculated and recognized adjustments accordingly. The following table shows the effect of the restatement on certain line items within the Company’s Condensed Consolidated Statement of Operations for the three months and six months ended June 30, 2018:

	For the Three Months Ended June 30, 2018		For the Six Months Ended June 30, 2018	
	Previously Reported	Restated	Previously Reported	Restated
Deemed dividend attributable to preferred stock	\$ (4,782,100)	\$ (11,479,308)	\$ (4,782,100)	\$ (11,479,308)
Net loss applicable to common stockholders	\$ (8,924,677)	\$ (15,621,885)	\$ (10,799,059)	\$ (17,496,267)
Loss per common share -basic and diluted	\$ (2.90)	\$ (5.08)	\$ (3.77)	\$ (6.11)

Edgar Filing: ATOSSA GENETICS INC - Form 10-Q/A

The following table shows the effect of the restatement on certain line items within the Company's Condensed Consolidated Statement of Stockholders' Equity for the six months ended June 30, 2018:

	Preferred Stock Additional Paid-in Capital		Common Stock Additional Paid-in Capital	
	Previously	Restated	Previously	Restated
	Reported		Reported	
Issuance of series B convertible preferred stock, net of issuance costs	\$12,290,537	\$6,926,778	\$0	\$5,363,759
Deemed Dividend on series B convertible preferred stock	\$4,782,100	\$11,479,308	\$(4,782,100)	\$(11,479,308)
Conversion of Series B convertible preferred stock to common stock	\$(7,056,421)	\$(7,821,992)	\$6,656,442	\$7,422,013

Except as specifically noted above, this Amended Form 10-Q does not modify or update the Original Form 10-Q or modify or update any related or other disclosures as originally filed, other than as required to reflect the effects of the amendment discussed above. Management has discussed these matters set forth above with the Company's independent registered public accounting firm. On November 12, 2018, the Company's Audit Committee of the Board of Directors concluded that the financial statements and other financial data at and for the three and six months ended June 30, 2018, as reported in the Original Form 10-Q, should not be relied upon because of the error described above which has been corrected in the Amended Form 10-Q. Additionally, investors, analysts and other persons should not rely upon any press releases, investor presentations or other communications that relate to that information.

ATOSSA GENETICS INC.

FORM 10-Q

QUARTERLY REPORT

INDEX

<u>PART I. FINANCIAL INFORMATION</u>	<u>3</u>
<u>ITEM 1. Condensed Consolidated Financial Statements – Unaudited</u>	<u>3</u>
<u>Condensed Consolidated Balance Sheets as of June 30, 2018 and December 31, 2017</u>	<u>3</u>
<u>Condensed Consolidated Statements of Operations for the three and six months ended June 30, 2018 and 2017</u>	<u>4</u>
<u>Condensed Consolidated Statement of Stockholders’ Equity for the six months ended June 30, 2018</u>	<u>5</u>
<u>Condensed Consolidated Statements of Cash Flows for the six months ended June 30, 2018 and 2017</u>	<u>6</u>
<u>Notes to Condensed Consolidated Financial Statements</u>	<u>7</u>
<u>ITEM 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>21</u>
<u>ITEM 3. Quantitative and Qualitative Disclosures about Market Risk</u>	<u>28</u>
<u>ITEM 4. Controls and Procedures</u>	<u>28</u>
<u>PART II. OTHER INFORMATION</u>	<u>29</u>
<u>ITEM 1. Legal Proceedings</u>	<u>29</u>
<u>ITEM 1A. Risk Factors</u>	<u>31</u>
<u>ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	<u>31</u>
<u>ITEM 3. Defaults upon Senior Securities</u>	<u>32</u>
<u>ITEM 4. Mine Safety Disclosures</u>	<u>32</u>
<u>ITEM 5. Other Information</u>	<u>32</u>

ITEM 6. Exhibits

32

SIGNATURES

33

2

PART I. FINANCIAL INFORMATION**ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS****ATOSSA GENETICS INC.****CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)**

	June 30, 2018 (as restated)	December 31, 2017
Assets		
Current assets		
Cash and cash equivalents	\$ 15,236,736	\$7,217,469
Restricted cash	55,000	55,000
Prepaid expenses	440,389	250,944
Research and development tax rebate receivable	626,011	358,277
Other current assets	50,035	16,344
Total current assets	16,408,171	7,898,034
Furniture and equipment, net	60,926	11,467
Intangible assets, net	59,882	75,686
Other assets	48,867	178,907
Total assets	\$ 16,577,846	\$8,164,094
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable	\$ 191,217	\$334,901
Accrued expenses	286,713	90,105
Payroll liabilities	952,657	784,867
Stock-based compensation liability	1,557,163	
Other current liabilities	23,331	15,534
Total current liabilities	3,011,081	1,225,407
Commitments and contingencies (note 11)		
Stockholders' equity		
Preferred stock - \$0.001 par value; 10,000,000 shares authorized, consisting of:	6	
Series A convertible preferred stock-\$0.001 par value; 4,000 shares authorized, and 0 shares outstanding as of June 30, 2018 and December 31, 2017; Series B		

Edgar Filing: ATOSSA GENETICS INC - Form 10-Q/A

convertible preferred stock- \$0.001 par value; 25,000 and 0 shares authorized, and 5,802 and 0 shares issued and outstanding, as of June 30, 2018 and December 31, 2017, respectively

Additional paid-in capital-Series B convertible preferred stock	5,801,994	
Common stock - \$0.18 par value; 175,000,000 shares authorized, 4,874,099 and 2,651,952 shares issued and outstanding, as of June 30, 2018 and December 31, 2017, respectively	877,329	477,342
Additional paid-in capital	78,330,724	71,887,674
Accumulated deficit	(71,443,288)	(65,426,329)
Total stockholders' equity	13,566,765	6,938,687
Total liabilities and stockholders' equity	\$ 16,577,846	\$8,164,094

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

ATOSSA GENETICS INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(UNAUDITED)

	For the Three Months Ended June 30,		For The Six Months Ended June 30,	
	2018 (as restated)	2017	2018 (as restated)	2017
Operating expenses:				
Research and development	\$1,467,736	\$824,094	\$1,938,712	\$1,368,396
General and administrative	2,674,920	1,072,169	4,078,385	2,231,458
Total operating expenses	4,142,656	1,896,263	6,017,097	3,599,854
Operating loss	(4,142,656)	(1,896,263)	(6,017,097)	(3,599,854)
Change in fair value of common stock warrants		(152,447)		(152,447)
Warrant financing expense		(192,817)		(192,817)
Other income	79	38	138	75
Loss before income taxes	(4,142,577)	(2,241,489)	(6,016,959)	(3,945,043)
Income taxes				
Net loss	\$(4,142,577)	\$(2,241,489)	\$(6,016,959)	\$(3,945,043)
Deemed dividends attributable to preferred stock	(11,479,308)	(2,568,132)	(11,479,308)	(2,568,132)
Net loss applicable to common stockholders	\$(15,621,885)	\$(4,809,621)	\$(17,496,267)	\$(6,513,175)
Loss per common share - basic and diluted	\$(5.08)	\$(7.72)	\$(6.11)	\$(13.85)
Weighted average shares outstanding, basic and diluted	3,073,803	623,004	2,864,033	470,139

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

ATOSSA GENETICS INC.

CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

(UNAUDITED)

	Series B Convertible Preferred Stock			Common Stock		Additional Paid-in Capital (as restated)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Additional Paid-in Capital (as restated)	Shares	Amount			
Balance at December 31, 2017		\$	\$	2,651,952	\$477,342	\$71,887,674	\$(65,426,329)	\$6,938,687
Issuance of Series B convertible preferred stock and warrants, net of issuance costs of \$1,333,449	13,624	14	6,926,778			5,363,759		12,290,551
Allocation of Series B convertible preferred stock to beneficial conversion feature			(4,782,100)			4,782,100		
Deemed Dividend on Series B convertible preferred stock			11,479,308			(11,479,308)		
Conversion of Series B convertible preferred stock to	(7,822)	(8)	(7,821,992)	2,222,147	399,987	7,422,013		

common
stock

Amortization
of
commitment
shares

(39,703)

(39,703)

Compensation
cost for stock
options
granted to
executives
and

394,189

394,189

employees
Net loss

(6,016,959) (6,016,959)

**Balance at
June 30, 2018**

5,802

\$6

\$5,801,994

4,874,099

\$877,329

\$78,330,724

\$(71,443,288)

\$13,566,765

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

ATOSSA GENETICS INC.**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS****(UNAUDITED)**

	For the Six Months Ended June 30,	
	2018	2017
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	\$(6,016,959)	\$(3,945,043)
Compensation cost for stock options granted	394,189	336,115
Loss on disposal of intangible asset		17,695
Change in stock-based compensation liability	1,557,163	
Depreciation and amortization	17,838	73,193
Change in fair value of common stock warrants		152,447
Warrant financing expense		192,817
Changes in operating assets and liabilities:		
Prepaid expenses	(189,445)	(56,769)
Research and development tax rebate receivable	(267,734)	
Other assets	56,644	25,831
Accounts payable	(143,684)	241,491)
Payroll liabilities	167,790	(287,479)
Accrued expenses	196,608	27,053
Other current liabilities	7,797	13,074
Net cash used in operating activities	(4,219,793)	(3,209,575)
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of furniture and equipment	(51,491)	
Net cash used in investing activities	(51,491)	
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from issuance of Class A and Class B Units, net of issuance costs		3,871,636
Proceeds from issuance of Series B convertible preferred stock and warrants, net of issuance costs	12,290,551	
Net cash provided by financing activities	12,290,551	3,871,636